

CHAPTER 1

(HB 176)

AN ACT relating to schools and declaring an emergency.

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

➔Section 1. KRS 160.346 is amended to read as follows:

(1) ***For purposes of this section:***

(a) ***"Persistently low-achieving school" means:***

1. ***For school years 2009-2010 and 2010-2011, based on averaging the percentage of proficient or higher in reading and mathematics on the state assessments under KRS 158.6455:***
 - a. ***A Title I school in the group of Title I schools that contains a minimum of the lowest five (5) or the lowest five percent (5%), whichever is greater, of the Title I schools identified collectively in any school improvement category under the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, that have failed to make adequate yearly progress for three (3) consecutive years; or***
 - b. ***A non-Title I school in the group of non-Title I schools that contains a minimum of the lowest five (5) or the lowest five percent (5%), whichever is greater, of the non-Title I schools that contain grades seven (7) through twelve (12), or any combination thereof, and has at least thirty-five percent (35%) or greater poverty as identified in the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq., or its successor, that have failed to make adequately yearly progress for three (3) consecutive years;***
2. ***A high school whose graduation rate, based on the state's approved graduation rate calculation, has been sixty percent (60%) for three (3) or more consecutive years; or***
3. ***Beginning with the state assessment results for the school year 2011-2012, a school that is in the lowest five percent (5%) of all schools that fail to meet the achievement targets of the state accountability system under KRS 158.6455 for at least three (3) or more consecutive years. For school years 2011-2012 and 2012-2013, the three (3) consecutive years shall be evaluated based on the status of the school under this subparagraph and subparagraph 1. of this paragraph.***

(b) ***"School intervention" means a process to turn around a persistently low-achieving school that is chosen by a school council, a superintendent and a local board of education, or the commissioner of education, or the commissioner's designee with approval of the Kentucky Board of Education.***

- (2) (a) A school with a school council identified as needing improvement under KRS 158.6455 shall include in its school improvement plan actions to strengthen the school council and the school-based decision making process at the school.
- (b) The local school district shall include in its assistance plan for a school identified in paragraph (a) of this subsection actions to strengthen the functioning of the school council and the school-based decision making process at the school.

(3)~~(2)~~ (a) ~~An [A scholastic] audit team, established under KRS 158.6455 (4) and (5), auditing a~~ ***persistently low-achieving school*** ~~[a second time that for two (2) or more successive accountability cycles failed to meet its goal], shall include in the review~~ ***and report:***

1. The functioning of the school and the school council;
2. ***A determination of the school council and principal's ability to lead the intervention in the persistently low-achieving school*** ~~[The implementation of the school improvement plan and actions related to the school council developed under subsection (1)(a) of this section];~~
3. The interaction and relationship between the superintendent, central office personnel, and the council; and

4. A recommendation to the commissioner of education~~[in the audit report]~~ concerning whether the school council should retain the authority granted to it under KRS 160.345, ***whether the council should be replaced, and whether the current principal should remain as principal in the school.*** If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:
 - a. The authority should be transferred to the superintendent or ***to the commissioner of education who shall designate staff to manage the school***~~[a highly skilled educator];{ and}]~~
 - b. The school council should continue to act in an advisory capacity until all authority has been restored under subsection (8)~~[(6)]~~ of this section; ***and***
 - c. ***The members of the school council shall be replaced by the commissioner of education.***
- (b) ~~An~~~~[A scholastic]~~ audit team, established under KRS 158.6455 ***(4) and (5)***, auditing a district of a school subject to ***paragraph (a) of this*** subsection ~~[(2)(a) of this section]~~, shall include in its review ***and report:***
 1. The overall functioning of the school district;
 2. The interaction and relationship between the superintendent, central office personnel, school board members, and the council; and
 3. ***A determination of the district's ability to manage the intervention in the persistently low-achieving school.***
- (4) ***Within thirty (30) days of receiving the reports of the school and district audits, the commissioner shall act on the recommendations in the reports and other relevant data that the commissioner considers to have bearing on his or her determination of actions to be taken***~~[The implementation of the district assistance plan for the audited school. In the audit report, the team shall make a recommendation to the commissioner of education concerning whether the school's council should retain its authority granted under KRS 160.345. If the recommendation is to transfer the authority of the school council, the team shall also recommend whether:~~
 - a. ~~The authority should be transferred to the superintendent or a highly skilled educator; and~~
 - b. ~~The school council should continue to act in an advisory capacity until all authority has been restored under subsection (6) of this section.~~
- ~~(3) (a) 1. If both the school and the district audit teams recommend transfer of the council's authority to the superintendent, the commissioner of education shall transfer the council's authority under KRS 160.345 to the superintendent. The commissioner shall determine whether the school council shall continue in an advisory capacity and shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the action].~~
- ~~(5)[2.]~~ Within thirty (30) days of the commissioner's action ***on the audit teams' recommendations***, the school council ***or local board of education may appeal the commissioner's action to***~~[request that]~~ the Kentucky Board of Education~~[consider the matter]~~ by submitting a written request including any supporting information. The Kentucky Board of Education shall consider the audit reports, the commissioner's decision, and the request for consideration with any supporting information, and make a final determination. ***If the state board is not scheduled to meet within thirty (30) days following the receipt of an appeal of the commissioner's decision, the board chair shall call a special meeting for action upon the appeal.***
- ~~[(b) If both audit teams recommend transfer of the council's authority to a highly skilled educator or if both recommend transfer of the council's authority but are not in agreement as to the party to be granted authority, the commissioner shall make a recommendation to the Kentucky Board of Education, which shall make the final determination. The school council and the superintendent may submit supporting information. The commissioner shall include as part of the recommendation whether the school council shall continue in an advisory capacity. The Kentucky Board of Education shall consider the audit reports, the commissioner's recommendation, and supporting information provided by the school council and superintendent. The commissioner shall notify the local board of education, the district superintendent, the principal of the school, and the school council members of the recommendation and the Kentucky Board of Education's final action.~~

~~(e) If the two (2) audit teams disagree in their recommendations about whether the council's authority should be transferred, the school council shall retain its authority.~~

~~(6)(4)~~ ***If a decision is made to transfer powers, duties, and authority under subsection (4) of this section, the local superintendent*** subject to the policies adopted for the district by the local board of education, ~~the local district superintendent~~ or the ***commissioner or the commissioner's designee*** ~~highly skilled educator~~ shall assume all powers, duties, and authority granted to a school council under KRS 160.345 thirty (30) days following the commissioner's ***action on the audit teams' recommendations*** ~~recommendation~~ if no ***appeal*** ~~to request for consideration by~~ the Kentucky Board of Education is submitted or following the final determination of the Kentucky Board of Education ***on an appeal***, whichever is appropriate.

~~(7)(5)~~ Within thirty (30) days after assuming the powers, duties, and authority under subsection ~~(6)(4)~~ of this section, the superintendent or ***the commissioner or the commissioner's designee*** ~~highly skilled educator~~ shall consult with the council, if the council has been given an advisory role under subsection ~~(4)(3)~~ of this section, and with stakeholders at the school including parents, the principal, certified staff, and classified staff, and prepare a plan for developing capacity for sound school-based decision making at the school. The commissioner of education shall review the ***proposed*** plan and approve it or identify specific areas for improvement ***before giving final approval***. The superintendent ~~or highly skilled educator~~ shall report to the commissioner every six (6) months on the implementation and results of the approved plan.

~~(8)(6)~~ The school's right to establish a council or the school's right for the council to assume the full authority granted under KRS 160.345 shall be restored ***if the school is not classified as persistently low-achieving for two (2) consecutive years*** ~~when the school meets its goal for an accountability cycle as determined by the Kentucky Department of Education under KRS 158.6455~~.

(9) ***Each persistently low-achieving school shall engage in one (1) of the following intervention options:***

(a) ***"External management option" which requires that the day to day management of the school is transferred to an education management organization that may be a for-profit or nonprofit organization that has been selected by a local board of education from a list of management organizations. The management organization may be approved by the Kentucky Board of Education after a rigorous review process, which shall be developed by the state board by the promulgation of administrative regulations. The management organization's authority shall include the right to make personnel decisions that comply with KRS Chapter 161 and any employee-employer bargained contract that is in effect;***

(b) ***"Restaffing option" which requires the replacement of the principal and the existing school-based decision making council unless the audit reports under subsection (3) of this section recommended otherwise, screening of existing faculty and staff with the retention of no more than fifty percent (50%) of the faculty and staff at the school, development and implementation of a plan of action that uses research-based school improvement initiatives designed to turn around student performance. Personnel actions shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(c) relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers;***

(c) ***"School closure option" which requires the closure of an existing school and the transfer of its students to other schools within the district that are meeting their accountability measures, reassignment of the school's faculty and staff to available positions within the district, and which may result in nonrenewal of contracts, dismissal, demotion, or a combination of these personnel actions which shall comply with KRS Chapter 161 and notwithstanding KRS 160.380 (1)(c) relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers;***

(d) ***"Transformation option" means a school intervention option that begins with replacing the school principal who led the school prior to commencement of the transformation option and replacing the school council members unless the audit reports under subsection (3) of this section recommended otherwise and instituting an extensive set of specified strategies designed to turn around the identified school which shall comply with KRS Chapter 161 and notwithstanding KRS 160.380(1)(c) relating to filling vacant positions and KRS 160.345(2)(h)1. relating to transfers; or***

(e) ***Any other model recognized by the federal No Child Left Behind Act of 2001, 20 U.S.C. secs 6301 et seq., or its successor.***

The Kentucky Board of Education shall promulgate administrative regulations to establish the process and procedures for implementing the intervention options identified in paragraphs (a) to (e) of this subsection available to local boards of education and the commissioner of education.

- (10) *Professionally negotiated contracts by a local board of education shall not take precedence over the requirements of paragraphs (b), (c), and (d) of subsection (9) of this section.*
- (11) *The Department of Education shall provide services and support to assist the schools identified as persistently low-achieving.*
- (12)(7) If, in the course of a school or district ~~[scholastic]~~ audit, the audit team identifies information suggesting that a violation of KRS 160.345(9)(a) may have occurred, the commissioner of education shall forward the evidence to the Office of Education Accountability for investigation.

➔Section 2. KRS 160.380 is amended to read as follows:

- (1) As used in this section:
 - (a) "Contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor;
 - (b) "Relative" means father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, and daughter-in-law; and
 - (c) "Vacancy" means any certified position opening created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member of a local school district, or a new position created in a local school district for which certification is required. However, if an employer-employee bargained contract contains procedures for filling certified position openings created by the resignation, dismissal, nonrenewal of contract, transfer, or death of a certified staff member, or creation of a new position for which certification is required, a vacancy shall not exist, unless certified positions remain open after compliance with those procedures.
- (2) ***Except as provided in Section 1 of this Act:***
 - (a) All appointments, promotions, and transfers of principals, supervisors, teachers, and other public school employees shall be made only by the superintendent of schools, who shall notify the board of the action taken. All employees of the local district shall have the qualifications prescribed by law and by the administrative regulations of the Kentucky Board of Education and of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the superintendent for any school year at any time after February 1 preceding the beginning of the school year. No superintendent of schools shall appoint or transfer himself or herself to another position within the school district.
 - (b) When a vacancy occurs in a local school district, the superintendent shall notify the chief state school officer thirty (30) days before the position shall be filled. The chief state school officer shall keep a registry of local district vacancies which shall be made available to the public. The local school district shall post position openings in the local board office for public viewing.
 - (c) When a vacancy needs to be filled in less than thirty (30) days' time to prevent disruption of necessary instructional or support services of the school district, the superintendent may seek a waiver from the chief state school officer. If the waiver is approved, the appointment shall not be made until the person recommended for the position has been approved by the chief state school officer. The chief state school officer shall respond to a district's request for waiver or for approval of an appointment within two (2) working days.
 - (d) When a vacancy occurs in a local district, the superintendent shall conduct a search to locate minority teachers to be considered for the position. The superintendent shall, pursuant to administrative regulations of the Kentucky Board of Education, report annually the district's recruitment process and the activities used to increase the percentage of minority teachers in the district.
 - (e) No relative of a superintendent of schools shall be an employee of the school district. However, this shall not apply to a relative who is a classified or certified employee of the school district for at least thirty-six (36) months prior to the superintendent assuming office, or prior to marrying a relative of the superintendent, and who is qualified for the position the employee holds. A superintendent's spouse who has at least twenty (20) years of service in school systems may be an employee of the school district. A

superintendent's spouse who is employed under this provision shall not hold a position in which the spouse supervises certified or classified employees. A superintendent's spouse may supervise teacher aides and student teachers. However, the superintendent shall not promote a relative who continues employment under an exception of this subsection.

- (f) No superintendent shall employ a relative of a school board member of the district, unless on July 13, 1990, the board member's relative is an employee of the district, the board member is holding office, and the relative was not initially hired by the district during the tenure of the board member. A relative employed in 1989-90 and initially hired during the tenure of a board member serving on July 13, 1990, may continue to be employed during the remainder of the board member's term. However, the superintendent shall not promote any relative of a school board member who continues employment under the exception of this subsection.
- (g)
 - 1. No principal's relative shall be employed in the principal's school, except a relative who is not the principal's spouse and who was employed in the principal's school during the 1989-90 school year.
 - 2. No spouse of a principal shall be employed in the principal's school, except:
 - a. A principal's spouse who was employed in the principal's school during the 1989-90 school year for whom there is no position for which the spouse is certified to fill in another school operated in the district; or
 - b. A principal's spouse who was employed in the 1989-90 school year and is in a school district containing no more than one (1) elementary school, one (1) middle school, and one (1) high school.
 - 3. A principal's spouse who is employed in the principal's school shall be evaluated by a school administrator other than the principal.
 - 4. The provisions of KRS 161.760 shall not apply to any transfer made in order to comply with the provisions of this paragraph.
- (3) No superintendent shall employ in any position in the district any person who is a violent offender or has been convicted of a sex crime as defined by KRS 17.165 which is classified as a felony. The superintendent may employ, at his discretion, persons convicted of sex crimes classified as a misdemeanor.
- (4)
 - (a) A superintendent shall require a national and state criminal background check on all new certified hires in the school district and student teachers assigned within the district. Excluded are certified individuals who were employed in another certified position in a Kentucky school district within six (6) months of the date of hire and who had previously submitted to a national and state criminal background check for the previous employment.
 - (b) The superintendent shall require that each new certified hire and student teacher, as set forth in paragraph (a) of this subsection, submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation.
 - (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation from the Department of Kentucky State Police after a state criminal background check is conducted. The results of the state and federal criminal background check shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police and the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
 - (d) The Education Professional Standards Board may promulgate administrative regulations to impose additional qualifications to meet the requirements of Public Law 92-544.
- (5) A superintendent shall require a state criminal background check on all classified initial hires.
 - (a) The superintendent shall require that each classified initial hire submit to a state criminal history background check by the Department of Kentucky State Police. If an applicant has been a resident of Kentucky twelve (12) months or less, the superintendent may require a national criminal history background check as a condition of employment.

- (b) Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested under the provisions of paragraph (a) of this subsection, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (6) The superintendent may require a contractor, volunteer, or visitor to submit to a national and state criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (7)
 - (a) If a school term has begun and a certified or classified position remains unfilled or if a vacancy occurs during a school term, a superintendent may employ an individual, who will have supervisory or disciplinary authority over minors, on probationary status pending receipt of the criminal history background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.
 - (b) Employment shall be contingent on the receipt of the criminal history background check documenting that the probationary employee has no record of a sex crime nor as a violent offender as defined in KRS 17.165.
 - (c) Notwithstanding KRS 161.720 to 161.800 or any other statute to the contrary, probationary employment under this section shall terminate on receipt by the school district of a criminal history background check documenting a record of a sex crime or as a violent offender as defined in KRS 17.165 and no further procedures shall be required.
 - (d) The provisions of KRS 161.790 shall apply to terminate employment of a certified employee on the basis of a criminal record other than a record of a sex crime or as a violent offender as defined in KRS 17.165.
- (8)
 - (a) Each application or renewal form, provided by the employer to an applicant for a classified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT. UNDER CERTAIN CIRCUMSTANCES, A NATIONAL CRIMINAL HISTORY BACKGROUND CHECK MAY BE REQUIRED AS A CONDITION OF EMPLOYMENT."
 - (b) Each application or renewal form, provided by the employer to an applicant for a certified position, shall conspicuously state the following: "FOR THIS TYPE OF EMPLOYMENT, STATE LAW REQUIRES A NATIONAL AND STATE CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT."
 - (c) Each application form for a district position shall require the applicant to:
 - 1. Identify the states in which he or she has maintained residency, including the dates of residency; and
 - 2. Provide picture identification.
- (9) The provisions of subsections (4), (5), (6), (7), and (8) of this section shall apply to a nonfaculty coach or nonfaculty assistant as defined under KRS 161.185.
- (10) A school-based decision making council parent member, as defined under KRS 160.345, shall submit to a state and national fingerprint-supported criminal history background check by the Department of Kentucky State Police and the Federal Bureau of Investigation. The results of the state criminal history background check and the results of the national criminal history background check, if requested, shall be sent to the district superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search. A parent member may serve prior to the receipt of the criminal history background check report but shall be removed from the council on receipt by the school district of a report documenting a record of a sex crime or criminal offense against a victim who is a

minor as defined in KRS 17.500 or as a violent offender as defined in KRS 17.165, and no further procedures shall be required.

- (11) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, when an employee of the school district is charged with any offense which is classified as a felony, the superintendent may transfer the employee to a second position until such time as the employee is found not guilty, the charges are dismissed, the employee is terminated, or the superintendent determines that further personnel action is not required. The employee shall continue to be paid at the same rate of pay he or she received prior to the transfer. If an employee is charged with an offense outside of the Commonwealth, this provision may also be applied if the charge would have been treated as a felony if committed within the Commonwealth. Transfers shall be made to prevent disruption of the educational process and district operations and in the interest of students and staff and shall not be construed as evidence of misconduct.

➔Section 3. Whereas, the 2009 Advance Placement results confirmed that the concerted effort of Advance Kentucky dramatically boosted student achievement on demanding AP examinations as evidenced by the percentage of passing scores on the 2009 AP math, science, and English examinations in Advance Kentucky schools, which increased 76.6 percent above the previous year; and whereas, AP classes increase student achievement by providing rigor in classes and students receive college credit for each passing AP score, the Kentucky Department of Education shall include in Kentucky's Race to the Top application a description of the intent to expand Advance Kentucky schools by twenty (20) schools each year over a four-year period. The Kentucky Department of Education shall provide fifty percent (50%) of the cost of the program with all additional costs to be covered by grants from philanthropy, local district funding, and other sources of funding, which may include funding from the General Assembly.

➔Section 4. Whereas, operating changes need to be made to conform with state and federal regulations, which affect significant federal funding for the Commonwealth, and the Commonwealth needs to implement these changes quickly, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor January 14, 2010.

CHAPTER 2

(HB 302)

AN ACT relating to Bluegrass Station, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. There is hereby appropriated to the Department of Military Affairs from Restricted Funds \$500,000 in fiscal year 2010-2011 and \$500,000 in fiscal year 2011-2012 for debt service to support agency bonds as set forth in this section. There is hereby authorized \$4,000,000 in agency bonds in fiscal year 2009-2010 for the Department of Military Affairs to construct a hangar at Bluegrass Station.

➔Section 2. Whereas time is of the essence and this project must be commenced by March 1, 2010, to meet contractual timelines, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by the Governor February 8, 2010.

CHAPTER 3

(HB 14)

AN ACT relating to Kentucky State Parks.

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

➔Section 1. A NEW SECTION OF KRS CHAPTER 148 IS CREATED TO READ AS FOLLOWS:

- (1) *A Kentucky resident shall be exempt from the relevant overnight accommodations rate at any Kentucky State Park if he or she is:*

- (a) *A permanently and totally disabled veteran with a one hundred percent (100%) service-connected disability, regardless of wartime service; or*
- (b) *A permanently and totally disabled member of the Kentucky National Guard or Reserve Component injured while on state active duty, active duty training, or inactive duty training.*
- (2) *To be entitled to the exemption under this section, a veteran must be a Kentucky resident and must be rated one hundred percent (100%) permanently and totally disabled, as the result of an injury suffered while on active duty, by the United States Veterans Administration or the Department of Defense. Members of the Kentucky National Guard or Reserve Component must be rated one hundred percent (100%) permanently and totally disabled as provided in KRS Chapter 342.*
- (3) *The exemption shall be made available to qualified Kentucky residents as described in this section for a maximum of three (3) overnight stays per calendar year at any Kentucky State Park. Each stay shall be limited to a maximum of three (3) days, subject to availability. During peak periods, as defined elsewhere in this section, stays are to be taken during the Sunday through Thursday five (5) day period only. Outside of peak periods, stays are available at any time.*
- (4) *The Department of Parks shall promulgate any administrative regulations necessary to carry out this section, including but not limited to:*
 - (a) *Defining peak periods, which shall be no longer than the days between Memorial Day and Labor Day and the month of October;*
 - (b) *Establishing the ten (10) day window during which reservations by residents under this section may be made;*
 - (c) *Establishing those accommodations which qualify for the exemption; and*
 - (d) *Delineating the types of proof acceptable for establishing eligibility for persons entitled to the exemption provided for in this section while working in conjunction with the Kentucky Department of Veterans Affairs.*
- (5) *The exemption described in this section shall not limit the benefits of a qualified Kentucky resident if he or she is also eligible for benefits under KRS 148.0211.*

Signed by Governor February 18, 2010.

CHAPTER 4

(HB 75)

AN ACT relating to honoring military service.

WHEREAS, the state government hiring preference for veterans helps to eliminate the penalty for time spent in military service; and

WHEREAS, the preference rewards veterans for their sacrifices and recognizes the economic loss they suffered while serving our country in uniform; and

WHEREAS, the preference restores veterans to a favorable competitive position for state government employment; and

WHEREAS, the preference acknowledges the larger obligation owed to disabled veterans and their families;

NOW, THEREFORE,

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

➔Section 1. KRS 18A.150 is amended to read as follows:

- (1) *Any person who has served in the active military, military reserves, or National Guard and was discharged or released therefrom with an honorable discharge, discharge under honorable conditions, or a general discharge*~~[honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment,]~~ shall have five (5) points added to *the veteran's*~~[his]~~ entrance examination score for classified positions. Any *current member of the active military, military reserves, or National Guard*~~[Kentucky National Guard]~~

~~member, or a former member of the Kentucky National Guard who has been honorably discharged,]~~ shall be entitled to the same number of points.

- (2) Any *person who has served in the active military, military reserves, or National Guard and was discharged or released therefrom with an honorable discharge, discharge under honorable conditions, or a general discharge*~~[honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment]~~, whom the Veterans Administration or any branch of the Armed Forces of the United States determines has service-connected disabilities, shall have ten (10) points added to *the veteran's*~~[his]~~ entrance examination score for a classified position.
- (3) The spouse of *a person who has served in the active military, military reserves, or National Guard, was discharged or released therefrom with an honorable discharge, discharge under honorable conditions, or a general discharge*~~[an honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment who]~~ would be eligible for a ten (10) point preference, and whose service-connected disability disqualifies *the veteran*~~[him]~~ for positions along the general line of *the veteran's*~~[his]~~ usual occupation shall have ten (10) preference points added to *the spouse's*~~[his]~~ entrance examination score for a classified position. In such a case, the spouse loses the right to preference if the disabled~~[war]~~ veteran recovers.
- (4) Until remarriage, the surviving spouse of *a person who has served in the active military, military reserves, or National Guard and was discharged or released therefrom with an honorable discharge, discharge under honorable conditions, or a general discharge*~~[an honorably discharged soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment]~~ shall have ten (10) preference points added to *the spouse's*~~[his]~~ entrance examination score for a classified position. This includes the surviving spouse of any military personnel who died while in the Armed Forces, unless circumstances surrounding the death would have been cause for other than honorable *or general* discharge separation.
- (5) A parent totally or partially dependent on *a person who has served in the active military, military reserves, or National Guard*~~[soldier, sailor, marine, member of the Air Force, or member of any other branch of the military service who was inducted into that service through voluntary or involuntary enlistment]~~ and ~~[who]~~ lost his *or her* life under honorable conditions while on active duty or active duty for training purposes~~[;]~~ or ~~[who]~~ became permanently and totally disabled as a result of a service-connected disability~~[;]~~ shall have ten (10) preference points added to *the parent's*~~[his]~~ examination score for a classified position.
- (6) The preference points granted by subsections (1) through (5) of this section shall be added to entrance examination scores for classified positions only if the score is determined by the secretary to be a passing score and after verification of the required service. The total of the entrance examination score and the preference points ~~may~~~~[shall not]~~ exceed one hundred (100).
- (7)
 - (a) *When a register certificate is transmitted to a state agency for employment consideration, that certificate shall clearly identify all individuals entitled to preference points under subsections (1) to (6) of this section, whether or not an examination is actually a part of the selection method. Regardless of the selection method used to fill a vacancy, these individuals shall be clearly identified.*
 - (b)
 1. *If the number of individuals identified in paragraph (a) of this subsection is less than five (5), the employing agency shall offer an interview to all individuals identified in paragraph (a) of this subsection, including individuals presently employed by the Commonwealth of Kentucky and applying for another classified position within state government.*
 2. *If the number of individuals identified in paragraph (a) of this subsection equals or exceeds five (5), the employing agency shall offer an interview to no fewer than five (5).*

Signed by Governor February 18, 2010.

CHAPTER 5**(HB 240)**

AN ACT relating to the promotion of the efficient use of energy, making an appropriation therefor, and declaring an emergency.

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

➔Section 1. KRS 56.770 is repealed and reenacted to read as follows:

As used in KRS 56.770 to 56.784, unless the context requires otherwise:

- (1) "Aggregate simple payback period" means the simple payback period of a set of energy efficiency measures taken together for a building;
- (2) "Building" means all contiguous land, structures, appurtenances, and improvements that use energy;
- (3) "Cabinet" means the Finance and Administration Cabinet;
- (4) "Energy audit" means examination of a building's energy-using systems, energy consumption and costs, occupancy patterns, and operation and maintenance procedures;
- (5) "Energy efficiency measure" means any construction, improvement, repair, alteration, or betterment of a building that is intended to reduce energy consumption; or any equipment, fixture, or furnishing to be added to or used in a building that will be a cost-effective energy-related project that is intended to reduce energy consumption;
- (6) "Guaranteed energy savings performance contract" means an agreement for the provision of energy services or equipment, including energy efficiency measures, energy conservation measures and alternate energy technologies for state government buildings, in which a person agrees to design, construct, install, maintain, operate, or manage energy systems or equipment to improve energy efficiency of, or produce energy in connection with, a state government building. Payments for a guaranteed energy savings performance contract shall be made from measured and verified savings generated from implementation of the energy efficiency measures financed by the contract. The term of a guaranteed energy savings performance contract shall not exceed the life of the energy savings generated from implementation of the energy efficiency measures financed by the contract. If the measured and verified savings are not sufficient to pay the financial obligations under the contract, the contractor is liable for the contract payments;
- (7) "High-performance building" means a public building that is designed, constructed, and capable of being operated in a manner that:
 - (a) Increases environmental performance and economic value over time;
 - (b) Safeguards the health of occupants;
 - (c) Enhances satisfaction and productivity of workers through energy-efficient systems;
 - (d) Incorporates environmentally friendly materials and products; and
 - (e) Reduces waste;
- (8) "High-performance building standards" means a set of standards developed by the cabinet pursuant to KRS 56.777;
- (9) "Engineering analysis" means a detailed cost-benefit analysis of energy efficiency investments including a review of potential cost savings through operation and maintenance changes;
- (10) "Life-cycle cost analysis" means a method for estimating the total cost of an energy-using component or building over its useful life, including cost factors such as purchase price or construction, renovation, or leasing costs, energy use, maintenance, interest, and inflation;
- (11) "Low cost/no cost energy conservation measures" means those energy saving practices and energy efficiency measures, usually involving operation and maintenance practices, that can be accomplished by existing personnel within existing operating budgets;

- (12) "Simple payback period" means the number of years it takes to pay back, from estimated savings, the initial cost of an energy efficiency measure with the simple payback period equal to the initial cost divided by the estimated annual savings;
- (13) "Savings" means the reduction in expenditures, excluding any state government and post-secondary education personnel expenditures, that are measured and verified, including but not limited to energy usage, operating costs, and capital cost avoidance that occur as a result of the implementation of energy efficiency measures;
- (14) "Capital cost avoidance" means savings generated when expenditures of appropriated capital construction or appropriated capital outlay funds are avoided because the budgeted capital improvements or items of equipment are contained within the energy efficiency measures provided by a guaranteed energy savings performance contract;
- (15) "Operating costs" means expenditures associated with operating and maintaining a properly functioning building and its systems including but not limited to the heating, ventilation, cooling, lighting, plumbing, water heating, electrical, and laundry systems and their controls;
- (16) "Public building" has the same meaning as in KRS 318.010;
- (17) "ENERGY STAR" means the voluntary program administered by the United States Environmental Protection Agency and the United States Department of Energy that is designed to protect the environment through the promotion of energy-efficient products and practices;
- (18) "Green Globes rating system" means the on-line environmental assessment tool developed by the Green Building Initiative as of December, 2004, that allows designers, property owners, and managers to evaluate and rate buildings against best sustainable building design practices and integrate principles of sustainable architecture at every stage of project delivery in order to design and construct buildings that will be energy-efficient and resource-efficient, achieve operational savings, and provide healthier environments in which to live and work; and
- (19) "LEED" means the building rating systems developed on or after January 1, 2005, by the United States Green Building Council that allow designers, property owners, and managers to evaluate and rate buildings against best sustainable building design and practices and to integrate principles of sustainable architecture at every stage of project delivery in order to design and construct buildings that will be energy-efficient and resource-efficient using a whole-building approach in five (5) key areas of human and environmental health:
 - (a) Sustainable site development;
 - (b) Water savings;
 - (c) Energy efficiency;
 - (d) Material selection; and
 - (e) Environmental quality.

➔Section 2. KRS 56.772 is repealed and reenacted to read as follows:

The General Assembly finds and declares it to be the public policy of the Commonwealth to maximize the use of energy efficiency measures in the construction, renovation, and maintenance of buildings owned or leased by the Commonwealth. In furtherance of this policy, the cabinet shall administer an energy efficiency program, to be known as the Energy Efficiency Program for State Government Buildings.

➔Section 3. KRS 56.774 is repealed and reenacted to read as follows:

- (1) The Energy Efficiency Program for State Government Buildings shall provide for implementation of low cost/no cost energy conservation measures, engineering analyses, energy efficiency measures, building improvements, and monitoring of results for state-owned or state-leased buildings.
- (2) Any engineering analysis conducted on a state-owned building shall assess the energy efficiency of the building and make recommendations for improving the efficient use of energy within the building. The analyses shall be performed by qualified engineers, architects, or other persons trained in energy efficiency who may be employees of the cabinet or employed pursuant to KRS Chapter 45A, except that any engineers, architects or other persons trained in energy efficiency and retained under a guaranteed energy savings performance contract, shall not be subject to the provisions of KRS 45A.800 to 45A.835.

- (3) Except as provided in subsection (5) of this section, measures to improve the energy efficiency of a state-owned building, which have an aggregate simple payback period of five (5) years or less, shall be implemented as general fund appropriations become available. No more than five percent (5%) of the cost of energy efficiency measures for a building may be utilized for monitoring the results.
- (4) If general fund appropriations are available for energy efficiency improvements, the cabinet shall prioritize projects among the various state-owned buildings to determine which projects shall be implemented to best utilize the available funding.
- (5) If general fund appropriations are unavailable, energy efficiency measures for a state-owned building may be financed by other means. These other means include but are not limited to guaranteed energy savings performance contracts as defined under KRS 56.770 entered into pursuant to KRS 45A.085 and KRS 45A.045(10). Guaranteed energy savings performance contracts shall not be subject to the provisions of KRS 45A.800 to 45A.835. These energy efficiency measures shall not be limited to those that have an aggregate simple payback period of five (5) years or less, but shall result in reasonable economic benefit to the Commonwealth. Ownership of the energy efficiency measures shall be transferred to the Commonwealth upon completion of the guaranteed energy savings performance contract or as otherwise agreed upon in the contract. Savings from the implementation of the energy efficiency measures under the guaranteed energy savings performance contract shall be used to satisfy the obligations under the guaranteed energy savings performance contract and to repay the cost of the other means used to finance the energy efficiency measures, and may be used to repay expenses incurred by the cabinet to reimburse the cabinet for expenses related to the guaranteed energy savings performance contract, including but not limited to staff time for monitoring, overseeing, and managing the project. Notwithstanding KRS 45.229, remaining savings shall remain in the state agency account and shall not lapse. All savings projected under a guaranteed energy savings performance contract shall be guaranteed to the Commonwealth.
- (6) The savings in reduced expenditures that are specified as payment sources shall be documented in the guaranteed energy savings performance contract. Savings shall be determined by using one (1) of the measurement and verification methodologies listed in the United States Department of Energy's "International Performance Measurement and Verification Protocol." If specific data limitations or documented unique characteristics of the project prevent use of the "International Performance Measurement and Verification Protocol," an alternative method that is compatible shall be adopted upon documentation and approval of the secretary of the cabinet.

➔Section 4. KRS 56.775 is repealed and reenacted to read as follows:

To improve energy efficiency throughout state government, the cabinet and universities that manage their own capital construction projects under KRS 164A.580 shall:

- (1) Beginning July 1, 2009, require that all construction or renovation of public buildings for which fifty percent (50%) or more of the total capital cost is paid by the Commonwealth shall be designed and constructed, or renovated, to meet the high-performance building standards established in KRS 56.777. This subsection applies to all projects that have not entered the design phase prior to January 1, 2009;
- (2) Require that all building leases entered into by the Commonwealth or any of its agencies on and after July 1, 2018, shall meet the high-performance building standards. From July 15, 2008 and prior to July 1, 2018, a building that meets the high-performance building standards established in this section shall be given a preference in the state leasing process over other buildings that do not meet the high-performance building standards; and
- (3) Incorporate ENERGY STAR-qualified products in state agency procurements to the extent economically feasible using a life-cycle cost analysis.

➔Section 5. KRS 56.777 is repealed and reenacted to read as follows:

- (1) A High-Performance Buildings Advisory Committee is hereby created and shall be administratively staffed by the cabinet.
- (2) The committee shall consist of fifteen (15) members and shall include:
 - (a) A representative of the cabinet designated by the secretary;
 - (b) A representative of the Tourism, Arts and Heritage Cabinet designated by the secretary;
 - (c) A representative of the Department of Education designated by the commissioner;

- (d) A representative of the Council on Postsecondary Education designated by the president;
- (e) A representative of the Governor's Office of Energy Policy designated by the executive director; and
- (f) A representative appointed by the Governor from each of the following:
 - 1. The design and construction industry involved in public works contracting;
 - 2. The Kentucky Chapter of the U. S. Green Building Council;
 - 3. The University of Kentucky College of Design;
 - 4. The Kentucky Forest Industries Association;
 - 5. The Kentucky Society of the American Institute of Architects;
 - 6. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and
 - 7. The Home Builders Association of Kentucky;
 - 8. The Associated General Contractors of Kentucky;
 - 9. The West Kentucky Construction Association; and
 - 10. The Kentucky Manufactured Housing Institute.
- (3) The representative of the cabinet shall serve as the chairperson of the committee. All appointments shall be for a term of two (2) years. Committee members shall serve until their successors are appointed and shall be eligible for reappointment.
- (4) The committee shall meet at least monthly or as convened by the chairperson.
- (5) The members of the committee shall receive reimbursement for the cost of travel to and from the meetings and any costs necessarily incurred in carrying out their duties.
- (6) The committee shall:
 - (a) Consult with architects, engineers, builders, energy and conservation organizations, and other interested stakeholders, and make recommendations to the cabinet regarding:
 - 1. Standards and benchmarks developed under existing high-performance building programs, including the ENERGY STAR rating system, Green Globes rating system, and Leadership in Energy and Environmental Design (LEED) Green Building rating system; and
 - 2. Standards and guidelines developed and adopted by the U.S. Green Building Council, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America partnership concerning the design of sustainable buildings to balance environmental responsibility, resource efficiency, occupant comfort and well-being, and community sensitivity;
 - (b) Assist the cabinet in the review of state building projects to ensure that building performance and efficiency are maximized to the extent economically feasible using a life-cycle cost analysis;
 - (c) Assist the cabinet in developing a process of documentation of the attainment of high-performance building standards; and
 - (d) Assist the cabinet in conducting an ongoing professional development program for state and local building designers, construction companies, school districts, building managers, and the general public on high-performance building design, construction, maintenance, and operation.
- (7) Prior to the implementation of KRS 56.770 to 56.784, the cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section. The cabinet shall consider the recommendations made by the High-Performance Buildings Advisory Committee pursuant to subsection (6) of this section and shall establish the criteria for the high-performance building standards and the benchmarks by which the high-performance building standards will be measured. At a minimum, the cabinet shall:
 - (a) Include the standards for site selection and management, water efficiency, energy conservation, waste reduction, material and resource use, and indoor air quality; and

- (b) Require that each high-performance building be designed, constructed, or renovated so that it is capable of being rated as an ENERGY STAR building in accordance with the criteria and rating system adopted by the United States Environmental Protection Agency and in effect at the time the building is designed or, in the case of leased buildings, at the time the lease is entered into on or after July 1, 2018.
- (8) In developing the criteria for the high-performance building standards, the cabinet shall consider and encourage the use of:
 - (a) Locally grown lumber from forest lands implementing sustainable practices established by the American Tree Farm System's Sustainable Forest Initiative or the Kentucky Forest Stewardship Program established under KRS 149.330 to 149.355;
 - (b) Building materials manufactured with recycled content within the Commonwealth; and
 - (c) Renewable energy sources.

➔Section 6. KRS 56.776 is repealed and reenacted to read as follows:

The cabinet, with the assistance of the Governor's Office of Energy Policy, shall institute an energy audit training program to identify energy saving techniques for state-owned building maintenance staff. Additional programs shall be developed to educate state employees and other building occupants on energy awareness and practices to reduce energy use in state-owned buildings. Local government employees may be included in training and educational programs.

➔Section 7. KRS 56.778 is repealed and reenacted to read as follows:

The cabinet shall require persons submitting bids or plans for state-owned buildings to be constructed or substantially renovated after July 15, 1996, to include within those bids or plans life-cycle energy cost analyses. The cabinet shall consider those life-cycle cost analyses when evaluating competing bids or plans.

➔Section 8. KRS 56.782 is repealed and reenacted to read as follows:

The cabinet shall report on or before October 15, 2008, and on or before every October 15 thereafter to the Legislative Research Commission on progress made to maximize the use of energy-efficiency measures in state government. The Legislative Research Commission shall transmit the report to the appropriate interim joint committees and to the General Assembly when it convenes. The report shall include but not be limited to:

- (1) A summary of initiatives undertaken by the cabinet during the reporting period to promote adoption of low cost/no cost energy-efficiency measures, including employee training efforts;
- (2) A summary of energy-efficiency measures installed and energy improvements made during the reporting period;
- (3) Energy consumption and expenditure data for facilities owned or leased by state government and any documented savings made as a result of energy-efficiency measures and improvements;
- (4) Status report on the number of buildings newly constructed, renovated, or leased in accordance with the high-performance building standards required under KRS 56.777 and the amount of savings realized based upon a life-cycle cost analysis;
- (5) Any efforts made during the reporting period to promote acquisition of energy-efficient products pursuant to KRS 45A.045(12) and the amount of savings expected to be realized in the first year of operation from the purchase of ENERGY STAR-qualified products pursuant to KRS 56.775;
- (6) Any recommendations for future funding of energy improvements or other measures needed to assure energy efficiency in state government; and
- (7) Any improvements in energy efficiency planned or realized through the use of the LEED rating system, the Green Globes rating system, ENERGY STAR-qualified products, and guaranteed energy savings performance contracts.

➔Section 9. KRS 56.783 is repealed and reenacted to read as follows:

- (1) A special fund in the State Treasury is hereby created which shall be known as the energy efficiency in state government buildings revolving loan fund. The fund shall be used to provide financial assistance to state government agencies for the purposes of KRS 56.770 to 56.784.

- (2) The fund may receive state appropriations, gifts, grants, and federal funds and shall include earnings from the investment of moneys in the fund. Any fund balance at the close of the fiscal year shall not lapse but shall carry forward to the next fiscal year and shall remain available solely for the purposes of this section.
- (3) Administration of this fund shall be the responsibility of the cabinet. The cabinet shall establish terms and conditions for loans from the fund including the application and repayment process. The cabinet shall establish and implement fiscal controls and accounting periods for payments received and disbursements made by the fund and for fund balances at the beginning and end of each accounting period.
- (4) All repayments of loans made under this section shall be paid into the fund. Balances, or portions thereof, in the fund shall not revert to the general fund.

➔Section 10. KRS 56.784 is repealed and reenacted to read as follows:

- (1) Each agency responsible for managing state-owned property shall review the utility usage of the property and shall cooperate with the cabinet to determine which properties are good candidates for guaranteed energy savings performance contracts. The responsible agency is encouraged to implement guaranteed energy savings performance contracts where appropriate.
- (2) The cabinet may implement the provisions of KRS 56.770 to 56.784 through the promulgation of administrative regulations pursuant to KRS Chapter 13A.
- (3) The secretary of the cabinet shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A establishing a process for procurement of energy savings performance contracts, including required contract language. The following entities shall adhere to these regulations when procuring services under a guaranteed energy savings performance contract:
 - (a) Any governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580; or
 - (b) Any public corporation as defined by KRS 45.750(2)(c) or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth that manages its capital construction program.
- (4) All state agencies, including those identified in subsection (3) of this section, shall submit proposed guaranteed energy savings performance contracts to the Office of Financial Management within the Office of the Controller for review and approval prior to contract execution.
- (5) The secretary shall report all authorized guaranteed energy savings performance contracts to the Capital Projects and Bond Oversight Committee for its review.

➔Section 11. KRS 141.435 is repealed and reenacted to read as follows:

As used in KRS 141.435 to 141.437:

- (1) "Active solar space-heating system" means a system that:
 - (a) Consists of solar energy collectors that collect and absorb solar radiation combined with electric fans or pumps to transfer and distribute that solar heat;
 - (b) May include an energy storage space-heating system to provide heat when the sun is not shining; and
 - (c) Is installed by a certified installer;
- (2) "Certified installer" means an installer who has satisfied the professional certification standards established by the North American Board of Certified Energy Practitioners (NABCEP) and who has been certified as a NABCEP Certified Solar PV Installer or a NABCEP Certified Solar Thermal Installer;
- (3) "Combined active solar space-heating and water-heating system" means a system that meets the requirements of both an active solar space-heating system and a solar water-heating system and is installed by a certified installer;
- (4) "Commonwealth" means the Commonwealth of Kentucky;
- (5) "Dwelling unit" includes a manufactured home as defined in KRS 100.348;

- (6) "Energy-efficient interior lighting system" means an interior lighting system that meets the maximum reduction in lighting power density requirements for the federal energy efficient commercial building deduction under 26 U.S.C. sec. 179D, as in effect December 31, 2007;
- (7) "Energy-efficient heating, cooling, ventilation, or hot water system" means a heating, cooling, ventilation, or hot water system that meets the requirements for the federal energy-efficient commercial building deduction under 26 U.S.C. sec. 179D, as in effect December 31, 2007;
- (8) "Energy-efficient windows and storm doors" means windows and storm doors that are:
 - (a) ENERGY STAR-labeled; and
 - (b) Certified by the National Fenestration Rating Council as meeting the North-Central U.S. climate zone performance standards for U-factor (nonsolar heat conductance), solar heat gain coefficient, air leakage, visible-light transmittance, and condensation resistance;
- (9) "ENERGY STAR" shall have the same meaning as in KRS 56.770;
- (10) "Installed cost" means the following, less any discounts, rebates, sales tax, installation-assistance credits, name-referral allowances, or other similar reductions:
 - (a) The purchase cost of equipment, components, and associated design; and
 - (b) Labor costs properly allocable to the on-site preparation, assembly, and original installation of the property, including piping or wiring to interconnect such property to the dwelling unit or commercial property;
- (11) "Passive solar space-heating system" means a system that:
 - (a) Takes advantage of the warmth of the sun through the use of design features such as large south-facing windows and materials in the floors or walls that absorb warmth during the day and release that warmth at night;
 - (b) Includes one (1) or more of the following designs:
 - 1. Direct gain which stores and slowly releases heat energy collected from the sun shining directly into the building and warming materials such as tile or concrete;
 - 2. Indirect gain which uses materials that are located between the sun and the living space such as a wall to hold, store, and release heat; or
 - 3. Isolated gain which collects warmer air from an area that is remote from the living space, such as a sunroom attached to a house, and the warmer air flows naturally to the rest of the house; and
 - (c) Meets the guidelines and technical requirements for passive solar design established by administrative regulation pursuant to KRS 141.436(7);
- (12) "Qualified energy property" means the following property that meets the performance, quality, and certification standards of and that would have been eligible for the federal tax credit for residential energy property expenditures under 26 U.S.C. sec. 25C, as it existed on December 31, 2007:
 - (a) An electric heat pump water heater;
 - (b) An electric heat pump;
 - (c) A closed loop geothermal heat pump;
 - (d) An open loop geothermal heat pump;
 - (e) A direct expansion (DX) geothermal heat pump;
 - (f) A central air conditioner;
 - (g) A natural gas, propane, or oil furnace or hot water heater;
 - (h) A hot water boiler including outdoor wood-fired boiler units; or
 - (i) An advanced main air circulating fan;
- (13) "Solar photovoltaic system" means a system for electricity generation that:

- (a) Includes solar photovoltaic panels, structural attachments, electrical wiring, inverters for converting direct current output to alternating current, and appropriate controls and safety measures for output monitoring;
 - (b) Meets the requirements of Article 690 of the National Electrical Code;
 - (c) Uses solar photovoltaic panels and inverters that are rated and listed by Underwriters Laboratories; and
 - (d) Is installed by a certified installer;
- (14) "Solar water-heating system" means a system that:
- (a) Uses solar-thermal energy to heat water;
 - (b)
 1. Is an indirect pressurized glycol system that uses propylene glycol; or
 2. Is an indirect drainback system that uses distilled water or propylene glycol;
 - (c) Uses OG-100 solar thermal collectors that are:
 1. Certified by the Solar Rating and Certification Corporation; and
 2. Covered by a manufacturer's warranty of not less than five (5) years;
 - (d) Is installed by a certified installer; and
 - (e) Is warranted by the certified installer for a period of not less than two (2) years;
- (15) "Upgraded insulation" means insulation with the following R-value ratings:
- (a) Attic insulation rated R-38 or higher;
 - (b) Exterior wall, crawl space, and basement exterior wall insulation rated R-13 or higher; and
 - (c) Floor insulation rated R-19 or higher; and
- (16) "Wind turbine" or "wind machine" means a turbine or machine used for generating electricity that:
- (a) Is certified as meeting the United States Wind Industry Consensus Standards developed by the American Wind Energy Association in partnership with the United States Department of Energy;
 - (b) Is covered by a manufacturer's warranty of not less than five (5) years;
 - (c) Is in compliance with all relevant building codes, height restriction variances, other special code requirements, and zoning ordinances;
 - (d) Has been installed in accordance with all building codes and all permits were received prior to the start of construction and installation;
 - (e) Is in compliance with all applicable Federal Aviation Administration regulations;
 - (f) Meets all requirements of Article 705 of the National Electrical Code for electrical components and installations; and
 - (g) Is rated and listed by Underwriters Laboratories.

➔Section 12. KRS 141.436 is repealed and reenacted to read as follows:

- (1) (a) For taxable periods beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205. The credit shall apply if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year in a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
1. The taxpayer's principal place of residence; or
 2. A single-family or multifamily residential rental unit.
- (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
1. Upgraded insulation, not to exceed one hundred dollars (\$100);

2. Energy-efficient windows and storm doors, not to exceed two hundred fifty dollars (\$250); or
 3. Qualified energy property, not to exceed two hundred fifty dollars (\$250).
- (c) In no case shall the total credits provided under this subsection exceed five hundred dollars (\$500) per taxpayer.
- (2) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year on a dwelling unit located in the Commonwealth, or on property located in the Commonwealth that is owned and used by the taxpayer as commercial property.
- (b) The tax credit shall equal:
1. Thirty percent (30%) of the installed costs of:
 - a. An active solar space-heating system;
 - b. A passive solar space-heating system;
 - c. A combined active solar space-heating and water-heating system;
 - d. A solar water-heating system; and
 - e. A wind turbine or wind machine; or
 2. Three dollars (\$3) per watt direct current (DC) of rated capacity of a solar photovoltaic system.
- (c) In no case shall the total tax credits provided in this subsection exceed:
1. Five hundred dollars (\$500) per taxpayer if installed on a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
 - a. The taxpayer's principal place of residence; or
 - b. A single-family residential rental unit; or
 2. One thousand dollars (\$1,000) per taxpayer if installed on property located in the Commonwealth that is owned and used by the taxpayer as:
 - a. A multifamily residential rental unit; or
 - b. Commercial property;
- (3) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the following is installed during the taxable year on property located in the Commonwealth that is owned and used by the taxpayer as commercial property:
1. An energy-efficient interior lighting system; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system.
- (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
1. An energy-efficient interior lighting system, not to exceed five hundred dollars (\$500) per taxpayer; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system, not to exceed five hundred dollars (\$500) per taxpayer.
- (c) In no case shall the total tax credits provided in this subsection exceed one thousand dollars (\$1,000) per taxpayer.
- (d) For purposes of the tax credit provided by this subsection, "commercial property" shall not include single-family or multifamily residential units.

- (4) The tax credits provided under this section shall apply in the tax year in which the installation is completed. If the credit cannot be taken in full in the year in which the installation is completed, the tax credit may be carried forward one (1) year.
- (5) The department may request copies of invoices, purchase receipts, installation contracts, proof of installer's NABCEP certification, and any other information that the department determines necessary to verify credits taken.
- (6) If the taxpayer has taken the ENERGY STAR home or the ENERGY STAR manufactured home tax credit provided under KRS 141.437, the tax credits provided under this section shall not apply.
- (7) The department shall establish, by administrative regulation, the guidelines and technical requirements for items that are eligible for the tax credits provided under subsection (2) of this section, including but not limited to requirements for capacity, siting, plumbing, collector mountings, and pressurization. The department shall enlist the assistance, cooperation, and recommendations of the Governor's Office of Energy Policy and the Kentucky Pollution Prevention Center at the University of Louisville in determining those guidelines and technical requirements and may enlist their assistance in evaluating the eligibility of credits taken under this section.
- (8) On or before December 1, 2010, and on or before every December 1 thereafter, the department shall report to the Legislative Research Commission the total number and gross amount of each type of tax credit claimed on returns processed during the fiscal year ending prior to the December reporting date.

➔Section 13. KRS 141.437 is repealed and reenacted to read as follows:

- (1) As used in this section:
 - (a) "ENERGY STAR home" means any single-family residence that qualifies for and receives the ENERGY STAR label under the ENERGY STAR Program administered by the United States Environmental Protection Agency; and
 - (b) "ENERGY STAR manufactured home" means a manufactured home as defined in KRS 100.348 that meets the ENERGY STAR label under the ENERGY STAR Program administered by the United States Environmental Protection Agency.
- (2) For taxable years beginning after December 31, 2008, and before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed by KRS 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205 if a taxpayer:
 - (a) Builds a new ENERGY STAR home located in the Commonwealth for use as a principal place of residence; or
 - (b) Sells a new ENERGY STAR manufactured home to a buyer who uses that home as a principal place of residence in the Commonwealth.
- (3) The tax credit shall equal:
 - (a) Eight hundred dollars (\$800) if the taxpayer builds an ENERGY STAR home; or
 - (b) Four hundred dollars (\$400) if the taxpayer sells an ENERGY STAR manufactured home.
- (4) The tax credit provided under this section shall apply in the tax year in which the taxpayer completes construction of the ENERGY STAR home or sells the ENERGY STAR manufactured home.
- (5) The tax credit provided in this section shall not apply if:
 - (a) The tax credit has been previously taken by another taxpayer on the same ENERGY STAR home or ENERGY STAR manufactured home; or
 - (b) The taxpayer has taken the energy efficiency tax credits provided in KRS 141.436.
- (6) The department may request verification of the ENERGY STAR label placed on the home, documentation that the buyer is using the home as a principal place of residence, and any other information that the department determines is necessary to verify the tax credits taken.

- (7) On or before December 1, 2010, and on or before every December 1 thereafter, the department shall report to the Legislative Research Commission the total number and gross amount of each type of credit claimed on returns processed during the fiscal year ending prior to the December reporting period.

➔Section 14. KRS 141.0205 is repealed and reenacted to read as follows:

If a taxpayer is entitled to more than one (1) of the tax credits allowed against the tax imposed by KRS 141.020, 141.040, and 141.0401, the priority of application and use of the credits shall be determined as follows:

- (1) The nonrefundable business incentive credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) 1. For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(a);
 2. For taxable years beginning after December 31, 2006, the limited liability entity tax credit permitted by KRS 141.0401;
 - (b) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (c) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (d) The health insurance credit permitted by KRS 141.062;
 - (e) The tax paid to other states credit permitted by KRS 141.070;
 - (f) The credit for hiring the unemployed permitted by KRS 141.065;
 - (g) The recycling or composting equipment credit permitted by KRS 141.390;
 - (h) The tax credit for cash contributions in investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (i) The coal incentive credit permitted under KRS 141.0405;
 - (j) The research facilities credit permitted under KRS 141.395;
 - (k) The employer GED incentive credit permitted under KRS 151B.127;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (n) The environmental stewardship credit permitted by KRS 154.48-025;
 - (o) The clean coal incentive credit permitted by KRS 141.428;
 - (p) The ethanol credit permitted by KRS 141.4242;
 - (q) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (r) The energy efficiency credits permitted by KRS 141.436; and
 - (s) The railroad maintenance and improvement credit permitted by KRS 141.385.
- (2) After the application of the nonrefundable credits in subsection (1) of this section, the nonrefundable personal tax credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual credits permitted by KRS 141.020(3);
 - (b) The credit permitted by KRS 141.066;
 - (c) The tuition credit permitted by KRS 141.069;
 - (d) The household and dependent care credit permitted by KRS 141.067; and
 - (e) The new home credit permitted by KRS 141.388.
- (3) After the application of the nonrefundable credits provided for in subsection (2) of this section, the refundable credits against the tax imposed by KRS 141.020 shall be taken in the following order:
 - (a) The individual withholding tax credit permitted by KRS 141.350;

- (b) The individual estimated tax payment credit permitted by KRS 141.305;
 - (c) For taxable years beginning after December 31, 2004, and before January 1, 2007, the corporation income tax credit permitted by KRS 141.420(3)(c);
 - (d) The certified rehabilitation credit permitted by KRS 141.382(1)(b); and
 - (e) The film industry tax credit allowed by KRS 141.383.
- (4) The nonrefundable credit permitted by KRS 141.0401 shall be applied against the tax imposed by KRS 141.040.
- (5) The following nonrefundable credits shall be applied against the sum of the tax imposed by KRS 141.040 after subtracting the credit provided for in subsection (4) of this section, and the tax imposed by KRS 141.0401 in the following order:
- (a) The economic development credits computed under KRS 141.347, 141.381, 141.384, 141.400, 141.401, 141.402, 141.403, 141.407, 141.415, 154.12-2088, and 154.27-080;
 - (b) The certified rehabilitation credit permitted by KRS 171.397(1)(a);
 - (c) The health insurance credit permitted by KRS 141.062;
 - (d) The unemployment credit permitted by KRS 141.065;
 - (e) The recycling or composting equipment credit permitted by KRS 141.390;
 - (f) The coal conversion credit permitted by KRS 141.041;
 - (g) The enterprise zone credit permitted by KRS 154.45-090, for taxable periods ending prior to January 1, 2008;
 - (h) The tax credit for cash contributions to investment funds permitted by KRS 154.20-263 in effect prior to July 15, 2002, and the credit permitted by KRS 154.20-258;
 - (i) The coal incentive credit permitted under KRS 141.0405;
 - (j) The research facilities credit permitted under KRS 141.395;
 - (k) The employer GED incentive credit permitted under KRS 151B.127;
 - (l) The voluntary environmental remediation credit permitted by KRS 141.418;
 - (m) The biodiesel and renewable diesel credit permitted by KRS 141.423;
 - (n) The environmental stewardship credit permitted by KRS 154.48-025;
 - (o) The clean coal incentive credit permitted by KRS 141.428;
 - (p) The ethanol credit permitted by KRS 141.4242;
 - (q) The cellulosic ethanol credit permitted by KRS 141.4244;
 - (r) The energy efficiency credits permitted by KRS 141.436;
 - (s) The ENERGY STAR home or ENERGY STAR manufactured home credit permitted by KRS 141.437;
 - (t) The railroad maintenance and improvement credit permitted by KRS 141.385; and
 - (u) The railroad expansion credit permitted by KRS 141.386.
- (6) After the application of the nonrefundable credits in subsection (5) of this section, the refundable credits shall be taken in the following order:
- (a) The corporation estimated tax payment credit permitted by KRS 141.044;
 - (b) The certified rehabilitation credit permitted by KRS 141.382(1)(b); and
 - (c) The film industry tax credit allowed in KRS 141.383.

➔Section 15. KRS 151.720 is repealed and reenacted to read as follows:

The Kentucky River Authority is authorized and empowered to:

- (1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;
- (2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;
- (3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;
- (4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;
- (5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;
- (6) Issue revenue bonds in accordance with KRS 151.730;
- (7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;
- (8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;
- (9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;
- (10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section and KRS 151.727 and 151.728, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;
- (11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-range water resource plan and submit it to the authority. The authority, after consultation with the Environmental and Public Protection Cabinet, shall develop a unified long-range water resource plan for the basin. The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years. The authority shall conduct a public hearing on the plan prior to its adoption and amend the plan as appropriate based on the comments received. The Environmental and Public Protection Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements under KRS Chapters 224 and 151. A drought response plan for the basin shall be developed by the authority and shall be coordinated with the Environmental and Public Protection Cabinet to assure consistency with KRS Chapters 224 and 151, and this plan shall be implemented for the basin upon the direction of the authority;
- (12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;
- (13) Promote private investment in the installation of hydroelectric generating units on all existing constructed and reconstructed Kentucky River dams under the jurisdiction of the authority, by developing a standard lease, establishing reasonable financial responsibility requirements, verifying that the proposed installation of the hydroelectric unit will not adversely affect the structural integrity of the dam, and adopting a schedule of reasonable fees for water used in the generation of hydroelectric power;
- (14) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;

- (15) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;
- (16) Coordinate the Kentucky River basin water resources activities among state agencies;
- (17) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;
- (18) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;
- (19) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and
- (20) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

➔Section 16. KRS 160.325 is repealed and reenacted to read as follows:

- (1) In an effort to reduce the rising energy costs that are straining school budgets, on or before January 1, 2010, each board of education shall enroll in the Kentucky Energy Efficiency Program that is offered by the Kentucky Pollution Prevention Center at the University of Louisville in order to obtain information regarding the potential energy savings for every board-owned and board-operated facility.
- (2) The Kentucky Pollution Prevention Center may prioritize the provision of assistance and development of energy management plans based upon available resources.
- (3) On or before December 1, 2011, and on or before December 1 of each year thereafter, the Kentucky Pollution Prevention Center shall file a report for the preceding fiscal year with the Governor's Office of Energy Policy and the Legislative Research Commission. The report shall include:
 - (a) The number of boards of education enrolled in the Kentucky Energy Efficiency Program;
 - (b) The status of the development of energy management plans by those boards of education and anticipated savings to be obtained by those plans; and
 - (c) The amount and disposition of grants provided by the Governor's Office of Energy Policy and any state appropriations for support of the Kentucky Energy Efficiency Program.

➔Section 17. KRS 158.808 is repealed and reenacted to read as follows:

- (1) Subject to the availability of funds, the Kentucky Department of Education and the Department for Workforce Investment shall establish an energy technology career track program. The purpose of the program is to provide grants to school districts to develop and implement an energy technology engineering career track across middle and high schools within the district. Program components may include but not be limited to career exploration and counseling, strategies to increase the rigor of instruction in pertinent core content areas, strategies to link core content to an energy technology career focus, professional development for teachers, and cooperative learning opportunities with industry and postsecondary institutions.
- (2) The Kentucky Board of Education shall promulgate administrative regulations for the administration of the energy technology career track program. The Kentucky Department of Education shall administer the program, approve grant recipients, and distribute the funds to local school districts.

➔Section 18. KRS 278.285 is repealed and reenacted to read as follows:

- (1) The commission may determine the reasonableness of demand-side management plans proposed by any utility under its jurisdiction. Factors to be considered in this determination include, but are not limited to, the following:
 - (a) The specific changes in customers' consumption patterns which a utility is attempting to influence;
 - (b) The cost and benefit analysis and other justification for specific demand-side management programs and measures included in a utility's proposed plan;

- (c) A utility's proposal to recover in rates the full costs of demand-side management programs, any net revenues lost due to reduced sales resulting from demand-side management programs, and incentives designed to provide positive financial rewards to a utility to encourage implementation of cost-effective demand-side management programs;
 - (d) Whether a utility's proposed demand-side management programs are consistent with its most recent long-range integrated resource plan;
 - (e) Whether the plan results in any unreasonable prejudice or disadvantage to any class of customers;
 - (f) The extent to which customer representatives and the Office of the Attorney General have been involved in developing the plan, including program design, cost recovery mechanisms, and financial incentives, and if involved, the amount of support for the plan by each participant, provided however, that unanimity among the participants developing the plan shall not be required for the commission to approve the plan;
 - (g) The extent to which the plan provides programs which are available, affordable, and useful to all customers; and
 - (h) Next-generation residential utility meters that can provide residents with amount of current utility usage, its cost, and can be capable of being read by the utility either remotely or from the exterior of the home.
- (2) A proposed demand-side management mechanism including:
- (a) Recover the full costs of commission-approved demand-side management programs and revenues lost by implementing these programs;
 - (b) Obtain incentives designed to provide financial rewards to the utility for implementing cost-effective demand-side management programs; or
 - (c) Both of the actions specified

may be reviewed and approved by the commission as part of a proceeding for approval of new rate schedules initiated pursuant to KRS 278.190 or in a separate proceeding initiated pursuant to this section which shall be limited to a review of demand-side management issues and related rate-recovery issues as set forth in subsection (1) of this section and in this subsection.

- (3) The commission shall assign the cost of demand-side management programs only to the class or classes of customers which benefit from the programs. The commission shall allow individual industrial customers with energy intensive processes to implement cost-effective energy efficiency measures in lieu of measures approved as part of the utility's demand-side management programs if the alternative measures by these customers are not subsidized by other customer classes. Such individual industrial customers shall not be assigned the cost of demand-side management programs.
- (4) Home energy assistance programs may be part of a demand-side management program. In considering a home energy assistance program, the commission shall only utilize the criteria set forth in subsections (1)(f) and (3) of this section.

➔Section 19. KRS 152.713 is repealed and reenacted to read as follows:

- (1) For purposes of this section, "renewable energy" has the same meaning as in KRS 154.20-400.
- (2) The Center for Renewable Energy Research and Environmental Stewardship is hereby created and attached to the Governor's Office of Energy Policy for administrative purposes. The Governor's Office of Energy Policy shall provide consultation, coordination services, technical assistance, and staff support to the board of directors created in subsection (4) of this section, on an as-needed basis, and perform other necessary administrative functions until the center is deemed fully operational. The executive director of the office or his or her designee shall coordinate the development of the center and act as the chair of the board of directors created in subsection (4) of this section until the board is established and is operational.
- (3) The Center for Renewable Energy Research and Environmental Stewardship shall:
 - (a) Provide leadership, research, support, and policy development in renewable energy;
 - (b) Advance the goal of renewable energy;

- (c) Promote technologies, practices, and programs that increase efficiency in energy utilization in homes, businesses, and public buildings;
 - (d) Emphasize energy policies that would result in cost-conscious, responsible development of Kentucky's energy resources and a commitment to environmental quality;
 - (e) Promote partnerships among the state's postsecondary education institutions, private industry, and nonprofit organizations to actively pursue federal research and development resources that are dedicated to renewable energy;
 - (f) Promote the continued development of public-private partnerships dedicated to promoting energy efficiency through education and outreach;
 - (g) Establish research priorities with approval of the board of directors created in subsection (4) of this section, relating to renewable energy, and develop procedures and processes for awarding research grants to eligible recipients as defined by the board and to the extent that funding is available;
 - (h) Collaborate with the Governor's Office of Energy Policy to avoid duplication of efforts, provide appropriate data and information, and support the implementation of Kentucky's comprehensive energy strategy; and
 - (i) Carry out other activities to further the efficient and environmentally responsible use of renewable energy.
- (4) (a) There is hereby created a governing board of directors to provide policy direction, establish a strategic research agenda and operating policies, and provide financial and operational oversight for the Center for Renewable Energy Research and Environmental Stewardship. The initial board shall be appointed within sixty (60) days following July 15, 2008.
- (b) The board shall consist of thirteen (13) members:
- 1. One (1) member to represent the Governor's Office of Energy Policy as designated by its executive director;
 - 2. Three (3) members representing postsecondary education interests who shall be appointed by the Governor;
 - 3. One (1) member to be designated by the governing body of the Kentucky Science and Technology Corporation;
 - 4. One (1) member from an energy conservation organization who shall be appointed by the Governor;
 - 5. The secretary of the Economic Development Cabinet or the secretary's designee;
 - 6. One (1) member who shall be a recognized consumer advocate to be appointed by the Governor;
 - 7. Three (3) members to represent companies that are focused on renewable energy who shall be appointed by the Governor;
 - 8. One (1) member who shall represent environmental interests to be appointed by the Governor; and
 - 9. One (1) member who shall be selected to represent local government interests to be appointed by the Governor.
- (c) The members appointed by the Governor shall serve two (2) year terms and may be reappointed. The members representing specific agencies shall serve for as long as the respective agencies determine appropriate.
- (5) The board shall:
- (a) Adopt operating procedures, including a meeting schedule;
 - (b) Meet at least quarterly;
 - (c) Select a chair and co-chair annually who may be reelected, not to exceed three (3) consecutive terms;

- (d) Establish working groups or subcommittees of the board as the board determines is needed;
- (e) Establish qualifications and job descriptions, set the compensation and benefits, and employ staff as it determines necessary to carry out its responsibilities under this section; and
- (f) Provide an annual program and financial report to the Legislative Research Commission within ninety (90) days of the close of each fiscal year.

➔Section 20. KRS 42.580 is repealed and reenacted to read as follows:

As used in KRS 42.580 to 42.588:

- (1) "Cabinet" means the Finance and Administration Cabinet;
- (2) "Demand-side management" has the same meaning as in KRS 278.010;
- (3) "Energy audit" has the same meaning as in KRS 56.770;
- (4) "Energy-efficient heating, cooling, ventilation, or hot water system" has the same meaning as in KRS 141.435;
- (5) "Energy-efficient interior lighting system" has the same meaning as in KRS 141.435;
- (6) "Energy-efficient windows and storm doors" has the same meaning as in KRS 141.435;
- (7) "Engineered demand-side management project" means a project undertaken to reduce the amount of energy consumed in an existing structure, including but not limited to:
 - (a) Energy-efficient heating, cooling, ventilation, or hot water systems;
 - (b) Energy-efficient interior lighting systems;
 - (c) Energy-efficient windows and storm doors;
 - (d) Qualified energy property;
 - (e) Upgraded insulation;
 - (f) Solar water-heating systems; and
 - (g) Any other energy efficiency measures that will reduce energy costs, including those that will use solar power, either active or passive;
- (8) "Private sector building" means a building owned by a private retail, commercial, or industrial business;
- (9) "Public sector building" means a building owned by the Commonwealth of Kentucky, any public university of the Commonwealth, or any public community college of the Commonwealth;
- (10) "Qualified energy property" has the same meaning as in KRS 141.435;
- (11) "Simple payback period" has the same meaning as in KRS 56.770;
- (12) "Solar water-heating system" has the same meaning as in KRS 141.435; and
- (13) "Upgraded insulation" has the same meaning as in KRS 141.435.

➔Section 21. KRS 42.582 is repealed and reenacted to read as follows:

- (1) There is established in the cabinet the Kentucky Bluegrass Turns Green Program for the purposes of:
 - (a) Concentrating on energy demand-side management in private and public sector buildings;
 - (b) Generating savings to taxpayers and the Commonwealth;
 - (c) Allowing for continued economic development;
 - (d) More efficiently using the Commonwealth's precious natural resources; and
 - (e) Establishing the Commonwealth as a benchmark state for demand-side management efforts.
- (2) The Kentucky Blue Grass Turns Green Program shall consist of the bluegrass turns green public sector grant fund established in KRS 42.584 and the bluegrass turns green private sector loan fund established in KRS 42.586.

➔Section 22. KRS 42.584 is repealed and reenacted to read as follows:

- (1) (a) The bluegrass turns green public sector grant fund is created as a trust and agency fund. The fund shall be administered by the cabinet and shall consist of:
 1. Proceeds from grants, contributions, appropriations, or other moneys made available for purposes of the trust and agency fund; and
 2. Funds derived from the bond issuance authorized under 2008 Ky. Acts ch. 139, sec. 27.
- (b) Notwithstanding KRS 45.229, fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the trust and agency fund shall become part of the trust and agency fund and shall not lapse.
- (2) Trust and agency fund moneys shall be used by the cabinet to provide grants to the public sector for engineered demand-side management projects in public sector buildings. The cabinet shall not award more than one (1) grant per public university campus or public community college campus within an eighteen (18) month period.
- (3) To be eligible for a grant under this section, the cost of a proposed engineered demand-side management project shall be at least five thousand dollars (\$5,000) and shall not exceed one million five hundred thousand dollars (\$1,500,000) per project.
- (4) Beginning July 1, 2009, and ending June 30, 2013, the simple payback period for an approved engineered demand-side management project shall be no more than five (5) years. Beginning July 1, 2013, the cabinet may consider a simple payback period of no more than twelve (12) years.
- (5) Moneys in the grant fund are hereby appropriated for the purposes set forth in subsection (2) of this section.
- (6) The cabinet shall not approve an applicant for a grant under this section, unless the applicant:
 - (a) Agrees to undergo and pay for an energy audit to establish a baseline of energy consumption; and
 - (b) Meets all the requirements established in this section and any regulations promulgated thereunder.

➔Section 23. KRS 42.586 is repealed and reenacted to read as follows:

- (1) (a) The bluegrass turns green private sector loan fund is created as a separate revolving fund. The fund shall be administered by the cabinet and shall consist of:
 1. Proceeds from grants, contributions, appropriations, or other moneys made available for purposes of the revolving fund;
 2. Loan repayments made by the private sector;
 3. Funds derived from the bond issuance authorized under 2008 Ky. Acts ch. 139, sec. 28.
- (b) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the fund shall become part of the revolving fund and shall not lapse.
- (2) Revolving fund moneys shall be used by the cabinet to provide low-interest loans to the private sector for engineered demand-side management projects in private sector buildings. The cabinet shall not have more than one (1) loan outstanding at a time to any private retail, commercial, or industrial business.
- (3) To be eligible for a loan under this section, the cost of a proposed engineered demand-side management project shall be at least five thousand dollars (\$5,000) and shall not exceed one million five hundred thousand dollars (\$1,500,000) per project.
- (4) Beginning July 1, 2009, and ending June 30, 2013, the simple payback period for an approved engineered demand-side management project shall be no more than five (5) years. Beginning July 1, 2013, the cabinet may consider a simple payback period of no more than twelve (12) years.
- (5) The loans provided under this section shall be subject to the prime interest rate minus one percent (1%).
- (6) Moneys in the fund are hereby appropriated for the purposes set forth in subsection (2) of this section.
- (7) The cabinet shall not approve an applicant for a loan under this section, unless the applicant:
 - (a) Can demonstrate that the applicant has no outstanding liabilities with the Commonwealth;

- (b) Can demonstrate that the applicant has a positive payment history with the applicant's electricity provider for the preceding three (3) consecutive years;
- (c) Agrees to undergo and pay for an energy audit to establish a baseline of energy consumption; and
- (d) Meets all the requirements established in this section and any administrative regulations promulgated thereunder.

➔Section 24. KRS 42.588 is repealed and reenacted to read as follows:

- (1) The cabinet shall, by administrative regulations promulgated in accordance with KRS Chapter 13A:
 - (a) Develop a method to score applications for the bluegrass turns green private sector loan fund established in KRS 42.586 and the bluegrass turns green public sector grant fund established in KRS 42.584;
 - (b) Develop a list of companies qualified to perform energy audits for the purposes of determining a baseline of energy consumption and any subsequent projected energy cost savings for:
 - 1. Private sector recipients of low-interest loans provided from the bluegrass turns green private sector loan fund established in KRS 42.586; and
 - 2. Public sector recipients of grants awarded from the public sector turns green grant fund established in KRS 42.584; and
 - (c) Establish a process for the collection of loan payments from the private sector to repay amounts that were made available under the bluegrass turns green loan private sector fund.

The cabinet shall also promulgate any other administrative regulations necessary to administer the provisions of KRS 42.580 to 42.588.

- (2) The cabinet shall report to the Governor and the Legislative Research Commission on or before November 1, 2009, and on or before each November 1 thereafter, the following for the bluegrass turns green private sector loan fund and the bluegrass turns green public sector grant fund for the immediately preceding fiscal year:
 - (a) The number of applicants;
 - (b) A description of the engineered demand-side management projects on which loans or grants were provided;
 - (c) The total amount loaned to the private sector and the total amount of grants provided to the public sector;
 - (d) The projected private sector energy cost savings;
 - (e) The projected public sector energy cost savings;
 - (f) The number of applicants and the amount of loan and grants for which funding was not available; and
 - (g) Based upon the energy audits performed, the amount of increased energy capacity realized.

➔Section 25. (1) There is hereby authorized \$50,000,000 in bond funds in fiscal year 2010-2011 for the bluegrass turns green public grant fund for public engineered demand-side management projects. The bonds shall remain authorized unless a specific action of the General Assembly deauthorizes the bonds prior to sale.

(2) The principal amount authorized in subsection (1) of this section shall be increased by the amount necessary to capitalize and pay required principal and interest payments in fiscal year 2010-2011 and fiscal year 2011-2012.

(3) It is the intent of the General Assembly for this Act to reaffirm the bond authorization contained in 2008 Regular Session HB2/EN. As such, the General Assembly has repealed, reenacted, and amended 2008 Acts Chapter 139, Section 27. Since the bonds were not issued in fiscal year 2008-2009, the bond authorization has been amended to fiscal year 2010-2011.

➔Section 26. (1) There is hereby authorized \$30,000,000 in bond funds in fiscal year 2010-2011 for bluegrass turns green private sector loan fund for private sector engineered demand-side management projects. The bonds shall remain authorized unless a specific action of the General Assembly deauthorizes the bonds prior to sale.

(2) The principal amount authorized in subsection (1) of this section shall be increased by the amount necessary to capitalize and pay required principal and interest payments in fiscal year 2010-2011 and fiscal year 2011-2012.

(3) It is the intent of the General Assembly for this Act to reaffirm the bond authorization contained in 2008 Regular Session HB2/EN. As such, the General Assembly has repealed, reenacted, and amended 2008 Acts Chapter 139, Section 27. Since the bonds were not issued in fiscal year 2008-2009, the bond authorization has been amended to fiscal year 2010-2011.

➔Section 27. It is the intent of the General Assembly in repealing and reenacting KRS 56.770, 56.772, 56.774, 56.775, 56.776, 56.777, 56.778, 56.782, 56.783, 56.784, 141.435, 141.436, 141.437, 141.0205, 151.720, 160.325, 158.808, 278.285, 152.713, 42.580, 42.582, 42.584, 42.586, and 42.588 in Sections 1 to 24 of this Act is to affirm the amendments made to KRS 56.770, 56.772, 56.774, 56.775, 56.776, 56.777, 56.778, 56.782, 56.783, 56.784, 141.435, 141.436, 141.437, 141.0205, 151.720, 160.325, 158.808, 278.285, 152.713, 42.580, 42.582, 42.584, 42.586, and 42.588 in 2008 Ky. Acts ch.139.

➔Section 28. Sections 1 to 24 of this Act shall apply retroactively to July 15, 2008.

➔Section 29. To the extent that any provisions include in Sections 1 to 24 of this Act is considered new language, the provisions of KRS 446.145 requiring new language to be underlined are notwithstanding.

➔Section 30. Whereas it is of vital importance for the Commonwealth to encourage the efficient use of energy, an emergency is declared to exist and this Act takes effect upon its passage and approval by the Governor or upon otherwise becoming law.

Signed by Governor February 25, 2010.

CHAPTER 6

(HB 51)

AN ACT relating to suicide prevention training.

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

➔Section 1. KRS 156.095 is amended to read as follows:

- (1) The Kentucky Department of Education shall establish, direct, and maintain a statewide program of professional development to improve instruction in the public schools.
- (2) Each local school district superintendent shall appoint a certified school employee to fulfill the role and responsibilities of a professional development coordinator who shall disseminate professional development information to schools and personnel. Upon request by a school council or any employees of the district, the coordinator shall provide technical assistance to the council or the personnel that may include assisting with needs assessments, analyzing school data, planning and evaluation assistance, organizing districtwide programs requested by school councils or groups of teachers, or other coordination activities.
 - (a) The manner of appointment, qualifications, and other duties of the professional development coordinator shall be established by Kentucky Board of Education through promulgation of administrative regulations.
 - (b) The local district professional development coordinator shall participate in the Kentucky Department of Education annual training program for local school district professional development coordinators. The training program may include, but not be limited to, the demonstration of various approaches to needs assessment and planning; strategies for implementing long-term, school-based professional development; strategies for strengthening teachers' roles in the planning, development, and evaluation of professional development; and demonstrations of model professional development programs. The training shall include information about teacher learning opportunities relating to the core content standards. The Kentucky Department of Education shall regularly collect and distribute this information.
- (3) The Kentucky Department of Education shall provide or facilitate optional, professional development programs for certified personnel throughout the Commonwealth that are based on the statewide needs of teachers, administrators, and other education personnel. Programs may include classified staff and parents

when appropriate. Programs offered or facilitated by the department shall be at locations and times convenient to local school personnel and shall be made accessible through the use of technology when appropriate. They shall include programs that: address the goals for Kentucky schools as stated in KRS 158.6451, including reducing the achievement gaps as determined by an equity analysis of the disaggregated student performance data from the state assessment program developed under KRS 158.6453; engage educators in effective learning processes and foster collegiality and collaboration; and provide support for staff to incorporate newly acquired skills into their work through practicing the skills, gathering information about the results, and reflecting on their efforts. Professional development programs shall be made available to teachers based on their needs which shall include but not be limited to the following areas:

- (a) Strategies to reduce the achievement gaps among various groups of students and to provide continuous progress;
 - (b) Curriculum content and methods of instruction for each content area, including differentiated instruction;
 - (c) School-based decision making;
 - (d) Assessment literacy;
 - (e) Integration of performance-based student assessment into daily classroom instruction;
 - (f) Nongraded primary programs;
 - (g) Research-based instructional practices;
 - (h) Instructional uses of technology;
 - (i) Curriculum design to serve the needs of students with diverse learning styles and skills and of students of diverse cultures;
 - (j) Instruction in reading, including phonics, phonemic awareness, comprehension, fluency, and vocabulary;
 - (k) Educational leadership; and
 - (l) Strategies to incorporate character education throughout the curriculum.
- (4) The department shall assist school personnel in assessing the impact of professional development on their instructional practices and student learning.
- (5) The department shall assist districts and school councils with the development of long-term school and district improvement plans that include multiple strategies for professional development based on the assessment of needs at the school level.
- (a) Professional development strategies may include, but are not limited to, participation in subject matter academies, teacher networks, training institutes, workshops, seminars, and study groups; collegial planning; action research; mentoring programs; appropriate university courses; and other forms of professional development.
 - (b) In planning the use of the four (4) days for professional development under KRS 158.070, school councils and districts shall give priority to programs that increase teachers' understanding of curriculum content and methods of instruction appropriate for each content area based on individual school plans. The district may use up to one (1) day to provide district-wide training and training that is mandated by state or federal law. Only those employees identified in the mandate or affected by the mandate shall be required to attend the training.
 - (c) State funds allocated for professional development shall be used to support professional development initiatives that are consistent with local school improvement and professional development plans and teachers' individual growth plans. The funds may be used throughout the year for all staff, including classified and certified staff and parents on school councils or committees. A portion of the funds allocated to each school council under KRS 160.345 may be used to prepare or enhance the teachers' knowledge and teaching practices related to the content and subject matter that are required for their specific classroom assignments.
- (6) (a) ***By August 1, 2010, the Kentucky Cabinet for Health and Family Services shall post on its Web page suicide prevention awareness information, to include recognizing the warning signs of a suicide***

crisis. The Web page shall include information related to suicide prevention training opportunities offered by the cabinet or an agency recognized by the cabinet as a training provider.

- (b) *By September 1, 2010, and September 1 of each year thereafter, every public middle and high school administrator shall disseminate suicide prevention awareness information to all middle and high school students. The information may be obtained from the Cabinet for Health and Family Services or from a commercially developed suicide prevention training program.*
- (7) The Department of Education shall establish an electronic consumer bulletin board that posts information regarding professional development providers and programs as a service to school district central office personnel, school councils, teachers, and administrators. Participation on the electronic consumer bulletin board shall be voluntary for professional development providers or vendors, but shall include all programs sponsored by the department. Participants shall provide the following information: program title; name of provider or vendor; qualifications of the presenters or instructors; objectives of the program; program length; services provided, including follow-up support; costs for participation and costs of materials; names of previous users of the program, addresses, and telephone numbers; and arrangements required. Posting information on the bulletin board by the department shall not be viewed as an endorsement of the quality of any specific provider or program.
- ~~(8)~~~~(7)}~~ The Department of Education shall provide training to address the characteristics and instructional needs of students at risk of school failure and most likely to drop out of school. The training shall be developed to meet the specific needs of all certified and classified personnel depending on their relationship with these students. The training for instructional personnel shall be designed to provide and enhance skills of personnel to:
 - (a) Identify at-risk students early in elementary schools as well as at-risk and potential dropouts in the middle and high schools;
 - (b) Plan specific instructional strategies to teach at-risk students;
 - (c) Improve the academic achievement of students at risk of school failure by providing individualized and extra instructional support to increase expectations for targeted students;
 - (d) Involve parents as partners in ways to help their children and to improve their children's academic progress; and
 - (e) Significantly reduce the dropout rate of all students.
- ~~(9)~~~~(8)}~~ The department shall establish teacher academies to the extent funding is available in cooperation with postsecondary education institutions for elementary, middle school, and high school faculty in core disciplines, utilizing facilities and faculty from universities and colleges, local school districts, and other appropriate agencies throughout the state. Priority for participation shall be given to those teachers who are teaching core discipline courses for which they do not have a major or minor or the equivalent. Participation of teachers shall be voluntary.

Signed by Governor March 4, 2010.

CHAPTER 7

(HB 231)

AN ACT relating to psychiatric residential treatment facilities.

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

➔Section 1. KRS 216B.450 is amended to read as follows:

As used in this section,~~and~~ KRS 216B.455, **and Section 3 of this Act:**

- (1) "Cabinet" means the Cabinet for Health and Family Services;
- (2) "Community-based" means a facility that is located in an existing residential neighborhood or community;
- (3) "Freestanding" means a completely detached building or two (2) residences under one (1) roof that are clearly separate and can serve youth independently;

- (4) "Home-like" means a residence with living space designed to accommodate the daily living needs and tasks of a family unit, with opportunity for adult-child communication, shared tasks, adult-child learning, congregate meals, and family-type routines appropriate to the ages and levels of functioning of the residents;~~and~~
- (5) "Psychiatric residential treatment facility" means *either* a licensed:
- (a) ~~Level I~~ community-based, and home-like facility with a maximum of nine (9) beds which provides inpatient psychiatric residential treatment to residents age six (6) to twenty-one (21) years who have an emotional disability or severe emotional disability as defined in KRS 200.503, with an age range of no greater than five (5) years at the time of admission in a living unit; *or*
 - (b) *Level II home-like facility that provides twenty-four (24) hour inpatient psychiatric residential treatment and habitation to persons who:*
 - 1. *Are ages four (4) to twenty-one (21) years, with an age range of no greater than five (5) years at the time of admission to the facility;*
 - 2. *Have a severe emotional disability as defined by KRS 200.503 in addition to severe and persistent aggressive behaviors, intellectual disability, sexually acting out behaviors, or developmental disability; and*
 - 3. *Do not meet the medical necessity criteria for an acute care hospital or a psychiatric hospital and whose treatment needs cannot be met in an ambulatory care setting, Level I psychiatric residential treatment facility, or other less restrictive environment;*
- (6) *"Qualified mental health personnel" means a staff member who operates under the supervision of a qualified mental health professional; and*
- (7) *"Qualified mental health professional" has the same meaning as in KRS 202A.011.*

➔Section 2. KRS 216B.455 is amended to read as follows:

- (1) A certificate of need shall be required for all **Level I** psychiatric residential treatment facilities. The application for a certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed **Level I** psychiatric residential treatment facility and each of the following agencies, organizations, or facilities located in the service area of the proposed facility:
- (a) Regional interagency council for children with emotional disability or severe emotional disability as defined in KRS 200.509;
 - (b) Department for Community Based Services;
 - (c) Local school districts;
 - (d) At least one (1) psychiatric hospital; and
 - (e) Any other agency, organization, or facility deemed appropriate by the cabinet.
- (2) Notwithstanding provisions for granting of a nonsubstantive review of a certificate of need application under KRS 216B.095, the cabinet shall review and approve the nonsubstantive review of an application seeking to increase the number of beds as permitted by KRS 216B.450 if the application is submitted by an eight (8) bed or sixteen (16) bed **Level I** psychiatric residential treatment facility licensed and operating or holding an approved certificate of need on July 13, 2004. The cabinet shall base its approval of expanded beds upon the **Level I** psychiatric residential treatment facility's ability to meet standards designed by the cabinet to provide stability of care. The standards shall be promulgated by the cabinet in an administrative regulation in accordance with KRS Chapter 13A. An application under this subsection shall not be subject to any moratorium relating to certificate of need.
- (3) All **Level I** psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.
- (4) All **Level I** psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation *of Services for Families and Children*, or any other accrediting body with comparable standards that is recognized by the state.

- (5) A **Level I** psychiatric residential treatment facility shall not be located in or on the grounds of a psychiatric hospital. More than one (1) freestanding **Level I** psychiatric residential treatment facility may be located on the same campus that is not in or on the grounds of a psychiatric hospital.
- (6) The total number of **Level I** psychiatric residential treatment facility beds shall not exceed three hundred and fifteen (315) beds statewide~~[- and shall be distributed among the state mental hospital districts established by administrative regulations promulgated by the Cabinet for Health and Family Services under KRS 210.300 as follows:~~
 - ~~(a) — District I for seventy two (72) beds;~~
 - ~~(b) — District II for ninety nine (99) beds;~~
 - ~~(c) — District III for ninety (90) beds; and~~
 - ~~(d) — District IV for fifty four (54) beds].~~
- (7)
 - (a) The Cabinet for Health and Family Services shall investigate the need for **specialty foster care and posttreatment services for persons discharged from**~~[- children's]~~ **Level I and Level II** psychiatric residential treatment **facilities**~~[services for specialized populations including, but not limited to, sexual offenders, children with physical and developmental disabilities, and children with dual diagnoses].~~
 - (b) The cabinet shall report to the Governor and the Legislative Research Commission by August 1, 2011~~[2005]~~, **detailing information on specialty foster care and posttreatment services for persons discharged from Level I and Level II psychiatric residential treatment facilities**~~[on a plan to enable children with specialized needs to be served in community-based psychiatric treatment facilities in Kentucky. The plan shall include methods to:~~
 1. — Identify the specialized populations;
 2. — Develop services targeted for the specialized populations; and
 3. — Establish a Medicaid reimbursement rate for specialized facilities in Kentucky].

➔SECTION 3. A NEW SECTION OF KRS 216B.450 TO 216B.459 IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of need shall be required for all Level II psychiatric residential treatment facilities. The need criteria for the establishment of Level II psychiatric residential treatment facilities shall be in the state health plan.*
- (2) *An application for a certificate of need for Level II psychiatric residential treatment facilities shall not exceed fifty (50) beds. Level II facility beds may be located in a separate part of a psychiatric hospital, a separate part of an acute care hospital, or a Level I psychiatric residential treatment facility if the Level II beds are located on a separate floor, in a separate wing, or in a separate building. A Level II facility shall not refuse to admit a patient who meets the medical necessity criteria and facility criteria for Level II facility services. Nothing in this section, and Sections 1 and 2 of this Act shall be interpreted to prevent a psychiatric residential treatment facility from operating both a Level I psychiatric residential treatment facility and a Level II psychiatric residential treatment facility.*
- (3) *The application for a Level II psychiatric residential treatment facility certificate of need shall include formal written agreements of cooperation that identify the nature and extent of the proposed working relationship between the proposed Level II psychiatric residential treatment facility and each of the following agencies, organizations, or entities located in the service area of the proposed facility:*
 - (a) *Regional interagency council for children with emotional disability or severe emotional disability created under KRS 200.509;*
 - (b) *Community mental health-mental retardation board established under KRS 210.380;*
 - (c) *Department for Community Based Services;*
 - (d) *Local school districts;*
 - (e) *At least one (1) psychiatric hospital; and*
 - (f) *Any other agency, organization, or entity deemed appropriate by the cabinet.*

- (4) *The application for a certificate of need shall include:*
- (a) *The specific number of beds proposed for each age group and the specific, specialized program to be offered;*
 - (b) *An inventory of current services in the proposed service area; and*
 - (c) *Clear admission and discharge criteria including age, sex, and other limitations.*
- (5) *All Level II psychiatric residential treatment facilities shall comply with the licensure requirements as set forth in KRS 216B.105.*
- (6) *All Level II psychiatric residential treatment facilities shall be certified by the Joint Commission on Accreditation of Healthcare Organizations, or the Council on Accreditation of Services for Families and Children, or any other accrediting body with comparable standards that are recognized by the Centers for Medicare and Medicaid Services.*
- (7) *A Level II psychiatric residential treatment facility shall be under the clinical supervision of a qualified mental health professional, with training or experience in mental health treatment of children and youth.*
- (8) *Treatment services shall be provided by qualified mental health professionals or qualified mental health personnel. Individual staff who will provide educational programs shall meet the employment standards outlined by the Kentucky Board of Education and the Education Professional Standards Board.*
- (9) *A Level II psychiatric residential treatment facility shall meet the following requirements with regard to professional staff:*
- (a) *A licensed psychiatrist, who is board-eligible or board-certified as a child or adult psychiatrist, shall be employed or contracted to meet the treatment needs of the residents and the functions that shall be performed by a psychiatrist;*
 - (b) *If a Level II psychiatric residential treatment facility has residents ages twelve (12) and under, the licensed psychiatrist shall be a board-eligible or board-certified child psychiatrist; and*
 - (c) *The licensed psychiatrist shall be present in the facility to provide professional services to the facility's residents at least weekly.*
- (10) *A Level II psychiatric residential treatment facility shall:*
- (a) *Prepare a written staffing plan that is tailored to meet the needs of the specific population of children and youth that will be admitted to the facility based on the facility's admission criteria. The written staffing plan shall include but not be limited to the following:*
 - 1. *Specification of the direct care staffing per patient ratio that the facility shall adhere to during waking hours and during sleeping hours;*
 - 2. *Delineation of the number of direct care staff per patient, including the types of staff and the mix and qualifications of qualified mental health professionals and qualified mental health personnel, that shall provide direct care and will comprise the facility's per patient staffing ratio;*
 - 3. *Specification of appropriate qualifications for individuals included in the per patient staffing ratio by job description, education, training, and experience;*
 - 4. *Provision for ensuring compliance with its written staffing plan, and specification of the circumstances under which the facility may deviate from the per patient staffing ratio due to patient emergencies, changes in patient acuity, or changes in patient census; and*
 - 5. *Provision for submission of the written staffing plan to the cabinet for approval as part of the facility's application for initial licensure.*

No initial license to operate as a Level II psychiatric residential treatment facility shall be granted until the cabinet has approved the facility's written staffing plan. Once a facility is licensed, it shall comply with its approved written staffing plan and, if the facility desires to change its approved per patient staffing ratio, it shall submit a revised plan and have the plan approved by the cabinet prior to implementation of the change;

- (b) *Require full-time professional and direct care staff to meet the continuing education requirements of their profession or be provided with forty (40) hours per year of in-service training; and*
- (c) *Develop and implement a training plan for all staff that includes but is not limited to the following:*
 - 1. *Behavior management procedures and techniques;*
 - 2. *Physical management procedures and techniques;*
 - 3. *First aid;*
 - 4. *Cardiopulmonary resuscitation;*
 - 5. *Infection control procedures;*
 - 6. *Child and adolescent growth and development;*
 - 7. *Training specific to the specialized nature of the facility;*
 - 8. *Emergency and safety procedures; and*
 - 9. *Detection and reporting of child abuse and neglect.*
- (11) *A Level II psychiatric residential treatment facility shall require a criminal records check to be completed on all employees and volunteers. The employment or volunteer services of an individual shall be governed by KRS 17.165, with regard to a criminal records check. A new criminal records check shall be completed at least every two (2) years on each employee or volunteer.*
- (12) (a) *Any employee or volunteer who has committed or is charged with the commission of a violent offense as specified in KRS 439.3401, a sex crime specified in KRS 17.500, or a criminal offense against a victim who is a minor as specified in KRS 17.500 shall be immediately removed from contact with a child within the residential treatment center until the employee or volunteer is cleared of the charge.*
- (b) *An employee or volunteer under indictment, legally charged with felonious conduct, or subject to a cabinet investigation shall be immediately removed from contact with a child.*
- (c) *The employee or volunteer shall not be allowed to work with the child until a prevention plan has been written and approved by the cabinet, the person is cleared of the charge, or a cabinet investigation reveals an unsubstantiated finding, if the charge resulted from an allegation of child abuse, neglect, or exploitation.*
- (d) *Each employee or volunteer shall submit to a check of the central registry. An individual listed on the central registry shall not be a volunteer at or be employed by a Level II psychiatric residential treatment facility.*
- (e) *Any employee or volunteer removed from contact with a child, pursuant to paragraph (12) of this section, may, at the discretion of the employer, be terminated, reassigned to a position involving no contact with a child, or placed on administrative leave with pay during the pendency of the investigation or proceeding.*
- (13) *An initial treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services, and shall be completed within seventy-two (72) hours of admission.*
- (14) *A comprehensive treatment plan of care shall be developed and implemented for each resident, and the plan of care shall be based on initial history and ongoing assessment of the resident's needs and strengths, with an emphasis on active treatment, transition planning, and after care services, and shall be completed within ten (10) calendar days of admission.*
- (15) *A review of the treatment plan of care shall occur at least every thirty (30) days following the first ten (10) days of treatment and shall include the following documentation:*
 - (a) *Dated signatures of appropriate staff, parent, guardian, legal custodian or conservator;*
 - (b) *An assessment of progress toward each treatment goal and objective with revisions as indicated; and*

- (c) *A statement of justification for the level of services needed, including suitability for treatment in a less-restrictive environment and continued services.*
- (16) *A Level II psychiatric residential treatment facility shall provide or arrange for the provision of qualified dental, medical, nursing, and pharmaceutical care for residents. The resident's parent, guardian, legal custodian, or conservator may choose a professional for nonemergency services.*
- (17) *A Level II psychiatric residential treatment facility shall ensure that opportunities are provided for recreational activities that are appropriate and adapted to the needs, interests, and ages of the residents.*
- (18) *A Level II psychiatric residential treatment facility shall assist residents in the independent exercise of health, hygiene, and grooming practices.*
- (19) *A Level II psychiatric residential treatment facility shall assist each resident in securing an adequate allowance of personally owned, individualized, clean, and seasonal clothes that are the correct size.*
- (20) *A Level II psychiatric residential treatment facility shall assist, educate, and encourage each resident in the use of dental, physical, or prosthetic appliances or devices and visual or hearing aids.*
- (21) *The cabinet shall promulgate administrative regulations that include but are not limited to the following:*
 - (a) *Establishing requirements for tuberculosis skin testing for staff of a Level II psychiatric residential treatment facility;*
 - (b) *Ensuring that accurate, timely, and complete resident assessments are conducted for each resident of a Level II psychiatric residential treatment facility;*
 - (c) *Ensuring that accurate, timely, and complete documentation of the implementation of a resident's treatment plan of care occurs for each resident of a Level II psychiatric residential treatment facility;*
 - (d) *Ensuring that an accurate, timely, and complete individual record is maintained for each resident of a Level II psychiatric residential treatment facility;*
 - (e) *Ensuring that an accurate, timely, and complete physical examination is conducted for each resident of a Level II psychiatric residential treatment facility;*
 - (f) *Ensuring accurate, timely, and complete access to emergency services is available for each resident of a Level II psychiatric residential treatment facility; and*
 - (g) *Ensuring that there is accurate, timely, and complete administration of medications for each resident of a Level II psychiatric residential treatment facility.*
- (22) *The cabinet shall, within ninety (90) days of the effective date of this Act, promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and Sections 1 and 2 of this Act. When promulgating the administrative regulations, the cabinet shall not consider only staffing ratios when evaluating the written staffing plan of an applicant but shall consider the applicant's overall ability to provide for the needs of patients.*
- (23) *The cabinet shall report, no later than August 1 of each year, to the Interim Joint Committee on Health and Welfare regarding the implementation of this section and Sections 1 and 2 of this Act. The report shall include but not be limited to information relating to resident outcomes, such as lengths of stay in the facility, locations residents were discharged to, and whether residents were readmitted to a Level II psychiatric residential treatment facility within a twelve (12) month period.*

Signed by Governor March 4, 2010.

CHAPTER 8

(SB 47)

AN ACT relating to state prisoners.

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

➔Section 1. KRS 441.045 is amended to read as follows:

- (1) The county governing body shall prescribe rules for the government, security, safety, and cleanliness of the jail and the comfort and treatment of prisoners, provided such rules are consistent with state law. The county judge/executive may inspect the jail at any reasonable time.
- (2) Willful violation of the rules promulgated pursuant to subsection (1) of this section shall be deemed a violation.
- (3) Except as provided in subsections (4) and (5) of this section, the cost of providing necessary medical, dental, and psychological care for indigent prisoners in the jail shall be paid from the jail budget.
- (4) The cost of providing necessary medical, dental, or psychological care for prisoners of the United States government shall be paid as provided by contract between the United States government and the county or as may otherwise be provided by federal law.
- (5) The cost of providing necessary medical, dental, or psychological care, beyond routine care and diagnostic services, for prisoners held pursuant to a contractual agreement with the state shall be paid as provided by contract between the state and county. The costs of necessary medical, dental, or psychological care, beyond routine care and diagnostic services, of prisoners held in the jail for which the county receives a per diem payment shall be paid by the state.
- (6) The cost of providing necessary medical, dental, or psychological care for prisoners held pursuant to a contractual agreement with another county or a city shall be paid as provided by contract between the county or city and county.
- (7) When the cost of necessary medical, dental, or psychological care for a prisoner exceeds two thousand dollars (\$2,000), as calculated by using the maximum allowable costs to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, the state shall reimburse the county for that portion of the costs that exceeds two thousand dollars (\$2,000). The reimbursement shall be subject to the following terms and conditions:
 - (a) The care is necessary as defined in subsection (10) of this section;
 - (b) The prisoner is indigent as defined in subsection (8) of this section, or is uninsured; and
 - (c) No state reimbursement to the county for care provided by physicians, hospitals, laboratories, or other health care providers shall exceed the maximum payments allowed to similar persons or facilities for the same or similar services under the Kentucky Medical Assistance Program, except as provided in subsection (11) of this section.
- (8)
 - (a) The determination of whether a prisoner is indigent shall be made pursuant to KRS 31.120. The prisoner shall not be considered indigent, in the case of prisoner medical care, if:
 1. The prisoner has funds on his inmate account to cover all or a portion of his medical expenses;
 2. The prisoner's medical expenses are covered on a medical insurance policy; or
 3. The prisoner has the private resources to pay for the use of the medical facilities.
 - (b) Prisoners who are later determined not to have been indigent, or who at a time following treatment are no longer indigent, shall be required to repay the costs of payments made pursuant to this section to the unit of government which made the payment.
- (9) The terms and conditions relating to any determination of nonindigency and demands for repayment shall be under the same terms and conditions as are provided under KRS Chapters 31 and 431 relating to similar circumstances in the program for defense of indigents by the public advocate.
- (10) For the purposes of this section, "necessary care" means care of a nonelective nature that cannot be postponed until after the period of confinement without hazard to the life or health of the prisoner. The physician attending the prisoner shall certify, under oath, that the care was necessary.
- (11) Any money appropriated for a given fiscal year to fund the state's obligation under subsection (7) of this section which remains unspent at the end of the year shall not lapse but shall be made available to satisfy, to the maximum extent possible, that portion of each catastrophic claim made during said year above the threshold amount for which the county did not receive state assistance pursuant to subsection (7) of this section. In the event there is an insufficient surplus to satisfy said balance of all such catastrophic claims which

are made during that year, the state shall pay to those qualified counties, on a per claim basis, an amount equal to each claim's percentage of the total surplus. Should the surplus be sufficient to satisfy all such catastrophic claims, the amount remaining, if any, shall not lapse but shall be carried forward to the next fiscal year to be made available for future catastrophic claims.

- (12) Notwithstanding other provisions of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a prisoner who has the ability to pay for the medical care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical treatment because he has insufficient funds on his inmate account. This subsection shall not preclude other recovery of funds as provided in this section.
- (13) (a) *Notwithstanding any other provision of this section to the contrary, a jail may impose a reasonable fee for the use of jail medical facilities by a state prisoner who has been placed in a local jail pursuant to a contract with the Department of Corrections under KRS 532.100 or other statute, and who has the ability to pay for medical care.*
- (b) *Funds may be deducted from the state prisoner's inmate account at the jail.*
- (c) *A state prisoner shall not be denied medical treatment because he or she has insufficient funds in his or her inmate account.*
- (d) *This subsection shall not preclude other recovery of funds as provided in this section.*
- (e) *This subsection does not authorize recovery of funds from a prisoner for medical care which has been paid or reimbursed by the state pursuant to this section.*

➔Section 2. KRS 197.020 is amended to read as follows:

- (1) The Department of Corrections shall:
- (a) Promulgate administrative regulations for the government and discipline of the penitentiary, for the government and official conduct of all officials connected with the penitentiary, and for the government of the prisoners in their deportment and conduct;
- (b) Promulgate administrative regulations for the character of food and diet of the prisoners; the preservation of the health of the prisoners; the daily cleansing of the penitentiary; the cleanliness of the persons of the prisoners; the general sanitary government of the penitentiary and prisoners; the character of the labor; the quantity of food and clothing; and the length of time during which the prisoners shall be employed daily;
- (c) Promulgate administrative regulations, as the department deems necessary, for the disposition of abandoned, lost, or confiscated property of prisoners; and
- (d) Cause the administrative regulations promulgated by the department, together with the law allowing commutation of time to prisoners for good conduct, to be printed and posted in conspicuous places in the cell houses and workshops.
- (2) The department may impose a reasonable fee for the use of medical facilities by a prisoner who has the ability to pay for the medical and dental care. These funds may be deducted from the prisoner's inmate account. A prisoner shall not be denied medical or dental treatment because he has insufficient funds in his inmate account.
- (3) The department may promulgate administrative regulations in accordance with KRS Chapter 13A to implement a program that provides for reimbursement of telehealth consultations.
- (4) *Fees for the use of medical facilities by a state prisoner who is confined in a county jail pursuant to KRS 532.100 or other statute shall be governed by Section 1 of this Act.*

Signed by Governor March 4, 2010.

CHAPTER 9**(HJR 34)**

A JOINT RESOLUTION recognizing the work done by Representative Joseph "Eddie" Ballard on behalf of veterans in Kentucky by naming the Western Kentucky Veterans Center in Hanson, Kentucky, in his honor.

WHEREAS, Representative Eddie Ballard and his wife have been active members of their community for more than 50 years; and

WHEREAS, Representative Eddie Ballard served his country with dignity as a member of the United States Air Force; and

WHEREAS, Representative Eddie Ballard is a self-employed businessman, an advocate for his community and the founder of a local food bank that has relied solely on local donations for 20 years; and

WHEREAS, Representative Eddie Ballard has continued to serve the citizens of Hopkins County as their representative since 1987; and

WHEREAS, immediately upon becoming a member of this august body, Representative Eddie Ballard turned his attention to the needs of veterans by sponsoring legislation to assist and honor veterans; and

WHEREAS, Representative Eddie Ballard has been the long-time chairman of the Subcommittee on Veterans' Affairs; and

WHEREAS, Representative Eddie Ballard has sponsored legislation to construct state-run veterans' nursing homes, including the Western Kentucky Veterans Center in Hanson, Kentucky; and

WHEREAS, Representative Eddie Ballard is a tireless proponent of state-operated veterans' cemeteries and has been instrumental in establishing cemeteries in Hopkinsville, Radcliffe, and Williamstown; and

WHEREAS, Representative Eddie Ballard has advocated for new veterans' cemeteries in Leslie and Greenup Counties; and

WHEREAS, Representative Eddie Ballard has sponsored legislation to create the Kentucky Department of Veterans' Affairs, and has co-sponsored legislation to provide special license plates to veterans and to make it easier for members of the Armed Services to register their motor vehicles; and

WHEREAS, Representative Eddie Ballard has also co-sponsored legislation to waive public higher education tuition for children of deceased veterans or veterans who are permanently and totally disabled, and to exempt veterans with 100 percent service-connected disability from having to annually file paperwork with the property valuation administrators; and

WHEREAS, Representative Eddie Ballard has been a worthy advocate of the needs of veterans and has reminded us time and again of our responsibility to honor those veterans for their service and sacrifice;

NOW, THEREFORE,

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

➔Section 1. The Kentucky Department of Veterans' Affairs is directed to name the veterans' nursing home in Hanson, Kentucky, the "Joseph 'Eddie' Ballard Western Kentucky Veterans' Center" in honor of Representative Eddie Ballard.

➔Section 2. A copy of this Resolution shall be sent to the Kentucky Department of Veterans' Affairs, 1111 Louisville Road, Frankfort, Kentucky 40601; and to Representative Eddie Ballard, Post Office Box 1736, Madisonville, Kentucky 42431.

Signed by Governor March 4, 2010.

CHAPTER 10

(SB 35)

AN ACT relating to the necessary information to be provided to the county clerks to maintain a roster of voters who are eligible to vote in city and school board elections.

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

➔Section 1. KRS 116.200 is amended to read as follows:

- (1) (a) ***On or before January 1, 2011, each city clerk, except in consolidated local governments and urban-county governments,***~~[Each city and school district board]~~ shall provide the clerk of the county ***or counties*** in which the city~~[or school district]~~ is located with ***a list of all properties within the city and a map of the city boundaries for the county clerk***~~[whatever information the county clerk requires]~~ to maintain a roster of voters who are eligible to vote in city~~[and school board]~~ elections. ***A county clerk may accept the list of city properties in an electronic format and the city clerk may provide a copy of the city's boundary map maintained by the Kentucky Commonwealth Office of Technology, Division of Geographic Information; and***
- (b) ***Documentation of any change to the boundaries of a city shall be reported to the county clerk in accordance with Sections 2 and 3 of this Act***~~[This information shall be provided to the county clerk not later than sixty (60) days preceding the date of a primary election in each year in which an election for city officers or school board members shall be held in that county].~~
- (2) (a) ***On or before January 1, 2011, each school district board shall provide the clerk of the county in which the school district is located with maps and written descriptions of the boundaries of each school board district located in the county for the county clerk to maintain a roster of voters who are eligible to vote in school board elections.***
- (b) ***Documentation of any change to a school district's boundaries shall be reported to the county clerk within sixty (60) days of the change, or immediately if the change is within sixty (60) days of the August 1 deadline established in KRS 160.210(4)(d).***
- (3) Each county clerk shall code all registered voters in that county in such a manner that precinct election officers may determine ***the voter's***~~[their]~~ eligibility to vote in city and school board elections ***prior to each primary and regular election for city officers in that county, each regular election for school board members in that county, and each special election in which a ballot question is presented to the residents of a city or a school board district.***
- (4) ***Notwithstanding KRS 64.012, the county clerk shall not charge a fee to a city or school district providing any information required by subsections (1)(a) and (2)(a) of this section.***
- (5) ***Nothing in this section shall prohibit a county clerk from requesting additional information from the city, school district board, or any other reliable source to ascertain whether a registered voter resides within a city or a school district boundary.***

➔Section 2. KRS 81A.470 is amended to read as follows:

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

➔Section 3. KRS 81A.475 is amended to read as follows:

If any city annexes any unincorporated area, accepts the transfer of incorporated territory, or reduces the boundaries of the city, it shall be the duty of the legislative body of the city to provide within sixty (60) days, to the county clerk of the county in which the city is located, a map clearly delineating the boundaries of the area affected along with a list of ***properties included in the annexation, transfer, or reduction. The list of properties required by this section shall include the name and address***~~[names and addresses]~~ of ***each***~~[those]~~ property ***owner***~~[owners and registered voters who reside in the area]~~.

Signed by Governor March 11, 2010

CHAPTER 11

(SB 19)

AN ACT relating to pharmacy technicians.

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

➔Section 1. KRS 315.136 is amended to read as follows:

- (1) Every applicant for registration as a pharmacy technician shall be sixteen (16) years of age and of good mental health and moral character and shall file with the board an application in such form and containing such data as the board may reasonably require.
- (2) The application fee shall be twenty-five dollars (\$25). ***All applicants for registration as a pharmacy technician who serve only on a voluntary basis as a pharmacy technician with a pharmacy operated by a charitable provider as defined in KRS 142.301 shall not be required to pay the application fee.***
- (3) The board shall issue a certificate of registration and a pocket registration card to an applicant who meets the requirements for registration.

Signed by Governor March 11, 2010

CHAPTER 12

(HB 19)

AN ACT relating to military affairs.

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

➔Section 1. KRS 36.450 is amended to read as follows:

- (1) Except as provided for in ***subsections***~~[subsection]~~ (5), ***(6), and (7)*** of this section, notwithstanding any other provision of law, a license, permit, or certification held by a member of the United States Armed Forces, including a member of the Kentucky National Guard or Reserve on federal active duty, that expires while that member is deployed overseas shall be extended until ninety (90) days after the end of the deployment.
- (2) The hiring, licensing, permitting, or certifying authority shall renew a license, permit, or certification extended under subsection (1) of this section until the next date that the license, permit, or certification expires or for the period that the license, permit, or certification is normally issued, at no cost to the member, if that member:
 - (a) Requests renewal of the license, permit, or certification within ninety (90) days after the end of overseas deployment;
 - (b) Provides the hiring, licensing, permitting, or certifying authority with a copy of the member's official orders ending the overseas deployment; and
 - (c) Meets all the requirements necessary for the renewal of the license, permit, or certification, except that the member need not meet the requirements, if any, that relate to continuing education or training.
- (3) (a) The possession by a member specified in subsection (1) of this section of a license, permit, or certification, together with orders for overseas deployment, shall constitute a de facto extension of the

license, permit, or certification until its expiration pursuant to subsection (1) of this section or until the license, permit, or certificate is renewed by the hiring, licensing, permitting, or certifying authority, whichever occurs later.

- (b) The possession of a license, permit, or certification, together with orders for overseas deployment, shall constitute, during the period specified in paragraph (a) of this subsection, a defense to any charge for possession of an expired license, permit, or certification by the member specified in subsection (1) of this section.
- (4) In order to avoid confusion regarding the status of a license, permit, or certification, a service member specified in subsection (1) of this section may provide the hiring, licensing, permitting, or certifying authority a copy of the service member's overseas deployment orders. Upon receipt of the service member's overseas deployment orders, the receiving agency shall indicate the license as extended as provided in this section in the agency's records. Failure of a service member to provide overseas deployment information to the hiring, licensing, permitting, or certifying authority shall have no effect on the automatic extension of the license, permit, or certification or its renewal as provided in this section. No hiring, licensing, permitting, or certifying agency shall take any adverse action with regard to the renewal of the license, permit, or certification of a service member who has been the subject of an overseas deployment and who has not notified the agency of the overseas deployment.
- (5) This section shall not apply to a motor vehicle or motorcycle operator's license issued under KRS Chapter 186, a motor vehicle registration issued under KRS Chapter 186, or a commercial driver's license issued under KRS Chapter 281A.
- (6) *A license to carry a concealed deadly weapon issued pursuant to KRS 237.110 shall not be extended beyond its expiration date. However, a service member specified in subsection (1) of this section may:*
 - (a) *Renew a license issued pursuant to KRS 237.110 by requesting an application form from the Department of Kentucky State Police by mail or facsimile, and returning the completed application, photograph, and license fee to the sheriff prior to the expiration date of the license. The request for the application may be submitted not more than six (6) months prior to the expiration date of the license. The Department of Kentucky State Police shall, if the applicants meet the requirements of KRS 237.110, mail the new license directly to the applicant at the active duty military address specified by the applicant and shall send notification to the sheriff who sent in the application that the license has been sent directly to the applicant. No extra charges shall be made for this service; or*
 - (b) *Permit the license to expire and upon return to the county of residence, apply for renewal of the license in the same manner as if the license had been renewed in a timely manner prior to its expiration without any extra fees or penalty charges if the renewal is accomplished within one (1) year after the end of the deployment.*
- (7) *The Department of Kentucky State Police shall promulgate administrative regulations to implement the provisions of subsection (6) of this section.*

Signed by Governor March 11, 2010

CHAPTER 13

(HB 237)

AN ACT relating to coordinated benefits for Kentucky National Guard members returning from deployment and declaring an emergency.

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

➔Section 1. KRS 38.030 is amended to read as follows:

- (1) Only the Governor shall have the authority to order units and members of the Kentucky National Guard into state active duty.
 - (a) The Governor may order units and individual members of the Kentucky National Guard into state active duty for any of the following purposes:
 - 1. Protecting lives and property;

2. Assisting in disaster relief or other humanitarian efforts;
 3. Preventing or suppressing riot or civil disorder;
 4. Enforcing the laws of the Commonwealth; or
 5. Other similar purpose.
- (b) In addition to ordering personnel and units to state active duty, the Governor may order other members of the Kentucky National Guard to participate in or perform duty in support of state active duty missions notwithstanding the fact that they are then entitled to receive federal pay and allowances pursuant to Title 32 of the United States Code. The personnel may be ordered to perform state active duty support missions either prior to, during, or after the time that state active duty missions are planned or performed.
- (c) Members of the National Guard who are ordered to perform duty as provided in subsection (1)(b) of this section while they are entitled to receive federal pay under Title 32 of the United States Code shall have all of the powers, immunities, and benefits conferred by law upon persons ordered to state active duty except that they shall receive no additional pay for the duty and the provisions of KRS 38.235 shall not apply to them. The powers, immunities, and benefits conferred upon those persons shall be in addition to, and not in place of, those powers, immunities, and benefits provided under federal law.
- (d) Any member of the National Guard may, with his consent, be ordered to state active duty without pay.
- (2) The Governor may direct the commanding officer of the military forces ordered to state active duty to report to any civil officer, including, but not limited to, judge, county judge/executive, mayor, sheriff, or head of law enforcement or other public agency in whose jurisdiction the state active duty mission is to be performed. The civil officer may advise the commanding officer regarding the specific objectives to be accomplished by the military force, but the tactical direction and disposition of the troops and the particular means to be employed to accomplish the mission shall be left solely to the commanding officer of the National Guard.
- (3) Troops shall not be relieved from active field service except by order of the Governor.
- (4) National Guard officers, enlisted soldiers, and airmen who are temporarily or permanently disabled as a direct result of an injury or disease arising out of the performance of an act in the line of duty **while on state active duty**~~[as a result of the January, 2009 Winter Storm Response, Mission # 090127G01,]~~ shall, at the discretion of the Governor, remain on paid state active duty status until a competent medical authority releases them to return to their normal activities or the Governor deems it appropriate to relieve the individual from state active duty status. Compensation paid to the soldier or airman by the department shall be adjusted and maintained at the soldier's or airman's regular rate of active duty pay; however, compensation paid by the department shall be reduced by the amount of payments received from workers' compensation insurance, Social Security benefits, and other federal or state-financed disability programs designed to supplement the soldier's or airman's income. Final compensation shall not be reduced by payments for medical care.

➔Section 2. Whereas Kentucky National Guard members who have sustained an injury or disease arising out of the performance of an act in the line of duty while on state active duty are in need of compensation while they recuperate, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor March 11, 2010

CHAPTER 14

(HB 96)

AN ACT relating to special license plates.

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

➔Section 1. KRS 186.041 is amended to read as follows:

- (1) Each initial and renewal application by a person who meets the criteria of paragraph (a) of this section and each initial application by a person who meets the criteria of paragraphs (b) and (c) of this section for a special military license plate shall be accompanied by proof that the person is associated with the United States Army,

United States Navy, United States Air Force, United States Marine Corps, United States Coast Guard, United States Coast Guard Auxiliary, Kentucky National Guard, Merchant Marines with service between December 7, 1941, and August 15, 1945, or Civil Air Patrol in one (1) of the following ways:

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

National Guard special license plate, may retain the license plate for use on the same vehicle or another vehicle that complies with KRS 186.164(7). The surviving spouse may renew the license plate indefinitely, provided the appropriate registration fee is paid annually.

Signed by Governor March 17, 2010.

CHAPTER 15

(HB 276)

AN ACT relating to boards and commissions.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 10 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "independent board or commission" means an executive branch agency created by statute that serves the primary purpose of licensing, certifying, registering, or otherwise regulating any occupational or professional category. "Independent board or commission" does not include:*
 - (a) *An executive branch board or commission that is a part of another executive branch agency;*
 - (b) *Any board or commission that is under the authority or jurisdiction of the General Assembly or the judicial branch; or*
 - (c) *Any board or commission within any branch of state government if that board or commission is expressly designed to:*
 1. *Study, report, or make recommendations regarding a particular issue; or*
 2. *Expire within a time certain.*
- (2) *Any independent board or commission that is created after the effective date of this Act shall use the administrative services of the Division of Occupations and Professions as described under Section 2 of this Act unless that board or commission can reasonably demonstrate to the satisfaction of the division that it will license, certify, register, or otherwise regulate at least one hundred (100) persons. If the board or commission is able to initially demonstrate that it will reach the threshold established in this subsection and then fails to license, certify, register, or otherwise regulate at least one hundred (100) persons at the end of any two (2) consecutive fiscal years, that board or commission shall be subject to the process required in subsection (4) of this section.*
- (3) *Any independent board or commission that was created before the effective date of this Act shall undergo the process required in subsection (4) of this section if that board or commission licenses, certifies, registers, or otherwise regulates less than one hundred (100) persons at the end of any two (2) consecutive fiscal years ending on or after June 30, 2010.*
- (4) (a) *If an independent board or commission fails to regulate one hundred (100) or more persons for two (2) consecutive fiscal years as described in subsections (2) and (3) of this section, that board or commission shall submit a report within ninety (90) days after the close of the second of the two (2) fiscal years to the Division of Occupations and Professions and to the Interim Joint Committee on Licensing and Occupations of the Legislative Research Commission or to the corresponding standing committees of the General Assembly. The report shall contain, at a minimum:*
 1. *The number of persons licensed, certified, registered, or otherwise regulated by the board or commission at the close of each of the two (2) fiscal years;*
 2. *A detailed accounting of the revenues, fees collected, board or commission member reimbursements or per diems, staff salaries, costs, expenses, and other financial activities of the board or commission for each of the two (2) fiscal years; and*
 3. *The board or commission's plan to:*
 - a. *Increase the number of persons it licenses, certifies, registers, or otherwise regulates to one hundred (100) or more persons;*

- b. Merge with one (1) or more other boards, commissions, or other governmental entities, which will result in a merged entity that will license, certify, register, or otherwise regulate one hundred (100) or more persons; or*
- c. Allow the Division of Occupations and Professions to assume administrative duties for the board or commission as described in Section 2 of this Act.*
- (b) If, after implementation of its plan under paragraph (a)3.a. or b. of this subsection, an independent board or commission fails to license, certify, register, or otherwise regulate one hundred (100) or more persons for an additional three (3) consecutive fiscal years, for a total of five (5) consecutive fiscal years, that board or commission shall allow the Division of Occupations and Professions to assume administrative duties for the board or commission as described in Section 2 of this Act within ninety (90) days after the end of the fifth fiscal year.*

➔Section 2. KRS 224.10-052 is amended to read as follows:

- (1) The Division of Occupations and Professions shall provide administrative services, technical assistance, and advice to the following boards and commissions at the request of the individual boards or commissions, all of which maintain their identity and their full authority for making policy decisions in the fields that they regulate: the State Board of Accountancy, the Kentucky Board of Architects, the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the State Board of Podiatry, the Kentucky State Board of Chiropractic Examiners, the Kentucky Board of Dentistry, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Professional Engineers and Land Surveyors, the Kentucky Board of Nursing, the Kentucky Board of Ophthalmic Dispensers, the Kentucky Board of Optometric Examiners, the Kentucky Board of Pharmacy, the State Board of Physical Therapy, the State Board of Examiners of Psychologists, the Kentucky Real Estate Commission, the Kentucky Board of Veterinary Examiners, the Board of Auctioneers, the State Board for Proprietary Education, the State Board of Examiners and Registration of Landscape Architects, the State Board of Medical Licensure, the Board of Speech-Language Pathology and Audiology, the Kentucky Board of Licensure for Nursing Home Administrators, the Kentucky Licensing Board for Specialists in Hearing Instruments, the Kentucky Board of Social Work, and such other boards and commissions as are created to license, certify, register, or otherwise regulate any occupational or professional category.
- (2) *The division may also provide administrative services to a board or commission that is created to license, certify, register, or otherwise regulate any occupational or professional category if these administrative services are deemed to be preferable or required after the review process conducted under Section 1 of this Act.*
- (3) To the extent that the division provides administrative services, the respective boards and commissions are relieved of the power and duty to provide the services for themselves. The division shall charge each board or commission a reasonable amount for administrative services provided pursuant to subsection (1) of this section. The division may employ persons previously employed by boards or commissions.
- ~~(4)~~~~(3)~~ The division may receive complaints against the conduct of licensees granted licensure by the boards and commissions assigned to the division for administrative purposes. The division shall cause such complaints to be reduced to writing and forwarded to the appropriate board or commission for investigation and a determination of the validity of the complaint. The division shall keep a record of all complaints received by it and forwarded to a board or commission.
- ~~(5)~~~~(4)~~ Any board or commission listed in subsection (1) of this section, shall accept personal checks in payment of license renewal fees.

Signed by Governor March 18, 2010.

CHAPTER 16

(HB 434)

AN ACT relating to the Kentucky Commission on Military Affairs.

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

➔Section 1. KRS 154.12-203 is amended to read as follows:

- (1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.
- (2) It shall be the purpose of the Kentucky Commission on Military Affairs to:
 - (a) Address matters of military significance to Kentucky;
 - (b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, the military;
 - (c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;
 - (d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;
 - (e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;
 - (f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;
 - (g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high-technology programs and activities at Kentucky's military installations;
 - (h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky;
 - (i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment; and
 - (j) Allocate available grant money to qualified applicants to further the purposes of paragraphs (a) to (i) of this subsection.
- (3) The Kentucky Commission on Military Affairs shall consist of:
 - (a) The Governor, or his designated representative;
 - (b) The secretary of the Cabinet for Economic Development, or his designated representative;
 - (c) The adjutant general of the Commonwealth, or his designated representative;
 - (d) The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;
 - (e) The executive director of the Office of Homeland Security, or his designated representative;
 - (f) The secretaries of the following cabinets, or their designees:
 1. Finance and Administration;
 2. Justice *and Public Safety*;
 3. Environmental and Public Protection;
 4. Transportation;
 5. Education *and Workforce Development*;
 6. Health and Family Services;~~{and}~~
 7. Personnel; *and*
 8. *Tourism, Arts and Heritage*;

- (g) The Attorney General, or his designee;
 - (h) The commissioner of the Department of Veterans' Affairs or a designee;
 - (i) The executive director of the Kentucky Commission on Military Affairs or a designee;
 - (j) Kentucky's Civilian Aides to the Secretary of the United States Army;
 - (k) Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;
 - (l) The commander or the designee of the commander of each of the following as nonvoting, ex officio members:
 - 1. Fort Campbell;
 - 2. Fort Knox;
 - 3. United States Army ~~Accessions~~~~[Recruiting]~~ Command;
 - 4. Bluegrass Army Depot;
 - 5. Louisville District of the United States Army Corps of Engineers;
 - 6. The One Hundredth Training Division; *and*
 - 7. ~~Naval Surface Warfare Center Port Hueneme Division, Louisville Detachment; and~~
 - 8. Any other installation or organization~~[, including but not limited to the United States Coast Guard, Air Force, Navy, and Marine Corps,]~~ with a *major* military mission in the Commonwealth; and
 - (m) Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
 - (5)
 - (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs, and the five (5) at-large members. The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.
 - (b) The chair and vice chair of the commission shall also serve as chair and vice chair of the executive committee.
 - (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
 - (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.
 - (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
 - (8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.
 - (9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.
 - (10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.

- (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

Signed by Governor March 18, 2010.

CHAPTER 17

(HCR 15)

A CONCURRENT RESOLUTION designating March as Kidney Cancer Awareness Month in Kentucky.

WHEREAS, the American Cancer Society estimates that there will be about 57,760 new cases of kidney cancer in the United States this year, and that about 12,980 people will die from this deadly disease; and

WHEREAS, more than 200,000 kidney cancer survivors are currently living in the United States; and

WHEREAS, a great deal remains unknown about this deadly ailment, including its exact cause; and

WHEREAS, kidney cancer has few symptoms and usually remains undiagnosed or misdiagnosed until its later stages or until it has spread to other areas of the body and becomes harder to treat; and

WHEREAS, early detection can help to offset the spread of kidney cancer; and

WHEREAS, kidney cancer is among the ten most common cancers in both men and women; and

WHEREAS, incidents of kidney cancer have increased in recent years; and

WHEREAS, other than surgery, the most commonly used treatments for kidney cancer are immunotherapy, radiation and chemotherapy; and

WHEREAS, breakthroughs in research over the last year have given renewed hope to patients who previously had few treatment options;

NOW, THEREFORE,

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

➔Section 1. The General Assembly does hereby designate March as Kidney Cancer Awareness Month and encourages citizens of the Commonwealth to lend their support to efforts to develop new and more effective treatments for controlling and curing kidney cancer.

➔Section 2. The General Assembly extends its deepest condolences to the family members and loved ones of victims of kidney cancer.

➔Section 3. The Clerk of the House of Representatives shall transmit a copy of this Resolution to the National Kidney Cancer Association; 1234 Sherman Avenue, Suite 203; Evanston, Illinois 60202.

Signed by Governor March 18, 2010.

CHAPTER 18

(HB 201)

AN ACT relating to water districts.

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

➔Section 1. KRS 74.020 is amended to read as follows:

- (1) A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district. The term of each commissioner is four (4) years, except as provided in this section:
 - (a) If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court.
 - (b) Except as provided in paragraph (c) of this subsection, if a district formed in a single county extends its area to include territory in one (1) or more adjacent counties, as provided by KRS 74.115, the board of commissioners shall be appointed by the appropriate county judges/executive, with the approval of the respective fiscal courts of the concerned counties as follows: in two (2) county districts, three (3) members from the original district and two (2) members from the extended portion of the district; for extensions into three (3) or more counties, the respective county judges/executive, with the approval of the respective fiscal courts, shall appoint, in addition to the existing membership of the commission, two (2) members from the original one-county district and two (2) members from the newly extended portion of the district. Orders establishing the extension shall provide for the staggering of initial terms in an equitable manner.
 - (c) If a district acquires an existing water or gas distribution system serving an area which extends beyond the boundaries of the district into one (1) or more additional counties, or if a district extends its area to include territory in one (1) or more adjacent counties as provided by KRS 74.115, it may operate the distribution system so acquired, or extended, without adding additional board members, if the new area to be served shall be deemed to be a minor portion of the total area served by the district, and if the fiscal court of the county containing the minor portion of the total area shall have agreed to the acquisition or to the extension of the distribution system. If less than twenty-five percent (25%) of the total assets of the distribution system are located within any particular county included in the territorial boundaries of the district, it shall be conclusively presumed, with respect to that particular county, that the district comes within the terms of this subsection.
- (2) A commissioner may be removed from office as provided by KRS 65.007 **or 74.455**.
- (3) A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office as provided by KRS 65.007 **or 74.455**.
- (4) Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding ~~the provisions of~~ KRS 67.710, a vacancy resulting from the expiration of a term **or the death, resignation, or removal of the incumbent** shall be filled by the Public Service Commission if, within ninety (90) days following the ~~vacancy~~ ~~expiration of the term~~, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.
- (5) The commission shall elect a chairman, vice chairman, secretary, treasurer, and any other officers and assistant officers as the commission may deem necessary, each of whom shall be members of the commission. Any two (2) or more offices may be held by the same person, except that the chairman may not hold any other office. Each commissioner shall execute a bond for the faithful performance of the duties of his position.
- (6) Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund. An educational year shall begin on January 1 and end on the following December 31. In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

- (7) (a) In order to receive an increase in salary as specified in subsection (6) of this section, commissioners shall successfully complete six (6) instructional hours of water district management training annually. The training shall be approved and paid for by the water district of the county the commissioner represents. Those commissioners not required to complete the six (6) instructional hours shall be reimbursed for the cost of instruction if they choose to complete the water district training.
- (b) The Public Service Commission shall be responsible for the regulation of all water district management training programs for commissioners of water districts, combined water, gas, or sewer districts, or water commissions.
- (c) The Public Service Commission shall encourage and promote the offering of high quality water district management training programs that enhance a water district commissioner's understanding of his or her responsibilities and duties. The commission shall, no later than January 1, 1999, establish standards and procedures to evaluate, accredit, and approve water district management training programs.
- ~~[(d) The Public Service Commission may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to implement this section.]~~
- (8) (a) *At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.*
- (b) *Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.*
- (9) (a) *Within thirty (30) days of the occurrence of a vacancy on its board of commissioners resulting from the expiration of a term or the death, resignation, or removal of the incumbent, a water district shall notify in writing the Public Service Commission of the existence of the vacancy. The notice shall include the name of the commissioner who last held the position and the date on which the unexpired term will end.*
- (b) *Within thirty (30) days of the appointment of a commissioner and the appropriate fiscal court's approval of that appointment, a water district shall notify the Public Service Commission of the appointment. The notice shall include the appointed person's name and the date of the expiration of his or her term.*
- (10) *The Public Service Commission may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.*

➔Section 2. KRS 74.363 is amended to read as follows:

- (1) Boards of commissioners of any two (2) or more water districts may by concurrent action and by approval of a majority of the membership of the board of each merge their districts into one (1).
- (2) The members of the boards of commissioners of the merged water districts shall serve as members of the board of commissioners of the resulting district, regardless of their normal term expiration, until one (1) year after approval of the merger by the Public Service Commission. Thereafter, the board shall be composed as follows:
 - (a) If the boundaries of the resulting district lie wholly within a single county, the board of commissioners shall be composed of between three (3) and seven (7) members as agreed upon by the merged water districts in their merger documents.
 - (b) If the boundaries of the resulting district lie within two (2) or more counties, the board of commissioners shall be composed of six (6) or more members as agreed upon by the merged water districts in their merger documents.

- (3) Each appointment to the board of commissioners of the resulting district shall be made by the appropriate county judge/executive with the approval of the fiscal court. Each member of the board shall be a resident of the county from which he or she is appointed. The initial terms of the board of commissioners after the merger shall be as follows: approximately one-third (1/3) of the commissioners shall be appointed for a term of two (2) years; approximately one-third (1/3) of the commissioners shall be appointed for a term of three (3) years; and the remaining commissioners shall be appointed for a term of four (4) years. Thereafter, all commissioners shall be appointed for a term of four (4) years. ~~[-The provisions of] KRS 74.020(2) to (10) [(7)]~~ shall apply to all commissioners and vacancies on the board of commissioners.
- (4) The resulting district shall have all the assets and legal liabilities of the water districts joining in the merger. The separate existences of the water districts joining in the merger, except the resulting district, shall cease, and the title to all real estate and other property owned by the water districts joining in the merger shall be vested in the resulting district without reversion or impairment. Bonded obligations of any district secured by the right to levy an assessment as provided by KRS 74.130 through 74.230 or secured by the revenue of the systems operated by the district shall continue to be retired or a sinking fund for such purpose created from the tax assessments or revenue from the system operated by the district from funds collected over the same area by the new board of commissioners in accordance with the laws under which the bonds were issued until all bonded obligations of the old district have been retired.

Signed by Governor March 18, 2010.

CHAPTER 19

(HB 175)

AN ACT relating to bees.

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

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

The General Assembly finds that the reclamation of coal mine sites can benefit from pollinator habitat sites. These sites are an important conservation resource which will encourage and protect the habitat for pollinators like honeybees, bumble bees, and other bee species. The protection and location of pollinator sites situated on mine sites can increase the revegetation rates during the reclamation period which supports soil and hydrologic stability. Therefore the General Assembly hereby directs the cabinet to develop a plan in conjunction with the Division of Conservation to encourage coal licensees to locate and protect pollinator sites on reclamation sites and to use high value trees and shrubs to aid in pollen transfer.

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

The honeybee is named and designated as the official state agricultural insect of Kentucky.

➔Section 3. KRS 350.113 is amended to read as follows:

- (1) When the planting of a permit area is completed, the permittee shall file a planting report with the cabinet on a form to be prescribed and furnished by the cabinet, giving the following information:
 - (a) Identification of the operation;
 - (b) The type of planting or seeding, including mixtures and amounts;
 - (c) The date of planting or seeding;
 - (d) The area of land planted;
 - (e) Other relevant information, ***including whether the operator has utilized a pollinator colony***, as the cabinet may require.
- (2) All planting reports shall be certified.
- (3) Inspection and evaluation for vegetative cover shall be made as soon as it is possible to determine if a satisfactory stand has been established. In no instance shall this vegetative cover check be made until just prior to or after the completion of the first growing season.

➔Section 4. KRS 350.435 is amended to read as follows:

The permittee or other person shall establish on the regraded areas, and all other lands affected, a diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area; except, that introduced species, *such as the establishment of pollinator habitat sites for bees*, may be used in the revegetation process where desirable and necessary to achieve the approved postmining land use plan.

➔Section 5. During the 2010 interim, the interim joint committee with jurisdiction over coal mine reclamation is encouraged to examine the issue of pollinator habitat and to find ways to support sustainable beekeeping habitats on mine reclamation sites.

Signed by Governor March 18, 2010.

CHAPTER 20

(HB 106)

AN ACT relating to veterans' discharge papers.

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

➔Section 1. KRS 422.090 is amended to read as follows:

- (1) All discharge papers, including Form DD-214, given, executed or delivered to any person in the military or naval service of the United States, which evidence his discharge from the service of the United States and show the unit or part of the department to which he was attached and from which he was discharged may be recorded in the office of the county clerk of the county in which the person discharged is a resident. Upon the presentation of such discharge papers the county clerk shall record them, without charge therefor, in a suitable book which he shall provide for that purpose.
- (2) A certified or attested copy of such recorded discharge is admissible evidence in all proceedings in which such discharge may come in question or in which it might be used as legal evidence of any fact.
- (3) It shall be the duty of each county clerk to index alphabetically the name of each person whose discharge papers are recorded as provided in this section and to keep such index as a permanent record in such office. This index shall be a public record which shall be disclosed to any member of the public. The index shall not be bound with the book in which the discharge papers are recorded, but shall be a separate bound index.
- (4) Except as provided in subsections (5) and (6) of this section, discharge papers recorded with the county clerk shall not be public records subject to public disclosure.
- (5) Upon presentation of proper identification, the following individuals may ***be provided with a copy***, ~~inspect discharge papers recorded with the county clerk, obtain~~ a certified ***copy***, or ***an*** attested copy of discharge papers ***recorded with*** ~~from~~ the county clerk ~~, or both~~:
 - (a) The veteran named in the discharge papers;
 - (b) His or her spouse, widow or widower, child eighteen (18) years of age or older, parent, grandparent, or sibling eighteen (18) years of age or older;
 - (c) Any person authorized by the veteran;
 - (d) A guardian, limited guardian, conservator, or limited conservator of a disabled or partially disabled veteran named in the discharge papers;
 - (e) An individual with power of attorney for the veteran;
 - (f) A funeral director handling funeral arrangements for the veteran; and
 - (g) The personal representative of the veteran's estate.
- (6)
 - (a) Discharge papers shall be subject to discovery under the federal and Kentucky rules of criminal and civil procedure.
 - (b) The county clerk shall comply with any proper court order pertaining to discharge papers.

- (7) Upon presentation of proper identification, a veteran may ask the county clerk to destroy that veteran's discharge papers. Within fifteen (15) days of receiving the request, the county clerk shall destroy all copies of the discharge papers in whatever form they are being held.
- (8) With regard to military discharge papers, including Form DD-214, filed before July 13, 2004, if a county clerk has commingled such discharge papers with documents unrelated to military discharge, that county clerk, in handling such discharge papers, may comply with the provisions in subsections (4), (5), and (6) of this section as well as the provision in subsection (3) of this section that the index shall not be bound with the book in which the discharge papers are recorded but shall be a separate bound index.
- (9) *The Kentucky Department of Veterans' Affairs shall send a reminder of the provisions of this section to all Kentucky County Clerks in January of each year to ensure the confidentiality of veterans' discharge papers.*

Signed by Governor March 18, 2010.

CHAPTER 21

(HB 188)

AN ACT relating to trusts and estates.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

An interest created in real or personal property shall not be void by reason of any rule against perpetuities, whether the common law rule or otherwise. The common law rule against perpetuities shall not be in force in this Commonwealth.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *A future interest or trust is void if it suspends the power of alienation for longer than the permissible period. The power of alienation is the power to convey to another an absolute fee in possession of land, or full ownership of personalty. The permissible period is within twenty-one (21) years after the death of an individual or individuals then alive.*
- (b) *If the settlor of an inter vivos trust has an unlimited power to revoke, the permissible period is computed from the termination of that power.*
- (c) *If a future property interest or trust is created by exercise of a power of appointment, the permissible period is computed from the time the power is exercised if the power is a general power exercisable in favor of the donee, the donee's estate, the donee's creditors, or the creditor's of the donee's estate, whether or not it is exercisable in favor of others, and even if the general power is exercisable only by will; in the case of other powers, the permissible period is computed from the time the power is created but facts at the time the power is exercised are considered in determining whether the power of alienation is suspended beyond the death of an individual or individuals alive at the time of creation of the power plus twenty-one (21) years.*
- (2) *The power of alienation is suspended when there are no persons who, alone or in combination with others, can convey an absolute fee in possession of land, or full ownership of personalty.*
- (3) *There is no suspension of the power of alienation by a trust or by equitable interests under a trust if the trustee has power to sell, either expressed or implied, or if there is a power to terminate the trust by distributing the property subject to the trust to the beneficiaries in fee simple in one (1) or more persons then living.*
- (4) *This section does not apply to limit any of the following:*
 - (a) *Transfers, outright or in trust, for charitable purposes;*
 - (b) *Transfers to one (1) or more charitable organizations as described in 26 U.S.C. secs. 170(c), 2055(a), and 2522(a), or any similar statute;*
 - (c) *A future interest or a power of appointment arising out of a nondonative transfer, except a nonvested property interest or a power of appointment arising out of:*

1. *A premarital or post-marital agreement;*
 2. *A separation or divorce settlement;*
 3. *An arrangement similar to subparagraph 1. or 2. of this paragraph arising out of a prospective, existing, or previous marital relationship between the parties;*
 4. *A contract to make or revoke a will or trust;*
 5. *A contract to exercise or not to exercise a power of appointment;*
 6. *A transfer in satisfaction of a duty of support; or*
 7. *A reciprocal transfer;*
- (d) *A transfer to a trust or other property arrangement forming part of a pension, profit-sharing, stock bonus, health, disability, death benefit, income deferral, or other current or deferred benefit plan for one (1) or more employees, independent contractors, or their beneficiaries or spouses, to which contributions are made for the purposes of distributing to or for the benefit of the participants or their beneficiaries or spouses the property, income, or principal in the trust or other property arrangement; or*
- (e) *A property interest, power of appointment, or arrangement that was not subject to the common law rule against perpetuities or is excluded by another statute of this Commonwealth.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, Sections 1 and 2 of this Act shall apply to:*
- (a) *A future property interest or a power of appointment that is created on or after the effective date of this Act, including a property interest or power of appointment created pursuant to the exercise of a power of appointment under an instrument executed prior to the effective date of this Act; or*
 - (b) *A future property interest or a power of appointment:*
 1. *That is created pursuant to the laws of any state that does not have a rule against perpetuities in force;*
 2. *That is not covered by any previously existing rule against perpetuities; and*
 3. *To which, after the effective date of this Act, the laws of this state are made applicable by transfer of the situs of a trust to Kentucky, by a change in the law governing a trust instrument to Kentucky law, or otherwise.*
- (2) *With respect to a nonvested property interest or a power of appointment created either before or after the effective date of this Act, which is determined in a judicial proceeding commenced on or after the effective date of this Act to violate Kentucky's rule against perpetuities as that rule existed at the time the interest or power was created, a court upon the petition of an interested person may reform the disposition in the manner that most closely approximates the transferor's manifested plan of disposition and is within the limits of the rule against perpetuities applicable when the nonvested property interest or power of appointment was created.*
- (3) *For purposes of this section only, a future property interest or a power of appointment is created when the power is irrevocably exercised or when a revocable exercise becomes irrevocable.*
- (4) *An instrument which contains a provision requiring the vesting of all interests created by the instrument within the period provided by the common law rule against perpetuities shall be construed as requiring the interests to vest within the period specified by this section and Sections 1 and 2 of this Act, unless the provision is determined by a court to have been included in the instrument for reasons other than protecting the interest against a violation of the common law rule against perpetuities. For purposes of this subsection, the term "common law rule against perpetuities" shall include KRS 381.215, 381.216, and 381.217 prior to their repeal on the effective date of this Act.*

➔Section 4. KRS 386.185 is amended to read as follows:

- (1) If a trustee or personal representative holds and controls an amount, exclusive of income, of *fifty thousand dollars (\$50,000)*~~twenty five thousand dollars (\$25,000)~~ or less or the will directs that such an amount be

placed in a trust, the fiduciary may petition the District Court having jurisdiction of the trust or estate, for an order authorizing the fiduciary to distribute the amount held, plus income available, less fees chargeable, to the appropriate beneficiary or beneficiaries, legal representatives thereof, or other appropriate persons or institutions responsible for the object of the trust, who shall be under a duty to use the funds for the purposes of the trust. Upon receipt of said petition by the District Court, and accompanying affidavit and/or oral testimony, the court shall order the amount distributed.

- (2) When an order to distribute the amount petitioned is granted and entered into the court's records, no bond shall be required of the recipient of said distribution from the trustee or personal representative.
- (3) A release of the trustee or personal representative shall be executed by the recipient upon distribution of the amount held, declaring said fiduciary not liable thereafter. The trustee or personal representative shall not be required to look into the application of the amount so distributed.

➔Section 5. KRS 386.450 is amended to read as follows:

As used in KRS 386.450 to 386.504:

- (1) "Accounting period" means a calendar year unless another twelve (12) month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve (12) month period that begins when an income interest begins or ends when an income interest ends;
- (2) "Beneficiary" includes, in the case of a decedent's estate, an heir, legatee, and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary;
- (3) "District Court approval" means the consent of ***the District Court having jurisdiction over the fiduciary, with notice of the request for approval being given to all current beneficiaries and all reasonably ascertainable remainder beneficiaries in the oldest generation***;
 - (a) ~~All current beneficiaries;~~
 - (b) ~~All remainder beneficiaries in the oldest generation; and~~
 - (c) ~~The court~~;
- (4) "Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, and public administrator;
- (5) "Income" means money or property that a fiduciary receives as current return from a principal asset. The term includes a portion of receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in Articles 4 and 5 of the Kentucky Principal and Income Act;
- (6) "Income beneficiary" means a person to whom net income of a trust is or may be payable;
- (7) "Income interest" means the right of an income beneficiary to receive all or part of net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion;
- (8) "Mandatory income interest" means the right of an income beneficiary to receive net income that the terms of the trust require the fiduciary to distribute;
- (9) "Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period, plus or minus transfers under KRS 386.450 to 386.504 to or from income during the period;
- (10) ***"Notice" means written notice of the time and place for a hearing on the request for District Court approval that is placed postage prepaid in the United States mail at least thirty (30) days prior to the hearing and addressed to the last known address of the party to receive notice, and may be proved by an affidavit of the fiduciary or fiduciary's counsel filed at the hearing stating the name and address to which notice was mailed postage prepaid and the date of the mailing;***
- (11) "Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates;
- ~~(12)(11)~~ "Remainder beneficiary" means a person entitled to receive principal when an income interest ends;
- ~~(13)(12)~~ "Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct; and

~~(14)~~~~(13)~~ "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

➔ Section 6. KRS 386.454 is amended to read as follows:

- (1) Notwithstanding any provision of Kentucky law to the contrary, the trustee of a trust to which by law KRS 286.3-277 does not apply may elect to have such provisions apply to the administration of the trust with approval of the District Court.
- (2) A trustee may adjust between principal and income to the extent the trustee considers necessary if KRS 286.3-277 applies by law or by election made and approved under subsection (1) of this section, the terms of the trust describe the amount that may or shall be distributed to a beneficiary by referring to the trust's income, the trustee determines, after applying the rules in KRS 386.452(1), that the trustee is unable to comply with KRS 386.452(2) and the adjustment, including an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, is approved by the District Court.
- (3) A personal representative may adjust between principal and income in the same manner as a trustee if KRS 286.3-277 applies to the personal representative by law or if the personal representative elects to have KRS 286.3-277 apply to the administration of the estate, upon approval of the District Court, which approval may be an adjustment method such as an annual percentage distribution if the percentage is not less than three percent (3%) nor more than five percent (5%) of the fair market value of the trust assets determined annually, and:
 - (a) The amount distributable to a beneficiary of the estate is determined by reference to the income of the estate; and
 - (b) The personal representative determines, and after applying the rules of KRS 386.452(1), that the personal representative is unable to comply with KRS 386.452(2).
- (4) *In deciding whether and to what extent to exercise the power conferred by subsection (2) or (3) of this section, a fiduciary shall consider all factors relevant to the trust or estate and its beneficiaries, including the following factors to the extent they are relevant:*
 - (a) *The nature, purpose, and expected duration of the trust or estate;*
 - (b) *The intent of the settlor or testator;*
 - (c) *The identity and circumstances of the beneficiaries;*
 - (d) *The needs for liquidity, regularity of income, and preservation and appreciation of capital;*
 - (e) *The assets held in trust or estate and:*
 1. *The extent to which those assets consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property;*
 2. *The extent to which an asset is used by a beneficiary; and*
 3. *Whether an asset was purchased by the fiduciary or received from the settlor or testator;*
 - (f) *The net amount allocated to income under the other sections of KRS 386.450 to 386.504 and the increase or decrease in the value of the principal assets, which the fiduciary may estimate as to assets for which market values are not readily available;*
 - (g) *Whether and to what extent the terms of the trust or will give the fiduciary the power to invade principal or accumulate income or prohibit the fiduciary from invading principal or accumulating income, and the extent to which the fiduciary has exercised a power from time to time to invade principal or accumulate income;*
 - (h) *The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and*
 - (i) *The anticipated tax consequences of an adjustment.*
- (5) A fiduciary shall not make an adjustment:

- (a) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the fiduciary did not have the power to make the adjustment;
 - (b) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
 - (c) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust assets;
 - (d) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust unless both income and principal are so set aside;
 - (e) If possessing or exercising the power to make an adjustment causes an individual to be treated as the owner of all or part of the trust or estate for income tax purposes, and the individual would not be treated as the owner if the fiduciary did not possess the power to make an adjustment;
 - (f) If possessing or exercising the power to make an adjustment causes all or part of the trust or estate assets to be included for estate tax purposes in the estate of an individual who has the power to remove a fiduciary, appoint a fiduciary, or both, and the assets would not be included in the estate of the individual if the fiduciary did not possess the power to make an adjustment;
 - (g) If the fiduciary is a beneficiary of the trust or estate; or
 - (h) If the fiduciary is not a beneficiary, but the adjustment would benefit the fiduciary directly or indirectly; except that any effect on the fiduciary's compensation shall not preclude an adjustment so long as the fiduciary's fees are reasonable and otherwise comply with the applicable law.
- ~~(6)(5)}~~ If paragraph (e), (f), (g), or (h) of subsection ~~(5)(4)}~~ of this section applies to a fiduciary and there is more than one (1) fiduciary, a cofiduciary to whom the provision shall not apply may make the adjustment unless the exercise of the power by the remaining fiduciary or fiduciaries is not permitted by the terms of the trust.
- ~~(7)(6)}~~ A fiduciary may release the entire power conferred by subsection (2) or (3) of this section or may release only the power to adjust from income to principal or the power to adjust from principal to income if the fiduciary is uncertain about whether possessing or exercising the power will cause a result described in paragraphs (a) to (f) of subsection ~~(5)(4)}~~ of this section or paragraph (h) of subsection ~~(5)(4)}~~ of this section, or if the fiduciary determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection ~~(5)(4)}~~ of this section. The release may be permanent or for a specified period, including a period measured by the life of an individual. Such release shall require approval of the District Court. Further, with approval of the District Court, a fiduciary may divide a trust into one (1) or more fractional shares if the division does not change the beneficial interests.
- ~~(8)(7)}~~ Terms of a trust or will that limit the power of a fiduciary to make an adjustment between principal and income do not affect the application of this section unless it is clear from the terms of the trust or will that the terms are intended to deny the fiduciary the power of adjustment conferred by subsection (2) or (3) of this section.
- (9) *An aggrieved party may, no later than thirty (30) days from the date of the order approving a power to adjust under subsection (2) or (3) of this section, institute an adversary proceeding in Circuit Court pursuant to KRS 24A.120(2).***
- ➔Section 7. KRS 386.480 is amended to read as follows:
- (1) *As used*** in this section:~~;~~
- (a)** "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one (1) or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer~~;~~ ~~including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan~~. ***For purposes of subsections (4), (5), (6), and (7) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment; and***

(b) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension profit-sharing, stock-bonus, or stock-ownership plan.

- (2) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, a trustee shall allocate it to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.
- (3) If no part of a payment is characterized as interest, a dividend, or an equivalent payment and all or part of the payment is required to be made, a trustee shall allocate to income ten percent (10%) of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the trustee shall allocate the entire payment to principal. For purposes of this subsection, a payment is not "required to be made" to the extent that it is made because the trustee exercises a right of withdrawal.
- (4) **Except as otherwise provided in subsection (5) of this section, subsections (6) and (7) of this section shall apply, and subsections (2) and (3) of this section shall not apply, in determining the allocation of a payment made from a separate fund to:**
 - (a) **A trust to which an election to qualify for a marital deduction under 26 U.S.C. sec. 2056(b)(7) has been made; or**
 - (b) **A trust that qualifies for the marital deduction under 26 U.S.C. sec. 2056(b)(5)**~~[(If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction].~~
- (5) **Subsections (4), (6), and (7) of this section shall not apply if and to the extent that the series of payments would, without the application of subsection (4) of this section, qualify for the marital deduction under 26 U.S.C. sec. 2056(b)(7)(C).**
- (6) **A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to KRS 386.450 to 386.504. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.**
- (7) **If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal three percent (3%) of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. sec. 7520, for the month preceding the accounting period for which the computation is made.**

~~(8)(5)}~~ This section shall not apply to payments to which KRS 386.482 applies.

➔Section 8. KRS 386.715 is amended to read as follows:

The trustee shall keep the beneficiaries of the trust reasonably informed of the trust and its administration. In addition:

- (1) Within thirty (30) days after his acceptance of the trust, the trustee shall inform in writing the current beneficiaries and if possible, one (1) or more persons who may represent beneficiaries with future interests, of the court in which the trust is registered and of his name and address;~~{}~~
- (2) Upon reasonable request, the trustee shall provide the beneficiary with a copy of the terms of the trust which describe or affect his interest and with relevant information about the assets of the trust and the particulars relating to the administration;~~{}~~
- (3) Upon reasonable request, a beneficiary is entitled to a statement of the accounts of the trust annually and on termination of the trust or change of the trustee; **and**

- (4) *While a trust is revocable by the settlor and, in the reasonable belief of the trustee, the settlor has capacity to revoke the trust, the trustee's duties under this section extend only to the settlor.*

➔Section 9. KRS 391.030 is amended to read as follows:

- (1) Except as otherwise provided in this chapter, where any person dies intestate as to his or her personal estate, or any part thereof, the surplus, after payment of funeral expenses, charges of administration, and debts, shall pass and be distributed among the same persons, and in the proportions, to whom and in which real estate is directed to descend, except as follows:
- (a) The personal estate of an infant shall be distributed as if he or she had died after full age;
 - (b) An alien may be distributee as though he or she were a citizen; and
 - (c) Personal property or money on hand or in a bank or other depository to the amount of fifteen thousand dollars (\$15,000) shall be exempt from distribution and sale and shall be set apart by the District Court having jurisdiction over the estate on application to the surviving spouse, or, if there is no surviving spouse, to the surviving children.
- (2) The surviving spouse may, at any time before the property or money is set apart by the court, procure on petition from the Judge of the District Court having jurisdiction over ~~administration of~~ the estate, an order authorizing the surviving spouse to withdraw from any bank or other depository not exceeding **two thousand five hundred dollars (\$2,500)** ~~one thousand dollars (\$1,000)~~ belonging to the estate ~~of the deceased~~. Upon presentation of the order, the bank or depository shall permit the surviving spouse to withdraw the sum and shall lodge the order, endorsing thereon the amount withdrawn, with the circuit clerk who shall retain it in **the clerk's** ~~this or her~~ files to be considered in connection with further proceedings in the estate and the withdrawal shall be treated as a charge against the property of the estate exempt from distribution.
- (3) In the application for the setting apart of property or money under subsection (1) of this section, the surviving spouse or, if there is no surviving spouse, the surviving children may make their selection out of the personal property of the estate to the extent that the value of the property selected does not exceed the amount of fifteen thousand dollars (\$15,000).
- (4) *Where any person dies testate:*
- (a) *Personal property or money on hand or in a bank or other depository to the amount of fifteen thousand dollars (\$15,000) shall be exempt from distribution and sale and shall be set apart by the District Court having jurisdiction over the estate on application of the surviving spouse;*
 - (b) *If there is no surviving spouse, personal property or money on hand or in a bank or other depository bequeathed to surviving children to the amount of fifteen thousand dollars (\$15,000) shall be exempt from distribution and sale and shall be set apart by the District Court having jurisdiction over the estate on application by the surviving children;*
 - (c) *The exemption of the surviving spouse under paragraph (a) of this subsection is not conditioned upon the surviving spouse renouncing the will, and, in the event of renunciation, the surviving spouse shall be entitled to the exemption in addition and prior to determining the statutory share of the surviving spouse under KRS 392.080; and*
 - (d) *Subsection (3) of this section shall apply with respect to the surviving spouse provided that the surviving spouse shall first select from among the personal property of the residuary estate, then to the extent necessary from among the money on hand or on deposit specifically bequeathed under the will, and then to the extent necessary from among any other personal property specifically bequeathed under the will. Where the selection of the surviving spouse is made up, in whole or in part, from personal property or money on hand or on deposit specifically bequeathed to a beneficiary, such beneficiary shall have a right of contribution on the principles of KRS 394.420 to 394.490 unless the will otherwise directs, or it is necessarily to be inferred therefrom that the testator intended the same to fall on such beneficiary except that there shall be no right of contribution from the surviving spouse* ~~The exemption provided in this section applies where the husband or wife dies testate.~~

➔Section 10. KRS 392.080 is amended to read as follows:

- (1) (a) When a husband or wife dies testate, the surviving spouse may, though under full age, release what is given to him or her by will, if any, and receive his or her share under KRS 392.020 as if no will had been made, except that in such case the share in any real estate of which the decedent or anyone for the

use of the decedent was seized of an estate in fee simple at the time of death shall be only one-third (1/3) of such real estate. Such relinquishment shall be *acknowledged before an officer authorized to administer oaths under the laws of this state and evidenced by the officer's certificate. The relinquishment and certificate shall be in substantially the following form:*

I, _____, am the surviving spouse of _____. Except as provided in KRS 392.080(2), I hereby release what is given to me by the will of my said deceased spouse. I understand I will now receive the share to which I am entitled pursuant to KRS 392.080.

Surviving Spouse

THE STATE OF _____

COUNTY OF _____

Subscribed to and acknowledged before me by _____, the surviving spouse of _____, this _____ day of _____.

(Officer's signature and capacity)

- (b) *To be effective, such relinquishment and certificate shall be filed both with the clerk of the court which admitted the will of the deceased spouse to probate and the county clerk of the county where the will of the deceased spouse was admitted to probate, within six (6) months after the admission of the will to probate*~~[made within six (6) months after the probate, and acknowledged before and left for record with the county clerk or his authorized deputy in the county where probate was made, or acknowledged before a subscribing witness and proved before and left with the county clerk or his authorized deputy. A copy of such relinquishment shall be filed with the clerk of the court in which probate was made].~~ If, within those six (6) months, an action contesting the will is brought, the surviving spouse need not make such relinquishment until within six (6) months succeeding the time when the action is disposed of. Provided, however, the period for renunciation may be extended not exceeding six (6) additional months by order entered by the district court upon application of the surviving spouse for such extension within six (6) months after the date of probate~~[for such extension]~~.

- (2) Subsection (1) does not preclude the surviving spouse from receiving his or her share under KRS 392.020, in addition to any bequest or devise to him or her by will, if such is the intention of the testator, plainly expressed in the will or necessarily inferable from the will.

➔Section 11. KRS 286.3-219 is amended to read as follows:

- (1) A corporate trustee administering a trust may continue the term of a portion of the trust so long as the period of the continuation does not extend beyond the term *allowable under Sections 1, 2, and 3 of this Act*~~[of the Rule Against Perpetuities, as set forth in KRS 381.215.]~~ that is applicable to the trust.
- (2) Subject to *Sections 1, 2, and 3 of this Act*~~[KRS 381.215]~~, the portion of the trust continued by the corporate trustee shall continue for the life of the remainder beneficiary of the trust, upon the same terms and conditions as provided in the trust, for the term preceding the life beneficiary's death. In addition, commencing with the death of the life beneficiary, the remainder beneficiary may withdraw that portion of the trust that has been continued by giving written notice to the corporate trustee. However, each year five percent (5%) of the remainder beneficiary's right of withdrawal shall lapse on December 31, and the lapses shall be cumulative.
- (3) The corporate trustee's authority granted in subsection (1) of this section shall not apply to any portion of a trust which:
 - (a) Continues by its terms after the death of the life beneficiary; or
 - (b) Has been pledged to secure a debt.
- (4) This section shall apply to any trust that was irrevocable on January 1, 1976.

➔Section 12. KRS 381.223 is amended to read as follows:

To the extent they are not superseded by Sections 1, 2, and 3 of this Act, and except as provided in KRS 381.221, KRS 381.218, 381.219, 381.221, 381.222, and~~381.215 to~~ 381.223 shall apply only to inter vivos instruments and wills taking effect after July 1, 1960, and to appointments made after July 1, 1960, including appointments by inter vivos instrument or will under powers created before July 1, 1960.

➔Section 13. KRS 386.478 is amended to read as follows:

If a trustee determines that an allocation between principal and income required by KRS 386.480, 386.482, 386.484, or 386.486 is unsubstantial, the trustee may allocate the entire amount to principal unless one (1) of the circumstances described in KRS 386.454(5)~~((4))~~ applies to the allocation. This power may be exercised by a cotrustee in the circumstances described in KRS 386.454(5)~~((4))~~ and may be released for the reasons and in the manner described in KRS 386.454(7)~~((6))~~. An allocation is presumed to be insubstantial if:

- (1) The amount of the allocation would increase or decrease net income in an accounting period, as determined before the allocation, by less than ten percent (10%); or
- (2) The value of the asset producing the receipt for which the allocation would be made is less than ten percent (10%) of the total value of the trust's assets at the beginning of the accounting period.

➔Section 14. The following KRS sections are repealed:

381.215 Adoption of common law rule against perpetuities.

381.216 Wait-and-see doctrine -- Reformation.

381.217 Exception in the case of pension trusts.

Signed by Governor March 18, 2010.

CHAPTER 22

(HB 300)

AN ACT relating to emergency authority for pharmacists.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

- (1) *When the Governor declares a state of emergency pursuant to Section 3 of this Act, the Governor may issue an executive order for a period of up to thirty (30) days giving pharmacists emergency authority. The executive order shall designate the geographical area to which it applies. In the executive order, the Governor may vest pharmacists with the authority to:*
 - (a) *Dispense up to a thirty (30) day emergency supply of medication;*
 - (b) *Administer immunizations to children pursuant to protocols established by the Centers for Disease Control and Prevention, the National Institutes of Health, or the National Advisory Committee on Immunization Practices or determined to be appropriate by the commissioner of public health or his designee;*
 - (c) *Operate temporarily, a pharmacy in an area not designated on the pharmacy permit; and*
 - (d) *Dispense drugs as needed to prevent or treat the disease or ailment responsible for the emergency pursuant to protocols established by the Centers for Disease Control and Prevention or the National Institutes of Health or determined to be appropriate by the commissioner of public health or his designee to respond to the circumstances causing the emergency.*
- (2) *The provisions of this section may be extended, in writing, by the Governor if necessary to protect the lives or welfare of the citizens.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

The Kentucky Board of Pharmacy may promulgate administrative regulations in accordance with KRS Chapter 13A to allow pharmacists to effectuate the authority granted in subsection (1) of Section 1 of this Act.

➔Section 3. KRS 39A.100 is amended to read as follows:

- (1) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, the Governor may declare, in writing, that a state of emergency exists. The Governor shall have and may exercise the following emergency powers during the period in which the state of emergency exists:
- (a) To enforce all laws, and administrative regulations relating to disaster and emergency response and to assume direct operational control of all disaster and emergency response forces and activities in the Commonwealth;
 - (b) To require state agencies and to request local governments, local agencies, and special districts to respond to the emergency or disaster in the manner directed;
 - (c) To seize, take, or condemn property, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, for the protection of the public or at the request of the President, the Armed Forces, or the Federal Emergency Management Agency of the United States, including:
 - 1. All means of transportation and communication;
 - 2. All stocks of fuel of whatever nature;
 - 3. Food, clothing, equipment, materials, medicines, and all supplies; and
 - 4. Facilities, including buildings and plants;
 - (d) To sell, lend, give, or distribute any of the property under paragraph (c) of this subsection among the inhabitants of the Commonwealth and to account to the State Treasurer for any funds received for the property;
 - (e) To make compensation for the property seized, taken, or condemned under paragraph (c) of this subsection;
 - (f) To exclude all nonessential, unauthorized, disruptive, or otherwise uncooperative personnel from the scene of the emergency, and to command those persons or groups assembled at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
 - (g) To declare curfews and establish their limits;
 - (h) To prohibit or limit the sale or consumption of goods, excluding firearms and ammunition, components of firearms and ammunition, or a combination thereof, or commodities for the duration of the emergency;
 - (i) ***To grant emergency authority to pharmacists pursuant to Section 1 of this Act, for the duration of the emergency;***
 - (j) Except as prohibited by this section or other law, to perform and exercise other functions, powers, and duties deemed necessary to promote and secure the safety and protection of the civilian population;
 - ~~(k)(i)~~ To request any assistance from agencies of the United States as necessary and appropriate to meet the needs of the people of the Commonwealth; and
 - ~~(l)(k)~~ Upon the recommendation of the Secretary of State, to declare by executive order a different time or place for holding elections in an election area for which a state of emergency has been declared for part or all of the election area. The election shall be held within thirty-five (35) days from the date of the suspended or delayed election. The State Board of Elections shall establish procedures for election officials to follow.
- (2) In the event of the occurrence or threatened or impending occurrence of any of the situations or events contemplated by KRS 39A.010, 39A.020, or 39A.030, which in the judgment of a local chief executive officer is of such severity or complexity as to require the exercise of extraordinary emergency measures, the county judge/executive of a county other than an urban-county government, or mayor of a city or urban-county government, or chief executive of other local governments or their designees as provided by ordinance of the

affected county, city, or urban-county may declare in writing that a state of emergency exists, and thereafter, subject to any orders of the Governor, shall have and may exercise for the period as the state of emergency exists or continues, the following emergency powers:

- (a) To enforce all laws and administrative regulations relating to disaster and emergency response and to direct all local disaster and emergency response forces and operations in the affected county, city, urban-county, or charter county;
 - (b) To exclude all nonessential, unauthorized, disruptive, or uncooperative personnel from the scene of the emergency, and to command persons or groups of persons at the scene to disperse. A person who refuses to leave an area in which a written order of evacuation has been issued in accordance with a written declaration of emergency or a disaster may be forcibly removed to a place of safety or shelter, or may, if this is resisted, be arrested by a peace officer. Forcible removal or arrest shall not be exercised as options until all reasonable efforts for voluntary compliance have been exhausted;
 - (c) To declare curfews and establish their limits;
 - (d) To order immediate purchase or rental of, contract for, or otherwise procure, without regard to procurement codes or budget requirements, the goods and services essential for protection of public health and safety or to maintain or to restore essential public services; and
 - (e) To request emergency assistance from any local government or special district and, through the Governor, to request emergency assistance from any state agency and to initiate requests for federal assistance as are necessary for protection of public health and safety or for continuation of essential public services.
- (3) Nothing in this section shall be construed to allow any governmental entity to impose additional restrictions on the lawful possession, transfer, sale, transport, carrying, storage, display, or use of firearms and ammunition or components of firearms and ammunition.

➔Section 4. KRS 217.215 is amended to read as follows:

- (1) The State Board of Pharmacy, its agents and inspectors shall have the same powers of inspection and enforcement as the cabinet under KRS 217.005 to 217.215, insofar as it relates to drugs in licensed pharmacies.
- (2) The board of pharmacy may establish regulations relating to the storage and retrieval of prescription records in licensed pharmacies, including regulations regarding computerized recordkeeping systems.
- (3) No prescription for any drug may be refilled by a pharmacist unless authorized by the prescribing practitioner, except that the board of pharmacy may promulgate rules and regulations to permit a pharmacist to:
 - (a) Dispense up to a seventy-two (72) hour supply of maintenance medication in emergency situations in which such authorization may not be readily or easily obtained from the practitioner; **and**
 - (b) ***Dispense up to a thirty (30) day supply of maintenance medication in emergency situations as authorized by Section 1 of this Act.***
- (4) Such emergency refills shall not be authorized for any controlled substance or for any drug which is not essential to maintenance of life or continuation of therapy in chronic disease conditions.

➔Section 5. KRS 315.010 is amended to read as follows:

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated

conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. "Compounding," as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;
- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:
 - (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto;
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals;
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to the following areas:
 - (a) Evaluation of prescription drug orders and patient records for:
 - 1. Known allergies;
 - 2. Rational therapy contraindications;
 - 3. Appropriate dose and route of administration;
 - 4. Appropriate directions for use; or
 - 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or
 - (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion, or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- (13) "Medical order" means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

- (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (16) "Pharmacist intern" means a natural person who is:
- (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
 - (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;
- (17) "Pharmacy" means every place where:
- (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection; administration of medications or biologics in the course of dispensing or maintaining a prescription drug order; the administration of adult immunizations pursuant to prescriber-approved protocols; ***the administration of immunizations to a child as defined in KRS 214.032, pursuant to protocols as authorized by Section 1 of this Act***; drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(35);
- (21) "Prescription drug" means a drug which:
- (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription";
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian";
 - 3. "Rx Only"; or
 - 4. "Rx"; or
 - (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and
- (26) "Wholesaler" means any person who legally buys drugs for resale or distribution to persons other than patients or consumers.

➔Section 6. KRS 315.035 is amended to read as follows:

- (1) No person shall operate a pharmacy within this Commonwealth, physically or by means of the Internet, facsimile, phone, mail, or any other means, without having first obtained a permit as provided for in KRS Chapter 315. An application for a permit to operate a pharmacy shall be made to the board upon forms provided by it and shall contain such information as the board requires, which may include affirmative evidence of ability to comply with such reasonable standards and rules and regulations as may be prescribed by the board. Each application shall be accompanied by a reasonable permit fee to be set by administrative regulation promulgated by the board pursuant to KRS Chapter 13A, not to exceed two hundred fifty dollars (\$250).
- (2) Upon receipt of an application of a permit to operate a pharmacy, accompanied by the permit fee not to exceed two hundred fifty dollars (\$250), the board shall issue a permit if the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall refuse to renew any permit to operate unless the pharmacy meets the standards and requirements of KRS Chapter 315 and the rules and regulations of the board. The board shall act upon an application for a permit to operate within thirty (30) days after the receipt thereof; provided, however, that the board may issue a temporary permit to operate in any instance where it considers additional time necessary for investigation and consideration before taking final action upon the application. In such event, the temporary permit shall be valid for a period of thirty (30) days, unless extended.
- (3) A separate permit to operate shall be required for each pharmacy.
- (4) Each permit to operate a pharmacy, unless sooner suspended or revoked, shall expire on June 30 following its date of issuance and be renewable annually thereafter upon proper application accompanied by such reasonable renewal fee as may be set by administrative regulation of the board, not to exceed two hundred fifty dollars (\$250) nor to increase more than twenty-five dollars (\$25) per year. An additional fee not to exceed the annual renewal fee may be assessed and set by administrative regulation as a delinquent renewal penalty for failure to renew by June 30 of each year.
- (5) Permits to operate shall be issued only for the premises and persons named in the application and shall not be transferable; provided however, that a buyer may operate the pharmacy under the permit of the seller pending a decision by the board of an application which shall be filed by the buyer with the board at least five (5) days prior to the date of sale.
- (6) The board may promulgate rules and regulations to assure that proper equipment and reference material is on hand considering the nature of the pharmaceutical practice conducted at the particular pharmacy and to assure reasonable health and sanitation standards for areas within pharmacies which are not subject to health and sanitation standards promulgated by the Kentucky Cabinet for Health and Family Services or a local health department.
- (7) Each pharmacy shall comply with KRS 218A.202.
- (8) Any pharmacy within the Commonwealth that dispenses more than twenty-five percent (25%) of its total prescription volume as a result of an original prescription order received or solicited by use of the Internet, including but not limited to electronic mail, shall, prior to obtaining a permit, receive and display in every medium in which it advertises itself a seal of approval for the National Association of Boards of Pharmacy certifying that it is a Verified Internet Pharmacy Practice Site (VIPPS) or a seal certifying approval of a substantially similar program approved by the Kentucky Board of Pharmacy. VIPPS, or any other substantially similar program approved by the Kentucky Board of Pharmacy, accreditation shall be maintained and remain current.

- (9) Any pharmacy within the Commonwealth doing business by use of the Internet shall certify the percentage of its annual business conducted via the Internet and submit such supporting documentation as requested by the board, and in a form or application required by the board, when it applies for permit or renewal.

(10) *A pharmacist may temporarily operate a pharmacy in an area not designated on the permit as authorized in Section 1 of this Act.*

➔Section 7. KRS 315.121 is amended to read as follows:

- (1) The board may refuse to issue or renew a license, permit, or certificate to, or may suspend, temporarily suspend, revoke, fine, place on probation, reprimand, reasonably restrict, or take any combination of these actions against any licensee, permit holder, or certificate holder for the following reasons:
- (a) Unprofessional or unethical conduct;
 - (b) Mental or physical incapacity that prevents the licensee, permit holder, or certificate holder from engaging or assisting in the practice of pharmacy or the wholesale distribution or manufacturing of drugs with reasonable skill, competence, and safety to the public;
 - (c) Being convicted of, or entering an "Alford" plea or plea of nolo contendere to, irrespective of an order granting probation or suspending imposition of any sentence imposed following the conviction or entry of such plea, one (1) or more of the following:
 - 1. A felony;
 - 2. An act involving moral turpitude or gross immorality; or
 - 3. A violation of the pharmacy or drug laws, rules, or administrative regulations of this state, any other state, or the federal government;
 - (d) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician is incapable of engaging or assisting in the practice of pharmacy with reasonable skill, competence, and safety to the public and failing to report any relevant information to the board;
 - (e) Knowingly making or causing to be made any false, fraudulent, or forged statement or misrepresentation of a material fact in securing issuance or renewal of a license, permit, or certificate;
 - (f) Engaging in fraud in connection with the practice of pharmacy or the wholesale distribution or manufacturing of drugs;
 - (g) Engaging in or aiding and abetting an individual to engage or assist in the practice of pharmacy without a license or falsely using the title of "pharmacist," "pharmacist intern," "pharmacy technician," or other term which might imply that the individual is a pharmacist, pharmacist intern, or pharmacy technician;
 - (h) Being found by the board to be in violation of any provision of this chapter, KRS Chapter 217, KRS Chapter 218A, or the administrative regulations promulgated pursuant to these chapters;
 - (i) Violation of any order issued by the board to comply with any applicable law or administrative regulation;
 - (j) Knowing or having reason to know that a pharmacist, pharmacist intern, or pharmacy technician has engaged in or aided and abetted the unlawful distribution of legend medications, and failing to report any relevant information to the board; or
 - (k) Failure to notify the board within fourteen (14) days of a change in one's home address.
- (2) Unprofessional or unethical conduct includes but is not limited to the following acts of a pharmacist, pharmacist intern, or pharmacy technician:
- (a) Publication or circulation of false, misleading, or deceptive statements concerning the practice of pharmacy;
 - (b) Divulging or revealing to unauthorized persons patient information or the nature of professional services rendered without the patient's express consent or without order or direction of a court. In addition to members, inspectors, or agents of the board, the following are considered authorized persons:
 - 1. The patient, patient's agent, or another pharmacist acting on behalf of the patient;
 - 2. Certified or licensed health-care personnel who are responsible for care of the patient;

3. Designated agents of the Cabinet for Health and Family Services for the purposes of enforcing the provisions of KRS Chapter 218A;
 4. Any federal, state, or municipal officer whose duty is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person; or
 5. An agency of government charged with the responsibility of providing medical care for the patient, upon written request by an authorized representative of the agency requesting such information;
- (c) Selling, transferring, or otherwise disposing of accessories, chemicals, drugs, or devices found in illegal traffic when the pharmacist, pharmacy intern, or pharmacy technician knows or should have known of their intended use in illegal activities;
 - (d) Engaging in conduct likely to deceive, defraud, or harm the public, demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from accepted standards of pharmacy practice ordinarily exercised by a pharmacist or pharmacy intern, with or without established proof of actual injury;
 - (e) Engaging in grossly negligent professional conduct, with or without established proof of actual injury;
 - (f) ***Except as provided in Section 1 of this Act***, selling, transferring, dispensing, ingesting, or administering a drug for which a prescription drug order is required, without having first received a prescription drug order for the drug;
 - (g) Willfully or knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with federal and state laws, rules, or administrative regulations;
 - (h) Obtaining any remuneration by fraud, misrepresentation, or deception;
 - (i) Accessing or attempting to access confidential patient information for persons other than those with whom a pharmacist has a current pharmacist-patient relationship and where such information is necessary to the pharmacist to provide pharmacy care; or
 - (j) Failing to exercise appropriate professional judgment in determining whether a prescription drug order is lawful.
- (3) Any licensee, permit holder, or certificate holder entering an "Alford" plea, pleading nolo contendere, or who is found guilty of a violation prescribed in subsection (1)(c) of this section shall within thirty (30) days notify the board of that plea or conviction. Failure to do so shall be grounds for suspension or revocation of the license, certificate, or permit.
 - (4) Any person whose license, permit, or certificate has been revoked in accordance with the provisions of this section, may petition the board for reinstatement. The petition shall be made in writing and in a form prescribed by the board. The board shall investigate all reinstatement petitions, and the board may reinstate a license, permit, or certificate upon showing that the former holder has been rehabilitated and is again able to engage in the practice of pharmacy with reasonable skill, competency, and safety to the public. Reinstatement may be on the terms and conditions that the board, based on competent evidence, reasonably believes necessary to protect the health and welfare of the citizens of the Commonwealth.
 - (5) Upon exercising the power of revocation provided for in subsection (1) of this section, the board may reasonably prohibit any petition for reinstatement for a period up to and including five (5) years.
 - (6) Any licensee, permit holder, or certificate holder who is disciplined under this section for a minor violation may request in writing that the board expunge the minor violation from the licensee's, permit holder's, or certificate holder's permanent record.
 - (a) The request for expungement may be filed no sooner than three (3) years after the date on which the licensee, permit holder, or certificate holder has completed disciplinary sanctions imposed and if the licensee, permit holder, or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.
 - (b) No person may have his or her record expunged under this section more than once.

The board shall promulgate administrative regulations under KRS Chapter 13A to establish violations which are minor violations under this subsection. A violation shall be deemed a minor violation if it does not demonstrate a serious inability to practice the profession; assist in the practice of pharmacy; adversely affect the public health, safety, or welfare; or result in economic or physical harm to a person, or create a significant threat of such harm.

Signed by the Governor March 24, 2010.

CHAPTER 23

(SB 18)

AN ACT relating to health care services provided in clinical trials for the treatment of cancer.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

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

(a) *"Cancer clinical trial" means a clinical trial that:*

1. *Is approved by:*

- a. *The National Institutes of Health, or any institutional review board recognized by the National Institutes of Health;*
- b. *The United States Food and Drug Administration;*
- c. *The United States Department of Defense; or*
- d. *The United States Veterans Administration; and*

2. *Does one (1) of the following:*

- a. *Tests how to administer a health care service, item, or drug for the treatment of cancer;*
- b. *Tests responses to a health care service, item, or drug for the treatment of cancer;*
- c. *Compares the effectiveness of health care services, items, or drugs for the treatment of cancer with that of other health care services, items, or drugs for the treatment of cancer; or*
- d. *Studies new uses of health care services, items, or drugs for the treatment of cancer.*

(b) *"Routine patient healthcare costs" means all healthcare services, items, and drugs for the treatment of cancer except for the following:*

- 1. *The healthcare service, item, or investigational drug that is the subject of the cancer clinical trial;*
- 2. *Any treatment modality outside the usual and customary standard of care required to administer or support the healthcare service, item, or investigational drug that is the subject of the cancer clinical trial;*
- 3. *Any healthcare service, item, or drug provided solely to satisfy data collection and analysis needs that are not used in the direct clinical management of the patient;*
- 4. *An investigational drug or device that has not been approved for market by the United States Food and Drug Administration;*
- 5. *Transportation, lodging, food, or other expenses for the patient or a family member or companion of the patient that are associated with travel to or from a facility providing the cancer clinical trial;*
- 6. *Any services, items, or drugs provided by the cancer clinical trial sponsors free of charge for any new patient; or*

7. *Any services, items, or drugs that are eligible for reimbursement by a person other than the insurer, including the sponsor of the clinical trial.*
- (2) *A health benefit plan shall not exclude coverage for routine patient healthcare costs that are incurred in the course of a cancer clinical trial if the health benefit plan would provide coverage for the routine patient healthcare costs had they not been incurred in a cancer clinical trial.*
- (3) *The coverage that may not be excluded under this section shall be subject to all terms, conditions, restrictions, exclusions, and limitations that apply to any other coverage under the policy, plan, or contract, including the treatment under the policy, plan, or contract of services performed by participating and nonparticipating providers.*
- (4) (a) *Nothing in this section requires a policy, plan, or contract to offer cancer clinical trial services by a participating provider.*
- (b) *Nothing in this section prohibits a policy, plan, or contract from offering cancer clinical trial services by a participating provider.*
- (c) *Nothing in this section requires services that are performed in a cancer clinical trial by a nonparticipating provider of a policy, plan, or contract to be reimbursed at the same rate as those performed by a participating provider of the policy, plan, or contract.*
- (5) *Nothing in this section shall be construed as imposing a new health benefit mandate.*

Signed by the Governor March 24, 2010.

CHAPTER 24

(HB 393)

AN ACT relating to reorganization.

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

➔Section 1. KRS 2.255 is amended to read as follows:

- (1) The fourth week of March each year shall be "Commonwealth Cleanup" week, culminating with a statewide cleanup day on the Saturday of that week. This week shall provide an opportunity for Kentucky communities, in partnership with local, regional, and state entities, to clean and display the natural beauty of the Commonwealth.
- (2) Local governments and private businesses shall be encouraged to participate in "Commonwealth Cleanup" week through developing, organizing, and implementing activities that highlight the natural beauty of their communities. They are encouraged to work in partnership with civic and volunteer organizations as well as corporate sponsors. Their goal shall be to consider the ways in which Kentucky's beauty enriches their daily living and underpins their economic vitality. Examples of "Commonwealth Cleanup" week activities include: encouraging local communities to offer prizes for those groups who collect the most litter; asking boat owners to volunteer their services to help remove litter from shorelines not easily reached by land; and setting up locations for recyclables.
- (3) The Kentucky National Guard is encouraged to support this effort by providing logistical support across the Commonwealth to help clean up the sites too large for volunteer groups.
- (4) The **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall promote "Commonwealth Cleanup" week by continuing to support those agencies and organizations wanting to clean up the environment. The support shall include providing technical assistance in assessing and understanding Kentucky's natural resources, coordinating contacts with other state and federal agencies that can assist with a project as appropriate, guiding local organizers to possible sources of funding to help implement a project as appropriate, overseeing a statewide campaign to publicize "Commonwealth Cleanup" week, and promoting those communities that have outstanding participation. This includes working in tandem with the Kentucky Department of Education to sponsor a statewide poster contest for children through the eighth grade.
- (5) The month of March shall be designated as Environmental Education Month. During this time, state agencies involved in environmental education are encouraged to work with schools and communities to promote the

environment and its preservation. Schools shall also be encouraged to sponsor cleanup or beautifying activities on their grounds during this month.

- (6) The "Commonwealth Cleanup" week activities shall culminate with the Governor proclaiming the success of those communities, civic organizations, and corporate sponsors that excel in cleaning up where they live.

➔Section 2. KRS 6.237 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the director of the Legislative Research Commission shall procure from one (1) or more life insurance companies, and from one (1) or more hospitalization insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all members of the General Assembly and shall procure a policy or policies of group hospitalization insurance covering all members of the General Assembly. The policy or policies shall be approved by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance and may contain such provisions as he approves whether or not otherwise permitted by the insurance laws.
- (2)
 - (a) The premiums shall be paid by the state for individual policies for members of the General Assembly. The premiums for family policies shall be paid by funds contributed partly from the policyholder and partly from the state.
 - (b) No payment of premium by the state shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee; any premium or other expense incurred by the state shall be considered a proper cost of administration.
- (3) The policy or policies may also provide accidental death and dismemberment insurance and may contain such provisions with respect to the amounts of insurance for members of the General Assembly, terms of eligibility, continuation of insurance after retirement, and such other provisions as the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance may approve.
- (4) The secretary of the Finance and Administration Cabinet is authorized to perform all acts necessary or advisable for the purpose of contracting for and maintaining insurance under the provisions of this section.

➔Section 3. KRS 6.948 is amended to read as follows:

- (1) For purposes of this section, "mandated health benefit" means any requirement that any health benefit plan, as defined in KRS 304.17A-005:
 - (a) Provide a specified benefit;
 - (b) Include a specified coverage;
 - (c) Pay, indemnify, or reimburse for a specified medical service; or
 - (d) Pay, indemnify, or reimburse specified health care providers for specific health care services.
- (2)
 - (a) On and after June 24, 2003, in the General Assembly, a sponsor of a bill or an amendment that contains a mandated health benefit shall cause a financial impact statement to be prepared and attached to the measure before final consideration by the standing committee to which the measure has been referred.
 - (b) A bill in the orders of the day in the House or the Senate which does not have attached a financial impact statement as required by this section shall be retained in the orders of the day but passed over in the orders of the day until the financial impact statement is attached. Members may require, by a majority vote, that a financial impact statement be prepared on any bill and on any amendment in the orders of the day. Any member proposing an amendment from the floor which contains a mandated health benefit shall cause a financial impact statement to be prepared and attached to the amendment. Until the time a financial impact statement is prepared and attached to an amendment that contains a mandated health benefit, action on the proposed amendment shall not be in order.
- (3) The financial impact statement shall be prepared by the **Department**~~{Office}~~ of Insurance as provided in subsection (6) of this section.
- (4) The sponsor of a bill or amendment that contains a mandated health benefit shall request the **Department**~~{Office}~~ of Insurance, as soon as practicable, to prepare a financial impact statement. If the sponsor submits a request prior to filing the measure with the clerk of the House or Senate, the **department**~~{office}~~ shall keep the measure confidential until the sponsor authorizes public distribution. The **department**~~{office}~~ shall

keep all financial impact statements and all requests for statements confidential until the person requesting the financial impact statement authorizes public distribution.

- (5) A majority of the members present at a meeting of any standing committee of the General Assembly, acting through the committee chair, may request the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance to prepare a financial impact statement for any measure before the committee and submit the statement in accordance with subsection (6) of this section.
- (6) (a) The financial impact statement shall be in writing and signed by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance or the **commissioner's**~~{executive director's}~~ designee, and shall determine the extent to which:
 1. The mandated health benefit will increase or decrease the administrative expenses of insurers;
 2. The mandated health benefit will increase or decrease premiums; and
 3. The mandated health benefit will impact the total cost of health care in the Commonwealth, including any potential cost savings that may be realized.
- (b) 1. If the sponsor of a bill that contains a mandated health benefit submits the request for a financial impact statement prior to filing the bill, the financial impact statement shall be completed as soon as possible, but no later than thirty (30) days after the request by the sponsor, unless the sponsor and the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance agree otherwise.
2. The financial impact statement shall be completed as soon as possible, but no later than thirty (30) days after the request by the sponsor of a measure before a standing committee under subsection (2) of this section or by the committee chair under subsection (5) of this section.
3. The financial impact statement shall be completed as soon as possible after the request by a majority vote of the House or Senate or by the sponsor of a floor amendment pursuant to subsection (2)(b) of this section.

➔Section 4. KRS 11.065 is amended to read as follows:

- (1) The secretaries of the Justice and Public Safety Cabinet, the Education and Workforce Development Cabinet, the ~~{Environmental and }~~Public Protection Cabinet, the Transportation Cabinet, the Cabinet for Economic Development, the Cabinet for Health and Family Services, the Finance and Administration Cabinet, **the Energy and Environment Cabinet, the Labor Cabinet**, the Tourism, Arts and Heritage Cabinet, the Personnel Cabinet, the Governor's Executive Cabinet, the state budget director, the Governor's chief of staff, and the Lieutenant Governor shall constitute the Governor's Executive Cabinet. There shall be a vice chairman appointed by the Governor who shall serve in an advisory capacity to the Executive Cabinet. The Governor shall be the chairman, and the secretary of the Finance and Administration Cabinet shall be a second vice chairman of the Executive Cabinet. The Governor may designate others to serve as vice chairman.
- (2) The cabinet shall meet not less than once every two (2) months and at other times on call of the Governor. The Executive Cabinet shall be a part of the Office of the Governor and shall not constitute a separate department or agency of the state. Members of the cabinet shall be the major assistants to the Governor in the administration of the state government and shall assist the Governor in the proper operation of his office and perform other duties the Governor may require of them.
- (3) The cabinet shall consider matters involving policies and procedures the Governor or any member may place before it. The cabinet shall advise and consult with the Governor on all matters affecting the welfare of the state.

➔Section 5. KRS 11.200 is amended to read as follows:

- (1) There is created the Commission on Small Business Advocacy. The commission shall be a separate administrative body of state government within the meaning of KRS 12.010(8).
- (2) It shall be the purpose of the Commission on Small Business Advocacy to:
 - (a) Address matters of small business as it relates to government affairs;

- (b) Promote a cooperative and constructive relationship between state agencies and the small business community to ensure coordination and implementation of statewide strategies that benefit small business in the Commonwealth;
 - (c) Coordinate and educate the small business community of federal, state, and local government initiatives of value and importance to the small business community;
 - (d) Create a process by which the small business community is consulted in the development of public policy as it affects their industry sector;
 - (e) Aid the small business community in navigating the regulatory process, when that process becomes cumbersome, time consuming, and bewildering to the small business community; and
 - (f) Advocate for the small business, as necessary when regulatory implementation is overly burdensome, costly, and harmful to the success and growth of small businesses in the Commonwealth.
- (3) The Commission on Small Business Advocacy shall consist of thirty (30) members:
- (a) The Governor, or the Governor's designee;
 - (b) The secretaries of the following cabinets, or their designees:
 - 1. Economic Development;
 - 2. ***Energy and Environment***~~{Environmental and Public Protection}~~;
 - 3. Finance and Administration; and
 - 4. Transportation;
 - (c) The state director of the Small Business Development Centers in Kentucky;
 - (d) One (1) representative of each of the following organizations, appointed by the Governor from a list of three (3) nominees submitted by the governing bodies of each organization:
 - 1. Associated Industries of Kentucky;
 - 2. National Federation of Independent Business;
 - 3. Kentucky Chamber of Commerce;
 - 4. Kentucky Federation of Business and Professional Women's Club, Inc.;
 - 5. Kentucky Retail Federation;
 - 6. Professional Women's Forum;
 - 7. Kentuckiana Minority Supplier Development Council;
 - 8. Greater Lexington Chamber of Commerce;
 - 9. Lexington chapter of the National Association of Women Business Owners;
 - 10. Greater Louisville, Inc.;
 - 11. Louisville chapter of the National Association of Women Business Owners;
 - 12. Northern Kentucky Chamber of Commerce, Inc.;
 - 13. Northern Kentucky - Greater Cincinnati chapter of the National Association of Women Business Owners;
 - 14. Kentucky Association of Realtors;
 - 15. Henderson - Henderson County Chamber of Commerce;
 - 16. Kentucky Farm Bureau Federation; and
 - 17. Kentucky Homebuilders Association;
 - (e) One (1) representative from small business from each of the following areas, appointed by the Governor:

1. A city of the second class;
 2. A city of the third class;
 3. A city of the fourth class; and
 4. A city of the fifth class;
- (f) One (1) representative who is a small business owner served by each of the following organizations, appointed by the Governor:
1. The Center for Rural Development; and
 2. Community Ventures Corporation; and
- (g) One (1) representative who is a small business owner under the age of thirty-five (35), appointed by the Governor.
- (4) The terms of all members appointed by the Governor shall be for four (4) years, except that the original appointments shall be staggered so that seven (7) appointments shall expire at two (2) years, seven (7) appointments shall expire at three (3) years, and seven (7) appointments shall expire at four (4) years from the dates of initial appointment.
- (5) The Governor shall appoint the chair and vice chair of the commission from the list of appointed members.
- (6) The commission shall meet quarterly and at other times upon call of the chair or a majority of the commission.
- (7) A quorum shall be a majority of the membership of the commission.
- (8) Members of the commission shall serve without compensation but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (9) The commissioner of the Department for Existing Business Development shall be the administrative head and chief executive officer of the commission. The secretary of the Cabinet for Economic Development shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (10) The Commission on Small Business Advocacy shall be an independent agency attached to the Department for Existing Business Development.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 12 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established within the Public Protection Cabinet a Department of Financial Institutions, a Department of Insurance, a Department of Housing, Buildings and Construction, a Department of Charitable Gaming, and a Department of Alcoholic Beverage Control. Each department shall be headed by a commissioner appointed by the Governor as required by KRS 12.040 and, where appropriate, by KRS 238.510, 241.015, and 304.2-020. Commissioners shall be directly responsible to the secretary and shall perform the functions, powers, and duties provided by law and prescribed by the secretary.*
- (2) *There is established within the Public Protection Cabinet an Office of Occupations and Professions, which shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. The executive director shall be directly responsible to the secretary and shall perform the functions, powers, and duties provided by law and prescribed by the secretary.*
- (3) *The secretary of the Public Protection Cabinet shall be appointed by the Governor in accordance with KRS 12.255. The Office of the Secretary shall contain the following entities:*
 - (a) *The Office of Communications and Public Outreach, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and*
 - (b) *The Office of Legal Services, which shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210.*
- (4) *The following agencies are attached to the Public Protection Cabinet for administrative purposes only, except as provided in KRS 131.330:*
 - (a) *Crime Victims Compensation Board;*

- (b) *Board of Claims;*
- (c) *Kentucky Board of Tax Appeals;*
- (d) *Kentucky Boxing and Wrestling Authority; and*
- (e) *Kentucky Horse Racing Commission.*

➔ Section 7. KRS 12.020 is amended to read as follows:

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

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

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

II. Program cabinets headed by appointed officers:

- 1. Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.

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

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

3. *Division of Biofuels.*
4. *Division of Energy Generation Transmission and Distribution.*
5. *Division of Carbon Management.*
6. *Division of Fossil Energy Development.*

4.~~(d)~~ ~~Department of~~ Public Protection *Cabinet.*

(a)~~(1)~~ Office of the ~~Secretary~~~~Commissioner~~.

1. *Office of Communications and Public Outreach.*
2. *Office of Legal Services.*
 - a. *Insurance Legal Division.*
 - b. *Charitable Gaming Legal Division.*
 - c. *Alcoholic Beverage Control Legal Division.*
 - d. *Housing, Buildings and Construction Legal Division.*
 - e. *Financial Institutions Legal Division.*

~~(2.) Division of Administrative Services.~~

(b)~~(3)~~ Crime Victims Compensation Board.

(c)~~(4)~~ Board of Claims.

(d)~~(5)~~ Kentucky Board of Tax Appeals.

(e)~~(6)~~ Kentucky Boxing and Wrestling Authority.

(f)~~(7)~~ Kentucky Horse Racing ~~Commission~~~~Authority~~.

1. *Division of Licensing.*
2. *Division of Incentives and Development.*
3. *Division of Veterinary Services.*
4. *Division of Security and Enforcement.*

~~(8.) Kentucky Public Service Commission.~~

(g)~~(9)~~ ~~Department~~~~Office~~ of Alcoholic Beverage Control.

1. *Division of Distilled Spirits.*
2. *Division of Malt Beverages.*
3. *Division of Enforcement.*

(h)~~(10)~~ ~~Department~~~~Office~~ of Charitable Gaming.

1. *Division of Licensing and Compliance.*
2. *Division of Enforcement.*

(i)~~(11)~~ ~~Department~~~~Office~~ of Financial Institutions.

1. *Division of Depository Institutions.*
2. *Division of Non-Depository Institutions.*
3. *Division of Securities.*

(j)~~(12)~~ ~~Department~~~~Office~~ of Housing, Buildings and Construction.

1. *Division of Fire Prevention.*
2. *Division of Plumbing.*

3. *Division of Heating, Ventilation, and Air Conditioning.*
4. *Division of Building Code Enforcement.*
- (k){13-} *Department{Office} of Insurance.*
 1. *Property and Casualty Division.*
 2. *Health and Life Division.*
 3. *Division of Financial Standards and Examination.*
 4. *Division of Agent Licensing.*
 5. *Division of Insurance Fraud Investigation.*
 6. *Consumer Protection Division.*
 7. *Division of Kentucky Access.*
- (l) *Office of Occupations and Professions.*
- 5.{e)}{Department of-}Labor *Cabinet.*
 - (a){1-}Office of the *Secretary{Commissioner}.*
 1. *Division of Management Services.*
 2. Office of *General Counsel{Occupational Safety and Health}.*
 - (b){3-}Office of *General Administration and Program Support for Shared Services{Labor Management Relations and Mediation}.*
 1. *Division of Human Resource Management.*
 2. *Division of Fiscal Management.*
 3. *Division of Budgets.*
 4. *Division of Information Services.*
 - (c) *Office of Inspector General for Shared Services.*
 - (d){4-}Department{Office} of Workplace Standards.
 1. *Division of Employment Standards, Apprenticeship, and Mediation.*
 2. *Division of Occupational Safety and Health Compliance.*
 3. *Division of Occupational Safety and Health Education and Training.*
 4. *Division of Workers' Compensation Funds.*
 - (e){5-}Department{Office} of Workers' Claims.
 1. *Office of General Counsel for Workers' Claims.*
 2. *Office of Administrative Law Judges.*
 3. *Division of Claims Processing.*
 4. *Division of Security and Compliance.*
 5. *Division of Information and Research.*
 6. *Division of Ombudsman and Workers' Compensation Specialist Services.*
 7. *Workers' Compensation Board.*
 8. *Workers' Compensation Advisory Council.*
 9. *Workers' Compensation Nominating Commission.*
 - (f){6-} Workers' Compensation Funding Commission.
 - (g){7-} Kentucky Labor-Management Advisory Council.

- (h)~~[8.]~~ Occupational Safety and Health Standards Board.
- (i)~~[9.]~~ Prevailing Wage Review Board.
- ~~[10.] Kentucky Employees Insurance Association.~~
- (j)~~[11.]~~ Apprenticeship and Training Council.
- (k)~~[12.]~~ State Labor Relations Board.
- ~~[13.] Workers' Compensation Advisory Council.~~
- ~~[14.] Workers' Compensation Nominating Commission.~~
- (l)~~[15.]~~ Employers' Mutual Insurance Authority.
- (m) ***Kentucky Occupational Safety and Health Review Commission.***
- ~~[16.] Division of Administrative Services.~~

6~~[4.]~~ Transportation Cabinet:

- (a) Department of Highways.
 - 1. Office of Project Development.
 - 2. Office of Project Delivery and Preservation.
 - 3. Office of Highway Safety.
 - 4. Highway District Offices One through Twelve.
- (b) Department of Vehicle Regulation.
- (c) Department of Aviation.
- (d) Department of Rural and Municipal Aid.
 - 1. Office of Local Programs.
 - 2. Office of Rural and Secondary Roads.
- (e) Office of the Secretary.
 - 1. Office of Public Affairs.
 - 2. Office for Civil Rights and Small Business Development.
 - 3. Office of Budget and Fiscal Management.
 - 4. Office of Inspector General.
- (f) Office of Support Services.
- (g) Office of Transportation Delivery.
- (h) Office of Audits.
- (i) Office of Human Resource Management.
- (j) Office of Information Technology.
- (k) Office of Legal Services.

7~~[5.]~~ Cabinet for Economic Development:

- (a) Office of Administration and Support.
- (b) Department for New Business Development.
- (c) Department of Financial Incentives.
- (d) Department for Existing Business Development.
- (e) Tobacco Research Board.

- (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
- 8[6]. Cabinet for Health and Family Services:
- (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.
 - (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
 - (t) Department for Aging and Independent Living.
- 9[7]. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.

- (l) Commonwealth Credit Union.
- (m) State Investment Commission.
- (n) Kentucky Housing Corporation.
- (o) Kentucky Local Correctional Facilities Construction Authority.
- (p) Kentucky Turnpike Authority.
- (q) Historic Properties Advisory Commission.
- (r) Kentucky Tobacco Settlement Trust Corporation.
- (s) Kentucky Higher Education Assistance Authority.
- (t) Kentucky River Authority.
- (u) Kentucky Teachers' Retirement System Board of Trustees.
- (v) Executive Branch Ethics Commission.

10[8]. Tourism, Arts and Heritage Cabinet:

- (a) Kentucky Department of Travel.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Administration.
 - (3) Division of Communications and Promotions.
- (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Human Resources.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Facilities Maintenance.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Resort Parks.
 - (12) Division of Recreational Parks and Historic Sites.
- (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.

- (1) Division of Support Services.
- (2) Division of Buildings and Grounds.
- (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
 - (1) Office of Administrative and Information Technology Services.
 - (2) Office of Human Resources and Access Control.
 - (3) Division of Expositions.
 - (4) Division of Kentucky Exposition Center Operations.
 - (5) Division of Kentucky International Convention Center.
 - (6) Division of Public Relations and Media.
 - (7) Division of Venue Services.
 - (8) Division of Personnel Management and Staff Development.
 - (9) Division of Sales.
 - (10) Division of Security and Traffic Control.
 - (11) Division of Information Technology.
 - (12) Division of the Louisville Arena.
 - (13) Division of Fiscal and Contract Management.
 - (14) Division of Access Control.
- (f) Office of the Secretary.
 - (1) Office of Finance.
 - (2) Office of Research and Administration.
 - (3) Office of Governmental Relations and Tourism Development.
 - (4) Office of the Sports Authority.
 - (5) Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.
- (l) Office of Arts and Cultural Heritage.
- (m) Kentucky African-American Heritage Commission.
- (n) Kentucky Foundation for the Arts.
- (o) Kentucky Humanities Council.
- (p) Kentucky Heritage Council.
- (q) Kentucky Arts Council.
- (r) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.

- (3) Division of Research and Publications.
- (4) Division of Administration.
- (s) Kentucky Center for the Arts.
- (1) Division of Governor's School for the Arts.
- (t) Kentucky Artisans Center at Berea.
- (u) Northern Kentucky Convention Center.
- (v) Eastern Kentucky Exposition Center.

~~II[9].~~ Personnel Cabinet:

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

III. Other departments headed by appointed officers:

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

➔Section 8. KRS 12.023 is amended to read as follows:

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

- (1) Department of Military Affairs;
- (2) Governor's Office for Local Development;
- (3) Kentucky Commission on Human Rights;
- (4) Kentucky Commission on Women;
- (5) Kentucky Commission on Military Affairs;
- (6) Governor's Scholars Program;
- (7) Agricultural Development Board;
- (8) Kentucky Agricultural Finance Corporation;
- (9) Office of Minority Empowerment;
- (a) The Martin Luther King Commission;
- (10) Office of Homeland Security; *and*

(11) Governor's Council on Wellness and Physical Activity~~[-; and~~

~~(12) The Governor's Office of Energy Policy].~~

➔Section 9. KRS 12.250 is amended to read as follows:

There are established within state government the following program cabinets:

- (1) Justice and Public Safety Cabinet.
- (2) Education and Workforce Development Cabinet.
- (3) ~~Environmental and~~ Public Protection Cabinet.
- (4) Transportation Cabinet.
- (5) Cabinet for Economic Development.
- (6) Cabinet for Health and Family Services.
- (7) Finance and Administration Cabinet.
- (8) Tourism, Arts and Heritage Cabinet.
- (9) Personnel Cabinet.

(10) *Energy and Environment Cabinet.*

(11) *Labor Cabinet.*

➔Section 10. KRS 12.260 is amended to read as follows:

- (1) There is hereby established in the Office of the Secretary *of the*~~[-for Environmental and-]~~ Public Protection ***Cabinet*** a deputy secretary, appointed by the secretary pursuant to KRS 12.050, who shall be responsible for and engaged in operations of the cabinet and any other duties as assigned by the secretary, and in the absence of the secretary, have authority over cabinet affairs.
- (2) ***There is hereby established in the Office of the Secretary of the Energy and Environment Cabinet a deputy secretary, appointed by the secretary pursuant to KRS 12.050, who shall be responsible for and engaged in operations of the cabinet and any other duties as assigned by the secretary, and in the absence of the secretary, have authority over cabinet affairs.***
- (3) ***There is hereby established in the Office of the Secretary of the Labor Cabinet a deputy secretary, appointed by the secretary pursuant to KRS 12.050, who shall be responsible for and engaged in operations of the cabinet and any other duties as assigned by the secretary, and in the absence of the secretary, have authority over cabinet affairs.***

➔Section 11. KRS 12.515 is amended to read as follows:

- (1) The following agencies shall designate a liaison to the Office for Faith-Based and Community Nonprofit Social Services:
 - (a) The Cabinet for Health and Family Services;
 - (b) The Department of Workforce Investment;
 - (c) The Education and Workforce Development Cabinet;
 - (d) The Department of Agriculture;
 - (e) The Kentucky Housing Corporation;
 - (f) The ***Labor***~~[-Environmental and Public Protection-]~~ Cabinet; and
 - (g) The Economic Development Cabinet.
- (2) Each agency identified in subsection (1) of this section shall, in cooperation and coordination with the Office for Faith-Based and Community Nonprofit Social Services:
 - (a) Review and evaluate existing policies that affect government funding opportunities for faith-based and nonprofit community organizations and report to the office, within ninety (90) days of June 20, 2005, actions necessary to implement KRS 12.510; and

- (b) Amend existing policies and administrative regulations or implement new policies or administrative regulations in accordance with KRS Chapter 13A consistent with the principles established in KRS 12.500 to 12.520.

➔Section 12. KRS 13B.020 is amended to read as follows:

- (1) The provisions of this chapter shall apply to all administrative hearings conducted by an agency, with the exception of those specifically exempted under this section. The provisions of this chapter shall supersede any other provisions of the Kentucky Revised Statutes and administrative regulations, unless exempted under this section, to the extent these other provisions are duplicative or in conflict. This chapter creates only procedural rights and shall not be construed to confer upon any person a right to hearing not expressly provided by law.
- (2) The provisions of this chapter shall not apply to:
 - (a) Investigations, hearings to determine probable cause, or any other type of information gathering or fact finding activities;
 - (b) Public hearings required in KRS Chapter 13A for the promulgation of administrative regulations;
 - (c) Any other public hearing conducted by an administrative agency which is nonadjudicatory in nature and the primary purpose of which is to seek public input on public policy making;
 - (d) Military adjudicatory proceedings conducted in accordance with KRS Chapter 35;
 - (e) Administrative hearings conducted by the legislative and judicial branches of state government;
 - (f) Administrative hearings conducted by any city, county, urban-county, charter county, or special district contained in KRS Chapters 65 to 109, or any other unit of local government operating strictly in a local jurisdictional capacity;
 - (g) Informal hearings which are part of a multilevel hearing process that affords an administrative hearing at some point in the hearing process if the procedures for informal hearings are approved and promulgated in accordance with subsections (4) and (5) of this section;
 - (h) Limited exemptions granted for specific hearing provisions and denoted by reference in the text of the applicable statutes or administrative regulations;
 - (i) Administrative hearings exempted pursuant to subsection (3) of this section;
 - (j) Administrative hearings exempted, in whole or in part, pursuant to subsections (4) and (5) of this section; and
 - (k) Any administrative hearing which was commenced but not completed prior to July 15, 1996.
- (3) The following administrative hearings are exempt from application of this chapter in compliance with 1994 Ky. Acts ch. 382, sec. 19:
 - (a) Finance and Administration Cabinet
 - 1. Higher Education Assistance Authority
 - a. Wage garnishment hearings conducted under authority of 20 U.S.C. sec. 1095a and 34 C.F.R. sec. 682.410
 - b. Offset hearings conducted under authority of 31 U.S.C. sec. 3720A and sec. 3716, and 34 C.F.R. sec. 30.33
 - 2. Department of Revenue
 - a. Any licensing and bond revocation hearings conducted under the authority of KRS 138.210 to 138.448 and 234.310 to 234.440
 - b. Any license revocation hearings under KRS 131.630 and 138.130 to 138.205
 - (b) Cabinet for Health and Family Services
 - 1. Office of Health Policy

- a. Certificate-of-need hearings and licensure conducted under authority of KRS Chapter 216B
 - b. Licensure revocation hearings conducted under authority of KRS Chapter 216B
 - 2. Department for Community Based Services
 - a. Supervised placement revocation hearings conducted under authority of KRS Chapter 630
 - 3. Department for Disability Determination Services
 - a. Disability determination hearings conducted under authority of 20 C.F.R. sec. 404
- (c) Justice and Public Safety Cabinet
 - 1. Department of Kentucky State Police
 - a. Kentucky State Police Trial Board disciplinary hearings conducted under authority of KRS Chapter 16
 - 2. Department of Corrections
 - a. Parole Board hearings conducted under authority of KRS Chapter 439
 - b. Prison adjustment committee hearings conducted under authority of KRS Chapter 197
 - c. Prison grievance committee hearings conducted under authority of KRS Chapters 196 and 197
 - 3. Department of Juvenile Justice
 - a. Supervised placement revocation hearings conducted under KRS Chapter 635
- (d) ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet
 - 1. Department for Natural Resources
 - a. Surface mining hearings conducted under authority of KRS Chapter 350
 - 2. Department for Environmental Protection
 - a. Wild River hearings conducted under authority of KRS Chapter 146
 - b. Water resources hearings conducted under authority of KRS Chapter 151
 - c. Water plant operator and water well driller hearings conducted under authority of KRS Chapter 223
 - d. Environmental protection hearings conducted under authority of KRS Chapter 224
 - e. Petroleum Storage Tank Environmental Assurance Fund hearings under authority of KRS Chapter 224
 - 3. ***Public Service Commission***
 - a. *Utility hearings conducted under authority of KRS Chapters 74, 278, and 279*
- (e) ***Labor Cabinet***
 - 1. ***Department***~~Office~~ of Workers' Claims
 - a. Workers' compensation hearings conducted under authority of KRS Chapter 342
 - 2~~4~~. Kentucky Occupational Safety and Health Review Commission
 - a. Occupational safety and health hearings conducted under authority of KRS Chapter 338
- (f)~~5~~ ~~Department of~~ Public Protection ***Cabinet***
 - 1~~a~~. Board of Claims
 - a~~i~~. Liability hearings conducted under authority of KRS Chapter 44
 - ~~b. — Public Service Commission~~

i. ~~Utility hearings conducted under authority of KRS Chapters 74, 278, and 279]~~

(g)(e) Education and Workforce Development Cabinet

1. Unemployment Insurance hearings conducted under authority of KRS Chapter 341

(h)(f) Secretary of State

1. Registry of Election Finance
 - a. Campaign finance hearings conducted under authority of KRS Chapter 121

(i)(g) State universities and colleges

1. Student suspension and expulsion hearings conducted under authority of KRS Chapter 164
2. University presidents and faculty removal hearings conducted under authority of KRS Chapter 164
3. Campus residency hearings conducted under authority of KRS Chapter 164
4. Family Education Rights to Privacy Act hearings conducted under authority of 20 U.S.C. sec. 1232 and 34 C.F.R. sec. 99
5. Federal Health Care Quality Improvement Act of 1986 hearings conducted under authority of 42 U.S.C. sec. 11101 to 11115 and KRS Chapter 311.

- (4) Any administrative hearing, or portion thereof, may be certified as exempt by the Attorney General based on the following criteria:

- (a) The provisions of this chapter conflict with any provision of federal law or regulation with which the agency must comply, or with any federal law or regulation with which the agency must comply to permit the agency or persons within the Commonwealth to receive federal tax benefits or federal funds or other benefits;
- (b) Conformity with the requirement of this chapter from which exemption is sought would be so unreasonable or so impractical as to deny due process because of undue delay in the conduct of administrative hearings; or
- (c) The hearing procedures represent informal proceedings which are the preliminary stages or the review stages of a multilevel hearing process, if the provisions of this chapter or the provisions of a substantially equivalent hearing procedure exempted under subsection (3) of this section are applied at some level within the multilevel process.

- (5) The Attorney General shall not exempt an agency from any requirement of this chapter until the agency establishes alternative procedures by administrative regulation which, insofar as practical, shall be consistent with the intent and purpose of this chapter. When regulations for alternative procedures are submitted to the Administrative Regulation Review Subcommittee, they shall be accompanied by the request for exemption and the approval of exemption from the Attorney General. The decision of the Attorney General, whether affirmative or negative, shall be subject to judicial review in the Franklin Circuit Court within thirty (30) days of the date of issuance. The court shall not overturn a decision of the Attorney General unless the decision was arbitrary or capricious or contrary to law.

- (6) Except to the extent precluded by another provision of law, a person may waive any procedural right conferred upon that person by this chapter.

➔Section 13. KRS 15.113 is amended to read as follows:

- (1) The Financial Integrity Enforcement Division is created in the Department of Law. The division shall:
 - (a) Investigate illegal redemption of food stamp benefits in cooperation with the United States Department of Agriculture and the Cabinet for Health and Family Services;
 - (b) Verify eligibility of food stamp program applicants as to past criminal history;
 - (c) Investigate the illegal distribution of counterfeit merchandise; and

- (d) Investigate the use of personal identification and financial information by persons for the purpose of theft, or fraud, or both theft and fraud, and other illegal or fraudulent activity which may involve electronic commerce.
- (2) The Office of the Attorney General shall coordinate with the **Department**~~Office~~ of Financial Institutions, the United States Secret Service, the Federal Trade Commission, the Kentucky Bankers' Association, and any other agency or organization to prepare and disseminate information to prevent identity theft.

➔Section 14. KRS 15.255 is amended to read as follows:

- (1) The Department of Law shall have the following powers, duties and functions:
 - (a) To prevent or remedy damage to the environment caused by any person, group, partnership, association, body corporate or politic, or any agency, department, board, commission, division, or authority, whether state or federal, or by commencing or intervening in any suit or action in state or federal courts, whether civil or criminal, to enforce any statute, ordinance, bylaw, or regulation, or to secure any common-law right or remedy;
 - (b) To counsel state agencies and commissions given the responsibility over environmental concerns including but not limited to the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet and the Public Service Commission;
 - (c) To exercise the common-law powers of the Attorney General in protecting the environment;
 - (d) To bring public nuisance and other actions in Circuit Courts in the name of the Commonwealth upon complaint by private citizens, when in the opinion of the Attorney General the activity or activities complained of may have a substantial impact upon the environment of the Commonwealth; and
 - (e) To develop guidelines related to the proper investigation of sexual misconduct by professionals which may be adopted by professional licensure boards.
- (2) Nothing in this section shall be interpreted to derogate from any existing common-law or statutory right or remedy against damage to the environment.

➔Section 15. KRS 15.300 is amended to read as follows:

- (1) As used in this section, "consent order" means the consent order of December 21, 1998, agreed to in Commonwealth of Kentucky v. Philip Morris Inc. et al., Docket Number 98-CI-01579, Franklin Circuit Court.
- (2) There is created the Tobacco Master Settlement Agreement Compliance Advisory Board in the Department of Law. The board shall be composed of six (6) members as follows:
 - (a) The Attorney General, or the Attorney General's designee;
 - (b) The secretary of the Cabinet for Health and Family Services, or the secretary's designee;
 - (c) The Commissioner of Agriculture, or the Commissioner's designee;
 - (d) The secretary of the ~~Environmental and~~ Public Protection Cabinet, or the secretary's designee; and
 - (e) Two (2) citizens at large appointed by the Attorney General.
- (3) The citizen members of the board shall serve for terms of one (1) year and until their successors are appointed. The citizen members shall be eligible for successive terms on the board.
- (4) The board shall annually elect a member to serve as its chair and shall meet at least quarterly on a date set by the board. Board members shall be reimbursed for necessary expenses incurred in serving on the board.
- (5) The board may adopt rules governing the conduct of its meetings, the creation of meeting agendas, and other procedural matters it deems necessary. The board may adopt reporting forms, which shall be developed in consultation with participating agencies.
- (6) The Office of the Attorney General shall:
 - (a) Enter into a memorandum of agreement with the Department of Public Health of the Cabinet for Health and Family Services, the **Department**~~Office~~ of Alcoholic Beverage Control in the ~~Environmental and~~ Public Protection Cabinet, and the Department of Agriculture to identify and report possible violations of the consent order;

- (b) Attempt to secure funding under the master settlement agreement to reimburse the agencies specified in paragraph (a) of this subsection for any compliance activity that they perform; and
 - (c) Provide necessary funding and staff for administrative expenses related to the operation of the board. The board may request assistance from other state agencies.
- (7) The Tobacco Master Settlement Agreement Compliance Advisory Board shall:
- (a) Identify activities for which training is required for personnel of the state agencies specified in paragraph (a) of subsection (6) of this section that are responsible for identifying and reporting possible violations of the consent order;
 - (b) Determine eligible compliance training costs and seek reimbursement for the costs; and
 - (c) Notify the appropriate tobacco manufacturer, in writing, of any alleged violation of the consent order and request a response and, if applicable, a corrective action plan within thirty (30) days from the date of the notice. If the manufacturer fails to respond or to satisfactorily resolve the matter, the board shall review the matter at its next meeting and may refer the matter to the Office of the Attorney General for enforcement action, if warranted.

➔Section 16. KRS 15.380 is amended to read as follows:

- (1) The following officers employed or appointed as full-time, part-time, or auxiliary officers, whether paid or unpaid, shall be certified:
 - (a) Department of Kentucky State Police officers, but for the commissioner of the Department of Kentucky State Police;
 - (b) City, county, and urban-county police officers;
 - (c) Court security officers and deputy sheriffs, except those identified in KRS 70.045 and 70.263(3);
 - (d) State or public university safety and security officers appointed pursuant to KRS 164.950;
 - (e) School security officers employed by local boards of education who are special law enforcement officers appointed under KRS 61.902;
 - (f) Airport safety and security officers appointed under KRS 183.880;
 - (g) ~~Department~~~~Office~~ of Alcoholic Beverage Control field representatives and investigators appointed under KRS 241.090;
 - (h) Division of Insurance Fraud Investigation investigators appointed under KRS 304.47-040; and
 - (i) County detectives appointed in a county containing a consolidated local government with the power of arrest in the county and the right to execute process statewide in accordance with KRS 69.360.
- (2) The requirements of KRS 15.380 to 15.404 for certification may apply to all state peace officers employed pursuant to KRS Chapter 18A and shall, if adopted, be incorporated by the Personnel Cabinet for job specifications.
- (3) Additional training in excess of the standards set forth in KRS 15.380 to 15.404 for all peace officers possessing arrest powers who have specialized law enforcement responsibilities shall be the responsibility of the employing agency.
- (4) The following officers may, upon request of the employing agency, be certified by the council:
 - (a) Deputy coroners;
 - (b) Deputy constables;
 - (c) Deputy jailers;
 - (d) Deputy sheriffs under KRS 70.045 and 70.263(3);
 - (e) Officers appointed under KRS 61.360;
 - (f) Officers appointed under KRS 61.902, except those who are school security officers employed by local boards of education;

- (g) Private security officers;
 - (h) Employees of a correctional services division created pursuant to KRS 67A.028 and employees of a metropolitan correctional services department created pursuant to KRS 67B.010 to 67B.080; and
 - (i) Investigators employed by the **Department**~~{Office}~~ of Charitable Gaming in accordance with KRS 238.510; and
 - (j) Commonwealth detectives employed under KRS 69.110 and county detectives employed under KRS 69.360.
- (5) The following officers shall be exempted from the certification requirements but may upon their request be certified by the council:
- (a) Sheriffs;
 - (b) Coroners;
 - (c) Constables;
 - (d) Jailers;
 - (e) Kentucky Horse Racing **Commission**~~{Authority}~~ security officers employed under KRS 230.240; and
 - (f) Commissioner of the State Police.
- (6) Federal peace officers cannot be certified under KRS 15.380 to 15.404.

➔Section 17. KRS 15.398 is amended to read as follows:

The following Kentucky Revised Statutes and any administrative regulations promulgated thereunder affecting those peace officers required to be certified pursuant to KRS 15.380 to 15.404 shall not be superseded by the provisions of KRS 15.380 to 15.404, and in all instances the provisions of all statutes specified below shall prevail:

- (1) KRS Chapter 16, relating to Department of Kentucky State Police Officers;
- (2) KRS Chapter 70, relating to sheriffs, and deputy sheriffs;
- (3) KRS Chapter 78, relating to county police;
- (4) KRS Chapters 15 and 95, except for KRS 95.955, relating to city and urban-county police;
- (5) KRS Chapter 183, relating to airport safety and security officers;
- (6) KRS Chapter 164, relating to State Universities and Colleges; Regional Education and Archaeology officers;
- (7) KRS Chapter 18A, relating to all state peace officers;
- (8) KRS 241.090, relating to **Department**~~{Office}~~ of Alcoholic Beverage Control field representatives and investigators;
- (9) KRS 304.47-040, relating to Division of Insurance Fraud Investigators; and
- (10) Any other statutes affecting peace officers not specifically cited herein.

➔Section 18. KRS 15.728 is amended to read as follows:

All law enforcement agencies and investigative bodies shall notify the **Department**~~{Office}~~ of Charitable Gaming of any investigation or prosecution of any violation of the charitable gaming laws as soon as reasonably possible after commencing the investigation or prosecution and shall coordinate any investigation with the **department**~~{office}~~.

➔Section 19. KRS 15A.195 is amended to read as follows:

- (1) No state law enforcement agency or official shall stop, detain, or search any person when such action is solely motivated by consideration of race, color, or ethnicity, and the action would constitute a violation of the civil rights of the person.
- (2) The secretary of the Justice and Public Safety Cabinet, in consultation with the Kentucky Law Enforcement Council, the Attorney General, the Department of Criminal Justice Training, the secretary of the Transportation Cabinet, the Department of Kentucky State Police, the secretary of the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet, and the **secretary**~~{commissioner}~~ of the

~~Department of~~ Public Protection **Cabinet**, shall design and implement a model policy to prohibit racial profiling by state law enforcement agencies and officials.

- (3) The Kentucky Law Enforcement Council shall disseminate the established model policy against racial profiling to all sheriffs and local law enforcement officials, including local police departments, city councils, and fiscal courts. All local law enforcement agencies and sheriffs' departments are urged to implement a written policy against racial profiling or adopt the model policy against racial profiling as established by the secretary of the Justice and Public Safety Cabinet within one hundred eighty (180) days of dissemination of the model policy. A copy of any implemented or adopted policy against racial profiling shall be filed with the Kentucky Law Enforcement Council and the Kentucky Law Enforcement Foundation Program Fund.
- (4)
 - (a) Each local law enforcement agency that participates in the Kentucky Law Enforcement Foundation Program fund under KRS 15.420 in the Commonwealth shall implement a policy banning the practice of racial profiling that meets or exceeds the requirements of the model policy disseminated under subsection (3) of this section. The local law enforcement agency's policy shall be submitted by the local law enforcement agency to the secretary of the Justice and Public Safety Cabinet within one hundred eighty (180) days of dissemination of the model policy by the Kentucky Law Enforcement Council under subsection (3) of this section. If the local law enforcement agency fails to submit its policy within one hundred eighty (180) days of dissemination of the model policy, or the secretary rejects a policy submitted within the one hundred and eighty (180) days, that agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.
 - (b) If the secretary of the Justice and Public Safety Cabinet approves a local law enforcement agency's policy, the agency shall not change its policy without obtaining approval of the new policy from the secretary of the Justice and Public Safety Cabinet. If the agency changes its policy without obtaining the secretary's approval, the agency shall not receive Kentucky Law Enforcement Foundation Program funding until the secretary approves a policy submitted by the agency.
- (5) Each local law enforcement agency shall adopt an administrative action for officers found not in compliance with the agency's policy. The administrative action shall be in accordance with other penalties enforced by the agency's administration for similar officer misconduct.

➔Section 20. KRS 15A.340 is amended to read as follows:

- (1) As used in this section and KRS 15A.342 and 15A.344, "KY-ASAP" means the Kentucky Agency for Substance Abuse Policy.
- (2) The Office of Drug Control Policy shall administer an endowment from interest generated through funds appropriated or gifts, donations, or funds received from any source. The Office of Drug Control Policy may expend endowment principal, if necessary in its discretion, to carry out the purposes of this section and KRS 15A.342 and 15A.344. These expenditures from the endowment principal are hereby appropriated for this purpose.
- (3)
 - (a) The Office of Drug Control Policy shall oversee the activities specified in this section and KRS 15A.342 and 15A.344 and provide administrative support to the seventeen (17) member KY-ASAP Board, which is created to oversee the activities of KY-ASAP. Membership of the board shall be appointed by the Governor and shall consist of the following:
 1. One (1) member representing the Kentucky Family Resource Youth Services Coalition, or a designee;
 2. One (1) member representing the Kentucky Health Department Association, or a designee;
 3. The secretary of the Cabinet for Health and Family Services, or designee;
 4. The secretary of the Justice and Public Safety Cabinet, or a designee;
 5. One (1) member representing the Division of Mental Health and Substance Abuse Services within the Department for Mental Health and Mental Retardation Services, Cabinet for Health and Family Services, or a designee;
 6. The commissioner of the Department for Public Health, Cabinet for Health and Family Services, or a designee;

7. The ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Alcoholic Beverage Control, or a designee;
 8. The commissioner of the Department of Education;
 9. The director of the Administrative Office of the Courts, or a designee;
 10. One (1) member representing the Kentucky Association of Regional Programs, or a designee;
 11. One (1) member representing the Kentucky Heart Association, or a designee;
 12. One (1) member representing the Kentucky Lung Association, or a designee;
 13. One (1) member representing the Kentucky Cancer Society, or a designee;
 14. Two (2) members representing local tobacco addiction and substance abuse advisory and coordination boards; and
 15. Two (2) members representing private community-based organizations, whether for-profit or nonprofit, with experience in programs involving smoking cessation or prevention or alcohol or substance abuse prevention and treatment.
- (b) Members shall serve for a term of four (4) years, may be reappointed, and may serve no more than two (2) consecutive terms. Members shall not be compensated but shall receive reimbursement for expenses incurred while performing board business.
- (c) The board shall meet at least quarterly. A quorum of nine (9) members shall be required for the transaction of business. Meetings shall be held at the call of the chair, or upon the written request of two (2) members to the chair.
- (d) The board shall:
1. Oversee deposits and expenditures from the endowment;
 2. Request, in its discretion, an audit relating to the expenditure of endowment funds;
 3. Receive quarterly reports from the ***commissioner of the Department of Alcoholic Beverage Control***~~[executive director]~~ regarding KY-ASAP's activities;
 4. Progress toward development and implementation of the strategic plan;
 5. Recommend to KY-ASAP the most efficient means for using public funds to coordinate, supplement, and support high quality and ongoing programs of all public agencies and private service providers related to smoking cessation and prevention and alcohol and substance abuse prevention and treatment;
 6. Recommend matters for review and analysis by KY-ASAP; and
 7. Perform other duties as necessary for the oversight of KY-ASAP.
- (4) The Office of Drug Control Policy and KY-ASAP shall promote the implementation of research-based strategies that target Kentucky's youth and adult populations.
- (5) The Office of Drug Control Policy and KY-ASAP shall vigorously pursue the philosophy that tobacco in the hands of Kentucky's youth is a drug abuse problem because of the addictive qualities of nicotine, and because tobacco is the most prevalent gateway drug that leads to later and escalated drug and alcohol abuse.

➔Section 21. KRS 15A.342 is amended to read as follows:

The Office of Drug Control Policy shall be responsible for all matters relating to the research, coordination, and execution of drug control policy and for the management of state and federal grants, including but not limited to the prevention and treatment related to substance abuse. By December 31 of each year, the Office of Drug Control Policy shall review, approve, and coordinate all current projects of any substance abuse program which is conducted by or receives funding through agencies of the executive branch. This oversight shall extend to all substance abuse programs which are principally related to the prevention or treatment, or otherwise targeted at the reduction, of substance abuse in the Commonwealth. The Office of Drug Control Policy shall promulgate administrative regulations consistent with enforcing this oversight authority. In addition, the Office of Drug Control Policy and KY-ASAP shall:

- (1) Develop a strategic plan to reduce the prevalence of smoking and drug and alcohol abuse among both the youth and adult populations in Kentucky;
- (2) Monitor the data and issues related to youth alcohol and tobacco access, smoking cessation and prevention, and substance abuse policies, their impact on state and local programs, and their flexibility to adapt to the needs of local communities and service providers;
- (3) Make policy recommendations to be followed to the extent permitted by budgetary restrictions and federal law, by executive branch agencies that work with smoking cessation and prevention and alcohol and substance abuse issues to ensure the greatest efficiency in agencies and to ensure that a consistency in philosophy will be applied to all efforts undertaken by the administration in initiatives related to smoking cessation and prevention and alcohol and substance abuse;
- (4) Identify existing resources in each community that advocate or implement programs for smoking cessation or prevention, or drug and alcohol abuse prevention, education, or treatment;
- (5) Encourage coordination among public and private, state and local, agencies, organizations, and service providers, and monitor related programs;
- (6) Act as the referral source of information, utilizing existing information clearinghouse resources within the Department for Public Health and CHAMPIONS for a Drug Free Kentucky Office, relating to youth tobacco access, smoking cessation and prevention, and substance abuse prevention, cessation, and treatment programs. The Office of Drug Control Policy and KY-ASAP shall identify gaps in information referral sources;
- (7) Search for grant opportunities for existing programs within the Commonwealth;
- (8) Make recommendations to state and local agencies and local tobacco addiction and substance abuse advisory and coordination boards;
- (9) Observe programs from other states;
- (10) Coordinate services among local and state agencies, including but not limited to the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, the Department of Agriculture, the ~~Environmental and~~ Public Protection Cabinet, the Administrative Office of the Courts, and the Education and Workforce Development Cabinet;
- (11) Assure the availability of training, technical assistance, and consultation to local service providers for programs funded by the Commonwealth that provide services related to tobacco addiction, smoking cessation or prevention, or alcohol or substance abuse;
- (12) Review existing research on programs related to smoking cessation and prevention and substance abuse prevention and treatment;
- (13) Comply with any federal mandate regarding smoking cessation and prevention and substance abuse, to the extent authorized by state statute;
- (14) Establish a mechanism to coordinate the distribution of funds to support any local prevention, treatment, and education program based on the strategic plan developed in subsection (1) of this section that could encourage smoking cessation and prevention through efficient, effective, and research-based strategies;
- (15) Oversee a school-based initiative that links schools with community-based agencies and health departments to implement School Programs to Prevent Tobacco Use, based upon the model recommended by the Centers for Disease Control and Prevention. To the extent permitted by resources, the initiative shall involve input by and services from each of the family resource and youth services centers, regional prevention centers, and existing school-based antidrug programs;
- (16) Work with community-based organizations to encourage them to work together to establish comprehensive tobacco addiction and substance abuse prevention education programs and carry out the strategic plan developed in this section. These organizations shall be encouraged to partner with district and local health departments and community mental health centers to plan and implement interventions to reach youths before tobacco addiction and substance abuse become a problem in their lives;
- (17) Coordinate media campaigns designed to demonstrate the negative impact of smoking and the increased risk of tobacco addiction, substance abuse, and the development of other disease in children, young people, and

adults. To accomplish this objective, KY-ASAP shall work with local media to reach all segments of the community quickly and efficiently;

- (18) Certify to the Governor, the secretary of the Justice and Public Safety Cabinet, and the General Assembly during the budget request process established under KRS Chapter 48 the extent to which each entity receiving state funds has cooperated with the Office of Drug Control Policy and KY-ASAP, coordinated with community resources, and vigorously pursued the philosophy of the Office of Drug Control Policy and KY-ASAP;
- (19) Promulgate, with the approval of the secretary of the Justice and Public Safety Cabinet, any administrative regulations necessary to implement this section and KRS 15A.340 and 15A.344; and
- (20) Report annually to the Legislative Research Commission and Governor regarding the proper organization of state government agencies that will provide the greatest coordination of services, and report semiannually to the Legislative Research Commission and Governor on the status of the Office of Drug Control Policy and KY-ASAP programs, services, and grants, and on other matters as requested by the Legislative Research Commission and Governor.

➔Section 22. KRS 16.075 is amended to read as follows:

- (1) The Department of Kentucky State Police shall secure, or reimburse members of the State Police who purchase a rider on their personal motor vehicle insurance policy to secure, such automobile liability insurance and uninsured and underinsured motorist coverage as will reasonably protect the interest of members of the State Police when in the conduct of official business.
- (2) Policies authorized by this section shall be purchased only in accordance with regulations prescribed by the ~~commissioner~~~~executive director~~ of insurance and the secretary of the Finance and Administration Cabinet.
- (3) The department shall determine the minimum coverage the member must purchase to be eligible for reimbursement under subsection (1) of this section and the maximum amount of reimbursement. The uninsured and underinsured motorist coverage shall be no less than the policy's liability limits for bodily injury or death.

➔Section 23. KRS 16.150 is amended to read as follows:

- (1) Any officer of the department who shall be found guilty by the trial board of any charge as provided in KRS 16.140 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court, provided the punishment be a suspension of more than twenty (20) days or his pay be reduced more than ten percent (10%), or if he is reduced in grade, if his classification so warrants, or is removed or dismissed from the department; provided, however, the enforcement of the judgment of the trial board upon said charges shall not be suspended during said appeal.
- (2) To perfect said appeal within the time specified, such officer shall file in the office of the clerk of the Franklin Circuit Court a copy of the order, of all the evidence heard, and of all the steps taken by the trial board relative to such charges, but shall first post a bond to secure the cost of the action in a lump sum to be approved by the circuit clerk, with corporate surety approved by the ~~Department~~~~Office~~ of Insurance as to solvency and responsibility and authorized to transact business in this state, or he may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to such appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.
- (3) Such action shall be set down for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party engaged in the administration of KRS 16.010 to 16.170, or one (1) who is a member of the trial board, but the court shall otherwise hear the case upon the record as attested by the board, and in all respects dispose of the appeal in a summary manner. Its review shall be limited to determining whether or not:
 - (a) The board acted without or in excess of its powers;
 - (b) The order appealed from was procured by fraud; or
 - (c) If questions of fact are in issue, whether or not any substantial evidence supports the order appealed from. After such a hearing, the court shall enter a judgment sustaining or setting aside the order of the trial board appealed from. The cost of the action shall follow the judgment of the court.

- (5) Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure, but such appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time be extended by the Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

➔Section 24. KRS 16.193 is amended to read as follows:

- (1) Any officer of the department found guilty by the trial board of any charge as provided in KRS 16.192 shall have the right, within ten (10) days from the date of judgment of the trial board, to appeal to the Franklin Circuit Court if the punishment is:
- (a) A suspension of more than twenty (20) days;
 - (b) A pay reduction of more than ten percent (10%);
 - (c) A grade reduction if his classification so warrants; or
 - (d) Dismissal from the department.

The enforcement of the judgment of the trial board upon said charges shall not be suspended during the appeal.

- (2) To perfect the appeal within the specified time, an officer shall file a copy of the order, all the evidence heard, and a full transcribed record relative to the charges with the Franklin County Circuit Clerk. The officer shall first post a bond to secure the cost of the action in a lump-sum amount to be approved by the circuit clerk, with corporate surety approved by the ~~Department~~**Office** of Insurance as to solvency and responsibility and authority to transact business in this state, or the officer may post a cash bond. The members of the trial board and the commissioner shall be necessary parties to the appeal. The circuit clerk shall docket the case as though it were a petition in equity and shall immediately issue a summons for the appellee. The summons shall be returnable in the same manner as in equity cases. Service of summons upon the commissioner or acting commissioner shall be deemed service upon the board.
- (3) The appeal shall be scheduled for trial as soon as possible, and the hearing thereof shall be expedited in the same manner as a declaratory judgment suit.
- (4) No new or additional evidence shall be introduced in the Franklin Circuit Court, except as to fraud or misconduct of some party involved in the investigation of the charges or a member of the trial board. The court shall sit in appellate jurisdiction and shall not overturn the verdict of the trial board unless it finds:
- (a) The board acted without or in excess of its powers;
 - (b) The order appealed from was procured by fraud; or
 - (c) If questions of fact are at issue, whether any substantial evidence exists to support the order issued by the trial board. The court shall enter a judgment sustaining or setting aside the order of the trial board. The cost of the action shall follow the judgment of the court.

- (5) Any party aggrieved by a judgment of the Franklin Circuit Court may appeal to the Court of Appeals in the manner provided in the Rules of Civil Procedure. The appeal shall be docketed within sixty (60) days from the entry of judgment, unless the time is extended by the Franklin Circuit Court, but in no event beyond one hundred twenty (120) days from the entry of judgment.

➔Section 25. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
- (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;

- (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
- (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
- (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
- (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;
- (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
- (j) Physicians employed as such;
- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
- (l) The judicial department, referees, receivers, jurors, and notaries public;
- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
- (n) Patients or inmates employed in state institutions;
- (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
- (p) Interim employees;
- (q) Officers and members of the state militia;
- (r) Department of Kentucky State Police troopers;
- (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
- (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
- (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
- (v) County and Commonwealth's attorneys and their respective appointees;
- (w) Chief district engineers and the state highway engineer;
- (x) Veterinarians employed as such by the Kentucky Horse Racing ~~Commission~~~~Authority~~;
- (y) Employees of the Kentucky Peace Corps;
- (z) Employees of the Council on Postsecondary Education;
- (aa) Executive director of the Commonwealth Office of Technology;

- (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;
 - (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
 - (ad) Federally funded time-limited employees as defined in KRS 18A.005.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
 - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
 - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
 - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
 - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
 - (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
 - (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

➔Section 26. KRS 18A.205 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary, may procure from one (1) or more life insurance companies, authorized to do business in this state, a policy or policies of group life insurance insuring the lives of all or any class or classes of state employees. The policy or policies shall be approved by the ~~commissioner~~~~executive director~~ of insurance and may contain such provisions as ***the commissioner of insurance***~~he~~ approves whether or not otherwise permitted by the insurance laws. It is intended that life insurance may be made available for state employees, except that the procuring is permissive.
- (2) The term "state employee," for purposes of KRS 18A.205 to 18A.215, shall mean a person who is regularly employed by any department, board, agency, or branch of state government, and who is also a contributing

member of any one (1) of the retirement systems administered by the state; provided, however, that any federally funded time-limited employee may receive insurance coverage.

- (3) The term "premiums," for the purposes of KRS 18A.205 to 18A.225, shall mean premiums to be paid on any type of insurance authorized under KRS 18A.205 to 18A.225.

➔Section 27. KRS 18A.215 is amended to read as follows:

The policy or policies may also provide accidental death and dismemberment insurance and may contain such provisions with respect to the class or classes of employees covered, amounts of insurance for designated classes or groups of employees, terms of eligibility, continuation of insurance after retirement, and such other provisions as the ~~commissioner~~~~executive director~~ of insurance may approve.

➔Section 28. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;
 2. Any certified or classified employee of a local board of education;
 3. Any elected member of a local board of education;
 4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and
 5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
- (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
- (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
- (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a

minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.

- (b) The policy or policies shall be approved by the ~~commissioner~~~~executive director~~ of insurance and may contain the provisions ~~the commissioner of insurance~~~~he~~ approves, whether or not otherwise permitted by the insurance laws.
 - (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection (18) of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
 - (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
 - (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.
 - (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
 - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or

- (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.
- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.
- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the ~~Department~~~~Office~~ of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.

- (13) (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
- (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
- (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (16) If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- (17) The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.
- (18) Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:
 - (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
 - (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
 - (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
 - (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
 - (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.
- (19) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.
- (20) Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.

- (21) Any full insured health benefit plan or self insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.

➔Section 29. KRS 18A.226 is amended to read as follows:

- (1) To provide quality, affordable health insurance coverage so that the Commonwealth can attract and retain able and dedicated public employees, and to facilitate the need for comprehensive and efficient planning, implementation, and administration of a state employee health insurance program in order to meet this goal, the Kentucky Group Health Insurance Board is created. The board shall be attached to the Personnel Cabinet for administrative purposes only. The board shall consist of thirteen (13) members as follows:
- (a) The secretary of the Finance and Administration Cabinet;
 - (b) The secretary of the Personnel Cabinet;
 - (c) The state budget director;
 - (d) The commissioner of education;
 - (e) The chair of the Advisory Committee of State Health Insurance Subscribers;
 - (f) The ~~commissioner~~~~executive director~~ of insurance, ex officio;
 - (g) The Auditor of Public Accounts, ex officio;
 - (h) The Director of the Administrative Office of the Courts, or his designee;
 - (i) One (1) retired state employee appointed by the Kentucky Retirement Systems, who shall serve an initial term of one (1) year;
 - (j) One (1) retired teacher appointed by the Teachers' Retirement System, who shall serve an initial term of two (2) years;
 - (k) One (1) active teacher appointed by the organization with the largest number of teacher members on payroll deduction, who shall serve an initial term of one (1) year;
 - (l) One (1) active state employee appointed by the organization with the largest number of state employee members on payroll deduction, who shall serve an initial term of two (2) years; and
 - (m) One (1) active classified education support employee appointed by the organization with the largest number of classified education support employee members on payroll deduction, who shall serve an initial term of one (1) year.

As each appointed member's term expires, the vacancy created shall be filled by the appointing authority for that position for a term of two (2) years. An appointment to fill an unexpired term of an appointed member shall be made by the designated appointing authority for the remainder of the term. Appointed terms shall begin effective October 1.

- (2) The members of the board shall elect from among its members a chair and a vice chair.
- (3) Regular meetings of the board shall be held at least once every month at a place, day, and time determined by the board. Special meetings of the board shall be held when needed as determined by the chair. If seven (7) or more members of the board request in writing that the chair call a special meeting, the chair shall call a special meeting. The meetings shall operate in accordance with the provisions of the Open Meetings Law under KRS 61.805 to 61.850.
- (4) Members of the board shall receive reimbursement for necessary expenses for attendance at official board meetings or public hearings.
- (5) The Kentucky Group Health Insurance Board shall:
 - (a) Engage in analyses and research to identify the factors and parameters that affect the state group health insurance program;

- (b) Develop and transmit, by October 1 of each year beginning October 1, 2001, to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, policy recommendations regarding benefit options and management of the state group health insurance program; and
- (c) Provide in the first report, due by October 1, 2001, the following:
 - 1. Analysis and discussion of methods used by all other states to provide health insurance benefits to their state group; and
 - 2. Analysis and discussion of the cost, enrollment, claims, and utilization data for calendar year 2000 on the Kentucky state group; and
 - 3. Recommendations including but not limited to appropriate structures for the state contribution rate which shall include recommendations on increasing the state contribution to provide support for dependent coverage, possible methods to mitigate adverse selection, competitive plan designs by type and benefit options, the feasibility of a state self-insurance plan, and strategies for evaluating third-party administrators and vendors.

➔Section 30. KRS 39B.050 is amended to read as follows:

- (1) Each local emergency management director shall establish and maintain a local disaster and emergency services organization in accordance with a city or county or city/county emergency operations plan required pursuant to KRS Chapters 39A to 39F. The local disaster and emergency services organization shall be comprised of the following members and participants:
 - (a) The county judge/executive and mayors, or the chief executive of other local governments;
 - (b) Elected legislative officials of the county and cities;
 - (c) The local emergency management director and all local emergency management agency staff members and workers, or emergency management agency-supervised operating units or personnel;
 - (d) All regular or volunteer public safety or emergency services department heads or agency chiefs in the cities or county;
 - (e) All regular or volunteer public safety or emergency services department or agency members in the cities or county;
 - (f) All districts, corporations, public agencies, groups, or political subdivisions of the state and special districts within the county or the cities thereof, which are organized under the laws of the Commonwealth to provide an emergency response service or related function in the interest of public safety; and
 - (g) All private sector personnel, agencies, organizations, companies, businesses, or individuals and citizens who agree to provide their assets, resources, talents, services, or supplies in aid to the local disaster and emergency services organization of the cities or county in accordance with the approved local emergency operations plan of the city, county, urban-county government, or charter county government.
- (2) The local disaster and emergency services organization shall have responsibility for the performance of all disaster and emergency response functions contemplated in KRS 39A.010, 39A.020, or 39A.030 and as listed or assigned in the city, county, or city/county emergency operations plan, except that the Division of Forestry of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall have primary responsibility for directing the implementation of all forest fire emergency responses consistent with KRS Chapter 149. Disaster and emergency response functions may be assigned within the local disaster and emergency services organization to existing agencies and organizations, public and private. It shall not be necessary for the local disaster and emergency services organization to create, provide, or maintain an additional or auxiliary capability for any existing function or service deemed adequate to local needs.
- (3) The local disaster and emergency services organization shall be the primary disaster and emergency response force of city, county, urban-county government, or charter county government and an organizational component of the integrated emergency management system of the Commonwealth. The local emergency management director shall have primary responsibility for the coordination of all disaster and emergency response of the local disaster and emergency services organization for an emergency, declared emergency, disaster, or catastrophe.

➔Section 31. KRS 39E.030 is amended to read as follows:

- (1) The commission shall be composed of not more than twenty-five (25) members and shall be chaired by the director of the Division of Emergency Management of the Department of Military Affairs, who shall also be a member. Other members shall include, but not be limited to, the executive director of the Commission on Fire Protection Personnel Standards and Education or the executive director's designee, representatives of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet,~~the office of~~ the state fire marshal, the Department of Kentucky State Police, the Office of the Attorney General, affected industry, local government, health services, environmental interests, and other persons who have technical expertise in the emergency response field as the Governor deems appropriate.
- (2) Members of the commission shall be appointed by the Governor. All appointments shall be for a term of two (2) years. Members shall serve until their successors are appointed and qualified and shall be eligible for reappointment.
- (3) The commission shall meet not less than semi-annually, or as convened by the chairman.
- (4) If a member misses three (3) consecutive meetings of the full commission or three (3) meetings in two (2) consecutive years, the position shall be declared vacant by the commission. In these cases, the Governor shall make an appointment to fill the unexpired term.
- (5) The presence of thirteen (13) members shall constitute a quorum and actions taken at these meetings shall be considered as actions of the full commission.
- (6) Members of the commission shall not receive a salary for serving on the commission, but travel and per diem may be paid if funds are appropriated or otherwise made available for these purposes.

➔Section 32. KRS 42.0651 is amended to read as follows:

- (1) The Office of Policy and Audit shall:
 - (a) Oversee and assist the management of the state fire and tornado insurance fund established in KRS Chapter 56;
 - (b) Develop and manage programs of risk assessment and insurance for the protection of state property not covered by the state fire and tornado insurance fund;
 - (c) Advise the secretary of the Finance and Administration Cabinet on the fiscal management of programs relating to life insurance, workers' compensation, and health care benefits for state employees;
 - (d) Serve as the central clearinghouse for coordinating and evaluating existing and new risk management programs within all state agencies;
 - (e) Develop financing techniques for risk protection; and
 - (f) Develop and implement other risk management, insurance, and self-insurance programs or other functions and duties as the secretary of the Finance and Administration Cabinet may direct the office to undertake and implement within the general statutory authority and control of the Finance and Administration Cabinet over state property and fiscal affairs of the executive branch of state government, including, but not limited to, those areas pertaining to tort and contractual liability, fidelity, and property risks.
- (2) Nothing in this section shall be construed or interpreted as affecting the operation of the employee benefit programs generally administered by the Division of Employee Benefits within the Personnel Cabinet and of the State Risk and Insurance Services programs administered by the ***Finance and Administration Cabinet***~~Office of Insurance~~. However, both of those departments shall coordinate the operation of life insurance, workers' compensation, health care benefit programs, and other self-insured programs with the Office of Policy and Audit.
- (3) All cabinets, departments, boards, commissions, and other state agencies shall provide to the Office of Policy and Audit the technical advice and other assistance the Office of Policy and Audit or the secretary of the Finance and Administration Cabinet shall request in the performance of the functions of the office as described in this section.
- (4) The secretary of the Finance and Administration Cabinet shall have the power and authority to promulgate administrative regulations pursuant to KRS Chapter 13A for purposes of implementing a risk management

program for the executive branch of state government. Any administrative regulations promulgated by the secretary shall be administered by the Office of Policy and Audit.

➔Section 33. KRS 42.566 is amended to read as follows:

- (1) The funds appropriated by the General Assembly shall be expended in a manner consistent with the judgments and settlements, as amended, which produced the oil overcharge refunds, as follows:
 - (a) The sum of five hundred thousand dollars (\$500,000) or eight percent (8%) of the amount appropriated each fiscal year, whichever is greater, shall be distributed annually to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet for expenditure in the Institutional Conservation Program established pursuant to Part G of Title III of the Energy Policy and Conservation Act, 42 U.S.C. secs. 6371 et seq. The source of these funds shall be deemed to be the trust funds produced by the Stripper Well litigation, In Re Department of Energy Stripper Well Exemption Litigation, D.C. Kan., M.D.L. No. 378, and the Diamond Shamrock litigation, Diamond Shamrock Refining Co. v. Standard Oil of Indiana, D.C. Ind., Civil Action No. C-84-1432, and interest accumulated thereon.
 - (b) The balance of the trust funds appropriated for expenditure in any fiscal year shall be distributed to the Cabinet for Health and Family Services and allocated as follows:
 1. Forty percent (40%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for weatherization of low-income households established pursuant to Part A of the Energy Conservation and Existing Buildings Act of 1976, 42 U.S.C. secs. 6861 et seq.; and
 2. Sixty percent (60%) of the trust funds received by the cabinet in any fiscal year shall be allocated to the cabinet's program for energy crisis or prevention services for low-income households established pursuant to the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. secs. 8621 et seq.

➔Section 34. KRS 42.738 is amended to read as follows:

- (1) The executive director shall establish and implement a statewide public safety interoperability plan. This plan shall include the development of required architecture and standards that will insure that new or upgraded Commonwealth public safety communications systems will interoperate. The Kentucky Wireless Interoperability Executive Committee shall be responsible for the evaluation and recommendation of all wireless communications architecture, standards, and strategies. The executive director shall provide direction, stewardship, leadership, and general oversight of information technology and information resources. The executive director shall report by September 15 annually to the Interim Joint Committee on Seniors, Veterans, Military Affairs, and Public Protection and the Interim Joint Committee on State Government on progress and activity by agencies of the Commonwealth to comply with standards to achieve public safety communications interoperability.
- (2) The Kentucky Wireless Interoperability Executive Committee shall serve as the advisory body for all wireless communications strategies presented by agencies of the Commonwealth and local governments. All state agencies in the Commonwealth shall present all project plans for primary wireless public safety voice or data communications systems for review and recommendation by the committee, and the committee shall forward the plans to the executive director for final approval. Local government entities shall present project plans for primary wireless public safety voice or data communications systems for review and recommendation by the Kentucky Wireless Interoperability Executive Committee.
- (3) The committee shall develop funding and support plans that provide for the maintenance of and technological upgrades to the public safety shared infrastructure, and shall make recommendations to the executive director, the Governor's Office for Policy and Management, and the General Assembly.
- (4) The executive director shall examine the project plans for primary wireless public safety voice or data communications systems of state agencies as required by subsection (2) of this section, and shall determine whether they meet the required architecture and standards for primary wireless public safety voice or data communications systems.
- (5) The Kentucky Wireless Interoperability Executive Committee shall consist of twenty (20) members as follows:

- (a) A person knowledgeable in the field of wireless communications appointed by the executive director who shall serve as chair;
 - (b) The executive director of the Office of Infrastructure Services, Commonwealth Office of Technology;
 - (c) The executive director of Kentucky Educational Television, or the executive director's designee;
 - (d) The chief information officer of the Transportation Cabinet;
 - (e) The chief information officer of the Justice and Public Safety Cabinet;
 - (f) The chief information officer of the Department of Kentucky State Police;
 - (g) The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
 - (h) The chief information officer of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet;
 - (i) The director of the Division of Emergency Management, Department of Military Affairs;
 - (j) The executive director of the Kentucky Office of Homeland Security;
 - (k) The chief information officer, Department for Public Health, Cabinet for Health and Family Services;
 - (l) A representative from an institution of postsecondary education appointed by the Governor from a list of three (3) names submitted by the president of the Council on Postsecondary Education;
 - (m) The executive director of the Center for Rural Development, or the executive director's designee;
 - (n) A representative from a municipal government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky League of Cities;
 - (o) A representative from a county government to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Counties;
 - (p) A representative from a municipal police department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Chiefs of Police;
 - (q) A representative from a local fire department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Association of Fire Chiefs;
 - (r) A representative from a county sheriff's department to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Sheriffs' Association;
 - (s) A representative from a local Emergency Medical Services agency to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Board of Emergency Medical Services; and
 - (t) A representative from a local 911 dispatch center to be appointed by the Governor from a list of three (3) names submitted by the Kentucky Chapter of the National Emergency Number Association/Association of Public Safety Communications Officials.
- (6) Appointed members of the committee shall serve for a two (2) year term. Members who serve by virtue of an office shall serve on the committee while they hold that office.
 - (7) The committee shall meet quarterly, or as often as necessary for the conduct of its business. A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at committee meetings.
 - (8) The committee shall be attached to the Commonwealth Office of Technology for administrative purposes only. Members shall not be paid and shall not be reimbursed for travel expenses.
 - (9) The Public Safety Working Group is hereby created for the primary purpose of fostering cooperation, planning, and development of the public safety frequency spectrum as regulated by the Federal Communications Commission, including the 700 MHz public safety band. The group shall endeavor to bring about a seamless, coordinated, and integrated public safety communications network for the safe, effective, and efficient protection of life and property. The Public Safety Working Group membership and other working group memberships deemed necessary shall be appointed by the chair of the Kentucky Wireless Interoperability Executive Committee.
 - (10) The committee may establish additional working groups as determined by the committee.

➔Section 35. KRS 42.740 is amended to read as follows:

- (1) There is hereby established a Kentucky Geospatial Board, attached to the Commonwealth Office of Technology for administrative purposes, to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The board shall recommend policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The board shall closely coordinate with users of geographic information systems to recommend policies and procedures that ensure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Kentucky Geospatial Board shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The board shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Finance and Administration Cabinet or his designee;
 5. The executive director of the Commonwealth Office of Technology or her or his designee, who shall serve as chair;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the Governor's Office for Local Development or his designee;
 8. The secretary of the Justice and Public Safety Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Tourism, Arts and Heritage Cabinet or his designee;
 15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;
 19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;

- 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
- 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The board shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The board may have committees and subcommittees as determined by the board or an executive committee, if an executive committee exists.
- (6) A member of the board shall not:
 - (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a board member.
- (7) Those board members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the board while they hold that office.
- (8) Appointed members of the board shall serve for a term of four (4) years. Vacancies in the membership of the board shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The board shall have no funds of its own, and board members shall not receive compensation of any kind from the board.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at board meetings.

➔Section 36. KRS 43.071 is amended to read as follows:

- (1) The Auditor of Public Accounts shall annually audit each county clerk concerning:
 - (a) All receipts due from the collection of motor vehicle and motorboat registration fees, motor vehicle and motorboat licenses and other receipts due the clerk pertaining to motor vehicles and motorboats as prescribed in KRS Chapters 186, 186A and 235;
 - (b) All receipts due from the collection of motor vehicle usage tax as prescribed by KRS 138.460; and
 - (c) All receipts due from the collection of the ad valorem tax on motor vehicles and motorboats as prescribed by KRS 134.800.

These annual audits shall be completed by April 15 of the year following the year to be audited.

- (2) The provisions of KRS 43.070 shall not apply to the separate and distinct duties imposed on the Auditor of Public Accounts pursuant to subsection (1) of this section. The audits specified in subsection (1) of this section shall be conducted prior to the audits mandated by KRS 43.070.

- (3) Immediately upon completion of each audit, the Auditor of Public Accounts shall prepare a report of his findings noting any indebtedness to the Commonwealth. He shall furnish one (1) copy to the county clerk, one (1) copy to the secretary of the Transportation Cabinet, one (1) copy to the secretary of the Finance and Administration Cabinet and one (1) copy to the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet. If the county clerk objects to any findings of indebtedness in the Auditor's report, he shall file a written response with the Auditor within ten (10) days of his receipt of the report. The Auditor shall consider the written response and within thirty (30) days of its receipt issue a final report. If the county clerk wishes to object to any findings of indebtedness contained in the final report, he shall file a request within ten (10) days of his receipt of the final report for a hearing before a three (3) member panel composed of the secretary of transportation or his designee, the commissioner of the Department of Revenue or his designee, and the president of the Kentucky County Clerks Association or his designee. The hearing shall be conducted in accordance with the provisions of KRS Chapter 13B. The majority decision of this panel shall be determinative of any indebtedness to the Commonwealth. If the county clerk wishes to appeal the decision of this panel, he shall file the appeal in the Circuit Court for the county where he serves in accordance with KRS Chapter 13B.

➔Section 37. KRS 45.850 is amended to read as follows:

- (1) Appropriations for the capital construction and for the operating budget of a nuclear waste disposal site owned by the Commonwealth shall be set forth as a major program cost in the executive budget document for the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) Appropriations for the regulating and monitoring of a nuclear waste disposal site owned by the Commonwealth shall be set forth as a major program cost in the executive budget document for the Cabinet for Health and Family Services. Monitoring and water sampling and analyses shall be maintained and budgeted for at a level to provide frequent and continuing evidence of the safety of the site.
- (3) Operating costs associated with the daily maintenance of the site in excess of allocations budgeted to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, regulating and monitoring costs associated with normal surveillance of the site in excess of allocations budgeted to the Cabinet for Health and Family Services, and costs associated with an emergency at the site so declared by the Governor shall be deemed necessary governmental expenses.
- (4) In the event a request for funds is made pursuant to subsection (3) of this section, a copy of the request and the justification for additional funds shall be forwarded to the office of the Legislative Research Commission and to the Governor at the time the request is made but no later than fifteen (15) days prior to the actual expenditure of additional funds. The Legislative Research Commission or its designated subcommittee may request further explanation of the need for additional funds.
- (5) Subsections (3) and (4) of this section shall apply only to sites located in the Commonwealth prior to July 15, 1980.

➔Section 38. KRS 45A.022 is amended to read as follows:

- (1) This chapter shall apply to all insurance contracts purchased by the Commonwealth, except where the ***commissioner***~~[executive director]~~ of insurance determines, with the concurrence of the secretary of Finance and Administration Cabinet, that:
 - (a) An emergency exists;
 - (b) Competition is not feasible; or
 - (c) The annual premium is less than ten thousand dollars (\$10,000).
- (2) Notwithstanding subsection (1) of this section, the health insurance contract or contracts for state employees as authorized by KRS 18A.225 shall be subject to the provisions of KRS 45A.080, 45A.085 and 45A.090.

➔Section 39. KRS 56.065 is amended to read as follows:

As used in KRS 56.070 to 56.180, unless the context requires otherwise:

- (1) "Subject of risk" means any or all property reasonably considered to be subject to loss or damage by any single occurrence of any event insured against.

- (2) "~~Cabinet~~~~{Office}~~" means the *Finance and Administration Cabinet*~~{Office of Insurance}~~.

➔Section 40. KRS 56.070 is amended to read as follows:

- (1) The ~~cabinet~~~~{Office of Insurance}~~ shall determine which state property shall be insured against loss by fire and other hazards. The ~~cabinet~~~~{Office of Insurance}~~ shall insure with a responsible company or companies authorized to do business in Kentucky all property financed under a statutory amortization plan, to the extent of the lien indebtedness upon the property or to the extent of its reasonable value, whichever is the lesser.
- (2) Any officer or agent of the state having control or custody of any property belonging to or controlled or used by the state or any agency of the state may, with the approval of the secretary of the Finance and Administration Cabinet~~{and the Office of Insurance}~~, from the funds allotted to such agency, purchase insurance of an additional kind or kinds which cannot properly be covered in the state fire and tornado insurance fund.

➔Section 41. KRS 56.080 is amended to read as follows:

Before July 1 of each year, the ~~cabinet~~~~{Office of Insurance}~~ shall reconsider its appraisal and valuation of public buildings and personal property belonging to or under the control and use of the state or any state agency, and shall certify any changes in value to the agency that has the custody or control of the property. The appraisal and valuation shall equal the amount that the ~~cabinet~~~~{Office of Insurance}~~ deems necessary to replace the property at the time of the appraisal, which may be less actual depreciation.

➔Section 42. KRS 56.090 is amended to read as follows:

Before July 1 of each year the ~~cabinet~~~~{Office of Insurance}~~ shall fix, upon each public building and upon each class of personal property belonging to or controlled or used by the state or any agency of the state, the rate of premium that the ~~cabinet~~~~{Office of Insurance}~~ deems to be the average rate charged by responsible insurance companies doing business in this state for insurance against damage by fire and other hazards upon property of like kind and degree of risk. The premium and insurance shall be calculated upon ninety percent (90%) of the valuation. Before July 1 of each year the ~~cabinet~~~~{Office of Insurance}~~ shall certify to the State Treasurer the premium to be charged against each agency of the state.

➔Section 43. KRS 56.095 is amended to read as follows:

Notwithstanding the provisions of any other law, KRS Chapter 45A shall apply to fire and tornado insurance contracts entered into by the ~~cabinet~~~~{Office of Insurance}~~, except as provided in KRS 45A.022.

➔Section 44. KRS 56.100 is amended to read as follows:

- (1) Each fiscal year the State Treasurer shall deduct from any funds in his hands payable to an agency for the care and maintenance of public buildings or property, an amount equal to the premiums certified to him as chargeable against that agency. The amount so debited shall be credited to an account kept by the State Treasurer and known as the state fire and tornado insurance fund. No premium shall be charged on any one (1) subject of risk upon a valuation of more than five hundred thousand dollars (\$500,000) unless the ~~cabinet~~~~{Office of Insurance}~~ has contracted for reinsurance that limits the liability of the fund to five hundred thousand dollars (\$500,000) upon such subject of risk.
- (2) The ~~cabinet~~~~{office}~~ shall prescribe a certificate setting forth the terms and conditions of coverage under the state fire and tornado insurance fund. Different forms of certificates may be used for different risks. Such certificates may contain such terms and conditions as the ~~cabinet~~~~{office}~~ may prescribe, including, but not limited to, a deductible in order that there be fair allocation of significant losses and the elimination of unnecessary costs in administering the state fire and tornado insurance fund.

➔Section 45. KRS 56.110 is amended to read as follows:

In case any building or other property belonging to the state or a state agency is damaged by any of the perils insured against, except as otherwise provided in KRS 56.070 to 56.180, the agency having control or custody over the property shall within thirty (30) days certify the event to the ~~cabinet~~~~{Office of Insurance}~~. After receiving in any manner knowledge of the event, the ~~cabinet~~~~{Office of Insurance}~~ shall ascertain and fix the amount of damage and file with the State Treasurer a statement thereof. If the agency having control or custody of the property disagrees with the estimate of damage, the agency and the ~~cabinet~~~~{Office of Insurance}~~ shall each appoint one (1) member of a board of appraisers, which two (2) members shall select a third member. An award in writing, submitted by the board of appraisers to the State Treasurer, shall determine the amount of damage.

➔Section 46. KRS 56.120 is amended to read as follows:

When the amount of damage has been determined, the State Treasurer shall debit the account of the state fire and tornado insurance fund by that amount and credit with an equal amount the account of the agency that has control or custody of the property damaged, and upon warrant from the Finance and Administration Cabinet, the Treasurer shall pay to the agency the amount so credited to it, for the purpose of repairing the damage or reconstructing or replacing the damaged or destroyed property. If the agency deems it impracticable or undesirable to use the money for repair, reconstruction, or replacement of the property damaged or destroyed, it may, with the approval of the Finance and Administration Cabinet, and subject to the provisions of KRS 56.491, expend said funds for the acquisition, repair, construction, or reconstruction of property similar to the property damaged or destroyed. No debit, credit, or payment made on account of the damage to any one (1) subject of risk, by any one (1) loss, shall be in excess of five hundred thousand dollars (\$500,000), unless the ~~cabinet~~~~Office of Insurance~~ has effected reinsurance upon the subject of risk such as to limit the liability of the state fire and tornado insurance fund to five hundred thousand dollars (\$500,000), and unless the excess over this amount has actually been paid into the fund by the reinsuring company or companies.

➔Section 47. KRS 56.150 is amended to read as follows:

The ~~cabinet~~~~Office of Insurance~~ and the State Treasurer may employ such assistance and incur such expenses as are necessary to carry out the purposes of KRS 56.070 to 56.180~~, subject to approval in advance by the Finance and Administration Cabinet~~. All such expenses may be debited against the state fire and tornado insurance fund, and paid on warrant of the ~~Finance and Administration~~ cabinet, but the total of such expenses during any fiscal year shall not exceed ten percent (10%) of the total receipts of the fund during the same fiscal year. If such expenses are incurred at a time when there is not a sufficient amount in the fund to pay them, they shall constitute a prior claim to be paid out of the first receipts of the fund thereafter before any damages on account of insured losses are paid.

➔Section 48. KRS 56.160 is amended to read as follows:

~~With the approval of the~~ The ~~Finance and Administration~~ cabinet~~, the Office of Insurance~~ may contract with any responsible fire and tornado insurance or reinsurance company authorized to do business in Kentucky to reinsure any subject of risk of which the total valuation has been fixed at over five hundred thousand dollars (\$500,000) in such a way as to limit the net liability of the state fire and tornado insurance fund with respect to such subject of risk to five hundred thousand dollars (\$500,000). The premium for reinsurance shall be paid out of the state fire and tornado insurance fund, on warrant of the ~~Finance and Administration~~ cabinet.

➔Section 49. KRS 56.170 is amended to read as follows:

The ~~cabinet~~~~Office of Insurance~~ shall annually have an inspection made of each building and its contents owned by the state or any agency thereof, for the purpose of determining the unnecessary causes of a fire hazard therein, and shall make recommendations to the agency having control or custody of the building relative to the removal or correction of the hazard. Reasonable differences in the premium chargeable against the agency on account of the building and its contents may be made contingent upon compliance with such recommendations.

➔Section 50. KRS 56.185 is amended to read as follows:

- (1) All state agencies shall comply with the requirements of the National Flood Insurance Program when constructing state buildings, structures, roads, or other facilities in a flood plain.
- (2) The Finance and Administration Cabinet shall issue regulations to ensure compliance with subsection (1) of this section.
- (3) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall assist the Finance and Administration Cabinet in interpreting the federal law and regulations relating to the National Flood Insurance Program.
- (4) The Finance and Administration Cabinet shall submit to the Legislative Research Commission verification of the proper initial implementation of this section and shall annually report to the Commission on its continued implementation.

➔Section 51. KRS 56.480 is amended to read as follows:

The cabinet may appoint qualified licensed engineers and qualified graduate engineers may be appointed for a period not to exceed one (1) year without obtaining a license, who shall perform duties delegated to them from time to time by the secretary of the Finance and Administration Cabinet. The cabinet shall prepare necessary plans and specifications, shall investigate and make studies of the comparative need and demand for acquiring lands, or for the

construction or reconstruction or structural maintenance of buildings, or the purchase, installation or construction of equipment, facilities or furnishings incidental or pertaining thereto, and shall make the estimates of cost required in connection with or incidental to the development, purchase, acquisition or construction of the foregoing. The engineering staff shall give technical assistance and perform other duties the secretary of the Finance and Administration Cabinet requires. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the ***Department***~~[Office]~~ of Housing, Buildings and Construction.

➔Section 52. KRS 56.491 is amended to read as follows:

- (1) No state agency shall have power or authority to make plans and specifications, provide public notice of invitations for bids, let contracts, or incur any financing commitments, either in the way of a charge against public funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal or water supply system, requiring the expenditure of more than two hundred fifty thousand dollars (\$250,000) without first securing the approval of the Finance and Administration Cabinet.
- (2) The state agency seeking the approval shall submit to the Finance and Administration Cabinet a general description of the proposed project, with the detailed information the cabinet may require. Review of construction plans for conformance with the Uniform State Building Code shall be conducted by the ***Department***~~[Office]~~ of Housing, Buildings and Construction. The Finance and Administration Cabinet shall not approve any project requiring its approval in any instance if it finds that: the project is not needed; the proposed method of financing is not sound; the project will exceed the amount of the funds available therefor; the work contemplated will be insufficient to accomplish the purpose of the project; or after providing for the ordinary recurring expenses of government and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the State Treasury to promptly pay for the work during the biennium, or except as provided in subsection (5) of this section, that the work is to be done by employees of the agency.
- (3) The finding of the Finance and Administration Cabinet shall be final, except in cases where the issuance and sale of bonds is proposed, in which cases the cabinet shall submit its findings to the commission for final approval, modification, or disapproval.
- (4) Any capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will exceed two hundred fifty thousand dollars (\$250,000), shall be contracted for on a competitive bid basis, and the execution of the contracts shall be approved and authorized by the cabinet. When a capital construction project has been approved as provided in this section, in whole or in part, the cabinet shall prepare the plans and specifications, provide public notice of invitations for bids, award the contracts, supervise the construction, and handle the financial negotiations on behalf of the requesting state agency; or with prior written approval, the cabinet may authorize a state agency to do so with delegated authority of the cabinet.
- (5) A capital construction project, the total cost of completion of which the Finance and Administration Cabinet determines will not exceed two hundred fifty thousand dollars (\$250,000), may be performed by the employees of the requesting agency or by individuals hired specifically for the project who shall be exempt from the requirements of KRS Chapter 18A, if the project is approved and authorized by the cabinet. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the cabinet as defined in KRS Chapter 45A.
- (6) This section shall not apply to capital outlays to the Department of Highways for roads and bridges.
- (7) This section shall not apply to capital outlays by the Justice and Public Safety Cabinet for repair, maintenance, improvement, or expansion of present correctional facilities on which projects inmates are used. Any capital construction project to be performed by the Justice and Public Safety Cabinet shall be approved and authorized by the Finance and Administration Cabinet.
- (8) This section shall not apply to surveys capable of being performed by employees of the Department of Fish and Wildlife Resources. Boundary surveys or surveys involving property lines shall be performed by or under the supervision of an employee possessing a professional land surveyor license.

➔Section 53. KRS 56.776 is amended to read as follows:

The cabinet, with the assistance of the ***Department for Energy Development and Independence***~~[Governor's Office of Energy Policy]~~, shall institute an energy audit training program to identify energy saving techniques for state-owned

building maintenance staff. Additional programs shall be developed to educate state employees and other building occupants on energy awareness and practices to reduce energy use in state-owned buildings. Local government employees may be included in training and educational programs.

➔Section 54. KRS 56.777 is amended to read as follows:

- (1) A High-Performance Buildings Advisory Committee is hereby created and shall be administratively staffed by the cabinet.
- (2) The committee shall consist of fifteen (15) members and shall include:
 - (a) A representative of the cabinet designated by the secretary;
 - (b) A representative of the Tourism, Arts and Heritage Cabinet designated by the secretary;
 - (c) A representative of the Department of Education designated by the commissioner;
 - (d) A representative of the Council on Postsecondary Education designated by the president;
 - (e) A representative of the ***Department for Energy Development and Independence***~~[Governor's Office of Energy Policy]~~ designated by the ***commissioner***~~[executive director]~~; and
 - (f) A representative appointed by the Governor from each of the following:
 1. The design and construction industry involved in public works contracting;
 2. The Kentucky Chapter of the U. S. Green Building Council;
 3. The University of Kentucky College of Design;
 4. The Kentucky Forest Industries Association;
 5. The Kentucky Society of the American Institute of Architects;
 6. The American Society of Heating, Refrigerating, and Air-Conditioning Engineers; and
 7. The Home Builders Association of Kentucky;
 8. The Associated General Contractors of Kentucky;
 9. The West Kentucky Construction Association; and
 10. The Kentucky Manufactured Housing Institute.
- (3) The representative of the cabinet shall serve as the chairperson of the committee. All appointments shall be for a term of two (2) years. Committee members shall serve until their successors are appointed and shall be eligible for reappointment.
- (4) The committee shall meet at least monthly or as convened by the chairperson.
- (5) The members of the committee shall receive reimbursement for the cost of travel to and from the meetings and any costs necessarily incurred in carrying out their duties.
- (6) The committee shall:
 - (a) Consult with architects, engineers, builders, energy and conservation organizations, and other interested stakeholders, and make recommendations to the cabinet regarding:
 1. Standards and benchmarks developed under existing high-performance building programs, including the ENERGY STAR rating system, Green Globes rating system, and Leadership in Energy and Environmental Design (LEED) Green Building rating system; and
 2. Standards and guidelines developed and adopted by the U.S. Green Building Council, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, and the Illuminating Engineering Society of North America partnership concerning the design of sustainable buildings to balance environmental responsibility, resource efficiency, occupant comfort and well-being, and community sensitivity;
 - (b) Assist the cabinet in the review of state building projects to ensure that building performance and efficiency are maximized to the extent economically feasible using a life-cycle cost analysis;

- (c) Assist the cabinet in developing a process of documentation of the attainment of high-performance building standards; and
 - (d) Assist the cabinet in conducting an ongoing professional development program for state and local building designers, construction companies, school districts, building managers, and the general public on high-performance building design, construction, maintenance, and operation.
- (7) Prior to the implementation of KRS 56.770 to 56.784, the cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A necessary to implement this section. The cabinet shall consider the recommendations made by the High-Performance Buildings Advisory Committee pursuant to subsection (6) of this section and shall establish the criteria for the high-performance building standards and the benchmarks by which the high-performance building standards will be measured. At a minimum, the cabinet shall:
- (a) Include the standards for site selection and management, water efficiency, energy conservation, waste reduction, material and resource use, and indoor air quality; and
 - (b) Require that each high-performance building be designed, constructed, or renovated so that it is capable of being rated as an ENERGY STAR building in accordance with the criteria and rating system adopted by the United States Environmental Protection Agency and in effect at the time the building is designed or, in the case of leased buildings, at the time the lease is entered into on or after July 1, 2018.
- (8) In developing the criteria for the high-performance building standards, the cabinet shall consider and encourage the use of:
- (a) Locally grown lumber from forest lands implementing sustainable practices established by the American Tree Farm System's Sustainable Forest Initiative or the Kentucky Forest Stewardship Program established under KRS 149.330 to 149.355;
 - (b) Building materials manufactured with recycled content within the Commonwealth; and
 - (c) Renewable energy sources.

➔Section 55. KRS 61.592 is amended to read as follows:

- (1) (a) "Hazardous position" for employees participating in the Kentucky Employees Retirement System, and for employees who begin participating in the County Employees Retirement System before September 1, 2008, means:
- 1. Any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning; and
 - 2. Positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates.
- (b) "Hazardous position" for employees who begin participating in the County Employees Retirement System on or after September 1, 2008, means police officers and firefighters as defined in KRS 61.315(1), paramedics, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, and emergency medical technicians if:
- 1. The employee's duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning; and
 - 2. The employee's duties are not primarily clerical or administrative.
- (c) The effective date of participation under hazardous duty coverage for positions in the ~~Department Office~~ of Alcoholic Beverage Control shall be April 1, 1998. The employer and employee contributions shall be paid by the employer and forwarded to the retirement system for the period not previously reported.
- (2) (a) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in

subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section.

- (b) Each employer desiring to provide hazardous duty coverage to employees who begin participating in the County Employees Retirement System on or after September 1, 2008, may request that the board approve hazardous duty coverage for those positions that meet the criteria set forth in subsection (1)(b) of this section. Each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1)(b) of this section for which coverage is requested and a job description for each position or employee. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. Each employer shall also certify, under penalty of perjury in accordance with KRS Chapter 523, that each employee's actual job duties are accurately reflected in the job description provided to the system. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as defined in subsection (1)(b) of this section. The board shall have the authority to remove any employee from hazardous duty coverage if the board determines the employee is not working in a hazardous duty position or if the employee is classified in a hazardous duty position but has individual job duties that do not meet the definition of a hazardous duty position or are not accurately reflected in the job descriptions filed by the employer with the system.
- (3)
 - (a) An employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation. An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation.
 - (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565.
 - (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost of converting the nonhazardous service to hazardous service from the date of participation to the date the payment is made, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.505 to 16.652.
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.

- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.510 to 61.705, or 78.510 to 78.852, or 16.505 to 16.652.

➔Section 56. KRS 62.160 is amended to read as follows:

- (1) The state officers elected by the voters of the state at large, except the Governor and the Lieutenant Governor, the heads of departments, offices, and cabinets of the state government, the adjutant general, the members of the Public Service Commission, the members of the State Fair Board and Fish and Wildlife Resources Commission, and the members of the Kentucky Board of Tax Appeals and the Alcoholic Beverage Control Board, shall each give bond. The amounts of the bonds shall be fixed by the Governor, which amounts as to those offices set forth in subsection (2) of this section shall be not less than the amounts set forth for the respective offices. At any time when it appears to be to the interest of the Commonwealth, the Governor may increase the penal sum of any bond or require a renewal of the bond with other or additional surety.

- (2) The minimum sum of the bond for the following offices shall be as follows:

Secretary of State	\$10,000
Attorney General	10,000
State Treasurer	300,000
Secretary for economic development	10,000
Commissioner of Agriculture	10,000
Secretary for education	10,000
Auditor of Public Accounts	25,000
Adjutant general	10,000
Secretary of finance and administration	100,000
Commissioner of revenue	50,000
Secretary of transportation	50,000
Commissioner of highways	50,000
Secretary of justice and public safety	50,000
Secretary of corrections	25,000
Commissioner for public health services	10,000
Secretary Commissioner of labor	5,000
Commissioner for natural resources	50,000
State librarian	5,000
Commissioner Executive director of alcoholic beverage control	10,000
Commissioner Executive director of financial institutions	25,000
Secretary for <i>energy and environment</i>	
[environmental and public protection]	50,000 [10,000]
Commissioner Executive director of insurance	50,000
Commissioner of vehicle regulation	10,000
Commissioner of fish and wildlife resources	5,000
Secretary for health and family services	20,000
Commissioner of environmental protection	10,000
Secretary Commissioner of public protection [and regulation]	10,000
Secretary of tourism, arts and heritage	25,000

Commissioner for community based services	20,000
Member of the Public Service Commission	10,000
Member of State Fair Board	10,000
Member of Fish and Wildlife Resources Commission	1,000
Member of Kentucky Board of Tax Appeals	10,000
Associate member of Alcoholic Beverage Control Board	5,000
Commissioner of local government	100,000

➔Section 57. KRS 62.170 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall secure, except for state officers required by KRS 62.160 to file bond, blanket bonds, with or without cosureties, written on a blanket position form, to cover all other officers, employees, or deputies of the Commonwealth of Kentucky, including all judges, clerks, and employees of the Court of Justice, including all other members of boards or commissions or employees of those boards or commissions, and including all superintendents, receivers, or employees of penal or eleemosynary institutions managed or directed by the Justice and Public Safety Cabinet, the Cabinet for Health and Family Services, or any other department or agency of the Commonwealth of Kentucky. Nothing in this subsection shall be deemed to prohibit the securing of any such blanket position bond on a departmental, board, commission, agency, or institutional basis.
- (2) The secretary of the Finance and Administration Cabinet may secure one (1) or more excess blanket bonds, with or without cosureties, to cover selected groups of persons covered by the bond or bonds required in the preceding paragraph to provide additional coverage which he or she may deem necessary by the exposures indicated in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts and in accordance with the amounts of money and property handled by the respective officers and employees.
- (3) Such bond or bonds shall be written by and participated in only by insurance companies licensed by the ~~Department~~~~{Office}~~ of Insurance to do business in this state and shall be countersigned by a duly authorized licensed resident agent of the company. The bonds may be written with or without cosureties. Further, the bonds are to be a percentage of the total risks, the ~~Department~~~~{Office}~~ of Insurance to approve the amount of the risk written by any one (1) company.
- (4) The penal amount of the bond secured pursuant to this section shall be fixed by the secretary of the Finance and Administration Cabinet in accordance with the duties and responsibilities indicated by the personnel classification schedules of the Personnel Cabinet and, for Court of Justice officers and personnel, by the Administrative Office of the Courts, and in accordance with the amounts of money and property handled by the respective officers and employees.

➔Section 58. KRS 65.7045 is amended to read as follows:

As used in KRS 65.7041 to 65.7083:

- (1) "Activation date" means the date established any time within a two (2) year period after the commencement date. The activation date is the date on which the time period for the pledge of incremental revenues shall commence. The governing body may extend the two (2) year period to no more than four (4) years upon written application by the agency requesting the extension. To implement the activation date, the agency that is a party to the local participation agreement or the local development area agreement shall notify the governing body that created the development area or local development area;
- (2) "Agency" means:
 - (a) An urban renewal and community development agency established under KRS Chapter 99;
 - (b) A development authority established under KRS Chapter 99;
 - (c) A nonprofit corporation;
 - (d) A housing authority established under KRS Chapter 80;

- (e) An air board established under KRS 183.132 to 183.160;
 - (f) A local industrial development authority established under KRS 154.50-301 to 154.50-346;
 - (g) A riverport authority established under KRS 65.510 to 65.650; or
 - (h) A designated department, division, or office of a city or county;
- (3) "Arena" means a facility which serves primarily as a venue for athletic events, live entertainment, and other performances, and which has a permanent seating capacity of at least five thousand (5,000);
- (4) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (5) "Brownfield site" means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant;
- (6) "Capital investment" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (b) The cost of acquiring land or rights in land within the development area on the footprint of the project, and any cost incident thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of a project which is not paid by the contractor or contractors or otherwise provided;
 - (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of a project;
 - (e) All costs that are required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of a project; and
 - (f) All other costs of a nature comparable to those described in this subsection;
- (7) "City" means any city, consolidated local government, or urban-county government;
- (8) "Commencement date" means:
- (a) The date on which a local development area agreement is executed; or
 - (b) The date on which a local participation agreement is executed;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) "County" means any county, consolidated local government, charter county, unified local government, or urban-county government;
- (11) "Debt charges" means the principal, including any mandatory sinking fund deposits, interest, and any redemption premium, payable on increment bonds as the payments come due and are payable and any charges related to the payment of the foregoing;
- (12) "Development area" means an area established under KRS 65.7049, 65.7051, and 65.7053;
- (13) "Economic development projects" means projects which are approved for tax credits under Subchapter 20, 22, 23, 24, 25, 26, 27, 28, 34, or 48 of KRS Chapter 154;
- (14) "Establishment date" means the date on which a development area or a local development area is created. If the development area, local development area, development area plan, or local development area plan is modified or amended subsequent to the original establishment date, the modifications or amendments shall not extend the existence of the development area or local development area beyond what would be permitted under KRS 65.7041 to 65.7083 from the original establishment date;
- (15) "Governing body" means the body possessing legislative authority in a city or county;

- (16) "Increment bonds" means bonds and notes issued for the purpose of paying the costs of one (1) or more projects, or grant or loan programs as described in subsection (29)(c) of this section, in a development area or a local development area;
- (17) "Incremental revenues" means the amount of revenues received by a taxing district, as determined by subtracting old revenues from new revenues in a calendar year with respect to a development area, a project within a development area, or a local development area;
- (18) "Issuer" means a city, county, or agency issuing increment bonds;
- (19) "Local development area" means a development area established under KRS 65.7047;
- (20) "Local development area agreement" means an agreement entered into under KRS 65.7047;
- (21) "Local participation agreement" means the agreement entered into under KRS 65.7063;
- (22) "Local tax revenues" means:
 - (a) Revenues derived by a city or county from one (1) or more of the following sources:
 - 1. Real property ad valorem taxes;
 - 2. Occupational license taxes, excluding occupational license taxes that have already been pledged to support an economic development project within the development area; and
 - 3. The occupational license fee permitted by KRS 65.7056; and
 - (b) Revenues derived by any taxing district other than school districts or fire districts from real property ad valorem taxes;
- (23) "Low-income household" means a household in which gross income is no more than two hundred percent (200%) of the poverty guidelines updated periodically in the Federal Register by the United States Department of Health and Human Services under the authority of 42 U.S.C. sec. 9902(2);
- (24) "New revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area in any calendar year beginning with the year in which the activation date occurred;
- (25) "Old revenues" means the amount of local tax revenues received by a taxing district with respect to a development area or a local development area during the last calendar year prior to the commencement date. If the governing body determines that the amount of local tax revenues received during the last calendar year prior to the commencement date does not represent a true and accurate depiction of revenues, the governing body may consider revenues for a period of no longer than three (3) calendar years prior to the commencement date, so as to determine a fair representation of local tax revenues;
- (26) "Outstanding" means increment bonds that have been issued, delivered, and paid for by the purchaser, except any of the following:
 - (a) Increment bonds canceled upon surrender, exchange, or transfer, or upon payment or redemption;
 - (b) Increment bonds in replacement of which or in exchange for which other increment bonds have been issued; or
 - (c) Increment bonds for the payment, redemption, or purchase for cancellation prior to maturity, of which sufficient moneys or investments, in accordance with the ordinance or other proceedings or any applicable law, by mandatory sinking fund redemption requirements, or otherwise, have been deposited, and credited in a sinking fund or with a trustee or paying or escrow agent, whether at or prior to their maturity or redemption, and, in the case of increment bonds to be redeemed prior to their stated maturity, notice of redemption has been given or satisfactory arrangements have been made for giving notice of that redemption, or waiver of that notice by or on behalf of the affected bond holders has been filed with the issuer or its agent;
- (27) "Planning unit" means a planning commission established pursuant to KRS Chapter 100;
- (28) "Project" means any property, asset, or improvement located in a development area or a local development area and certified by the governing body as:

- (a) Being for a public purpose; and
 - (b) Being for the development of facilities for residential, commercial, industrial, public, recreational, or other uses, or for open space, including the development, rehabilitation, renovation, installation, improvement, enlargement, or extension of real estate and buildings; and
 - (c) Contributing to economic development or tourism;
- (29) "Redevelopment assistance," as utilized within a development area, includes the following:
- (a) Technical assistance programs to provide information and guidance to existing, new, and potential businesses and residences;
 - (b) Programs to market and promote the development area and attract new businesses and residents;
 - (c) Grant and loan programs to encourage the construction or rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
 - (d) Programs to obtain a reduced interest rate, down payment, or other improved terms for loans made by private, for-profit, or nonprofit lenders to encourage the construction or rehabilitation of residential, commercial, and industrial buildings; improve the appearance of building facades and signage; and stimulate business start-ups and expansions;
 - (e) Local capital improvements, including but not limited to the installation, construction, or reconstruction of streets, lighting, pedestrian amenities, public utilities, public transportation facilities, public parking, parks, playgrounds, recreational facilities, and public buildings and facilities;
 - (f) Improved or increased provision of public services, including but not limited to police or security patrols, solid waste management, and street cleaning;
 - (g) Provision of technical, financial, or other assistance in connection with:
 - 1. Applications to the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet for a brownfields assessment or a No Further Remediation Letter issued pursuant to KRS 224.01-450; or
 - 2. Site remediation by means of the Voluntary Environmental Remediation Program to remove environmental contamination in the development area, or lots or parcels within it, pursuant to KRS 224.01-510 to 224.01-532; and
 - (h) Direct development by a city, county, or agency of real property acquired by the city, county, or agency. Direct development may include one (1) or more of the following:
 - 1. Assembly and replatting of lots or parcels;
 - 2. Rehabilitation of existing structures and improvements;
 - 3. Demolition of structures and improvements and construction of new structures and improvements;
 - 4. Programs of temporary or permanent relocation assistance for businesses and residents;
 - 5. The sale, lease, donation, or other permanent or temporary transfer of real property to public agencies, persons, and entities both for profit and nonprofit; and
 - 6. The acquisition and construction of projects;
- (30) "Service payment agreement" means an agreement between a city, county, or issuer of increment bonds or other obligations and any person, whereby the person agrees to guarantee the receipt of incremental revenues, or the payment of debt charges, or any portion thereof, on increment bonds or other obligations issued by the city, county, or issuer;
- (31) "Special fund" means a special fund created under KRS 65.7061 in which all incremental revenues shall be deposited;
- (32) "Taxing district" means any city, county, or special taxing district other than school districts and fire districts;
- (33) "Tax incentive agreement" means an agreement entered into under KRS 154.30-070; and

(34) "Termination date" means:

- (a) For a development area, a date established by the ordinance creating the development area that is no more than twenty (20) years from the establishment date. If a tax incentive agreement for a project within a development area or a local participation agreement relating to the development area has a termination date that is later than the termination date established in the ordinance, the termination date for the development area shall be extended to the termination date of the tax incentive agreement, or local participation agreement. However, the termination date for the development area shall in no event be more than forty (40) years from the establishment date;
- (b) For a local development area, a date established by the ordinance creating the local development area that is no more than twenty (20) years from the establishment date, provided that if a local development area agreement relating to the local development area has a termination date that is later than the termination date established in the ordinance, the termination date for the local development area shall be extended to the termination date of the local development area agreement;
- (c) For a local participation agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local participation agreement shall in no event be more than forty (40) years from the establishment date of the development area to which the local participation agreement relates; and
- (d) For a local development area agreement, a date that is no more than twenty (20) years from the activation date. However, the termination date for a local development area agreement shall in no event be more than forty (40) years from the establishment date of the local development area to which the development area agreement relates.

➔Section 59. KRS 67A.6901 is amended to read as follows:

As used in KRS 67A.6901 to 67A.6911:

- (1) "~~Secretary~~~~[Commissioner]~~" means the ~~secretary~~~~[commissioner]~~ of the ~~cabinet~~~~[department]~~;
- (2) "Corrections personnel" means an employee of an urban-county government permanently assigned to a detention facility and working in any capacity in that detention facility;
- (3) "~~Cabinet~~~~[Department]~~" means the Kentucky ~~[Department of]~~Labor ~~[within the Environmental and Public Protection]~~~~[Cabinet]~~;
- (4) "Exclusive representative" means the labor organization which has been designated by the ~~cabinet~~~~[department]~~ as the representative of the majority of police officers, firefighter personnel, firefighters, or corrections personnel in appropriate units or has been so recognized by the urban-county government;
- (5) "Firefighter" means an employee of an urban-county government engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;
- (6) "Firefighter personnel" means dispatch communications officers;
- (7) "Labor organization" means any chartered labor organization of any kind in which police officers, firefighter personnel, firefighters, or corrections personnel participate and which exists for the primary purpose of dealing with urban-county governments concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (8) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers; and
- (9) "Police officer" means an employee, sworn or certified, of an urban-county government who participates in the Law Enforcement Foundation Program Fund provided in KRS 15.410 to 15.510.

➔Section 60. KRS 67A.6902 is amended to read as follows:

- (1) Police officers, firefighter personnel, firefighters, and corrections personnel of an urban-county government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.

- (2) Labor organizations designated by the ~~cabinet[department]~~ as the representative of the majority of police officers, firefighter personnel, firefighters, or corrections personnel in an appropriate unit or recognized by an urban-county government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.
- (3) Labor organizations recognized by an urban-county government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interests of all police officers, firefighter personnel, firefighters, or corrections personnel in the unit without discrimination.

➔Section 61. KRS 67A.6905 is amended to read as follows:

- (1) Whenever, in accordance with administrative regulations that may be promulgated by the ~~cabinet[department]~~, a petition has been filed:
 - (a) By a police officer, group of police officers, firefighter personnel, a firefighter, group of firefighters, a corrections officer, group of corrections personnel, or any labor organization acting on behalf of thirty percent (30%) of the employees who have signed labor organization affiliation cards and the labor organization showing proof of representation:
 1. Alleging that they wish to be represented for collective bargaining by a labor organization as exclusive representative; or
 2. Asserting that the labor organization which has been certified or is currently being recognized by the urban-county government as bargaining representative is no longer the representative of the majority of employees in the unit; or
 - (b) By an urban-county government alleging that one (1) or more labor organizations has presented to it a claim to be recognized as the representative of the majority of police officers, firefighter personnel, firefighters, or corrections personnel in an appropriate unit;

the ~~cabinet[department]~~ shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. If the ~~cabinet[department]~~ finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the police officers, firefighter personnel, firefighters, or corrections personnel desire to be represented, and shall certify the result thereof to the legislative council of the urban-county government.

- (2) The ~~cabinet[department]~~ shall decide in each case, in order to assure police officers, firefighter personnel, firefighters, and corrections personnel the fullest freedom in exercising the rights guaranteed by this section, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the police officers, firefighter personnel, firefighters, or corrections personnel involved; the history of collective bargaining; and the desires of the police officers, firefighter personnel, firefighters, or corrections personnel.
- (3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding twelve (12) month period a valid election has been held. The ~~cabinet[department]~~ shall determine who is eligible to vote in the election and shall promulgate administrative regulations governing the election. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted and the ballot shall provide for the selection between the two (2) choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the ~~cabinet[department]~~ as exclusive representative of all the police officers, firefighter personnel, firefighters, or corrections personnel in the unit.
- (4) Nothing in this or any other law shall be construed to prohibit recognition of a labor organization as the exclusive representative by an urban-county government by mutual consent.
- (5) No election shall be directed by the ~~cabinet[department]~~ in any bargaining unit where there is in force and effect a valid collective bargaining agreement; provided, however, no collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than four (4) years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

➔Section 62. KRS 67A.6906 is amended to read as follows:

Violations of the provisions of KRS 67A.6904 shall be deemed to be unfair labor practices remedial by the *cabinet[department]* in the following manner.

- (1) Whenever it is charged by an urban-county government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the *cabinet[department]* or any hearing officer designated by the *cabinet[department]* shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If, upon the preponderance of the evidence presented, the *cabinet[department]* is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers, firefighter personnel, firefighters, or corrections personnel with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the *cabinet[department]* is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the *cabinet[department]* shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the *cabinet[department]*, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event, the six (6) month period shall be computed from the day of his or her discharge. No final order of the *cabinet[department]* shall require the reinstatement of any individual as a police officer, firefighter personnel, firefighter, or corrections personnel who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.
- (3) Until a final order has been appealed, the *cabinet[department]* at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.
- (4) The *cabinet[department]* or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.
- (5) Any person aggrieved by a final order of the *cabinet[department]* may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

➔Section 63. KRS 67A.6907 is amended to read as follows:

- (1) If, after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications to an existing agreement, the parties to the negotiations are deadlocked, either party or the parties jointly may petition the *cabinet[department]*, by certified mail, return receipt requested, or by registered mail, to initiate fact-finding.
- (2) Upon receipt of a petition to initiate fact-finding, the *cabinet[department]* shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the *secretary[commissioner]* is empowered to utilize his or her office in an effort to effectuate a settlement between the parties through mediation and conciliation.
- (3) Upon completion of the *cabinet's[department's]* investigation, and if a settlement between the parties has still not been reached, the *secretary[commissioner]* shall within ten (10) days appoint a qualified and disinterested person as the impartial chairman of a three (3) member panel to function as the fact-finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) member named by the urban-county government, parties to the deadlocked negotiations.
- (4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the urban-county government is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings, the panel shall, by majority decision, make written findings of fact, recommendations, and opinions to be served on the urban-county government and labor organization parties and released to the public. Expenses incurred by the three (3) member panel in this section shall be paid by the parties involved in the labor dispute.

➔Section 64. KRS 67C.400 is amended to read as follows:

As used in KRS 67C.400 to 67C.418:

- (1) "~~Cabinet~~~~{Department}~~" means the Kentucky ~~{Department of }Labor~~ ~~{within the Environmental and Public Protection}~~Cabinet;
- (2) "Labor organization" means any chartered labor organization of any kind in which police officers participate and which exists for the primary purpose of dealing with consolidated local governments concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (3) "Exclusive representative" means the labor organization which has been designated by the ~~cabinet~~~~{department}~~ as the representative of the majority of police officers in appropriate units or has been so recognized by the consolidated local government;
- (4) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers; and
- (5) "~~Secretary~~~~{Commissioner}~~" means the ~~secretary~~~~{commissioner}~~ of the ~~{Department of }Labor~~ **Cabinet** of the Commonwealth of Kentucky.

➔Section 65. KRS 67C.402 is amended to read as follows:

- (1) Police officers of a consolidated local government shall have, and shall be protected in the exercise of, the right of self-organization, to form, join, or assist any labor organization, to bargain collectively through representatives of their own choosing on questions of wages, hours, and other conditions of employment free from interference, restraint, or coercion.
- (2) Labor organizations designated by the ~~cabinet~~~~{department}~~ as the representative of the majority of police officers in an appropriate unit or recognized by a consolidated local government as the representative of the majority of employees in an appropriate unit shall be the exclusive representative for the employees of that unit for the purpose of collective bargaining with respect to rates of pay, wages, hours, and other conditions of employment.
- (3) Labor organizations recognized by a consolidated local government as the exclusive representative or so designated in accordance with the provisions of this section shall be responsible for representing the interest of all police officers in the unit without discrimination.
- (4) When a labor organization has been designated in accordance with the provisions of this section as the exclusive representative of police officers in an appropriate unit, the mayor of a consolidated local government or his designated authorized representative shall represent the consolidated local government in collective bargaining with the labor organization.

➔Section 66. KRS 67C.408 is amended to read as follows:

- (1) Whenever, in accordance with administrative regulations that may be promulgated by the ~~cabinet~~~~{department}~~, a petition has been filed:
 - (a) By a police officer or group of police officers or any labor organization acting in behalf of thirty percent (30%) of the employees who have signed labor organization affiliation cards and the labor organization showing proof of representation:
 1. Alleging that they wish to be represented for collective bargaining by a labor organization as exclusive representative; or
 2. Asserting that the labor organization which has been certified or is currently being recognized by the consolidated local government as bargaining representative is no longer the representative of the majority of employees in the unit; or
 - (b) By a consolidated local government alleging that one (1) or more labor organizations has presented to it a claim to be recognized as the representative of the majority of police officers in an appropriate unit;

The ~~cabinet~~~~{department}~~ shall investigate the petition, and if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing upon due notice. If the ~~cabinet~~~~{department}~~ finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the police officers desire to be represented and shall certify the result thereof to the legislative council of the consolidated local government.

- (2) The ~~cabinet[department]~~ shall decide in each case, in order to assure police officers the fullest freedom in exercising the rights guaranteed by this section, the unit appropriate for the purposes of collective bargaining, based on such factors as community of interest, wages, hours, and other working conditions of the police officers involved; the history of collective bargaining; and the desires of the police officers.
- (3) An election shall not be directed in any bargaining unit or in any subdivision thereof within which in the preceding twelve (12) month period a valid election has been held. The ~~cabinet[department]~~ shall determine who is eligible to vote in the election and shall promulgate administrative regulations governing the election. In any election where none of the choices on the ballot receives a majority, a runoff shall be conducted, the ballot providing for the selection between the two (2) choices receiving the largest and the second largest number of valid votes cast in the election. A labor organization which receives the majority of the votes cast in an election shall be certified by the ~~cabinet[department]~~ as exclusive representative of all the police officers in the unit.
- (4) Nothing in this or any other law shall be construed to prohibit recognition of a labor organization as the exclusive representative by a consolidated local government by mutual consent.
- (5) No election shall be directed by the ~~cabinet[department]~~ in any bargaining unit where there is in force and effect a valid collective bargaining agreement; provided, however, that no collective bargaining agreement shall bar an election upon the petition of persons not parties thereto where more than four (4) years have elapsed since the execution of the agreement or the last timely renewal, whichever was later.

➔Section 67. KRS 67C.410 is amended to read as follows:

Violations of the provisions of KRS 67C.406 shall be deemed to be unfair labor practices remedial by the ~~cabinet[department]~~ in the following manner.

- (1) Whenever it is charged by a consolidated local government or a labor organization that any person has engaged in or is engaging in any unfair labor practices, the ~~cabinet[department]~~ or any hearing officer designated by the ~~cabinet[department]~~ shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If, upon the preponderance of the evidence presented, the ~~cabinet[department]~~ is of the opinion that any person named in the charge has engaged in or is engaging in an unfair labor practice, then it shall issue a final order requiring the person to cease and desist from the unfair labor practice, and to take any affirmative action including reinstatement of police officers with or without back pay, as will effectuate the policies of this section. The final order may further require the person to make reports from time to time showing the extent to which he or she has complied with the order. If, upon the preponderance of the evidence presented, the ~~cabinet[department]~~ is not of the opinion that the person named in the charge has engaged in or is engaging in the unfair labor practice, then the ~~cabinet[department]~~ shall issue a final order dismissing the complaint. No final order shall issue based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the ~~cabinet[department]~~, unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces, in which event the six (6) month period shall be computed from the day of his or her discharge. No final order of the ~~cabinet[department]~~ shall require the reinstatement of any individual as a police officer who has been suspended or discharged, or the payment to the individual of any back pay, if the individual was suspended or discharged for cause.
- (3) Until a final order has been appealed, the ~~cabinet[department]~~ at any time, upon reasonable notice and in the manner that it deems proper, may modify or set aside, in whole or in part, any final order made or issued by it.
- (4) The ~~cabinet[department]~~ or the charging party may petition for the enforcement of the final order and for appropriate temporary relief or restraining order in the Circuit Court for the county in which the violation occurred.
- (5) Any person aggrieved by a final order of the ~~cabinet[department]~~ may obtain a review of the final order by filing a petition in the Circuit Court assigned jurisdiction under subsection (4) of this section in accordance with KRS Chapter 13B.

➔Section 68. KRS 67C.412 is amended to read as follows:

- (1) If, after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement, the parties to the negotiations are deadlocked, either party or the parties jointly may petition the ~~cabinet[department]~~, by certified mail, return receipt requested, or by registered mail, to initiate fact-finding.

- (2) Upon receipt of a petition to initiate fact-finding, the ~~cabinet~~~~[department]~~ shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the ~~secretary~~~~[commissioner]~~ is empowered to utilize his or her office in an effort to effectuate a settlement between the parties through mediation and conciliation.
- (3) Upon completion of the ~~cabinet's~~~~[department's]~~ investigation, and if a settlement between the parties has still not been reached, the ~~secretary~~~~[commissioner]~~ shall within ten (10) days appoint a qualified and disinterested person as the impartial chairman of a three (3) member panel to function as the fact-finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) member named by the consolidated local government, parties to the deadlocked negotiations.
- (4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the consolidated local government is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact, recommendations, and opinions to be served on the consolidated local government and labor organization (parties) and these shall be released to the public. Expenses incurred by the three (3) member panel in this section shall be paid by the parties involved in the labor dispute.

➔Section 69. KRS 75.180 is amended to read as follows:

- (1) The chief, assistant chief, or highest officer present at the fires answered by his department shall investigate their causes. He may examine witnesses, compel the testimony of witnesses, administer oaths, compel production of evidence and make arrests as provided in KRS 75.160. He may enter any building at all reasonable times for the purpose of examining the building if, in his opinion the building is in danger of fire. He shall report his findings, when requested, to the board, Kentucky Inspection Bureau, and ~~Office of the~~ state fire marshal.
- (2) The chief of the fire department shall direct and control the operation of the fire department and the control of the members in the discharge of their duties. He, and members of the fire department, shall have access to and the use of all cisterns, fireplugs, the waters of the waterworks of private persons and cisterns of private persons for the purpose of extinguishing fires and shall have the power to examine these water supplies at all reasonable times to see that they are in condition for use in case of fire. The chief shall have control of all hose, buildings, engines and other equipment provided for the fire department under direction of the board, or those authorized by the board to exercise this direction, and shall perform such other duties prescribed by the board not inconsistent with law. Upon application within ten (10) days to the board, any owner of property where water is used for firefighting shall be reimbursed in a reasonable amount by the board for water used.

➔Section 70. KRS 76.268 is amended to read as follows:

Annexation to subdistricts may be accomplished by any of the following procedures, as the board may elect:

- (1) (a) After the creation of a construction subdistrict under the provisions of KRS 76.241 to 76.246, the board may, if it deems it advisable, use the authority and procedures granted to sanitation districts by KRS 220.535 to 220.537 to annex territory to a subdistrict, the words "board of directors" being read as "metropolitan sewer district board."
- (b) Language in KRS 220.535 limiting the powers of annexation to a sanitation district in a county not containing a city of the first class shall not be applicable to a metropolitan sewer district which might use this method of annexation to a construction subdistrict even if it is located in a county containing a city of the first class, and the secretary of the ~~Energy and Environment~~~~[Environmental and Public Protection]~~ Cabinet shall function in regard to annexation by it in the same manner and under the same procedures, as set out in KRS 220.535 to 220.537, as he would in his capacity as commissioner of sanitation districts for any sanitation district.
- (2) After the creation of a construction subdistrict under the provisions of KRS 76.241 to 76.246, the board may annex any area, contiguous or noncontiguous, subject to the limitations of KRS 76.242, to the construction subdistrict by making a preliminary order describing the area to be annexed and causing said order to be published pursuant to KRS Chapter 424. The notice so published shall state that objections in writing to the proposed annexation may be filed with the district within thirty (30) days of the date of said notice. The district shall examine and hear all such complaints. It may modify or amend the areas proposed to be annexed; and it shall make a final order, within sixty (60) days of the date of publication of said notice, describing the areas to

be annexed and shall cause the same to be published, pursuant to KRS Chapter 424. A freeholder of land within the area proposed to be annexed may appeal such final order in the manner described in KRS 76.247. In referring to KRS 76.247, this section is not intended to provide for de novo trial.

- (3) In the event the owner or owners of all the property or properties proposed to be annexed to a construction subdistrict shall tender to the district their written request or requests that the district proceed immediately with the annexation of said property or properties, and shall unqualifiedly waive all formalities and substantive rights contained in subsection (2) of this section, the district may thereupon make and publish a final order annexing said property or properties to the construction subdistrict. Said order shall contain a recitation of the receiving of waivers from the owners of all properties to be annexed thereunder. Provided, however, that in all such instances the written request or requests of the owner or owners of all properties proposed to be annexed to a construction subdistrict shall be in recordable form and shall be recorded in the office of the county clerk of the county wherein the property is located; and said clerk is authorized to record such instruments as in the case of mortgages and may charge and receive fees therefor as in the case of mortgages.
- (4) The provisions of subsections (1), (2) and (3) of this section shall not repeal or reduce any existing rights or duties of metropolitan sewer districts, but shall constitute merely a procedure for annexation to construction subdistricts by a metropolitan sewer district.

➔Section 71. KRS 76.410 is amended to read as follows:

Language in KRS 220.535, limiting the powers of annexation to a sanitation district in a county not containing a city of the first class, shall not be applicable to sewer construction districts which may use this method of annexation, even if they are located in a county containing a city of the first class, and the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall function in regard to annexations by them in the same manner and under the same procedures as set out in KRS 220.535 to 220.537 as he would in his capacity as commissioner of sanitation districts for any sanitation district.

➔Section 72. KRS 77.192 is amended to read as follows:

The air pollution control board, in conjunction with the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, shall promulgate administrative regulations, rules, and orders, to implement Section 7412(i)(5) of Title 42, United States Code, relating to alternative emission limitations allowed for early reduction of emissions.

➔Section 73. KRS 77.310 is amended to read as follows:

- (1) If there is reason to believe that a violation of this chapter or of a regulation promulgated under this chapter has occurred within an air pollution control district, the district shall issue and mail to or serve upon the person complained against a written notice of the provision of this chapter or the regulation allegedly violated. The district may schedule a settlement conference before the air pollution control officer or a designee at which the person complained against may appear to answer the charges set out in the notice. The conference shall be scheduled at a time not less than thirty (30) days after the date of notice unless the person complained against waives in writing the thirty (30) day period. Alleged violations that remain unresolved may be scheduled for a hearing under subsection (3) of this section at a time not less than thirty (30) days after a determination that the violation is unresolved unless the person complained against waives in writing the thirty (30) day period. The scheduling of a settlement conference or hearing shall not prevent the negotiation of a settlement of a violation prior to the conference or hearing. At any time, the air pollution control board may determine that a violation shall be resolved as a civil or criminal action in an appropriate court or referred for action to either the United States Environmental Protection Agency or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet instead of being resolved as a district action.
- (2) When permittees or persons not previously heard in connection with the issuance of an order or the making of a determination including, but not limited to, the issuance, denial, modification, or revocation of a permit, consider themselves aggrieved, they may file with the district a petition for a hearing. The petition shall allege that the order or determination is contrary to law or fact and is injurious to the petitioner, stating the grounds and reasons, and demanding a hearing. Unless the board considers the petition frivolous, the air pollution control officer shall serve written notice of the petition on each person named therein and shall schedule a hearing not less than sixty (60) days after the date of the petition unless the person complained against waives in writing the sixty (60) day period. The right to demand a hearing under this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice, or could reasonably have had notice, of the

order or determination complained of. Prior to the hearing, the air pollution control officer may require the parties to meet for settlement purposes.

- (3) Hearings of unresolved violations or petitions for a hearing on orders or determinations shall be held before a qualified hearing officer who, in the discretion of the district, may serve by contract, be paid on a per diem basis, or be a full-time employee of the county not assigned to the district. The district shall provide written notice of the hearing to the person alleged to be in violation or to the petitioner. After the conclusion of the hearing, the hearing officer shall, within thirty (30) days, make a report and recommended order, which shall contain findings of fact and conclusions of law, to the secretary-treasurer. If the secretary-treasurer finds upon written request of the hearing officer that additional time is needed, the secretary-treasurer may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record to the proceedings, and the parties shall be granted the right to file exceptions within fourteen (14) days of receipt. The secretary-treasurer shall schedule a time for the air pollution control board to consider the report, exceptions, and recommended order and to decide the case. The decision shall be served by mail upon all parties and shall be a final order of the board. No order of the board on a Title V permit shall become final for appeal purposes until it is approved by the United States Environmental Protection Agency under the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990.
- (4) The hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practices. A party to a hearing under this section may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original, except as otherwise provided in district regulations.

➔Section 74. KRS 79.080 is amended to read as follows:

- (1) The term "health maintenance organization" for the purposes of this section, means a health maintenance organization as defined in KRS 304.38-030, which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the **Department**~~Office~~ of Insurance as a health maintenance organization and which is qualified under the requirements of the United States Department of Health, Education and Welfare, except as provided in subsection (4) of this section.
- (2) Cities of all classes, counties, and urban-county governments and the agencies of cities, counties, charter county, and urban-county governments are authorized to establish and operate plans for the payment of retirement, disability, health maintenance organization coverage, or hospitalization benefits to their employees and elected officers, and health maintenance organization coverage or hospitalization benefits to the immediate families of their employees and elected officers. The plan may require employees to pay a percentage of their salaries into a fund from which coverage or benefits are paid, or the city, county, charter county, urban-county government, or agency may pay out of its own funds the entire cost of the coverage or benefits. A plan may include a combination of contributions by employees and elected officers and by the city, county, charter county, urban-county government, or agency into a fund from which coverage or benefits are paid, or it may take any form desired by the city, county, charter county, urban-county government, or agency. Each city, county, charter county, urban-county government, or agency may make rules and regulations and do all other things necessary in the establishment and operation of the plan.
- (3) Cities of all classes, counties, charter counties, urban-county governments, the agencies of cities, counties, charter counties, and urban-county governments, and all other political subdivisions of the state may provide disability, hospitalization, or other health or medical care coverage to their officers and employees, including their elected officers, through independent or cooperative self-insurance programs and may cooperatively purchase the coverages.
- (4) Any city, county, charter county, or urban-county government which is a contributing member to any one (1) of the retirement systems administered by the state may participate in the state health insurance coverage program for state employees as defined in KRS 18A.225 to 18A.229. Should any city, county, charter county, or urban-county government opt at any time to participate in the state health insurance coverage program, it shall do so for a minimum of three (3) consecutive years. If after the three (3) year participation period, the city, county, charter county, or urban-county government chooses to terminate participation in the state health insurance coverage program, it will be excluded from further participation for a period of three (3) consecutive years. If a city, county, charter county, or urban-county government, or one (1) of its agencies, terminates participation of

its active employees in the state health insurance coverage program and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, neither the unit of government, or its agency, nor the employees shall receive the state-funded contribution after termination from the state employee health insurance program. The three (3) year participation and exclusion cycles shall take effect each time a city, county, charter county, or urban-county government changes its participation status.

- (5) Any city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons and which provides hospitalization benefits or health maintenance organization coverage to its employees and elected officers, shall annually give its employees an option to elect either standard hospitalization benefits or membership in a qualified health maintenance organization which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside; except that if any city, county, charter county, urban-county government, or agencies of any city, county, charter county, urban-county government, or any other political subdivision of the state which does not have a qualified health maintenance organization engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside, the city, county, charter county, urban-county government, or agencies of the city, county, charter county, urban-county government, or any other political subdivision of the state may annually give its employees an option to elect either standard hospitalization benefits or membership in a health maintenance organization which has been licensed by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and issued a certificate of authority by the ~~Department~~**Office** of Insurance as a health maintenance organization and which is engaged in providing basic health services in a health maintenance service area in which at least twenty-five (25) of the employees reside. Any premium due for health maintenance organization coverage over the amount contributed by the city, county, charter county, urban-county government, or other political subdivision of the state which employs more than twenty-five (25) persons for any other hospitalization benefit shall be paid by the employee.
- (6) If an employee moves his place of residence or employment out of the service area of a health maintenance organization, under which he has elected coverage, into either the service area of another health maintenance organization or into an area of the state not within a health maintenance organization service area, the employee shall be given an option, at the time of the move or transfer, to elect coverage either by the health maintenance organization into which service area he moves or is transferred or to elect standard hospitalization coverage offered by the employer.
- (7) Any plan adopted shall provide that any officer or member of a paid fire or police department who has completed five (5) years or more as a member of the department, but who is unable to perform his duties by reason of heart disease or any disease of the lungs or respiratory tract, is presumed to have contracted his disease while on active duty as a result of strain or the inhalation of noxious fumes, poison or gases, and shall be retired by the pension board under terms of the pension system of which he is a member, if the member passed an entrance physical examination and was found to be in good health as required.
- (8) The term "agency" as used herein shall include boards appointed to operate waterworks, electric plants, hospitals, airports, housing projects, golf courses, parks, health departments, or any other public project.
- (9) After August 1, 1988, except as permitted by KRS 65.156, no new retirement plan shall be created pursuant to this section, and cities which were covered by this section on or prior to August 1, 1988, shall participate in the County Employees Retirement System effective August 1, 1988. Any city, county, charter county, urban-county, or agency thereof which provided a retirement plan for its employees, pursuant to this section, on or prior to August 1, 1988, shall place employees hired after August 1, 1988, in the County Employees Retirement System. The city, county, charter county, urban-county, or agency thereof shall offer employees hired on or prior to August 1, 1988, membership in the County Employees Retirement System under the alternate participation plan as described in KRS 78.530(3), but such employees may elect to retain coverage under this section.

➔Section 75. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each local government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the ~~commissioner~~**executive director** of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose a license fee or tax. No less than eighty-five (85) days

prior to the effective date, the **commissioner**~~[executive director]~~ of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those local governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.

- (2) Any license fee or tax imposed by a local government upon an insurance company with respect to life insurance policies~~[,]~~ may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the local government.
- (3) Any license fee or tax imposed by a local government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the insurance company within each calendar quarter on risks located within the corporate limits of the local government on those classes of business which the insurance company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the local government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the local government.
- (4) The **Department**~~[Office]~~ of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the local government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.
- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the **commissioner**~~[executive director]~~ of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the **Department**~~[Office]~~ of Insurance.
- (7)
 - (a) Upon written request of the legislative body of any local government, at the expense of the requesting local government, which shall be paid in advance by the local government to the **Department**~~[Office]~~ of Insurance, the **Department**~~[Office]~~ of Insurance shall audit, or cause to be audited by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the audit shall be reported to the local government and the insurance company subject to the audit. An insurance company may appeal the findings of the audit conducted under this subsection and any assessment issued pursuant to the audit findings in accordance with the provisions of KRS 91A.0804(4).
 - (b) Willful failure to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
 - (c) If the **Department**~~[Office]~~ of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section, the **Department**~~[Office]~~ of Insurance may assess the responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government. The penalty fee shall be paid to the local government owed the license fee or tax less any administrative costs of the **Department**~~[Office]~~ of Insurance in enforcing this section. Any insurance company or agent held responsible for a penalty fee may request a hearing with the **Department**~~[Office]~~ of Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.

- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurance company shall furnish each local government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
 - (a) Casualty;
 - (b) Automobile;
 - (c) Inland marine;
 - (d) Fire and allied perils;
 - (e) Health; and
 - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the local government is separate of penalties provided for in subsection (7) of this section. In addition, the local government may assess a ten percent (10%) penalty for a tax or fee not paid within thirty (30) days after the due date.
- (10) No license fee or tax imposed under this section shall apply to premiums received on:
 - (a) Policies of group health insurance provided for state employees under KRS 18A.225;
 - (b) Policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under the provisions of KRS Chapter 342;
 - (c) Health insurance policies issued to individuals;
 - (d) Policies issued through Kentucky Access created in Subtitle 17B of KRS Chapter 304; or
 - (e) Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2).
- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990. For purposes of this subsection, a consolidated local government, urban-county government, charter county government, or unified local government shall be considered a county.
- (13) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.
- (14) A county may impose a license fee or tax covering the entire county or may limit the application of the fee or tax to the unincorporated portions of the county.

➔Section 76. KRS 91A.0802 is amended to read as follows:

As used in this chapter:

- (1) "Local government" means a city, county, charter county, consolidated local government, urban-county government, or unified local government;
- (2) "Risk location system or program" means any electronic software, hardware, or other technology verified by the Kentucky ~~Department~~ *Office* of Insurance under KRS 91A.0806 used for locating risks that are subject to taxes or fees under KRS 91A.080; and
- (3) "Tax period" means a twelve (12) month period ending on December 31 of each year.

➔Section 77. KRS 91A.0804 is amended to read as follows:

- (1) The provisions of this section shall provide the sole and exclusive method for the filing of amended returns and requests or assessments by any insurance company, local government, or policyholder for nonpayment, underpayment, or overpayment of any license fees or taxes imposed pursuant to KRS 91A.080 and the appeals from the denial or refusal thereof. For tax periods beginning after December 31, 2008, all amended returns, requests for refunds or credits, and assessments shall be made within two (2) years of the due date of the annual reconciliation provided for in KRS 91A.080(8) for the tax period during which the error was made, except that in the case of fraudulent failure to file a return or the filing of a fraudulent return, the underpayment may be assessed at any time. The provisions of this subsection shall not apply to any refund or credit to an insurance company or policyholder or assessment by a local government that is affected by litigation pending on July 15, 2008.
- (2)
 - (a) Any insurance company that has paid a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for any overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (1) of this section.
 - (b) A request for a refund or credit by an insurance company shall be made by mailing an amended return and supporting documentation to the local government to which the fee or tax was paid. A complete refund request shall include the amended return and supporting documentation showing the total amount of overpayment of license fee or tax that the insurance company believes was erroneously paid and a breakdown of information for each policy upon which a refund or credit is requested, including the location of the risk by street address or, if a street address is unavailable, another appropriate identifier of the physical location, the amount of the erroneous payment, the premium charged, the amount of tax or fee actually collected, the type or types of risk insured, and the period the policy was in force during the taxable year or years.
 - (c) For refund and credit requests submitted for payments made during tax periods after December 31, 2009, the insurance company shall produce proof that it employed risk location systems or programs meeting the requirements of KRS 91A.0806 during the time for which the refund or credit is requested or a copy of **a Department**~~an Office~~ of Insurance order issued pursuant to the administrative regulation promulgated under KRS 91A.0806(3). If the insurance company fails or is unable to produce such proof or a copy of the **Department**~~Office~~ of Insurance order, the local government shall be entitled to keep a penalty in the amount of ten percent (10%) of the refund or credit that would have otherwise been due the insurance company. Any dispute regarding the imposition of a penalty shall be resolved under paragraph (d) of this subsection.
 - (d) If a local government fails to accept the completed amended return or refuses to issue the requested refund or credit within ninety (90) days of its receipt, the insurance company may make application to the **Department**~~Office~~ of Insurance to review the claim. The application shall be filed with the **Department**~~Office~~ of Insurance within thirty (30) days of receipt of the response from the local government or, in the case of a local government's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The **Department**~~Office~~ of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The **commissioner**~~executive director~~ of the **Department**~~Office~~ of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**~~Office~~ of Insurance within sixty (60) days of the issuance of the order.
 - (e) No insurance company shall apply a credit to taxes or fees imposed by KRS 91A.080 without written agreement from the local government, without an order of final agency action from the **Department**~~Office~~ of Insurance order that the refund is due, or without an administrative ruling from the **Department**~~Office~~ of Insurance order that a refund is due. Each violation of this paragraph shall be punishable as provided in KRS 91A.080(7)(b) and (c).
- (3)
 - (a) Any policyholder who has paid to an insurance company a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for an overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection (1) of this section.
 - (b) A request for a refund or credit by a policyholder shall be made by mailing the request to the insurance company to which the fee or tax was paid. The request shall include the name of the policyholder, the

address of the location of the risk insured, the amount of overpayment of license fee or tax that was erroneously paid, the dates of coverage, the amount of the fee or tax that was paid, and the type of risk insured.

- (c) If an insurance company fails to make payment or to grant credit to a policyholder as requested within ninety (90) days of its receipt, the policyholder may make application to the **Department**~~{Office}~~ of Insurance to review the request. The application shall be filed with the **Department**~~{Office}~~ of Insurance within thirty (30) days of receipt of the response from the insurance company or, in the case of an insurance company's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The **Department**~~{Office}~~ of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**~~{Office}~~ of Insurance within sixty (60) days of the issuance of the order.
- (4) (a) If a local government has a reasonable basis to believe that a license fee or tax imposed by it in accordance with KRS 91A.080 has not been paid or has been underpaid, the local government shall request the **Department**~~{Office}~~ of Insurance to conduct an audit pursuant to the provisions of KRS 91A.080(7) within the time provided in subsection (1) of this section.
- (b) If the findings of the audit show that an insurance company did not pay or underpaid the local government, the local government may send an assessment by mail to the insurance company. The notice of assessment shall state the total amount of payment due from the insurance company based upon the findings of the audit conducted pursuant to KRS 91A.080(7), the geographic area affected, and the applicable license fee or tax rate.
- (c) The insurance company may respond to the assessment by either paying the assessment in full within ninety (90) days of its receipt or by filing an appeal of the findings of the audit and the assessment with the **Department**~~{Office}~~ of Insurance within ninety (90) days of the receipt of the assessment. An insurance company appealing the audit findings and assessment shall make application to the **Department**~~{Office}~~ of Insurance and provide notice of the challenge to the local government by certified mail. The **Department**~~{Office}~~ of Insurance shall, within sixty (60) days of the receipt of the completed application, issue an order of final agency action upon the findings of the audit and a determination that the assessment is or is not warranted in whole or in part. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the **Department**~~{Office}~~ of Insurance within sixty (60) days of the issuance of the order.
- (d) If the insurance company fails to make the full payment as requested by the local government or fails to file an application of appeal with the **Department**~~{Office}~~ of Insurance within ninety (90) days of receipt of the assessment, the findings of the audit and the assessment shall be deemed final, and the local government may provide notification to the **Department**~~{Office}~~ of Insurance to impose a penalty in accordance with KRS 91A.080(7)(c). Any penalty imposed because of an insurance company's failure to timely pay the assessment shall be in addition to any penalties imposed as a result of the audit. The notification shall be filed with the **Department**~~{Office}~~ of Insurance within thirty (30) days of the end of the ninety (90) day period provided in paragraph (c) of this subsection. The **Department**~~{Office}~~ of Insurance shall issue an order to the insurance company to pay the assessment and any additional penalties imposed within thirty (30) days of the order, or the **Department**~~{Office}~~ of Insurance may revoke the license of the insurance company under the provisions of KRS 91A.080(7) and KRS Chapter 304.
- (e) The **Department**~~{Office}~~ of Insurance may determine the scope of any audit requested under this subsection and KRS 91A.080. Nothing in this chapter shall preclude the **Department**~~{Office}~~ of Insurance from exercising its discretion to conduct an audit or examination of any insurance company under its authority as otherwise provided in KRS Chapter 304.
- (5) An administrative hearing held pursuant to this section shall be conducted pursuant to KRS Chapter 13B. The hearing officer may compel any information necessary to make a determination. Information concerning rates,

the names and addresses as of policyholders, and the expiration date of policies shall be proprietary and confidential, shall not be divulged to any person or organization not a party to the hearing, shall not be subject to disclosure or to the provisions of KRS 61.870 to 61.884, and the record shall be sealed at the conclusion of the hearing.

- (6) If a refund or credit is received by an insurance company that passed the fee or tax on to the policyholder, and the amount refunded or credited is not owed to another local government, the insurance company shall pass the full amount of the refund or credit, including any collection fee that has been retained by the insurance company pursuant to KRS 91A.080(4), on to the policyholder from whom the fee or tax was collected within ninety (90) days of receipt of the refund or credit. For a refund or credit received by an insurance company for tax periods after December 31, 2009, that is not owed to another local government, the insurance company shall pay a penalty fee of ten percent (10%) of the total amount of the refund or credit due to the policyholder if the insurance company is unable to produce proof of the use of a risk location system as required under subsection (2)(c) of this section.
- (7) No legal action shall be filed by any party prior to the exhaustion of all administrative remedies provided under this section.
- (8)
 - (a) Information on specific policies and policyholders provided to local governments pursuant to subsection (2) of this section shall be considered confidential and proprietary information of an insurance company and shall not be disclosed or subject to disclosure under KRS 61.870 to 61.884. No present or former official or employee of a local government or any other person shall, intentionally and without authorization, inspect or divulge any information acquired by him or her of the affairs of any insurance company, or information regarding specific policies, policyholders, tax schedules, returns, or reports required to be filed with a local government, or any information produced by a hearing or investigation, insofar as the information may have to do with the proprietary information of the insurance company. All county judges/executive, mayors, local government legislative body members, and local government employees whose duties include the fiscal affairs of their local government, shall be deemed to have the necessary authorization to inspect such information. Any person who violates the provisions of this paragraph shall be guilty of a Class A misdemeanor for each offense and the disclosure of information on each policyholder shall constitute a separate offense.
 - (b) Except for local governments that have been certified by the Internal Revenue Service or its agent as being in compliance with IRS safeguard requirements and authorized to receive federal tax information, any proprietary information provided to a local government for the purposes of compliance with subsection (2) of this section and all copies or other records related to such information shall be destroyed in an irreversible, secure, and confidential manner in accordance with KRS 171.410 to 171.740 and the administrative regulations promulgated or approved thereunder. A local government failing to destroy proprietary information in accordance with this paragraph shall be subject to a civil penalty payable to the insurance company of five hundred dollars (\$500) for each offense, and the disclosure of information on each policyholder shall constitute a separate offense. An insurance company may commence a civil action in a court of competent jurisdiction for payment of the civil penalty. The total civil penalty shall not exceed ten thousand dollars (\$10,000) per incident.
 - (c) This subsection shall not preclude the disclosure of information to the **Department**~~{Office}~~ of Insurance or to the legal representative of the local government for purposes of administrative hearings or legal appeals therefrom, nor shall it prohibit the local government from verifying the accuracy of the information with an individual policyholder to whom the information pertains.
- (9) The filing of amended returns, requests for refunds or credits, assessments, and all applications and notification by any party to the **Department**~~{Office}~~ of Insurance for review under this section, shall be sent to the designated party or parties by certified mail, return receipt requested.

➔Section 78. KRS 91A.0806 is amended to read as follows:

- (1) Before January 1, 2009, the **Department**~~{Office}~~ of Insurance shall by administrative regulation establish criteria for the verification of risk location systems and programs. The criteria for verification shall include but not be limited to a requirement that the municipal and county boundary information of a risk location system or program uses the municipal and county boundary data available from the Commonwealth Office of Technology that is based upon municipal and other filings with the Secretary of State.

- (2) Upon application of a vendor or insurance company for verification and payment of a two thousand five hundred dollar (\$2,500) application fee to the **Department**~~{Office}~~ of Insurance, the **department**~~{office}~~ shall test the risk location system or program to determine whether the program shall be verified as meeting the criteria promulgated in the administrative regulation required by subsection (1) of this section. The **Department**~~{Office}~~ of Insurance shall maintain a list of verified risk location systems or programs and shall make the list available to insurance companies and the public. The verification of a risk location system or program shall remain valid for a period of three (3) years unless revoked by the **Department**~~{Office}~~ of Insurance.
- (3) The **Department**~~{Office}~~ of Insurance shall, by administrative regulation, provide an option for an insurance company to apply for a written order by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance that the insurance company has a limited number of risk locations, not exceeding two hundred (200), in the Commonwealth that may be located by other means with an equivalent level of accuracy. Such an order shall remain valid for a period of three (3) years and as long as the insured risk of the insurance company does not exceed two hundred (200) in any calendar year.
- (4) An insurance company shall be deemed to perform due diligence in the location of risks if the insurance company employs a verified risk location system or program in its collection of a tax or fee imposed pursuant to KRS 91A.080 and:
 - (a) Expends reasonable resources to accurately and reliably implement such method to collect and to remit the proper tax or fee due to the local government that has imposed a tax or fee pursuant to KRS 91A.080;
 - (b) Maintains adequate internal controls to correctly include in its database of policyholders the location of the risk insured, in the proper address format, so that matching with the database is accurate;
 - (c) Corrects errors in the assignment of addresses to local taxing jurisdictions within the next renewal period after the insurance company discovers the errors, and, if applicable, reports such errors to the provider of the risk location system or program; and
 - (d) In the case of insurance companies that issue policies covering multiple locations, maintains adequate internal controls and employs an accurate and consistent methodology to correctly prorate multilocation policies to assign risks to appropriate addresses or, if a street address is unavailable, through another appropriate identifier of physical location, and tax jurisdictions.
- (5) Upon the presentation of proof that an insurance company has complied with the provisions of subsection (4) of this section or has received an order of the **Department**~~{Office}~~ of Insurance under the administrative regulation promulgated pursuant to subsection (3) of this section, the insurance company:
 - (a) Shall not be subject to penalties for failure to comply with KRS 91A.080 that may otherwise be imposed pursuant to KRS Chapter 304 or KRS 91A.080(7) for failure of a risk location system to properly locate risks;
 - (b) Shall be held harmless from any liability including but not limited to liability for penalties, except for the tax that is due and interest on the tax that an insurance company has failed to timely remit, that would otherwise be due solely as a result of a failure to properly collect and remit the tax or fee levied pursuant to KRS 91A.080 because of the failure of a risk location system to properly locate risks; and
 - (c) Shall not be subject to penalties under KRS 91A.0804(2)(c).
- (6) On and after January 1, 2010, an insurance company shall use a verified risk location system or program during the calendar year if the total policies issued and renewed by the insurance company in Kentucky in the preceding calendar year is more than two thousand (2,000).

➔Section 79. KRS 91A.0808 is amended to read as follows:

- (1) (a) The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance shall appoint a local premium tax advisory council to provide advice and expertise on the imposition, administration, and collection of taxes and fees imposed pursuant to KRS 91A.080. The council shall be chaired by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance and shall be composed of eight (8) members which shall include two (2) city government representatives nominated by the Kentucky League of Cities, two (2) county government representatives nominated by the Kentucky

Association of Counties, one (1) independent insurance agent, one (1) representative of a domestic insurance company, one (1) representative of a foreign insurance company, and one (1) representative of an insurance trade association. Members shall serve four (4) year terms, except for the initial members whose appointments shall be staggered.

- (b) The chair shall preside over meetings of the advisory council but shall have no vote except that he or she may cast a vote in order to break a tie.
 - (c) The ~~Department~~~~Office~~ of Insurance shall staff and assist the council which shall meet at least two (2) times per year at meetings called by the chair or a majority of the members.
- (2) The council may identify ways to make the system more effective and efficient for all parties by making recommendations on needed legislative changes and providing comments on needed regulatory reforms. In addition, the council may provide information and assistance to insurance companies and local governments regarding procedures and practices related to compliance with provisions of this chapter related to the imposition, administration, and collection of taxes and fees imposed pursuant to KRS 91A.080. At least once each year, the council shall review the criteria for verification of risk location systems or programs established by the ~~Department~~~~Office~~ of Insurance under KRS 91A.0806 and make recommendations for updating and improving the verification criteria.

➔Section 80. KRS 91A.0810 is amended to read as follows:

- (1) Effective December 31, 2008, if the local government premium tax is included in the premium charge to the policyholder, the insurance company shall include on either the renewal certificates or billings the amount of the local government tax charged for the period and the name of the taxing jurisdiction to which the local premium tax is due.
- (2) Before December 31, 2008, each insurance company shall cause each current policyholder to be notified of the policyholder's rights under this chapter. The one (1) time notice may be sent to the policyholder under any mode of communication normally used between the insurance company and the policyholder and may be sent as a separate notice or included as an additional item within routine statements, billings, or other notices. The Kentucky ~~Department~~~~Office~~ of Insurance shall promulgate by administrative regulation the text of such notice, which shall include:
 - (a) A statement that past and future premium charges may include a local insurance premium tax; and
 - (b) A statement that a policyholder who has been erroneously charged or overcharged the local insurance premium tax may obtain information for requesting a refund or credit by contacting the insurance company to which the local insurance premium tax was erroneously paid.
- (3) Any insurance company contacted by a policyholder under subsection (2) of this section shall, within thirty (30) days of the contact, provide the policyholder the full text of KRS 91A.0804(3) to inform the policyholder of the procedural requirements for requesting a refund or a credit. The insurance company may, at its option, include a summary or explanation of the procedural requirements in addition to providing the text.

➔Section 81. KRS 91A.0812 is amended to read as follows:

On a biennial basis beginning on July 15, 2008, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance may impose an assessment for the cost of administering the provisions of this chapter. The assessment shall be made on an equitable basis against all insurance companies and surplus lines brokers subject to KRS 91A.080, provided that the amount of the assessment shall not exceed two hundred dollars (\$200) per insurance company or surplus lines broker.

➔Section 82. KRS 95A.262 is amended to read as follows:

- (1) The Commission on Fire Protection Personnel Standards and Education shall, in cooperation with the Cabinet for Health and Family Services, develop and implement a continuing program to inoculate every paid and volunteer firefighter in Kentucky against hepatitis B. The program shall be funded from revenues allocated to the Firefighters Foundation Program fund pursuant to KRS 136.392 and 42.190. Any fire department which has inoculated its personnel during the period of July 1, 1991 to July 14, 1992, shall be reimbursed from these revenues for its costs incurred up to the amount allowed by the Cabinet for Human Resources for hepatitis B inoculations.
- (2) Except as provided in subsection (3) of this section, the Commission on Fire Protection Personnel Standards and Education shall allot on an annual basis a share of the funds accruing to and appropriated for volunteer fire

department aid to volunteer fire departments in cities of all classes, fire protection districts organized pursuant to KRS Chapter 75, county districts established under authority of KRS 67.083, and volunteer fire departments created as nonprofit corporations pursuant to KRS Chapter 273. The commission shall allot eight thousand dollars (\$8,000) annually to each qualifying department, and beginning on July 1, 2001, the commission shall allot eight thousand two hundred fifty dollars (\$8,250) annually to each qualifying department. Any qualifying department which fails to participate satisfactorily in the Kentucky fire incident reporting system as described in KRS 304.13-380 shall forfeit annually five hundred dollars (\$500) of its allotment. If two (2) or more qualified volunteer fire departments, as defined in KRS 95A.500 to 95A.560, merge after January 1, 2000, then the allotment shall be in accordance with the provisions of KRS 95A.500 to 95A.560. Administrative regulations for determining qualifications shall be based on the number of both paid firefighters and volunteer firemen within a volunteer fire department, the amount of equipment, housing facilities available, and such other matters or standards as will best effect the purposes of the volunteer fire department aid law. A qualifying department shall include at least twelve (12) firefighters, a chief, and at least one (1) operational fire apparatus or one (1) on order. Fifty percent (50%) of the firefighters shall have completed at least one-half (1/2) of one hundred fifty (150) training hours toward certification within the first six (6) months of the first year of the department's application for certification, and there shall be a plan to complete the one hundred fifty (150) training hours within the second year. These personnel, equipment, and training requirements shall not be made more stringent by the promulgation of administrative regulations. No allotment shall exceed the total value of the funds, equipment, lands, and buildings made available to the local fire units from any source whatever for the year in which the allotment is made. A portion of the funds provided for above may be used to purchase group or blanket health insurance and shall be used to purchase workers' compensation insurance, and the remaining funds shall be distributed as set forth in this section.

- (3) There shall be allotted two hundred thousand dollars (\$200,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund that shall be allocated each fiscal year of the biennium to the firefighters training center fund, which is hereby created and established, for the purposes of constructing new or upgrading existing training centers for firefighters. If any moneys in the training center fund remain uncommitted, unobligated, or unexpended at the close of the first fiscal year of the biennium, then such moneys shall be carried forward to the second fiscal year of the biennium, and shall be reallocated to and for the use of the training center fund, in addition to the second fiscal year's allocation of two hundred thousand dollars (\$200,000). Prior to funding any project pursuant to this subsection, a proposed project shall be approved by the Commission on Fire Protection Personnel Standards and Education as provided in subsection (4) of this section and shall comply with state laws applicable to capital construction projects.
- (4) Applications for funding low-interest loans and firefighters' training centers shall be submitted to the Commission on Fire Protection Personnel Standards and Education for their recommendation, approval, disapproval, or modification. The commission shall review applications periodically, and shall, subject to funds available, recommend which applications shall be funded and at what levels, together with any terms and conditions the commission deems necessary.
- (5) Any department or entity eligible for and receiving funding pursuant to this section shall have a minimum of fifty percent (50%) of its personnel certified as recognized by the Commission on Fire Protection Personnel Standards and Education.
- (6) Upon the written request of any department, the Commission on Fire Protection Personnel Standards and Education shall make available a certified training program in a county of which such department is located.
- (7) The amount of reimbursement for any given year for costs incurred by the Kentucky Community and Technical College System for administering these funds, including but not limited to the expenses and costs of commission operations, shall be determined by the commission and shall not exceed five percent (5%) of the total amount of moneys accruing to the Firefighters Foundation Program fund which are allotted for the purposes specified in this section during any fiscal year.
- (8) The commission shall withhold from the general distribution of funds under subsection (2) of this section an amount which it deems sufficient to reimburse volunteer fire departments for equipment lost or damaged beyond repair due to hazardous material incidents.
- (9) Moneys withheld pursuant to subsection (8) of this section shall be distributed only under the following terms and conditions:

- (a) A volunteer fire department has lost or damaged beyond repair items of personal protective clothing or equipment due to that equipment having been lost or damaged as a result of an incident in which a hazardous material (as defined in any state or federal statute or regulation) was the causative agent of the loss;
 - (b) The volunteer fire department has made application in writing to the commission for reimbursement in a manner approved by the commission and the loss and the circumstances thereof have been verified by the commission;
 - (c) The loss of or damage to the equipment has not been reimbursed by the person responsible for the hazardous materials incident or by any other person;
 - (d) The commission has determined that the volunteer fire department does not have the fiscal resources to replace the equipment;
 - (e) The commission has determined that the equipment sought to be replaced is immediately necessary to protect the lives of the volunteer firefighters of the fire department;
 - (f) The fire department has agreed in writing to subrogate all claims for and rights to reimbursement for the lost or damaged equipment to the Commonwealth to the extent that the Commonwealth provides reimbursement to the department; and
 - (g) The department has shown to the satisfaction of the commission that it has made reasonable attempts to secure reimbursement for its losses from the person responsible for the hazardous materials incident and has been unsuccessful in the effort.
- (10) If a volunteer fire department has met all of the requirements of subsection (9) of this section, the commission may authorize a reimbursement of equipment losses not exceeding ten thousand dollars (\$10,000) or the actual amount of the loss, whichever is less.
- (11) Moneys which have been withheld during any fiscal year which remain unexpended at the end of the fiscal year shall be distributed in the normal manner required by subsection (2) of this section during the following fiscal year.
- (12) No volunteer fire department may receive funding for equipment losses more than once during any fiscal year.
- (13) The commission shall make reasonable efforts to secure reimbursement from the responsible party for any moneys awarded to a fire department pursuant to this section.
- (14) There shall be allotted each year of the 1992-93 biennium one million dollars (\$1,000,000), and each year of the 1994-95, 1996-97, 1998-99, and 2000-01 bienniums one million dollars (\$1,000,000) of the insurance premium surcharge proceeds accruing to the Firefighters Foundation Program fund for the purpose of creating a revolving low-interest loan fund, which shall thereafter be self-sufficient and derive its operating revenues from principal and interest payments. The commission, in accordance with the procedures in subsection (4) of this section, may make low-interest loans, and the interest thereon shall not exceed three percent (3%) annually or the amount needed to sustain operating expenses of the loan fund, whichever is less, to volunteer fire departments for the purposes of major equipment purchases and facility construction. Loans shall be made to departments which achieve the training standards necessary to qualify for volunteer fire department aid allotted pursuant to subsection (2) of this section, and which do not have other sources of funds at rates which are favorable given their financial resources. The proceeds of loan payments shall be returned to the loan fund for the purpose of providing future loans. If a department does not make scheduled loan payments, the commission may withhold any grants payable to the department pursuant to subsection (2) of this section until the department is current on its payments. Money in the low-interest loan fund shall be used only for the purposes specified in this subsection. Any funds remaining in the fund at the end of a fiscal year shall be carried forward to the next fiscal year for the purposes of the fund.
- (15) For fiscal year 2004-2005 and each fiscal year thereafter, there is allotted one million dollars (\$1,000,000) from the fund established in KRS 95A.220 to be used by the commission to conduct training-related activities.
- (16) If funding is available from the fund established in KRS 95A.220, the Commission on Fire Protection Personnel Standards and Education may implement the following:
- (a) A program to prepare emergency service personnel for handling potential man-made and non-man-made threats. The commission shall work in conjunction with the *state* fire ~~marshal~~~~marshal's office~~ and

other appropriate agencies and associations to identify and make maps of gas transmission and hazardous liquids pipelines in the state;

- (b) A program to provide and maintain a mobile test facility in each training region established by the Commission on Fire Protection Personnel Standards and Education with equipment to administer Comprehensive Physical Aptitude Tests (CPAT) to ascertain a firefighter's ability to perform the physical requirements necessary to be an effective and safe firefighter;
- (c) A program to provide defensive driving training tactics to firefighters. The commission shall purchase, instruct in the use of, and maintain mobile equipment in each of the training regions, and fund expenses related to equipment replacement;
- (d) A program to annually evaluate equipment adequacy and to provide for annual physical examinations for instructors, adequate protective clothing and personal equipment to meet NFPA guidelines, and to establish procedures for replacing this equipment as needed;
- (e) A program to establish a rotational expansion and replacement program for mobile fleet equipment currently used for training and recertification of fire departments;
- (f) A program to expand and update current EMS, first responder, EMT, and paramedic training and certification instruction; and
- (g) A program to purchase thermal vision devices to comply with the provisions of KRS 95A.400 to 95A.440.

➔Section 83. KRS 96.911 is amended to read as follows:

As used in KRS 96.910 to 96.927, unless the context otherwise requires:

- (1) "City" means an incorporated municipality of any class and a county that has adopted an urban-county government, except those communities served by a metropolitan sewer district, under the provisions of KRS Chapter 76;
- (2) "Governing body" means the municipal legislative body of a city;
- (3) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (4) "Sewer" means any structure or installation for the drainage of liquid wastes, but only insofar as they relate to sanitation and the control of water pollution, as distinguished from the drainage of storm or surface waters; however, where both functions are carried out by the same system, it is to be construed as a sewer;
- (5) "Natural drainage area" means any geographical area within which liquids flow by gravity to a common point, which is necessary, reasonable, or practicable from the standpoint of sewage treatment and disposal, as approved by the cabinet.

➔Section 84. KRS 99.200 is amended to read as follows:

Notwithstanding any requirement of law to the contrary or the absence of direct provision therefor in the instrument under which a fiduciary is acting, every executor, administrator, trustee, guardian, conservator or any other person holding trust funds or acting in a fiduciary capacity, unless the instrument under which such fiduciary is acting expressly forbids, the state, its subdivisions, cities, all other public bodies, all public officers, corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, banking corporations), the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Financial Institutions as conservator, liquidator or rehabilitator of any such person, partnership or corporation, persons, partnerships and corporations organized under or subject to the provisions of the insurance law, the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation, any of which owns or holds any real property within a development area, may grant, sell, lease or otherwise transfer any such real property to a redevelopment corporation, and receive and hold any cash, stocks, notes, mortgages, or other securities or obligations, which they are allowed by law to acquire, exchanged therefor by such redevelopment corporation, and may execute such instruments and do such acts as may be deemed necessary or desirable by them or it and by the redevelopment corporation in connection with the development and the development plan.

➔Section 85. KRS 99.270 is amended to read as follows:

Certificates, bonds and notes, or part interests therein, or any part of an issue thereof, which are secured by a first mortgage on the real property in a development area, or any part thereof, shall be securities in which all the following persons, partnerships or corporations and public bodies or public officers may legally invest the funds within their control, provided that the principal amount secured by such mortgage shall not exceed the limits, if any, imposed by law for such investments by the person, partnership, corporation, public body or public officer making the same: Every executor, administrator, trustee, guardian, conservator or other person or corporation holding trust funds or acting in a fiduciary capacity; the state, its subdivisions, cities, all other public bodies, all public officers; persons, partnerships and corporations organized under or subject to the provisions of the banking law (including savings banks, savings and loan associations, trust companies, banking corporations); the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions as conservator, liquidator or rehabilitator of any such person, partnership or corporation; persons, partnerships or corporations organized under or subject to the provisions of the insurance law; fraternal benefit societies; and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance as conservator, liquidator or rehabilitator of any such person, partnership or corporation.

➔Section 86. KRS 99A.030 is amended to read as follows:

- (1) Prior to or concurrent with the establishment of a neighborhood redevelopment zone, the legislative body of the local government shall adopt by ordinance the BOCA Basic Property Maintenance Code as drafted by the Building Officials and Codes Administrators International, Inc., and the Kentucky Building Code which shall be applicable to all residential buildings within the neighborhood redevelopment zone. The local government shall delegate responsibility for enforcement to the local agency responsible for local enforcement of the state building code, or such other agency deemed best qualified to carry out the responsibilities under this chapter.
- (2) Variances from provisions of the Kentucky Building Code may be granted in specific cases pursuant to the provisions of this subsection.
 - (a) If a submitted plan for rehabilitation of a residential building is disapproved by the local enforcement agency for nonconformity with the building code, the owner or his agent may, in writing, apply to the ~~Department~~~~Office~~ of Housing, Buildings and Construction for a variance from the building code with respect to such plans. In making the determination to approve or disapprove the application for variance, the ~~department~~~~office~~ shall consider:
 1. The architectural and historical significance of the structure;
 2. The health, safety, and welfare of the public;
 3. The costs of complying with the standards;
 4. The ability of the applicant to proceed with the project if the variance is not granted; and
 5. The significance to the neighborhood of the project.

The ~~department~~~~office~~ may impose a reasonable fee for the evaluation of a requested variance.

- (b) The ~~Department~~~~Office~~ of Housing, Buildings and Construction shall respond in writing within twenty (20) working days of the application, and such response shall be binding upon the local enforcement agency. Appeals from the determination of the ~~Department~~~~Office~~ of Housing, Buildings and Construction may be taken to the board of appeals.
 - (c) The ~~Department~~~~Office~~ of Housing, Buildings and Construction shall maintain a central file of all such determinations, making them available upon request, to all interested parties, and using them as precedent for other cases.
 - (d) The Kentucky ~~Department~~~~Office~~ of Housing, Buildings and Construction, the Kentucky State Historic Preservation Office, and the Kentucky Housing Corporation are authorized to establish a joint task force to identify and recommend changes in the state building code as it applies to the rehabilitation of existing housing.
- (3) The United States Secretary of the Interior's standards of rehabilitation shall apply to the rehabilitation of the exterior of any housing listed individually on the National Register of Historic Places or located in an historic district listed on the National Register of Historic Places.

➔Section 87. KRS 99A.060 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance shall approve the issuance of special endorsements on policies of mortgage guaranty insurance by an insurer pursuant to this section. The

~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance within ten (10) days of approval shall notify the executive director of the Kentucky Housing Corporation of the name of the insurer.

- (2) No insurer shall be authorized to issue special endorsements except upon submission of an application to and approval of such application by the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance. In granting such applications the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance shall consider:
 - (a) The financial condition of the insurer;
 - (b) The percentage of defaulted loans insured by the insurer within the past five (5) years; and
 - (c) Such other standards as prescribed by the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance.
- (3) Upon approval by the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance, the insurer may issue special endorsements on policies of mortgage guaranty insurance covering that portion of a mortgage or rehabilitation loan which exceeds ninety percent (90%) but is less than one hundred and twenty-five percent (125%) of the appraised value of the residential building and the property on which it is located after completion of the rehabilitation.
- (4) An insurer shall issue a special endorsement only upon certification by the mortgagee that:
 - (a) The residential property subject to the mortgage or rehabilitation loan is located within the boundaries of a neighborhood development zone established pursuant to KRS 99A.020;
 - (b) The mortgagor is unable to secure the necessary funds for rehabilitation upon reasonable terms and conditions without the guaranty provided by the special endorsement;
 - (c) The loan is an acceptable risk, taking into consideration the need for the rehabilitation, the security for the loan or loans, and the ability of the mortgagor to repay the mortgage or rehabilitation loan; and
 - (d) The mortgage or rehabilitation loan transaction complies with such other terms, conditions and restrictions as may be prescribed by the executive director of the Kentucky Housing Corporation.
- (5) Each mortgagee who holds a mortgage covered by a policy of mortgage guaranty insurance with a special endorsement pursuant to this section shall submit a quarterly report to the executive director of the Kentucky Housing Corporation listing each mortgage or rehabilitation loan covered by such special endorsement and the status of such mortgage or rehabilitation loan.
- (6) The ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance in his discretion or when requested by the executive director of the Kentucky Housing Corporation as needed to protect the mortgage guaranty fund may withdraw the approval to an insurer to issue special endorsements on policies of mortgage guaranty insurance.
- (7) Any insurer subject to approval by the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance may charge a premium for the special endorsement issued pursuant to this section, of which sixty-six percent (66%) shall be remitted to the executive director of the Kentucky Housing Corporation to be used pursuant to KRS 99A.080.

➔Section 88. KRS 104.450 is amended to read as follows:

As used in KRS 104.450 to 104.680, unless the context otherwise requires:

- (1) "Secretary" means the secretary of the ~~Energy and Environment~~~~[Environmental and Public Protection]~~ Cabinet of the Commonwealth of Kentucky.
- (2) "Flood control work" means all land, pumping equipment, buildings, motor vehicles, mowing machines, or any other fixtures, tools or equipment a part of or used in connection with a floodwall or other construction designed to protect an area from being flooded.
- (3) "District" means a flood control district organized and created under the terms of KRS 104.450 to 104.680.
- (4) "Board" or "directors" means the board of directors of a flood control district organized and created under the terms of KRS 104.450 to 104.680.

- (5) "Director" means a person appointed as a member of the board of directors as provided in KRS 104.450 to 104.680.
- (6) "Person" means any person, firm, copartnership, association or corporation other than a public corporation.
- (7) "Public corporation" means any county, city, school district, water district or drainage district, and any other governmental agency or political subdivision clothed with the power of levying general or special taxes or issuing bonds payable from special funds.
- (8) "Land" or "property" means real property.

➔Section 89. KRS 109.011 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds, determines, and declares, as follows:

- (1) That an ever-increasing volume of solid waste both within and outside the Commonwealth is being generated as a result of increasing economic and commercial activity, continuing technological progress, and changes in methods of manufacturing, packaging, and marketing of consumer products, which results in additional solid wastes discarded by the users of these products;
- (2) That the continued economic and population growth of the Commonwealth has required increased industrial and commercial expansion and has made necessary the demolition of obsolete structures, the construction of new structures, the provision of highways and other avenues of transportation, and the construction and installation of public works which, together with pre-existing commercial, industrial, and agricultural operations, have resulted in the generation of further volumes of solid waste;
- (3) That the handling of solid wastes has been primarily carried out through the dumping of wastes on open soil and in landfills, which in some cases are inimical to the public health, safety, and welfare;
- (4) That by the enactment by the Congress of the United States of the Resource Conservation and Recovery Act of 1976 (Public Law 94-580), as amended, the collection, sanitary disposal, and recovery of solid waste has been determined to be a matter of nationwide importance, recognizing that the management of solid waste should continue to be primarily the function of state, regional, and local agencies; and that pursuant to this federal law, the Commonwealth has taken and will take certain actions in respect to the planning and implementation of solid waste plans within the guidelines of time requirements set forth in this federal law;
- (5) That as a result of the conditions described in the foregoing findings, problems of solid waste collection, management, and treatment, and resource recovery activities in connection therewith have become a matter of statewide concern necessitating action by the General Assembly to:
 - (a) Enable responsible planning and management agencies to be created to define solid waste management requirements, with all of the foregoing subject to regulation by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet;
 - (b) Assist those units of government primarily responsible for the management of solid waste and the acquisition, financing and operation of facilities to dispose of solid waste to fulfill their functions in a responsible and proper manner with primary emphasis on the regionalization of these functions; and
 - (c) Reduce the amount of solid waste generated and disposed in Kentucky;
- (6) That it is the intent of the General Assembly of the Commonwealth of Kentucky that the primary responsibility for adequate solid waste collection, management, treatment, disposal, and resource recovery shall rest with combinations of counties and waste management districts, subject to standards set by administrative regulations adopted by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. In those cities currently operating solid waste management systems, the city and county may assume joint responsibility of preparing a solid waste management plan. If it is in the best public interest to do so and with the mutual agreement of both the county and city, a county may delegate responsibility for adequate collection, management, treatment, disposal, or materials recovery to a city. This delegation of responsibility is contingent upon the approval of a solid waste management plan by the cabinet. The purpose of delegating responsibilities shall be to effectuate the safe and sanitary management, use, and handling of solid waste, the protection of the health, welfare, and safety of the citizens and inhabitants of the Commonwealth, and for making the most efficient use of all resources for the benefit of the citizens and inhabitants of the Commonwealth;
- (7) That the General Assembly recognizes the generation of solid waste is inevitable, but much of it is unnecessary and should be discouraged. However, where solid waste does exist, it should be considered to the extent

possible as a valuable resource, and be made use of wherever and whenever desirable and economically justifiable. Therefore, it shall be the policy of the Commonwealth to, above all things, encourage resource conservation and preservation of our natural resources before waste contributes in a needless fashion to the volumes of solid waste and litter produced by our society; but in dealing with existing solid waste, materials recovery from the solid waste stream is deemed to be the most environmentally sound alternative for handling waste;

- (8) It is not the intent of this chapter to prohibit or discourage the participation of the private sector in any aspect of solid waste management. Moreover, it is preferable for solid waste management functions to be performed by the private sector when it is in the best interests of the public and conforms with the policies and provisions in this chapter;
- (9) It is the intent of the General Assembly that counties and waste management districts cooperate to develop and implement the solid waste management plans mandated by KRS Chapter 224 and the administrative regulations adopted by the cabinet with the goal of regionalizing the management of solid waste;
- (10) It is the intent of the General Assembly that waste requiring disposal in municipal solid waste disposal facilities be reduced and that solid waste be managed in an environmentally protective manner;
- (11) Notwithstanding any provision of KRS Chapters 82, 83, and 94, it is the intent of the General Assembly that this chapter and KRS 67.083(3)(o) provide counties with authority to develop a solid waste management system for solid waste generated within the geographical boundaries of the county, consistent with the provisions of this chapter and KRS Chapter 224. It is further the intent of the General Assembly that cities be authorized to finance, own, and operate solid waste management systems with the consent of the county or by contract with the county, except that in the event a county fails to submit a solid waste management plan pursuant to KRS Chapter 224 cities may proceed to develop solid waste management systems consistent with administrative regulations adopted by the cabinet pursuant to KRS Chapter 224. Cities that develop solid waste management facilities pursuant to this section shall have all the powers and restrictions set forth for counties in KRS 109.041, 109.056, and 109.059; and
- (12) It is the intent of the General Assembly that waste management districts which are formed and operated under this chapter shall comply with the standards set by administrative regulations adopted by the cabinet pursuant to KRS Chapter 224.

➔Section 90. KRS 109.012 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

- (1) "Board of directors" or "board" means the governing body of a solid waste management district.
- (2) "City" means an existing city of any class.
- (3) "County" means the governing body of a county, including urban-county governments.
- (4) "Cabinet" means the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (5) "Long-term contract" means a contract of sufficient duration to assure the viability of a resource recovery facility to the extent that such viability depends upon solid waste supply.
- (6) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (7) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to KRS Chapter 224 and administrative regulations adopted by the cabinet.

- (8) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body.
- (9) "Solid waste" means any garbage, refuse, sludge, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste, coal mining by-products, refuse and overburden), agricultural operations, and from community activities, but does not include those materials including, but not limited to, sand, soil, rock, gravel, or bridge debris extracted as part of a public road construction project funded wholly or in part with state funds, recovered material, special wastes as designated by KRS 224.50-760, solid or dissolved material in domestic sewage, manure, crops, crop residue, or a combination thereof which are placed on the soil for return to the soil as fertilizers or soil conditions, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- (a) "Household solid waste" means solid waste, including garbage and trash generated by single and multiple family residences, hotels, motels, bunk houses, ranger stations, crew quarters, and recreational areas such as picnic areas, parks, and camp grounds;
- (b) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other service and nonmanufacturing activities, excluding household and industrial solid waste;
- (c) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste or a special waste as designated by KRS 224.50-760, including, but not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer or agricultural chemicals; food and related products or by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and
- (d) "Municipal solid waste" means household solid waste and commercial solid waste.
- (10) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment and disposal, which shall be in accordance with a cabinet approved county or multicounty solid waste management plan of the cabinet.
- (11) "Solid waste management area" or "area" means any geographical area established or, designated by the cabinet in accordance with the provisions of KRS Chapter 224.
- (12) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance.
- (13) "Waste management district" means any county or group of counties electing to form under the provisions of KRS 109.115 and operate in conformance with the provisions of this chapter and with Section 4006 of the Resource Conservation and Recovery Act of 1976, as amended (P.L. 94-580).

➔Section 91. KRS 131.1815 is amended to read as follows:

- (1) Whenever it is determined that a taxpayer, who holds a license under KRS Chapter 243, is a delinquent taxpayer as defined in subsection (2) of this section, the department may, after giving notice as provided in subsection (3) of this section, submit the name of the taxpayer to the ~~Department Office~~ of Alcoholic Beverage Control for revocation of any license issued under KRS Chapter 243.
- (2) Any of the following situations shall be sufficient to cause a taxpayer to be classified as a "delinquent taxpayer" for purposes of this section:

- (a) When a taxpayer has an overdue state tax liability arising directly or indirectly from the manufacture, sale, transportation, or distribution of alcoholic beverages, for which all protest and appeal rights granted by law have expired, and the taxpayer has been contacted by the department concerning the overdue tax liability. This does not include a taxpayer who is making current timely installment payments on the overdue tax liability under agreement with the department.
 - (b) When a taxpayer has not filed a required tax return as of ninety (90) days after the due date or after the extended due date, and the taxpayer has been contacted by the department concerning the delinquent return.
 - (c) When an owner, partner, or corporate officer of a proprietorship, partnership, or corporation holding a license under KRS Chapter 243 held a similar position in a business whose license was revoked as a "delinquent taxpayer," and the tax liability remains unpaid as of ninety (90) days after the due date.
- (3) At least twenty (20) days before submitting a taxpayer's name to the **Department**~~{Office}~~ of Alcoholic Beverage Control as provided in subsection (1) of this section, the department shall notify the taxpayer by certified mail that the action is to be taken. The notice shall state the reason for the action and shall set out the amount of any tax liability including any applicable penalties and interest and any other area of noncompliance that must be satisfied in order to prevent the submission of his name to the **Department**~~{Office}~~ of Alcoholic Beverage Control as a delinquent taxpayer.

➔Section 92. KRS 131.190 is amended to read as follows:

- (1) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business. This prohibition does not extend to information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws, nor does it extend to any matter properly entered upon any assessment record, or in any way made a matter of public record, nor does it preclude furnishing any taxpayer or his properly authorized agent with information respecting his own return. Further, this prohibition does not preclude the commissioner or any employee of the Department of Revenue from testifying in any court, or from introducing as evidence returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws. The commissioner or the commissioner's designee may provide an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer.
- (2) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Department of Revenue under the gasoline excise tax law may be made public by the department.
- (4) Access to and inspection of information received from the Internal Revenue Service is for Department of Revenue use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, or any other person.

- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.
- (7) Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.

➔Section 93. KRS 131.310 is amended to read as follows:

There is hereby created an administrative review agency which shall be known as the "Kentucky Board of Tax Appeals." ***It is attached to the Public Protection Cabinet for administrative purposes, except as provided in KRS 131.330.***

➔Section 94. KRS 131.330 is amended to read as follows:

The Kentucky Board of Tax Appeals, subject to the provisions of KRS 18A.005 to 18A.185, shall appoint ***an executive director***~~a clerk~~ of the Kentucky Board of Tax Appeals with the qualifications hereinafter prescribed, and such ~~clerical~~ assistance as authorized by the ***Public Protection***~~Finance and Administration~~ Cabinet. The ***executive director***~~clerk~~ of the Kentucky Board of Tax Appeals shall be a person holding a degree from an accredited college or university.

➔Section 95. KRS 131.990 is amended to read as follows:

- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
- (2)
 - (a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
 - (b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
 - (e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.
- (3) Any person who willfully fails to comply with the rules and regulations promulgated by the Department of Revenue for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).

- (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.
- (6) (a) Any person or financial institution that fails to comply with the provisions of KRS 131.672 and 131.674 within ninety (90) days after notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.
- (b) Any financial institution that fails or refuses to comply with the provisions of KRS 131.672 and 131.674 within one hundred twenty (120) days after the notification by the Department of Revenue shall, unless the failure is due to reasonable cause as defined in KRS 131.010, forfeit its right to do business within the Commonwealth, unless and until the financial institution is in compliance. Upon notification by the Department of Revenue, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions shall, as applicable, revoke the authority of the financial institution or its agents to do business in the Commonwealth.

➔Section 96. KRS 132.010 is amended to read as follows:

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

- (1) "Department" means the Department of Revenue.
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (3) "Real property" includes all lands within this state and improvements thereon.
- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.
- (7) "Net assessment growth" means the difference between:
 - (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and
 - (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
 - (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
 - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;

- (c) The value of improvements to existing nonresidential property;
- (d) The value of new residential improvements to property;
- (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
- (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
- (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
- (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and
- (i) The value of improvements to real property previously under assessment moratorium.

"Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.

(9) "Agricultural land" means:

- (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;
- (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
- (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.

(10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.

(11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:

- (a) Relative percentages of tillable land, pasture land, and woodland;
- (b) Degree of productivity of the soil;
- (c) Risk of flooding;
- (d) Improvements to and on the land that relate to the production of income;
- (e) Row crop capability including allotted crops other than tobacco;
- (f) Accessibility to all-weather roads and markets; and
- (g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.

(12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.

(13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.

- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.
- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.
- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.
- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
 - (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.
 - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
 - (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
 - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (18) "Hazardous substances" shall have the meaning provided in KRS 224.01-400.
- (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400.
- (20) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115.
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, or 224.60-135 where the ***Energy and Environment*** ~~Environmental and Public Protection~~ Cabinet has made a determination that:
 - (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;
 - (b) The property owner *has* made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;
 - (c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 - (d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - (e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 - (f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
 - 1. Direct or indirect familial relationship;

2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 3. Reorganization of a business entity that was potentially liable.
- (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property.

➔Section 97. KRS 132.020 is amended to read as follows:

- (1) The owner or person assessed shall pay an annual ad valorem tax for state purposes at the rate of:
- (a) Thirty-one and one-half cents (\$0.315) upon each one hundred dollars (\$100) of value of all real property directed to be assessed for taxation;
 - (b) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all privately-owned leasehold interests in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, upon the prior approval of the Kentucky Economic Development Finance Authority, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
 - (c) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all qualifying voluntary environmental remediation property, provided the property owner has corrected the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant or the petroleum storage tank environmental assurance fund. This rate shall apply for a period of three (3) years following the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet's issuance of a No Further Action Letter or its equivalent, after which the regular tax rate shall apply;
 - (d) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of all tobacco directed to be assessed for taxation;
 - (e) One and one-half cents (\$0.015) upon each one hundred dollars (\$100) of value of unmanufactured agricultural products;
 - (f) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operations;
 - (g) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all livestock and domestic fowl;
 - (h) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
 - (i) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all machinery actually engaged in manufacturing;
 - (j) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all commercial radio, television, and telephonic equipment directly used or associated with electronic equipment which broadcasts electronic signals to an antenna;
 - (k) Fifteen cents (\$0.15) upon each one hundred dollars (\$100) of value of all property which has been certified as a pollution control facility as defined in KRS 224.01-300;
 - (l) One-tenth of one cent (\$0.001) upon each one hundred dollars (\$100) of value of all property which has been certified as an alcohol production facility as defined in KRS 247.910, or as a fluidized bed energy production facility as defined in KRS 211.390;

- (m) Twenty-five cents (\$0.25) upon each one hundred dollars (\$100) of value of motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043;
 - (n) Five cents (\$0.05) upon each one hundred dollars (\$100) of value of goods held for sale in the regular course of business, which includes machinery and equipment held in a retailer's inventory for sale or lease originating under a floor plan financing arrangement; and raw materials, which includes distilled spirits and distilled spirits inventory, and in-process materials, which includes distilled spirits and distilled spirits inventory, held for incorporation in finished goods held for sale in the regular course of business;
 - (o) Ten cents (\$0.10) per one hundred dollars (\$100) of assessed value on the operating property of railroads or railway companies that operate solely within the Commonwealth;
 - (p) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on aircraft not used in the business of transporting persons or property for compensation or hire;
 - (q) One and one-half cents (\$0.015) per one hundred dollars (\$100) of assessed value on federally documented vessels not used in the business of transporting persons or property for compensation or hire, or for other commercial purposes; and
 - (r) Forty-five cents (\$0.45) upon each one hundred dollars (\$100) of value of all other property directed to be assessed for taxation shall be paid by the owner or person assessed, except as provided in KRS 132.030, 132.200, 136.300, and 136.320, providing a different tax rate for particular property.
- (2) Notwithstanding subsection (1)(a) of this section, the state tax rate on real property shall be reduced to compensate for any increase in the aggregate assessed value of real property to the extent that the increase exceeds the preceding year's assessment by more than four percent (4%), excluding:
- (a) The assessment of new property as defined in KRS 132.010(8);
 - (b) The assessment from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The assessment from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1)(b) of this section. In any year in which the aggregate assessed value of real property is less than the preceding year, the state rate shall be increased to the extent necessary to produce the approximate amount of revenue that was produced in the preceding year from real property.
- (3) By July 1 each year, the department shall compute the state tax rate applicable to real property for the current year in accordance with the provisions of subsection (2) of this section and certify the rate to the county clerks for their use in preparing the tax bills. If the assessments for all counties have not been certified by July 1, the department shall, when either real property assessments of at least seventy-five percent (75%) of the total number of counties of the Commonwealth have been determined to be acceptable by the department, or when the number of counties having at least seventy-five percent (75%) of the total real property assessment for the previous year have been determined to be acceptable by the department, make an estimate of the real property assessments of the uncertified counties and compute the state tax rate.
- (4) If the tax rate set by the department as provided in subsection (2) of this section produces more than a four percent (4%) increase in real property tax revenues, excluding:
- (a) The revenue resulting from new property as defined in KRS 132.010(8);
 - (b) The revenue from property which is subject to tax increment financing pursuant to KRS Chapter 65; and
 - (c) The revenue from leasehold property which is owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103 and entitled to the reduced rate of one and one-half cents (\$0.015) pursuant to subsection (1) of this section;
- the rate shall be adjusted in the succeeding year so that the cumulative total of each year's property tax revenue increase shall not exceed four percent (4%) per year.
- (5) The provisions of subsection (2) of this section notwithstanding, the assessed value of unmined coal certified by the department after July 1, 1994, shall not be included with the assessed value of other real property in

determining the state real property tax rate. All omitted unmined coal assessments made after July 1, 1994, shall also be excluded from the provisions of subsection (2) of this section. The calculated rate shall, however, be applied to unmined coal property, and the state revenue shall be devoted to the program described in KRS 146.550 to 146.570, except that four hundred thousand dollars (\$400,000) of the state revenue shall be paid annually to the State Treasury and credited to the ***Department for Energy Development and Independence***~~[Office of Energy Policy]~~ for the purpose of public education of coal-related issues.

➔Section 98. KRS 132.200 is amended to read as follows:

All property subject to taxation for state purposes shall also be subject to taxation in the county, city, school, or other taxing district in which it has a taxable situs, except the class of property described in KRS 132.030 and the following classes of property, which shall be subject to taxation for state purposes only:

- (1) Farm implements and farm machinery owned by or leased to a person actually engaged in farming and used in his farm operation;
- (2) Livestock, ratite birds, and domestic fowl;
- (3) Capital stock of savings and loan associations;
- (4) Machinery actually engaged in manufacturing, products in the course of manufacture, and raw material actually on hand at the plant for the purpose of manufacture. The printing, publication, and distribution of a newspaper or operating a job printing plant shall be deemed to be manufacturing;
- (5)
 - (a) Commercial radio, television, and telephonic equipment used to receive, capture, produce, edit, enhance, modify, process, store, convey, or transmit audio or video content or electronic signals which are broadcast over the air;
 - (b) Equipment directly used or associated with the equipment identified in paragraph (a) of this subsection, including radio and television towers used to transmit or facilitate the transmission of the signal broadcast, but excluding telephone and cellular communications towers; and
 - (c) Equipment used to gather or transmit weather information;
- (6) Unmanufactured agricultural products. They shall be exempt from taxation for state purposes to the extent of the value, or amount, of any unpaid nonrecourse loans thereon granted by the United States government or any agency thereof, and except that cities and counties may each impose an ad valorem tax of not exceeding one and one-half cents (\$0.015) on each one hundred dollars (\$100) of the fair cash value of all unmanufactured tobacco and not exceeding four and one-half cents (\$0.045) on each one hundred dollars (\$100) of the fair cash value of all other unmanufactured agricultural products, subject to taxation within their limits that are not actually on hand at the plants of manufacturing concerns for the purpose of manufacture, nor in the hands of the producer or any agent of the producer to whom the products have been conveyed or assigned for the purpose of sale;
- (7) All privately owned leasehold interest in industrial buildings, as defined under KRS 103.200, owned and financed by a tax-exempt governmental unit, or tax-exempt statutory authority under the provisions of KRS Chapter 103, except that the rate shall not apply to the proportion of value of the leasehold interest created through any private financing;
- (8) Property which has been certified as a pollution control facility as defined in KRS 224.01-300;
- (9) Property which has been certified as an alcohol production facility as defined in KRS 247.910;
- (10) On and after January 1, 1977, the assessed value of unmined coal shall be included in the formula contained in KRS 132.590(9) in determining the amount of county appropriation to the office of the property valuation administrator;
- (11) Tangible personal property located in a foreign trade zone established pursuant to 19 U.S.C. sec. 81, provided that the zone is activated in accordance with the regulations of the United States Customs Service and the Foreign Trade Zones Board;
- (12) Motor vehicles qualifying for permanent registration as historic motor vehicles under the provisions of KRS 186.043. However, nothing herein shall be construed to exempt historical motor vehicles from the usage tax imposed by KRS 138.460;
- (13) Property which has been certified as a fluidized bed energy production facility as defined in KRS 211.390;

- (14) All motor vehicles held for sale in the inventory of a licensed motor vehicle dealer, which are not currently titled and registered in Kentucky and are held on an assignment pursuant to the provisions of KRS 186A.230, and all motor vehicles with a salvage title held by an insurance company;
- (15) Machinery or equipment owned by a business, industry, or organization in order to collect, source separate, compress, bale, shred, or otherwise handle waste materials if the machinery or equipment is primarily used for recycling purposes as defined in KRS 139.010;
- (16) New farm machinery and other equipment held in the retailer's inventory for sale under a floor plan financing arrangement by a retailer, as defined under KRS 139.010;
- (17) New boats and new marine equipment held for retail sale under a floor plan financing arrangement by a dealer registered under KRS 235.220;
- (18) Aircraft not used in the business of transporting persons or property for compensation or hire if an exemption is approved by the county, city, school, or other taxing district in which the aircraft has its taxable situs;
- (19) Federally documented vessels not used in the business of transporting persons or property for compensation or hire or for other commercial purposes, if an exemption is approved by the county, city, school, or other taxing district in which the federally documented vessel has its taxable situs;
- (20) Any nonferrous metal that conforms to the quality, shape, and weight specifications set by the New York Mercantile Exchange's special contract rules for metals, and which is located or stored in a commodity warehouse and held on warrant, or for which a written request has been made to a commodity warehouse to place it on warrant, according to the rules and regulations of a trading facility. In this subsection:
 - (a) "Commodity warehouse" means a warehouse, shipping plant, depository, or other facility that has been designated or approved by a trading facility as a regular delivery point for a commodity on contracts of sale for future delivery; and
 - (b) "Trading facility" means a facility that is designated by or registered with the federal Commodity Futures Trading Commission under 7 U.S.C. secs. 1 et seq. "Trading facility" includes the Board of Trade of the City of Chicago, the Chicago Mercantile Exchange, and the New York Mercantile Exchange;
- (21) Qualifying voluntary environmental remediation property for a period of three (3) years following the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet's issuance of a No Further Action Letter or its equivalent, pursuant to the correction of the effect of all known releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products located on the property consistent with a corrective action plan approved by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant program of the petroleum storage tank environmental assurance fund;
- (22) Biotechnology products held in a warehouse for distribution by the manufacturer or by an affiliate of the manufacturer. For the purposes of this section:
 - (a) "Biotechnology products" means those products that are applicable to the prevention, treatment, or cure of a disease or condition of human beings and that are produced using living organisms, materials derived from living organisms, or cellular, subcellular, or molecular components of living organisms. Biotechnology products does not include pharmaceutical products which are produced from chemical compounds;
 - (b) "Warehouse" includes any establishment that is designed to house or store biotechnology products, but does not include blood banks, plasma centers, or other similar establishments; and
 - (c) "Affiliate" means an individual, partnership, or corporation that directly or indirectly owns or controls, or is owned or controlled by, or is under common ownership or control with, another individual, partnership, or corporation.

➔Section 99. KRS 132.488 is amended to read as follows:

- (1) The assessment of all motorboats as defined in KRS 235.010 shall be administered in the same manner and according to the same procedures provided for motor vehicles in KRS 132.487.

- (2) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall provide access to all records of motorboat registrations as necessary to prepare and maintain a complete tax roll of motorboats throughout each year.

➔Section 100. KRS 136.335 is amended to read as follows:

Beginning with calendar year 2000, every life insurance company incorporated under the laws of and doing business in Kentucky shall make an irrevocable election whether to be taxed under the provisions of KRS 136.320 or 136.330. For insurance companies incorporated under the laws of and doing business in Kentucky, prior to January 1, 2000, the election shall be filed with the ***commissioner***~~[executive director]~~ of insurance and the commissioner of the Department of Revenue on or before January 1, 2000. For insurance companies applying for a certificate to do business in Kentucky as a domestic life insurance company, after January 1, 2000, the election shall be filed with the company's initial application for certificate of authority to do business in Kentucky.

➔Section 101. KRS 136.392 is amended to read as follows:

- (1) (a) Every domestic, foreign, or alien insurer, other than life and health insurers, which is either subject to or exempted from Kentucky premium taxes as levied pursuant to the provisions of either KRS 136.340, 136.350, 136.370, or 136.390, shall charge and collect a surcharge of one dollar and fifty cents (\$1.50) upon each one hundred dollars (\$100) of premium, assessments, or other charges, except for those municipal premium taxes, made by it for insurance coverage provided to its policyholders, on risk located in this state, whether the charges are designated as premiums, assessments, or otherwise. The premium surcharge shall be collected by the insurer from its policyholders at the same time and in the same manner that its premium or other charge for the insurance coverage is collected. The premium surcharge shall be disclosed to policyholders pursuant to administrative regulations promulgated by the ***commissioner***~~[executive director]~~ of insurance. However, no insurer or its agent shall be entitled to any portion of any premium surcharge as a fee or commission for its collection. On or before the twentieth day of each month, each insurer shall report and remit to the Department of Revenue, on forms as it may require, all premium surcharge moneys collected by it during its preceding monthly accounting period less any moneys returned to policyholders as applicable to the unearned portion of the premium on policies terminated by either the insured or the insurer. Insurers with an annual liability of less than one thousand dollars (\$1,000) for each of the previous two (2) calendar years may report and remit to the Department of Revenue all premium surcharge moneys collected on a calendar year basis on or before the twentieth day of January of the following calendar year. The funds derived from the premium surcharge shall be deposited in the State Treasury, and shall constitute a fund allocated for the uses and purposes of the Firefighters Foundation Program fund, KRS 95A.220 and 95A.262, and the Law Enforcement Foundation Program fund, KRS 15.430.
- (b) Effective July 1, 1992, the surcharge rate in paragraph (a) of this subsection shall be adjusted by the commissioner of revenue to a rate calculated to provide sufficient funds for the uses and purposes of the Firefighters Foundation Program fund as prescribed by KRS 95A.220 and 95A.262 and the Law Enforcement Foundation Program fund as prescribed by KRS 15.430 for each fiscal year. The rate shall be calculated using as its base the number of local government units eligible for participation in the funds under applicable statutes as of January 1, 1994. To allow the commissioner of revenue to calculate an appropriate rate, the secretary of the ~~[Environmental and]~~ Public Protection Cabinet and the secretary for the Justice and Public Safety Cabinet shall certify to the commissioner of revenue, no later than January 1 of each year, the estimated budgets for the respective funds specified above, including any surplus moneys in the funds, which shall be incorporated into the consideration of the adjusted rate for the next biennium. As soon as practical, the commissioner of revenue shall advise the ***commissioner***~~[executive director]~~ of insurance of the new rate and the ***commissioner***~~[executive director]~~ shall inform the affected insurers. The rate adjustment process shall continue on a biennial basis.
- (2) Within five (5) days after the end of each month, all insurance premium surcharge proceeds deposited in the State Treasury as set forth in this section shall be paid by the State Treasurer into the Firefighters Foundation Program fund trust and agency account and the Law Enforcement Foundation Program fund trust and agency account. The amount paid into each account shall be proportionate to each fund's respective share of the total deposits, pursuant to KRS 42.190. Moneys deposited to the Law Enforcement Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 15.410 to 15.500, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of

three million dollars (\$3,000,000) shall lapse. On and after July 1, 1999, moneys in this account shall not lapse. Money deposited to the Firefighters Foundation Program fund trust and agency account shall not be disbursed, expended, encumbered, or transferred by any state official for uses and purposes other than those prescribed by KRS 95A.200 to 95A.300, except that beginning with fiscal year 1994-95, through June 30, 1999, moneys remaining in the account at the end of the fiscal year in excess of three million dollars (\$3,000,000) shall lapse, but moneys in the revolving loan fund established in KRS 95A.262 shall not lapse. On and after July 1, 1999, moneys in this account shall not lapse.

- (3) Insurance premium surcharge funds collected from the policyholders of any domestic mutual company, cooperative, or assessment fire insurance company shall be deposited in the State Treasury, and shall be paid monthly by the State Treasurer into the Firefighters Foundation Program fund trust and agency account as provided in KRS 95A.220 to 95A.262. However, insurance premium surcharge funds collected from policyholders of any mutual company, cooperative, or assessment fire insurance company which transfers its corporate domicile to this state from another state after July 15, 1994, shall continue to be paid into the Firefighters Foundation Program fund and the Law Enforcement Foundation Program fund as prescribed.
- (4) No later than July 1 of each year, the ~~Department~~~~Office~~ of Insurance shall provide the Department of Revenue with a list of all Kentucky-licensed property and casualty insurers and the amount of premium volume collected by the insurer for the preceding calendar year as set forth on the annual statement of the insurer. No later than September 1 of each year, the Department of Revenue shall calculate an estimate of the premium surcharge due from each insurer subject to the insurance premium surcharge imposed pursuant to this section, based upon the surcharge rate imposed pursuant to this section and the amount of the premium volume for each insurer as reported by the ~~Department~~~~Office~~ of Insurance. The Department of Revenue shall compare the results of this estimate with the premium surcharge paid by each insurer during the preceding year and shall provide the Legislative Research Commission, the Commission on Fire Protection Personnel Standards and Education, the Kentucky Law Enforcement Council, and the ~~Department~~~~Office~~ of Insurance with a report detailing its findings on a cumulative basis. In accordance with KRS 131.190, the Department of Revenue shall not identify or divulge the confidential tax information of any individual insurer in this report.
- (5) The insurance premiums surcharge provided in this section shall not apply to premiums collected from the following:
 - (a) The federal government;
 - (b) Resident educational and charitable institutions qualifying under Section 501(c)(3) of the Internal Revenue Code;
 - (c) Resident nonprofit religious institutions for real, tangible, and intangible property coverage only;
 - (d) State government for coverage of real property; or
 - (e) Local governments for coverage of real property.

➔Section 102. KRS 136.990 is amended to read as follows:

- (1) Any corporation that fails to pay its taxes, penalty, and interest as provided in subsection (2) of KRS 136.050, after becoming delinquent, shall be fined fifty dollars (\$50) for each day the same remains unpaid, to be recovered by indictment or civil action, of which the Franklin Circuit Court shall have jurisdiction.
- (2) Any public service corporation, or officer thereof, that willfully fails or refuses to make reports as required by KRS 136.130 and 136.140 shall be fined one thousand dollars (\$1,000), and fifty dollars (\$50) for each day the reports are not made after April 30 of each year.
- (3) Any superintendent of schools or county clerk who fails to report as required by KRS 136.190, or who makes a false report, shall be fined not less than fifty dollars (\$50) nor more than one hundred dollars (\$100) for each offense.
- (4) Any company or association that fails or refuses to return the statement or pay the taxes required by KRS 136.330 or 136.340 shall be fined one thousand dollars (\$1,000) for each offense.
- (5) Any insurance company that fails or refuses for thirty (30) days to return the statement required by KRS 136.330 or 136.340 and to pay the tax required by KRS 136.330 or 136.340, shall forfeit one hundred dollars (\$100) for each offense. The ~~commissioner~~~~executive director~~ of insurance shall revoke the authority of the

company or its agents to do business in this state, and shall publish the revocation pursuant to KRS Chapter 424.

- (6) Any person who violates subsection (3) of KRS 136.390 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (7) Where no other penalty is mentioned for failing to do an act required, or for doing an act forbidden by this chapter, the penalty shall be not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (8) The Franklin Circuit Court shall have jurisdiction of all prosecutions under subsections (4) to (6) of this section.
- (9) Any person who violates any of the provisions of KRS 136.073 or KRS 136.090 shall be subject to the uniform civil penalties imposed pursuant to KRS 131.180.
- (10) If the tax imposed by KRS 136.070 or KRS 136.073, whether assessed by the department or the taxpayer, or any installment or portion of the tax, is not paid on or before the date prescribed for its payment, interest shall be collected upon the nonpaid amount at the tax interest rate as defined in KRS 131.010(6) from the date prescribed for its payment until payment is actually made to the department.
- (11) Any provider who violates the provisions of KRS 136.616(3) shall be subject to a penalty of twenty-five dollars (\$25) per purchaser offense, not to exceed ten thousand dollars (\$10,000) per month.

➔Section 103. KRS 137.132 is amended to read as follows:

- (1) As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, ~~Division of Oil and Gas Conservation,~~ and that resumes producing crude petroleum oil.
- (2) Every taxpayer engaged in the production of crude petroleum oil within this Commonwealth shall be allowed a credit against the tax imposed under KRS 137.120 equal to four and one-half percent (4.5%) of the market value of crude petroleum oil that is produced from a recovered inactive well.

➔Section 104. KRS 137.170 is amended to read as follows:

- (1) Every person engaged in the business of conducting a race meeting at which live horse races are run for stakes, purses, or prizes, under the jurisdiction of the Kentucky Horse Racing **Commission**~~Authority~~, shall pay a tentative license tax to the state, as provided in subsection (2) of this section.
- (2) Any race track for any year commencing December 1 and ending the following November 30 for the days upon which races are actually conducted for any stake, purse, or prize, shall pay a license tax based on the average daily mutuel handle for the preceding year as follows:

Average Daily Mutuel Handle	License Tax
\$0 - \$25,000	\$ 0
\$25,000 - \$250,000	\$ 175
\$250,001 - \$450,000	\$ 500
\$450,001 - \$700,000	\$1,000
\$700,001 - \$800,000	\$1,500
\$800,001 - \$900,000	\$2,000
\$900,001 and above	\$2,500

- (3) As used in subsection (2) of this section the term "daily mutuel handle" shall mean the total gross amount of money bet or wagered by a race track's patrons by means of pari-mutuel, combination, or French pools on live races conducted by the track.

➔Section 105. KRS 138.480 is amended to read as follows:

Except for the conduct of harness racing at a county fair, each person entering the grounds or enclosure of any race track at which a live race meeting is being conducted under the jurisdiction of the Kentucky Horse Racing **Commission**~~Authority~~, for the purpose of attending the races or for any other purpose connected therewith, shall

pay a tax of fifteen cents (\$0.15) to the state, except as otherwise provided in this section. If tickets good for more than one (1) day are issued, the sum of fifteen cents (\$0.15) shall be paid by each person using such ticket on each day that it is used. No admission tax shall be collected from any of the employees of the race track, or any of the owners or trainers of horses, or jockeys, or their employees. The admission tax provided for in this section shall be collected by the race track from each person on entering the race track or enclosure on a paid or free admission. The race track shall account to and pay to the state the money so collected.

➔Section 106. KRS 138.510 is amended to read as follows:

- (1) (a) Except as provided in paragraphs (b) and (d) of this subsection, an excise tax is imposed on all tracks conducting pari-mutuel wagering on live racing under the jurisdiction of the ~~commission~~^{authority}.
 1. For each track with a daily average live handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered on live races at the track during the fiscal year.
 2. For each track with a daily average live handle under one million two hundred thousand dollars (\$1,200,000), the tax shall be one and one-half percent (1.5%) of all money wagered on live races at the track during the fiscal year.
- (b) 1. If:
 - a. A track located in this state is the host track for a live one (1) or two (2) day international horse racing event in 2010 that distributes in excess of a total of fifteen million dollars (\$15,000,000) in purses during the international horse racing event; and
 - b. The organization responsible for selecting the location of the same international horse racing event in subsequent years contractually agrees to conduct the international horse racing event at a host track in this state in calendar year 2011 or 2012 or calendar years 2011 and 2012;

then the excise tax imposed by paragraph (a) of this subsection shall not be imposed on pari-mutuel wagering on any live racing conducted during the one (1) or two (2) day international horse racing event held at a host track within this state in calendar years 2010 through 2012.

 2. Beginning January 1, 2013, if the requirements of subparagraph 1. of this paragraph are satisfied, the tax exemption established by subparagraph 1. of this paragraph shall remain in effect for any succeeding one (1) or two (2) day international horse racing event if the event returns within three (3) years of a previously-held international horse racing event.
 3. A minimum of five hundred thousand dollars (\$500,000) of the amount that would have been paid to the Commonwealth but for the exemption provided by this paragraph shall be used by the host track to fund undercard races during each international horse racing event.
- (c) Money shall be deducted from the tax paid under paragraph (a) of this subsection and deposited as follows:
 1. An amount equal to three-quarters of one percent (0.75%) of all money wagered on live races at the track for thoroughbred racing shall be deposited in the thoroughbred development fund established in KRS 230.400;
 2. An amount equal to one percent (1%) of all money wagered on live races at the track for harness racing shall be deposited in the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770;
 3. An amount equal to two-tenths of one percent (0.2%) of all money wagered on live races at the track shall be deposited in the equine industry program trust and revolving fund established by KRS 230.550 to support the Equine Industry Program at the University of Louisville;
 4. a. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races at the track shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities.

- b. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subparagraph shall not replace other funds for capital purposes or operation of equine programs at state universities.
 - c. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds.
 - d. The Kentucky Council on Postsecondary Education may promulgate administrative regulations to establish procedures for administering the program and criteria for evaluating and awarding grants; and
- 5. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races shall be distributed to the ~~commission~~~~authority~~ to support equine drug testing as provided in KRS 230.265(3).
- (d) The excise tax imposed by paragraph (a) of this subsection shall not apply to pari-mutuel wagering on live harness racing at a county fair.
- (2) (a) Except as provided in paragraphs (c) and (d) of this subsection, an excise tax is imposed on:
 - 1. All tracks conducting telephone account wagering;
 - 2. All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the ~~commission~~~~authority~~; and
 - 3. All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.
- (b) The tax shall be three percent (3%) of all money wagered on races as provided in paragraph (a) of this subsection during the fiscal year.
- (c) A noncontiguous track facility approved by the ~~commission~~~~authority~~ on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this paragraph shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.
- (d) A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:
 - 1. The international horse racing event is conducted at a host track in this state; and
 - 2. The host track is exempt from the excise tax during the international horse racing event under subsection (1)(b) of this section.
- (e) Money shall be deducted from the tax paid under paragraphs (a) and (b) of this subsection as follows:
 - 1. An amount equal to two percent (2%) of the amount wagered shall be deposited as follows:
 - a. In the thoroughbred development fund established in KRS 230.400 if the host track is conducting a thoroughbred race meeting or the interstate wagering is conducted on a thoroughbred race meeting; or
 - b. In the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund established in KRS 230.770, if the host track is conducting a harness race meeting or the interstate wagering is conducted on a harness race meeting;
 - 2. An amount equal to one-twentieth of one percent (0.05%) of the amount wagered shall be allocated to the equine industry program trust and revolving fund established by KRS 230.550 to be used to support the Equine Industry Program at the University of Louisville;
 - 3. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or

the purchase of equipment for equine programs at state universities, as detailed in subsection (1)(c)4. of this section; and

4. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be distributed to the ~~commission[authority]~~ to support equine drug testing as provided in KRS 230.265(3).
- (3) The taxes imposed by this section shall be paid, collected, and administered as provided in KRS 138.530.

➔Section 107. KRS 138.511 is amended to read as follows:

As used in KRS 138.510 to 138.550:

- (1) "~~Commission[Authority]~~" means the Kentucky Horse Racing ~~Commission[Authority]~~;
- (2) "Association" has the same meaning as in KRS 230.210;
- (3) "Daily average live handle" means the total amount wagered at a track on live racing and does not include money wagered:
 - (a) At a receiving track;
 - (b) At a simulcast facility;
 - (c) On telephone account wagering;
 - (d) Through advance deposit account wagering; or
 - (e) At a track participating as a receiving track or simulcast facility displaying simulcasts and conducting interstate wagering as permitted by KRS 230.3771 and 230.3773;
- (4) "Department" means the Department of Revenue;
- (5) "Fiscal year" means a time frame beginning 12:01 a.m. July 1, and ending 12 midnight June 30;
- (6) "Host track" has the same meaning as in KRS 230.210;
- (7) "Interstate wagering" has the same meaning as in KRS 230.210;
- (8) "Intertrack wagering" has the same meaning as in KRS 230.210;
- (9) "Receiving track" has the same meaning as in KRS 230.210;
- (10) "Simulcast facility" has the same meaning as in KRS 230.210;
- (11) "Telephone account wagering" has the same meaning as in KRS 230.210; and
- (12) "Track" has the same meaning as in KRS 230.210.

➔Section 108. KRS 138.530 is amended to read as follows:

- (1) The department shall enforce the provisions of and collect the tax and penalties imposed and other payments required by KRS 138.510 to 138.550, and in doing so it shall have the general powers and duties granted it in KRS Chapters 131 and 135, including the power to enforce, by an action in the Franklin Circuit Court, the collection of the tax, penalties and other payments imposed or required by KRS 138.510 to 138.550.
- (2)
 - (a) The remittance of the taxes imposed by KRS 138.510 shall be made weekly to the department no later than the fifth business day, excluding Saturday and Sunday, following the close of each week of racing, during each race meeting and shall be accompanied by reports as prescribed by the department.
 - (b) All funds received by the department shall be paid into the State Treasury and shall be credited to the general expenditure fund.
- (3) The supervisor of pari-mutuel betting appointed by the ~~commission[authority]~~ shall weekly, during each race meeting, report to the department the total amount bet or handled the preceding week and the amount of tax due the state thereon, under the provisions of KRS 138.510 to 138.550.
- (4) The supervisor of pari-mutuel betting appointed by the ~~commission[authority]~~ or his or her duly authorized representatives shall, at all reasonable times, have access to all books, records, issuing or vending machines, adding machines, and all other pari-mutuel equipment for the purpose of examining and checking the same and ascertaining whether or not the proper amount or amounts due the state are being or have been paid.

- (5) Every person, corporation, or association required to pay the tax imposed by KRS 138.510 shall keep its books and records so as to clearly show by a separate record the total amount of money contributed to every pari-mutuel pool.

➔Section 109. KRS 138.550 is amended to read as follows:

In addition to all other penalties provided in KRS 138.510 to 138.540, when the pari-mutuel system of betting is operated at a track licensed under KRS Chapter 230, said license may be suspended, revoked or renewal refused by the ~~commission[authority]~~ upon the failure of the operator to comply with KRS 138.510 to 138.540 or the rules and regulations promulgated by the department pursuant thereto, even though the pari-mutuel system of betting and the track are operated by different persons, corporations, or associations.

➔Section 110. KRS 140.100 is amended to read as follows:

- (1) The ~~Department[Office]~~ of Insurance, on the application of the Department of Revenue, shall determine, and certify in duplicate to the department, the value of any future or contingent estate, income or interest therein, limited, contingent, dependent or determinable upon the lives of persons in being, upon the facts contained in the application or other facts submitted by the department. No fee shall be charged by the **Department of Insurance**~~[division]~~ for this service. The certificate shall be competent evidence that the method of computation therein is correct.
- (2) The value of every future, contingent or limited estate, income or interest for the purpose of this chapter shall be determined by the rules, methods and standards of mortality and of value prescribed by the appropriate United States life mortality tables for ascertaining the value of life estates, annuities and remainder interests except that the rate of interest assessed in computing the present value of all future interests and contingencies shall be four percent (4%) per annum.
- (3) When an annuity or a life estate is terminated by the death of the annuitant or life tenant, and the tax upon such interest has not been fixed and determined, the value of the interest for the purpose of taxation shall be that amount of the annuity or income actually paid or payable to the annuitant or life tenant during the period for which the annuitant or life tenant was entitled to the annuity or was in possession of the life estate. The tax on such annuities and life interests shall be payable out of the corpus of the estate, unless otherwise provided under the terms of the will.
- (4) Notwithstanding anything in this chapter to the contrary, the value of a surviving spouse's interest in a trust or life estate which was exempt from Kentucky inheritance tax in the first spouse's estate pursuant to an election made under KRS 140.080(1)(a) shall be deemed to be equal to the entire value of the property held in the trust or life estate, at the surviving spouse's death, for Kentucky inheritance tax purposes in the surviving spouse's estate.

➔Section 111. KRS 141.0405 is amended to read as follows:

- (1) There shall be allowed a nonrefundable credit against taxes imposed by the Commonwealth on any taxpayer that:
 - (a)
 1. Is an electric power company subject to tax under KRS 136.120;
 2. Is an entity that owns or operates a coal-fired electric generation plant; or
 3. Is an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010 that has not been approved for incentives under Subchapter 27 of KRS Chapter 154;
 - (b) Remits tax to the Commonwealth under KRS 136.070, 136.120, 141.020, 141.040, or 141.0401; and
 - (c) Purchases coal subject to the tax imposed under KRS 143.020 that is used:
 1. For the purpose of generating electricity; or
 2. As feedstock for an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010;

by the taxpayers, or by a parent company if the taxpayer is a wholly owned subsidiary.
- (2) The amount of the allowable credit shall be two dollars (\$2) per each incentive ton of coal purchased that is subject to tax under KRS 143.020 and that is used to generate electric power or used as feedstock for an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010.

- (3) (a) Incentive tons are calculated as the tons of coal purchased in the current year for which coal severance tax was paid minus the tons of coal purchased and used during the base year.
- (b) For an existing electric power company subject to tax under KRS 136.120 that expands operations to include an alternative fuel facility as defined in KRS 154.27-010 or a gasification facility as defined in KRS 154.27-010, the incentive tons for the expanded operation calculated in paragraph (a) of this subsection shall not include any coal subject to the incentives provided under KRS 143.024 and 154.27-060.
- (4) The base year amount shall be equal to:
 - (a) For entities existing on July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the tons of coal purchased and used to generate electricity during the twelve (12) calendar months ending in December 31, 1999, that were subject to the tax imposed by KRS 143.020; or
 - (b) For entities that come into existence after July 14, 2000, that meet the eligibility requirements imposed under subsection (1) of this section, the base year amount shall be equal to zero (0). However, no company qualifying for the credit as of July 14, 2000, with a base year calculation as provided under subsection (4)(a) of this section may create an affiliate, subsidiary, or corporation that would qualify for a base year of zero (0).
- (5) On or before March 15 of each year, a company eligible for the credit provided under subsection (2) of this section shall file a coal incentive credit claim on forms prescribed by the department. At the time of filing for the credit, the taxpayer shall submit verification of the tons of coal purchased in the base year and the tons of coal purchased in the year for which the credit is being claimed. The department shall determine the amount of the eligible credit and issue a credit certificate to the taxpayer.
- (6) The taxpayer shall be eligible to apply, subject to the conditions imposed under subsection (7) of this section, the amount identified on the credit certificate issued by the department under subsection (5) of this section, against the taxpayer's liability for the taxes, in consecutive order as follows:
 - (a) The credit shall first be applied against both the taxes imposed by KRS 141.020 or 141.040 and the tax imposed by KRS 141.0401, with the ordering of credits as provided in KRS 141.0205;
 - (b) The credit shall next be applied to the taxes imposed by KRS 136.070; and
 - (c) Any remaining credit shall be applied against the taxes imposed by KRS 136.120.
- (7) The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order under subsection (6) of this section before applying the remaining credit to the next tax listed in consecutive order. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.
- (8) The taxpayer shall maintain records required in subsection (5) of this section for a period of five (5) years.
- (9) Acceptable verification of coal purchased during the base year shall include invoices that indicate the tons of coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.
- (10) The department shall develop the forms required under subsection (5) of this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsections (6) and (7) of this section.
- (11) The ***Department for Energy Development and Independence*** ~~[Governor's Office of Energy Policy established by KRS 152.712]~~ shall:
 - (a)
 - 1. Certify that an alternative fuel facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; or
 - 2. Certify that a gasification facility for which a credit is being requested meets the definition as provided in KRS 154.27-010; and
 - (b) Notify the department of the certification.

- (12) To assist in determining the amount of coal purchased and used that is eligible for the credit, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, or other coal-derived chemicals or chemical feedstocks, considering:

- (a) The type of coal to be used;
- (b) Equipment to be employed;
- (c) Size and output of the facility;
- (d) Slate of products produced; and
- (e) Other characteristics of the alternative fuel facility or gasification facility.

➔Section 112. KRS 141.418 is amended to read as follows:

- (1) As used in this section:

- (a) "Hazardous substances" shall have the meaning provided in KRS 224.01-400;
- (b) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400;
- (c) "Petroleum" and "petroleum products" shall have the meaning provided in KRS 224.60-115;
- (d) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115;
- (e) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400, KRS 224.01-405, or 224.60-135 where the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet has made a determination that:
 - 1. All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property occurred prior to the property owner's acquisition of the property;
 - 2. The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices;
 - 3. The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 - 4. The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - 5. The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 - 6. The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
 - a. Direct or indirect familial relationship;
 - b. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 - c. Reorganization of a business entity that was potentially liable;
- (f) "Expenditures" means payment for work to characterize the extent of contamination and to remediate the contamination at a qualifying voluntary environmental remediation property; and
- (g) "Taxpayer" means an individual subject to tax under KRS 141.020 or a corporation subject to tax under KRS 141.040.

- (2) (a) There shall be allowed a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040 for taxable years beginning after December 31, 2004, and against the tax imposed by KRS 141.0401 for taxable years beginning after December 31, 2006, for taxpayer expenditures made at a qualifying voluntary environmental remediation property in order to correct the effect of a release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS

224. 01-400, 224.01-405, or 224.60-135, consistent with a corrective action plan approved by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, and provided the cleanup was not financed through a public grant program or the petroleum storage tank environmental assurance fund.

- (b) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of the credits as provided in KRS 141.0205.
- (3) The maximum total credit for each taxpayer shall not exceed one hundred fifty thousand dollars (\$150,000). For purposes of this section, an affiliated group of taxpayers required to file a consolidated return under KRS 141.200 shall be treated as one (1) taxpayer.
- (4) A taxpayer claiming a credit under this section shall submit receipts to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet in proof of the expenditures claimed. The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall verify the receipts. After the receipts are verified, the Finance and Administration Cabinet shall notify the taxpayer of eligibility for the credit.
- (5) The credit may be first claimed on the income tax return of the taxpayer filed in the taxable year during which the credit was certified. The amount of the allowable credit for any taxable year shall be twenty-five percent (25%) of the maximum credit approved. The credit may be carried forward for ten (10) successive taxable years.
- (6) If the taxpayer is a pass-through entity, the taxpayer shall apply the credit against the limited liability entity tax imposed by KRS 141.0401, and shall also pass the credit through to its members, partners, or shareholders in the same proportion as the distributive share of income or loss is passed through.

➔Section 113. KRS 141.428 is amended to read as follows:

- (1) As used in this section:
 - (a) "Clean coal facility" means an electric generation facility beginning commercial operation on or after January 1, 2005, at a cost greater than one hundred fifty million dollars (\$150,000,000) that is located in the Commonwealth of Kentucky and is certified by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet as reducing emissions of pollutants released during generation of electricity through the use of clean coal equipment and technologies;
 - (b) "Clean coal equipment" means equipment purchased and installed for commercial use in a clean coal facility to aid in reducing the level of pollutants released during the generation of electricity from eligible coal;
 - (c) "Clean coal technologies" means technologies incorporated for use within a clean coal facility to lower emissions of pollutants released during the generation of electricity from eligible coal;
 - (d) "Eligible coal" means coal that is subject to the tax imposed under KRS 143.020;
 - (e) "Ton" means a unit of weight equivalent to two thousand (2,000) pounds; and
 - (f) "Taxpayer" means taxpayer as defined in KRS 131.010(4).
- (2) Effective for tax years ending on or after December 31, 2006, a nonrefundable, nontransferable credit shall be allowed for:
 - (a) Any electric power company subject to tax under KRS 136.120 and certified as a clean coal facility or any taxpayer that owns or operates a clean coal facility and purchases eligible coal that is used by the taxpayer in a certified clean coal facility; or
 - (b) A parent company of an entity identified in paragraph (a) of this subsection if the subsidiary is wholly owned.
- (3) (a) The credit may be taken against the taxes imposed by:
 - 1. KRS 136.070;
 - 2. KRS 136.120; or

3. KRS 141.020 or 141.040, and 141.0401.
- (b) The credit shall not be carried forward and must be used on the tax return filed for the period during which the eligible coal was purchased. The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet must approve and certify use of the clean coal equipment and technologies within a clean coal facility before any taxpayer may claim the credit.
- (c) The credit allowed under paragraph (a) of this subsection shall be applied both to the income tax imposed under KRS 141.020 or 141.040 and to the limited liability entity tax imposed under KRS 141.0401, with the ordering of credits as provided in KRS 141.0205.
- (4) The amount of the allowable credit shall be two dollars (\$2) per ton of eligible coal purchased that is used to generate electric power at a certified clean coal facility, except that no credit shall be allowed if the eligible coal has been used to generate a credit under KRS 141.0405 for the taxpayer, a parent, or a subsidiary.
- (5) Each taxpayer eligible for the credit provided under subsection (2) of this section shall file a clean coal incentive credit claim on forms prescribed by the Department of Revenue. At the time of filing for the credit, the taxpayer shall submit an electronic report verifying the tons of coal subject to the tax imposed by KRS 143.020 purchased for each year in which the credit is claimed. The Department of Revenue shall determine the amount of the approved credit and issue a credit certificate to the taxpayer.
- (6) Corporations and pass-through entities subject to the tax imposed under KRS 141.040 or 141.0401 shall be eligible to apply, subject to the conditions imposed under this section, the approved credit against its liability for the taxes, in consecutive order as follows:
 - (a) The credit shall first be applied against both the tax imposed by KRS 141.0401 and the tax imposed by KRS 141.020 or 141.040, with the ordering of credits as provided in KRS 141.0205;
 - (b) The credit shall then be applied to the tax imposed by KRS 136.120.

The credit shall meet the entirety of the taxpayer's liability under the first tax listed in consecutive order before applying any remaining credit to the next tax listed. The taxpayer's total liability under each preceding tax must be fully met before the remaining credit can be applied to the subsequent tax listed in consecutive order.

- (7) If the taxpayer is a pass-through entity not subject to tax under KRS 141.040, the amount of approved credit shall be applied against the tax imposed by KRS 141.0401 at the entity level, and shall also be distributed to each partner, member, or shareholder based on the partner's, member's, or shareholder's distributive share of the income of the pass-through entity. The credit shall be claimed in the same manner as specified in subsection (6) of this section. Each pass-through entity shall notify the Department of Revenue electronically of all partners, members, or shareholders who may claim any amount of the approved credit. Failure to provide information to the Department of Revenue in a manner prescribed by regulation may constitute the forfeiture of available credits to all partners, members, or shareholders associated with the pass-through entity.
- (8) The taxpayer shall maintain all records associated with the credit for a period of five (5) years. Acceptable verification of eligible coal purchased shall include invoices that indicate the tons of eligible coal purchased from a Kentucky supplier of coal and proof of remittance for that purchase.
- (9) The Department of Revenue shall develop the forms required under this section, specifying the procedure for claiming the credit, and applying the credit against the taxpayer's liability in the order provided under subsections (6) and (7) of this section.
- (10) The ***Department for Energy Development and Independence within the Energy and Environment***~~[Governor's Office of Energy Policy, Environmental and Public Protection]~~ Cabinet~~[,]~~ and the Department of Revenue shall promulgate administrative regulations necessary to administer this section.
- (11) This section shall be known as the Kentucky Clean Coal Incentive Act.

➔Section 114. KRS 141.436 is amended to read as follows:

- (1) (a) For taxable periods beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205. The credit shall apply if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year in a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
 1. The taxpayer's principal place of residence; or

2. A single-family or multifamily residential rental unit.
 - (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
 1. Upgraded insulation, not to exceed one hundred dollars (\$100);
 2. Energy-efficient windows and storm doors, not to exceed two hundred fifty dollars (\$250); or
 3. Qualified energy property, not to exceed two hundred fifty dollars (\$250).
 - (c) In no case shall the total credits provided under this subsection exceed five hundred dollars (\$500) per taxpayer.
- (2) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the items listed in paragraph (b) of this subsection is installed during the taxable year on a dwelling unit located in the Commonwealth, or on property located in the Commonwealth that is owned and used by the taxpayer as commercial property.
- (b) The tax credit shall equal:
1. Thirty percent (30%) of the installed costs of:
 - a. An active solar space-heating system;
 - b. A passive solar space-heating system;
 - c. A combined active solar space-heating and water-heating system;
 - d. A solar water-heating system; and
 - e. A wind turbine or wind machine; or
 2. Three dollars (\$3) per watt direct current (DC) of rated capacity of a solar photovoltaic system.
- (c) In no case shall the total tax credits provided in this subsection exceed:
1. Five hundred dollars (\$500) per taxpayer if installed on a dwelling unit located in the Commonwealth that is owned by the taxpayer and used by the taxpayer as:
 - a. The taxpayer's principal place of residence; or
 - b. A single-family residential rental unit; or
 2. One thousand dollars (\$1,000) per taxpayer if installed on property located in the Commonwealth that is owned and used by the taxpayer as:
 - a. A multifamily residential rental unit; or
 - b. Commercial property;
- (3) (a) For taxable years beginning after December 31, 2008, and beginning before January 1, 2016, there is hereby created a nonrefundable credit against the tax imposed under KRS 141.020 or 141.040, and KRS 141.0401, with the ordering of credits as provided in KRS 141.0205, if one (1) or more of the following is installed during the taxable year on property located in the Commonwealth that is owned and used by the taxpayer as commercial property:
1. An energy-efficient interior lighting system; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system.
- (b) The tax credit shall equal thirty percent (30%) of the installed costs of:
1. An energy-efficient interior lighting system, not to exceed five hundred dollars (\$500) per taxpayer; and
 2. An energy-efficient heating, cooling, ventilation, or hot water system, not to exceed five hundred dollars (\$500) per taxpayer.

- (c) In no case shall the total tax credits provided in this subsection exceed one thousand dollars (\$1,000) per taxpayer.
- (d) For purposes of the tax credit provided by this subsection, "commercial property" shall not include single-family or multifamily residential units.
- (4) The tax credits provided under this section shall apply in the tax year in which the installation is completed. If the credit cannot be taken in full in the year in which the installation is completed, the tax credit may be carried forward one (1) year.
- (5) The department may request copies of invoices, purchase receipts, installation contracts, proof of installer's NABCEP certification, and any other information that the department determines necessary to verify credits taken.
- (6) If the taxpayer has taken the ENERGY STAR home or the ENERGY STAR manufactured home tax credit provided under KRS 141.437, the tax credits provided under this section shall not apply.
- (7) The department shall establish, by administrative regulation, the guidelines and technical requirements for items that are eligible for the tax credits provided under subsection (2) of this section, including but not limited to requirements for capacity, siting, plumbing, collector mountings, and pressurization. The department shall enlist the assistance, cooperation, and recommendations of the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ and the Kentucky Pollution Prevention Center at the University of Louisville in determining those guidelines and technical requirements and may enlist their assistance in evaluating the eligibility of credits taken under this section.
- (8) On or before December 1, 2010, and on or before every December 1 thereafter, the department shall report to the Legislative Research Commission the total number and gross amount of each type of tax credit claimed on returns processed during the fiscal year ending prior to the December reporting date.

➔Section 115. KRS 143.090 is amended to read as follows:

- (1) The Transportation Cabinet shall certify to the commissioner of the Department of Revenue by October 1 of each fiscal year the amount required for lease rental payments to the Kentucky Turnpike Authority for resource recovery road projects.
- (2) The ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ shall certify to the commissioner of the Department of Revenue by October 1 of each year the amount of the annual lease rental payments required to be made for any energy research ***development***~~{developmental}~~ or demonstration project undertaken by the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~. The amount so certified shall in no case exceed three million dollars (\$3,000,000) in any one (1) year.
- (3) Upon receiving the certifications provided for in subsections (1) and (2) of this section, the commissioner of the Department of Revenue shall cause the certified amounts to be deposited from the proceeds of the tax levied by KRS 143.020 to the credit of the transportation fund and the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~, respectively, unless otherwise provided by the General Assembly in a budget bill, as follows:
 - (a) An amount equal to the amount certified by the Transportation Cabinet shall be deposited to the transportation fund (road fund); and
 - (b) An amount equal to the amount certified by the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ shall be transferred by appropriate interfund transfer procedures to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~.
- (4) All tax levied by KRS 143.020 collected in excess of the amount required to be deposited to the transportation fund (road fund) or transferred to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ shall be deposited by the Department of Revenue to the credit of the general fund.
- (5) If the proceeds of the tax levied by KRS 143.020 are less than the amounts certified under subsections (1) and (2) of this section, the commissioner of revenue shall prorate the proceeds to the transportation fund and the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ based upon the ratio of each certified amount to the total of the two (2) certified amounts.

➔Section 116. KRS 143A.033 is amended to read as follows:

- (1) As used in this section, "recovered inactive well" means a well that has been inactive for a consecutive two (2) year period or a well that has been plugged and abandoned, as determined by the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet, Division of Oil and Gas~~[Conservation]~~, and that resumes producing natural gas.
- (2) Every taxpayer engaged in severing or processing natural gas within this Commonwealth shall be allowed a credit against the tax imposed under KRS 143A.020 equal to four and one-half percent (4.5%) of the gross value of natural gas that is produced from a recovered inactive well.

➔Section 117. KRS 146.080 is amended to read as follows:

There is hereby created, within the Department for **Natural Resources**~~[Environmental Protection]~~ in the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet, a Division of Conservation. The division shall consist of a Soil and Water Conservation Commission, a director, and such officers, employees, and agents as the commission may deem necessary for carrying out the function of the division, through the commission and the director, to assist soil and water conservation districts and watershed conservancy districts organized under KRS Chapter 262 in carrying out the functions, powers, and duties conferred upon them by such chapter.

➔Section 118. KRS 146.090 is amended to read as follows:

- (1) The secretary for **energy and environment**~~[environmental and public protection]~~, with the approval of the Soil and Water Conservation Commission shall divide the state into nine (9) soil and water conservation areas which shall contain as nearly as practicable, an equal number of soil and water conservation districts;
- (2) The Soil and Water Conservation Commission shall consist of nine (9) members, not more than five (5) of whom shall be of the same political party, to be appointed by the secretary for **energy and environment**~~[environmental and public protection]~~ with the approval of the Governor;
- (3) One (1) member shall be appointed from each of the areas from a list of two (2) names submitted from each such area by the supervisors of the soil and water conservation districts that have their principal offices therein. All members shall be supervisors of soil and water conservation districts;
- (4) The term of office of each such member shall be four (4) years; provided that, whenever a member of the commission ceases to hold the office of district supervisor by virtue of which he is serving on the commission, his term of office as a member of the commission shall be terminated. In the case of any vacancy other than the one (1) caused by the expiration of a term, the secretary for **energy and environment**~~[environmental and public protection]~~, with the approval of the Governor, shall appoint the successor from a list of two (2) names submitted by the supervisors of the soil and water conservation area which was represented by the former member. The successor shall also be a supervisor of a soil and water conservation district;
- (5) The members of the commission shall designate a chairman from among their members and may from time to time change such designation. The commission shall keep a record of its official actions. A majority of the commission shall constitute a quorum. The commission may call upon the Attorney General for such legal services as it may require. It may delegate to its chairman, any of its members, the director of the division, or any officer, employee, or agent, such powers and duties as it deems proper. Members of the commission shall receive no compensation for their services, but shall be entitled to expenses, including traveling expenses, necessarily incurred in discharging their duties;
- (6) The following persons are advisory members of the commission by virtue of their offices: the secretary for **energy and environment**~~[environmental and public protection]~~, the Commissioner of Agriculture, the director of the agricultural experiment station, the director of vocational education, and the state conservationist of the United States Department of Agriculture.

➔Section 119. KRS 146.100 is amended to read as follows:

- (1) The secretary for **energy and environment**~~[environmental and public protection]~~, with the approval of the Soil and Water Conservation Commission shall appoint a director of the Division of Conservation who shall be a graduate of a recognized agricultural college, with at least five (5) years practical experience in professional agricultural activities and who shall serve as executive officer for the commission. The director shall serve at the will of, and receive such compensation as may be determined by the secretary for **energy and environment**~~[environmental and public protection]~~ with the approval of the Soil and Water Conservation Commission. Before entering upon his duties, the director shall take the constitutional oath. The director shall

hold no other public office or employment. In addition to any other duties assigned to him by the secretary for **energy and environment**~~environmental and public protection~~, the director shall exercise, subject to the approval of the secretary, general administrative supervision over all activities, employees and property of the commission;

- (2) The secretary for **energy and environment**~~environmental and public protection~~ may employ such other officers, employees, and agents, who shall serve at his will as he deems necessary, with the approval of the Soil and Water Conservation Commission, and shall provide for surety bonds for members, the director, officers, employees or agents if entrusted with funds or property.

➔Section 120. KRS 146.131 is amended to read as follows:

The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Kentucky Department of Parks and to the Commonwealth's Railtrail Development Office in the Department for Local Government any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

➔Section 121. KRS 146.180 is amended to read as follows:

- (1) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet may assess a fee for the use of any lock on a navigable waterway operated by the Commonwealth and formerly under jurisdiction of the United States Army Corps of Engineers and pursuant to completion of negotiations authorized by KRS 151.580.
- (2) The fee shall not exceed five dollars (\$5) each time the lock gates are used regardless of the number of craft passing through said lock.

➔Section 122. KRS 146.185 is amended to read as follows:

- (1) No person shall attempt to utilize any lock on a navigable waterway operated by the Commonwealth without payment of the fee prescribed by KRS 146.180(2). At the time any person attempts to utilize the lock, the fee must be paid to the lockmaster or the employee who provides the service of opening the lock.
- (2) The months, days and hours of lock operation shall be prescribed by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (3) Each Monday following a period of lock operation, those individuals responsible for collection of fees shall remit all moneys collected to the cabinet in a manner prescribed by the cabinet.

➔Section 123. KRS 146.210 is amended to read as follows:

As used in KRS 146.210 to 146.360, the words listed herein shall have the following respective meanings, unless another or different meaning or intent shall be clearly indicated by the context:

- (1) "Stream or watercourse" shall mean a flowing body of water or a section or portion thereof, including rivers, streams, and creeks.
- (2) "Free flowing" shall mean existing or flowing in a natural condition without impoundment, diversion, straightening, riprapping, or other modification of the waterway. The existence, however, of low dams, diversion works, and other minor structures at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such structures within components of the Wild Rivers System.
- (3) "Road" shall mean a highway, a hard-surfaced road, or an improved or unimproved dirt road. The existence, however, of unimproved roads at the time any stream is proposed for inclusion in the Wild Rivers System shall not automatically bar its consideration for such inclusion; provided, that this shall not be construed to authorize or to be intended to encourage future construction of such roads where this would be contrary to the provisions of KRS 146.200 to 146.360.
- (4) "Wilderness type recreation" shall mean activities such as fishing, hunting, canoeing, camping, hiking, horseback riding, exploring, archaeological and scientific investigation, and scenic and aesthetic enjoyment, which utilizes and protects to the highest degree the primitive and natural values of the area.

- (5) "Visual horizon" shall mean the normal distance to which land and vegetative features can be unobstructedly viewed from the center of the stream.
- (6) "Access point" shall mean an area along the stream under public ownership, or under easement acquired by agreement with a private landowner. This area would be available for public recreational use including, but not limited to, the launching of boats, picnicking, and camping.
- (7) "Secretary" shall mean the secretary for *energy and environment*~~[environmental and public protection]~~ or the successor to that office.

➔Section 124. KRS 146.230 is amended to read as follows:

Streams which substantially meet the following criteria are eligible for inclusion in the Wild Rivers System:

Streams or sections of streams that are essentially free-flowing, with shorelines and scenic vistas essentially primitive and unchanged, free from evidence of the works of man, and pleasing to the eye. The waters shall not be polluted beyond feasible correction and shall be kept unpolluted once corrected according to standards established by the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet. The area may provide a high quality fish and wildlife habitat, containing one or more unique or rare species for sport or observation. It may provide opportunities for scientific study or appreciation of essentially undisturbed ecological, geologic, or archaeological conditions. It shall provide wilderness type recreation such as canoeing and hiking, or specialized uses without disturbing the primitive character of the area.

➔Section 125. KRS 146.250 is amended to read as follows:

The secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall, by June 16, 1974, determine generally the boundaries of the stream area associated with the stream or stream segment initially included in the Wild Rivers System by KRS 146.200 to 146.360. Establishment of these boundaries shall be accomplished in such a way that it includes at least the visual horizon from the stream, but not more than two thousand (2,000) feet from the center of the stream. The boundary shall further include access points, at the upstream and downstream boundary of the area.

➔Section 126. KRS 146.260 is amended to read as follows:

- (1) The secretary for *energy and environment*~~[environmental and public protection]~~ shall study and from time to time submit to the Governor and to the General Assembly proposals for additions to the Wild Rivers System of streams and sections of streams which, in his judgment, would qualify for inclusion therein. Each proposal shall be accompanied by:
 - (a) A detailed map showing the boundaries of the stream or sections of streams and those adjacent lands needed to protect and administer the needed controls.
 - (b) The category of the proposed additions in accordance with KRS 146.230.
 - (c) A detailed report on the factors which make the area a worthy addition to the system.
- (2) The intention of this requirement is to insure that such studies will be made; it is not intended to preclude or discourage, but rather encourage similar studies and proposals by other agencies or by citizen groups working independently. Authority for additions to the Wild Rivers System shall remain exclusively with the Kentucky General Assembly.

➔Section 127. KRS 146.270 is amended to read as follows:

The Wild Rivers System shall be administered by the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet according to the policies and criteria set forth in KRS 146.200 to 146.360. The secretary for *energy and environment*~~[environmental and public protection]~~ shall adopt such rules or regulations necessary for the preservation and enhancement of the stream areas as set forth in KRS 146.250, and for control of recreational, educational, scientific, and other uses of these areas in a manner that shall not impair them. In such administration primary emphasis shall be given to protecting aesthetic, scenic, historic, archaeological, and scientific features of the area. The secretary shall develop a management plan for a designated stream area and shall publicize and hold public hearings and record the views expressed on each plan developed. Management plans for a given stream area may establish varying degrees of intensity for its protection, based on special attributes of each area, but shall follow the concepts embodied in KRS 146.230. No public use of lands within the boundaries of a designated wild river area in which the state has acquired an interest shall be permitted prior to the development of a management plan. Any such

management plan shall be developed jointly with the Department of Fish and Wildlife Resources with respect to those aspects of such plan as relate to the jurisdiction of that department over fish and wildlife resources.

➔Section 128. KRS 146.280 is amended to read as follows:

- (1) Within the boundaries of a designated stream area, as established and authorized by the Kentucky General Assembly, the secretary for ***energy and environment***~~environmental and public protection~~ is authorized and empowered to acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title, an easement, or any acceptable lesser interest in any lands, and by lease or conveyance, contract for the right to use and occupy any lands. Where property within such boundaries is owned by the federal government, the secretary can enter into agreements with the landowning agency concerning use of the property consistent with the objectives of KRS 146.200 to 146.360. Nothing in KRS 146.200 to 146.360 shall be construed to deprive a landowner of the fee simple title to or lesser interest in his property without just compensation.
- (2) The secretary for ***energy and environment***~~environmental and public protection~~ may not exercise authority to acquire lands or interests in lands located within any incorporated city, village, or county when such entities have in force a duly adopted, valid ordinance or plan for the management, zoning and protection of such lands in accordance with the provisions of KRS 146.200 to 146.360.

➔Section 129. KRS 146.310 is amended to read as follows:

All state agencies shall, promptly upon June 16, 1972, inform the secretary for ***energy and environment***~~environmental and public protection~~ of any proceedings, studies, or other activities within their jurisdictions, and regardless of by whom requested, which are now in progress and which affect or may affect any of the streams specified in KRS 146.241. They shall likewise inform him of any such proceedings, studies or other activities which are hereafter commenced or resumed before they are commenced or resumed.

➔Section 130. KRS 146.320 is amended to read as follows:

Nothing in KRS 146.200 to 146.360 shall preclude a component of the Wild Rivers System from becoming a part of the National Wild and Scenic Rivers System. The secretary for ***energy and environment***~~environmental and public protection~~ is directed to encourage and assist any federal studies for inclusion of Kentucky streams in the National Wild and Scenic Rivers System. The secretary for ***energy and environment***~~environmental and public protection~~ may enter into written cooperative agreements for joint federal-state or interstate administration of a Kentucky component of the National Wild and Scenic Rivers System, provided such agreements for the administration of water and land uses are not less restrictive than those set forth in KRS 146.200 to 146.360.

➔Section 131. KRS 146.330 is amended to read as follows:

The secretary for ***energy and environment***~~environmental and public protection~~ may employ such technical, clerical, stenographic and other employees and assistants as are required to effectively carry out his duties and responsibilities as provided in KRS 146.200 to 146.360.

➔Section 132. KRS 146.340 is amended to read as follows:

A fund for the purpose of carrying out the provisions of KRS 146.200 to 146.360 is hereby created to be designated as a "Wild Rivers System Fund" to consist of all revenues derived from privileges, concessions, contracts, or otherwise, all moneys received by gifts, contributions, donations, and grants from public or private sources. Such "Wild Rivers System Fund" shall be disbursed by the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, after appropriations are made by law, for administration and other expenses and for other purposes provided by KRS 146.200 to 146.360.

➔Section 133. KRS 146.415 is amended to read as follows:

As used in KRS 146.410 to 146.530:

- (1) "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains, or has reestablished to some degree in the judgment of the commission its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;
- (2) "Natural preserve" means a natural area, and land necessary for its protection, any estate, interest or right in which has been formally dedicated under the provisions of KRS 146.410 to 146.530 to be maintained as nearly

as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment and habitat for plant and animal species and other natural objects;

- (3) "Articles of dedication" means the writing by which any estate, interest or right in a natural area is formally dedicated, as provided in KRS 146.410 to 146.530;
- (4) "Commission" means the Kentucky State Nature Preserves Commission;
- (5) "System" means the state system of nature preserves established under KRS 146.410 to 146.530;
- (6) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (7) "Director" means the director of the Kentucky State Nature Preserves Commission.

➔Section 134. KRS 146.560 is amended to read as follows:

- (1) There is hereby established a Kentucky Heritage Land Conservation Fund Board, referred to hereafter as "the board", which shall administer the Kentucky Heritage Land Conservation Fund established in KRS 146.570 and shall review and approve all grants payable from the fund. The board shall consist of the following members:
 - (a) The commissioner of the Department of Parks or a designee;
 - (b) The director of the Kentucky Nature Preserves Commission or a designee;
 - (c) The commissioner of the Department for Natural Resources or a designee;
 - (d) The commissioner of the Department of Fish and Wildlife Resources or a designee;
 - (e) The chairperson of the Kentucky Environmental Education Council or a designee;
 - (f) One (1) person appointed by the Governor, from two (2) persons nominated by the Kentucky Chapter of the Nature Conservancy;
 - (g) One (1) person appointed by the Governor, from two (2) persons nominated by the League of Kentucky Sportsmen;
 - (h) Two (2) persons appointed by the Governor, from four (4) persons recognized for their expertise in natural resource issues and nominated by the Kentucky Academy of Sciences;
 - (i) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Farm Bureau, one (1) by the Commissioner of the Department of Agriculture, and one (1) by the Kentucky Association of Conservation Districts;
 - (j) One (1) person appointed by the Governor, from three (3) persons nominated, one (1) by the Kentucky Audubon Council, one (1) by the Cumberland Chapter of the Sierra Club, and one (1) by the Kentucky Conservation Committee; and
 - (k) One (1) person appointed by the Governor with at least five (5) years of experience in natural resources land acquisition.

The board shall receive staff support from the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet and the Department of Fish and Wildlife Resources. Of the seven (7) members identified in paragraphs (f) to (k) of this subsection and first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, and three (3) for terms of three (3) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the board for a term of three (3) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. The Governor shall appoint a chairperson for the board.

- (2) The board shall promulgate in accordance with the provisions of KRS Chapter 13A administrative regulations as are deemed necessary for application for funds from the agencies identified in KRS 146.570, review and approval of proposed projects, and review and approval of grants. Grants shall be made in amounts, for purposes, and to the agencies identified in KRS 146.570 as meet the priorities for acquisition which are:

- (a) Natural areas that possess unique features such as habitat for rare and endangered species;
- (b) Areas important to migratory birds;
- (c) Areas that perform important natural functions that are subject to alteration or loss; or
- (d) Areas to be preserved in their natural state for public use, outdoor recreation and education.

The board shall promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A on acquisition based on these priorities and property costs seeking to maximize the greatest public benefit by taking advantage of those priority areas available below fair market value and where public or private funds are available on a matching basis. The board shall expend the whole or any part of the principal and interest as needed. KRS 146.550 to 146.570 shall not allow the use of condemnation powers and shall only allow acquisition of land from willing sellers.

➔Section 135. KRS 146.570 is amended to read as follows:

- (1) There is hereby established in the State Treasury a fund entitled "Kentucky Heritage Land Conservation Fund." The fund shall primarily receive state appropriations, gifts, grants, federal funds, and tax receipts. The fund shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Moneys in the fund not expended at the end of a fiscal year shall be carried forward to the next fiscal year, and the fund shall not lapse. Moneys in the fund shall be invested in accordance with administrative regulations developed by the State Investment Commission in accordance with KRS 42.525. Interest earnings shall accrue to the fund.
- (2) The fund shall be attached for administrative, budgeting, and capital planning and reporting purposes to the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. Land acquisitions shall be authorized by the General Assembly and reported to the Capital Projects and Bond Oversight Committee in accordance with KRS 45.750 to 45.800. Allocation of moneys as approved by the board for management of the lands shall be appropriated to each separate agency as part of its operating budget.
- (3) Moneys in the fund shall be used exclusively for the purposes of acquisition and management of lands as defined in KRS 146.560. Each recipient of moneys shall develop and implement a resource management plan for each tract acquired, except a resource management plan for properties adjacent to a state park shall be developed and managed by the Department of Parks, and shall allocate at least ten percent (10%) of moneys received for management of lands acquired. Lands acquired shall be maintained in perpetuity for the purposes set out in KRS 146.560.
- (4) Moneys in the fund shall be allocated as follows:
 - (a) The Department of Parks shall receive ten percent (10%);
 - (b) The Department of Fish and Wildlife Resources shall receive ten percent (10%);
 - (c) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, Division of Forestry, shall receive ten percent (10%);
 - (d) Ten percent (10%) shall be allocated for wild rivers corridors established by the Kentucky Wild Rivers Act, KRS 146.200 to 146.360, and any administrative regulations promulgated pursuant thereto;
 - (e) The Nature Preserves Commission shall receive ten percent (10%); and
 - (f) The board shall receive the remaining fifty percent (50%), for allocation to state agencies, local governments, and state colleges and universities.

➔Section 136. KRS 147A.031 is amended to read as follows:

- (1) The Governor's Office for Local Development, in cooperation with cities, counties, waste management districts, waste industries, the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, and the Environmental Quality Commission, shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:
 - (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues, including but not limited to host community compensation and collection and disposal fees; and

- (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include but are not limited to the following:

1. Operational issues, such as hours of operation;
2. Recycling and composting efforts that may be implemented;
3. Protection of property values;
4. Traffic routing and road maintenance; and
5. Establishment of local advisory committees.

- (2) The Governor's Office for Local Development shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

➔Section 137. KRS 147A.200 is amended to read as follows:

- (1) The Governor's Office for Local Development is authorized and directed to apply for and receive federal funds to be placed in a state account called the gas system restoration and development project account, and to provide staff to administer said funds. The funds in this account may be used in any gas system restoration or development project approved by the Gas System Restoration and Development Project Account Review Board.
- (2) A Gas System Restoration and Development Project Account Review Board is established and shall consist of eight (8) members appointed by the Governor. The board shall be chaired by the commissioner of the Governor's Office for Local Development and shall include representatives of the Public Service Commission, state fire ~~marshal~~~~[Marshal's Office]~~, Governor's Office for Local Development, Kentucky Infrastructure Authority, banking and finance industry, commercial or industrial consumers, Kentucky Gas Association, and low-income or minority group consumers. Members shall be reimbursed for necessary expenses in attending meetings.
- (3) The review board shall meet as necessary and shall establish rules for conducting its business. The review board shall consider applications for loans from the account and approve or disapprove loan applications. No loan shall be considered unless the applicant has complied with all construction and securities requirements of the Public Service Commission. In reviewing loan applications, the review board may request the testimony of the county judge/executive of an affected county and any other witnesses deemed appropriate.

➔Section 138. KRS 148.590 is amended to read as follows:

- (1) There is created the Kentucky Sports Authority, which shall be attached to the Tourism, Arts and Heritage Cabinet, Office of the Secretary, for administrative purposes.
- (2) The authority shall consist of fifteen (15) members, including the Lieutenant Governor, the secretary of the Tourism, Arts and Heritage Cabinet, the secretary of the ~~[Environmental and]~~ Public Protection Cabinet, and twelve (12) members appointed by the Governor. The members appointed by the Governor shall include representatives of the Kentucky ~~Horse Racing Commission~~~~[Authority]~~, the fish and wildlife community, and the Kentucky Boxing and Wrestling Authority.
- (3) The Lieutenant Governor shall serve as chairperson of the authority. Members shall elect other officers as they deem necessary. Of the members initially appointed by the Governor, one-third (1/3) shall serve a term of four (4) years, one-third (1/3) shall serve a term of three (3) years, and one-third (1/3) shall serve a term of two (2) years. All succeeding terms shall be for four (4) years.
- (4) The secretary of the Tourism, Arts and Heritage Cabinet shall appoint an executive director, with the prior written approval of the Governor, to head the authority. The cabinet shall provide additional administrative support to the authority from the cabinet's existing staff as necessary.

- (5) The authority shall meet monthly and at other times as necessary, upon the call of the chairperson. Members shall be reimbursed for expenses incurred in performing the authority's duties, functions, and responsibilities.
- (6) The authority's primary responsibility shall be to recruit, promote, assist, place, and develop sporting events, facilities, attractions, and programs in the Commonwealth, with the ultimate goal of developing commerce, the economy, job opportunities, and revenue streams. The authority's duties shall include but not be limited to the following:
 - (a) Lead efforts to attract national and regional sporting events to Kentucky by working with the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics, the Professional Golf Association, the National Football League, the National Basketball Association, the Professional Bowlers Association, the Professional Tennis Tour, the National Association for Stock Car Auto Racing, the United States Olympic Committee, Bassmasters, and other nationally recognized organizations;
 - (b) Work toward establishing professional franchises in Kentucky, and develop an overall strategic plan to recruit and retain all forms of professional and amateur sporting events, including boxing, motor vehicle racing, baseball, football, soccer, hockey, tennis, gymnastics, volleyball, and figure skating;
 - (c) Identify and propose improvements for sporting activity infrastructure, including opportunities for private and public partnership on infrastructure development; present for the Governor's approval any financial plan that would require state tax dollars to build new athletic facilities; and upon the Governor's approval of a proposed financial plan, present it to the General Assembly;
 - (d) Foster relationships between sporting event organizers and event sponsors, and between and among state agencies, and provide advice and direction for increasing the number and quality of sporting events;
 - (e) Evaluate various sports and sports-related activities and entities, such as auto racing, summer instructional camps for cheerleading, and sports agents, and make written recommendations to the Governor and the General Assembly as to whether additional regulation, licensing, or taxing are necessary;
 - (f) Attempt to involve renowned Kentucky athletes in the war against drugs and the promotion of the Governor's Wellness Initiative;
 - (g) Work with Kentucky Educational Television and other media outlets to establish and develop a twenty-four (24) hour television channel devoted to promoting and highlighting healthy lifestyles, sports, and applicable government programs, such as the state park system and the Department of Fish and Wildlife Resources;
 - (h) Develop and recommend to the Governor, as necessary, legislation and administrative regulations to further the purposes of the authority, provide additional professional and amateur participation by Kentucky's citizens, provide adequate safety measures and ethical operations for sporting events, recruit and maintain professional and amateur sporting events, and address the fiscal and tax implications of the issues and activities of this section; and
 - (i) Assume all duties, functions, responsibilities, records, equipment, and staff of the Governor's Commission on Sports, Physical Activity, and Wellness established under KRS 11.190, and establish a council titled the Council on Sports, Physical Activity, and Wellness to implement these transferred statutory responsibilities.

➔Section 139. KRS 148.795 is amended to read as follows:

- (1) As used in this section:
 - (a) "Agreement" means a recreational land use agreement where at least one (1) party is a governmental entity as defined in this section;
 - (b) "Government" or "governmental entities" means any government entity of the Commonwealth, including state government agency, city, county, urban-county government, consolidated local government, unified local government, or charter county;
 - (c) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached to the realty;

- (d) "Owner" means a private individual, corporation, or government who possesses a fee interest in the land; and
 - (e) "Recreational purpose" includes but is not limited to any of the following, or any combination thereof: hunting, fishing, rock climbing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, waterskiing, winter sports, all-terrain vehicle riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
- (2) The Kentucky Recreational Trails Authority is hereby established and attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet, for the purpose of planning and implementing programs to expand tourism opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including but not limited to pedestrians, bicycles, mountain bicycles, horses, all-terrain vehicles (ATVs), and off-highway vehicles (OHVs), on designated lands in Kentucky. Membership of the authority shall consist of the following:
- (a) A chairman, selected from its members, to be designated by the Governor;
 - (b) Membership shall include the following members:
 - 1. Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association. The initial term of one (1) member shall expire one (1) year after the date of appointment. The initial term of the other member shall expire two (2) years after the date of appointment;
 - 2. One (1) member of the League of Kentucky Sportsmen, appointed by the Governor. The initial term of this member shall expire one (1) year after the date of appointment;
 - 3. One (1) member of the Kentucky Council of Area Development Districts, appointed by the Governor. The initial term of this member shall expire four (4) years after the date of appointment;
 - 4. Two (2) members selected from ATV associations, with consideration given to geographic diversity. The initial term of one (1) of these members shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire three (3) years after the date of appointment;
 - 5. Two (2) members representing Kentucky Farm Bureau, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment; and
 - 6. Two (2) members representing the coal industry, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment;
 - (c) Seven (7) additional members who shall be appointed by the Governor from the following groups:
 - 1. One (1) member shall be chosen from a Kentucky bicycling organization that is affiliated with either the League of American Bicyclists, the United States Cycling Federation, or the International Mountain Bicycling Association. The initial term of this member shall expire three (3) years after the date of appointment;
 - 2. One (1) member shall be from a Kentucky equine organization that has trail riding as its primary focus. The initial term of this member shall expire one (1) year after the date of appointment;
 - 3. One (1) member shall be chosen from a state or national hiking or backpacking organization. The initial term of this member shall expire two (2) years after the date of appointment;
 - 4. Two (2) members shall be chosen from five (5) persons nominated in writing by the Kentucky Horse Council. The initial term of one (1) of these members shall expire four (4) years after the date of appointment, and the initial term of the other member shall expire two (2) years after the date of the appointment;

5. One (1) member shall be chosen by the Governor from the public at large. The initial term of this member shall expire three (3) years after the date of appointment; and
 6. One (1) member shall be selected from among the county judges/executive of the Commonwealth. The initial term of this member shall expire two (2) years after the date of appointment;
- (d) Additionally, the following shall serve as members by virtue of their official positions:
1. The secretary of the Transportation Cabinet, or the secretary's designee;
 2. The secretary of the Tourism, Arts and Heritage Cabinet, or the secretary's designee;
 3. The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
 4. The secretary of the Justice and Public Safety Cabinet, or the secretary's designee;
 5. The secretary of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet, or the secretary's designee; and
 6. The Commissioner of the Department of Agriculture, or the Commissioner's designee; and
- (e) Upon the expiration of the terms of the initial members described in paragraphs (b) and (c) of this subsection, the Governor shall appoint thirteen (13) members of the public in such a manner as to ensure equal representation of motorized and nonmotorized use of trails and in accordance with the requirements of paragraphs (b) and (c) of this subsection. Any vacancy on the authority shall be filled by the Governor for the unexpired term.
- (3) (a) Each appointed member shall serve for a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (b) Any member may be removed from his or her appointment by the Governor for cause.
- (c) Appointed members shall be reimbursed for travel costs incurred in attending meetings, which shall be paid from the funds of the Kentucky Department of Travel and in compliance with the Tourism, Arts and Heritage Cabinet's procedures for travel and reimbursement.
- (4) (a) The chairman shall set the agenda, place, and time of meetings, which shall be held a minimum of two (2) times per year and conducted in accordance with the Open Meetings Act, KRS 61.805 to 61.850.
- (b) A quorum for all meetings shall consist of seven (7) of the members.
- (c) The chairman shall be a nonvoting member, except in cases of a tie vote, in which case, the chairman may cast the deciding vote.
- (5) (a) An agreement as defined in subsection (1) of this section may be entered into by any owner or owners and any governmental entities as defined in subsection (1)(b) of this section.
- (b) The agreement shall be a contractual arrangement that authorizes the public to utilize the owner's land for a recreational purpose. The allowable recreational purpose or purposes may include but are not limited to all-terrain vehicle riding, public hunting, nature conservation, biking, rock climbing, hiking, and horseback trail riding and may be limited in scope by the terms of the agreement.
- (c) The agreement may specify that the governmental entity or entities may be responsible for the maintenance and upkeep of the land.
- (d) The provisions of KRS 411.190 shall apply to public use of lands for recreational purposes authorized under an agreement entered into pursuant to this section.
- (e) Unless otherwise agreed by the parties, the agreement may be terminated by either party at any time for any reason if thirty (30) days' notice is given.
- (6) An agreement executed pursuant to this section, or the use of land under an agreement created pursuant to this section, shall not:
- (a) Create in any user any interest in the property;
 - (b) Ripen into a claim of adverse possession;

- (c) Alter the land or status of the land to make it unsuitable for mining pursuant to KRS 350.610; or
 - (d) Cause a denial of a mining permit pursuant to KRS 350.085 or other statutes or regulations of the Commonwealth of Kentucky or any political subdivision thereof.
- (7) In accordance with the purpose and limitations specified in this section, the governmental entities may:
- (a) Construct, develop, manage, maintain, operate, improve, renovate, finance, or otherwise provide for recreational activities and facilities on designated public lands and private lands where owners have voluntarily entered into use agreements with the authority or government; and
 - (b) Charge for a general use permit to access the lands for off-road activities as described in subsection (5) of this section that shall be valid for not less than thirty (30) days.
- (8) The Kentucky Recreational Trails Authority may accept, acquire, dispose of, or hold real or personal property, and any interest therein, by deed, grant, loan, gift, devise, bequest, lease, license, easement, or transfer from any state or federal government agency, or from any person, corporation, or other entity, for the purpose of public use.
- (9) All proceeds derived from the sale of a general use permit pursuant to subsection (7)(b) of this section, or any proceeds derived from property identified in subsection (8) of this section, shall be paid to the State Treasurer, who shall deposit the proceeds in a revolving fund to carry out the purposes of this chapter. The fund shall be administered by the Tourism, Arts and Heritage Cabinet. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.
- (10) The Tourism, Arts and Heritage Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of this section.

➔Section 140. KRS 148.876 is amended to read as follows:

- (1) The power of eminent domain may only be exercised to acquire land in fee within the boundaries of the trail, except that the power of eminent domain shall not be exercised to acquire any privately owned dwelling, areas designated for residential structures and their surrounding properties, or property owned or leased, including adjacent or contiguous tracts of land leased or owned or which may be acquired, for the purposes of operating an oil or gas well, surface or underground coal mine operation, or surface or underground mineral quarrying operation, if the person holds a state permit or license issued by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, Division of Mine Permits or Office of Mine Safety and Licensing.
- (2) Within the boundaries of the trail, the department may acquire, on behalf of the Commonwealth, fee title or lesser interests in land. Acquisition of land may be by gift, by purchase with donated funds, by funds appropriated by the General Assembly, by the use of proceeds from the sale of bonds, by exchange, by assumption of property tax payments, or by other authorized means. Notwithstanding the provisions in KRS 350.085(3) and 353.610, in acquiring any interests the Commonwealth or its agencies shall waive the three hundred (300) foot restriction contained in KRS 350.085(3) and boundary restrictions for a well set forth in KRS 353.610.

➔Section 141. KRS 149.010 is amended to read as follows:

- (1) There is hereby created and there shall be maintained within the Department for Natural Resources in the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet a Division of Forestry to supervise all forestry property and advance forest interests of the state through development of such property and interests. It shall initiate such projects as will promote public appreciation of forest protection and of reforestation; encourage tree planting in general and on the public highways in particular; grow, collect and distribute seedlings; form and foster junior forestry clubs; cooperate with local civic organizations in the care of trees and planting of more trees; provide for organized forest fire protection; cooperate with the federal government, state departments and landowners in the perpetuation of forests, the promotion of tree growth and the redemption of wasteland for agricultural purposes; and encourage an interest in forestry by correspondence, press, pamphlets, reports, moving pictures and organizations.
- (2) The director of the Division of Forestry with the approval of the secretary for **energy and environment**~~environmental and public protection~~ shall adopt and enforce such rules and regulations as may be necessary to carry out the functions assigned the cabinet by law.

➔Section 142. KRS 149.015 is amended to read as follows:

There shall be established and maintained within the nursery or nurseries of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet a section or sections for the propagation of blight resistant chestnut tree seedlings. Such seedlings shall be distributed to landowners and citizens of the Commonwealth at reasonable cost and under and subject to such rules and regulations as may be established by the secretary for environmental and public protection.

➔Section 143. KRS 149.020 is amended to read as follows:

- (1) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet may receive by donation, purchase, or lease lands for forestry purposes, and may convey, exchange, or lease said lands and may sell timber or other forest products thereon. In exercising this function the cabinet shall be exempted from any provision of KRS 45.301 or 45A.045, except with respect to the purchase, conveyance, exchange, or inventory of lands.
- (2) No land shall be purchased, leased, or received as a donation unless the title thereto is merchantable and has been approved by the Attorney General.

➔Section 144. KRS 149.030 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet may establish forest reserves in places where the land is suitable for the growth of timber and for the propagation of wild animal life. It may lease lands suitable for the purpose of growing timber and adapted to the propagation of game and wild animals. Such leases shall be for a term of not less than twenty (20) nor more than one hundred (100) years, and the rental shall not exceed the amount of state, county and school taxes on the property. The rentals shall be paid not later than December 31 in each year, out of funds accruing to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet. All taxes shall be paid by the owners of the property prior to or at the time the rentals are paid by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.

➔Section 145. KRS 149.040 is amended to read as follows:

- (1) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet has complete control over all property acquired or leased by it. It may post all forest reserves and may eject all trespassers from property under its control.
- (2) No person shall injure any property under its control, or interfere in any manner with the management and supervision of the property.
- (3) No person shall acquire title by adverse possession to any property under control of the cabinet.
- (4) The cabinet may cooperate with any department of the state or the federal government, for the purpose of protecting and propagating fish and game.

➔Section 146. KRS 149.060 is amended to read as follows:

If merchantable timber is taken from land leased to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, one-half (1/2) of the stumpage value of the timber shall be paid into the State Treasury and the other half (1/2) shall be paid to the lessor or his assigns. The sale of timber grown upon leased lands shall be made only by consent of all parties interested in the land or by court order. If all interested parties do not agree to sell the timber, the cabinet may, by a suit in equity, to which all persons interested shall be made parties, obtain an order directing the cabinet to sell merchantable timber on any leased lands.

➔Section 147. KRS 149.070 is amended to read as follows:

When any action is instituted in behalf of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, the county and Commonwealth's attorney shall represent it in the county in which the action is brought. The Attorney General shall have supervisory authority over all actions instituted for or against the cabinet.

➔Section 148. KRS 149.080 is amended to read as follows:

Forest wardens employed by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, shall assist in preventing, controlling and extinguishing forest fires, under direction of the cabinet. A forest warden must be a full-time employee of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet who has been appointed by the secretary. A deputy forest warden can be a full-time or part-time employee of the cabinet or a non-

employee who has been appointed by the secretary to have the same rights and privileges of a forest warden except the issuing of citations or arrests for violations of this chapter or collection of suppression costs.

➔Section 149. KRS 149.083 is amended to read as follows:

No person shall resist, obstruct, interfere with or threaten, or attempt to intimidate, or in any other manner interfere with any officer or employee of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet in the discharge of his duties under the provisions of KRS Chapter 149.

➔Section 150. KRS 149.087 is amended to read as follows:

- (1) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet may secure such automobile liability insurance as will reasonably protect the interest of employees of the cabinet, particularly those employees driving trucks or heavy equipment in the conduct of official business.
- (2) Policies authorized by this section shall be purchased only in accordance with regulations prescribed by the ***commissioner***~~[executive director]~~ of insurance and the secretary of the Finance and Administration Cabinet.

➔Section 151. KRS 149.090 is amended to read as follows:

- (1) A forest warden, for violation of laws for the protection of the forest of the state, has the following arrest powers:
 - (a) With a warrant;
 - (b) Without a warrant any person he observes committing a misdemeanor or a felony; and
 - (c) Without a warrant when he has reasonable grounds to believe that the person being arrested has committed a felony. No action for trespass shall lie against any forest warden, or person summoned by him, for crossing or working upon lands of another in connection with his duties as forest warden.
- (2) A forest warden may summon any resident of the state over eighteen (18) years of age who is physically able to assist in extinguishing forest fires. Inability or failure to pay such persons does not bar the authority of the warden to summon them.
- (3) A forest warden may require the use of horses, automobiles, tools and other equipment needed in extinguishing fires. Owners of said required equipment and materials shall receive reasonable compensation therefor, as determined by the forest warden. In case of disagreement upon the terms of compensation, the dispute shall be referred to the secretary for ***energy and environment***~~[environmental and public protection]~~ who shall make the final decision.

➔Section 152. KRS 149.097 is amended to read as follows:

The secretary for ***energy and environment***~~[environmental and public protection]~~ may offer rewards out of moneys, appropriated to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, for information leading to the apprehension and conviction of persons violating the laws relating to the setting of fires and forest fire control.

➔Section 153. KRS 149.160 is amended to read as follows:

When the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet determines that a danger of forest fire exists in a county in which the statewide system of forest fire protection has been established under KRS 149.510 to 149.600, the cabinet shall respond to the forest fire danger and employ those persons and means as, in its judgment, are expedient and necessary to respond to the forest fire danger or to extinguish the fire, within the limits of the expense that it has been authorized to incur in its instructions from the secretary for ***energy and environment***~~[environmental and public protection]~~. The cabinet shall keep an itemized account of all expenses thus incurred and immediately send the account verified by affidavit to the secretary for ***energy and environment***~~[environmental and public protection]~~ for examination. Upon approval by the secretary for ***energy and environment***~~[environmental and public protection]~~, the account shall be paid from such fund or funds as are available to the cabinet for such purpose. No such payment shall be made to any person who has intentionally started the fire or to any person whose negligence caused or contributed to the setting of the fire.

➔Section 154. KRS 149.170 is amended to read as follows:

No action for trespass shall lie against the secretary for *energy and environment*~~[environmental and public protection]~~, or any agent or employee of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet, or any forest warden on account of lawful acts done in legal performance of their duties.

➔Section 155. KRS 149.180 is amended to read as follows:

Whenever possible, the secretary for *energy and environment*~~[environmental and public protection]~~ shall collect the costs of firefighting done and approved as provided in KRS 149.160, from the person responsible for the origin of the fire by his negligence or intent. The recovered costs shall be deposited in a special fund in the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet. The recovered costs shall be repaid to the county in which the costs were incurred, if such county has fully paid its annual assessment to the statewide system as provided for in KRS 149.540 for the year in which the fire suppression costs were incurred. If a county is not eligible to receive the recovered costs, the money shall be used by the Division of Forestry to improve fire protection services. The funds so repaid to the county shall be placed in the county forest fire protection fund provided for in KRS 149.590. Any money in the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet's, or its predecessor's, special fund upon July 15, 1998, that were not repaid to a county for having failed to fully pay its annual assessment, shall be used by the Division of Forestry to improve fire protection services. In the event the suppression cost is not collected, the Commonwealth's attorney of the county in which the fire occurred shall institute and prosecute the necessary proceedings. Costs recovered under this section shall be ordered to be paid directly to the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet. The court shall not direct that the costs be paid through the circuit clerk.

➔Section 156. KRS 149.280 is amended to read as follows:

- (1) The secretary for *energy and environment*~~[environmental and public protection]~~, or his authorized agent, may, upon request, and whenever he deems it essential to the best interests of the people of the Commonwealth, cooperate with counties, cities, corporations, institutions or individuals in preparing plans for the protection, management and replacement of trees, woodlands and timber tracts, under an agreement that the parties obtaining such assistance pay at least the field expenses of the men employed in preparing said plans. Services rendered under this cooperative plan may include the designation of trees for sale or removal, measuring or estimating the commercial volume contained in the trees designated, marketing advice, and general forestry advice concerning the management of the landowner's forest.
- (2) When services are rendered under this section, the landowner or his agent, upon presentation of a statement, shall pay to the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet, within thirty (30) days of receipt of the statement, the amount due. The amounts so collected by the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet shall be paid into the State Treasury and shall be credited to a special fund for forest management and marketing, and, with such other funds as may be appropriated by the General Assembly, or contributed by the United States or any governmental or private agency for such purposes, shall be used and disbursed by the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet for such purpose.

➔Section 157. KRS 149.325 is amended to read as follows:

The secretary for *energy and environment*~~[environmental and public protection]~~ shall be the compact administrator representing the Commonwealth of Kentucky as provided for in Article III of the compact approved by KRS 149.310. The *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet is hereby authorized to do any and all things required to make effective the provisions of the compact.

➔Section 158. KRS 149.330 is amended to read as follows:

As used in KRS 149.330 to 149.355, unless the context requires otherwise:

- (1) "Best management practices" means effective, practical, economical, structural, or nonstructural methods that prevent or reduce the movement of sediment, nutrients, pesticides, and other pollutants from the land to surface or groundwater, or that otherwise protect water quality from potential adverse effects of timber harvesting operations as developed by the Division of Forestry and approved by the Agriculture Water Quality Authority;
- (2) "Cabinet" means the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (3) "Director" means the director of the Division of Forestry;
- (4) "Division" means the Division of Forestry;
- (5) "Logger" means any person who conducts timber harvesting operations for commercial purposes;

- (6) "Operator" means any person who operates or exercises control over any timber harvesting operations;
- (7) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or business organization, and any agency or instrumentality of federal, state, or local government, including any publicly-owned utility or any publicly-owned corporation of federal, state, or local government;
- (8) "Timber harvesting operations" means activities directly related to the cutting or removal of trees from the forest as a raw material for commercial processes or purposes, including timber preharvesting and postharvesting activities associated with the implementation of appropriate best management practices. "Timber harvesting operations" does not include:
 - (a) The cutting of firewood;
 - (b) The cutting of evergreens grown for and cut for the traditional Christmas holiday season;
 - (c) The removal of trees incidental to clearing for coal mining or farm purposes or incidental to ground-disturbing construction activities, including well sites, and access roads and gathering lines for oil and natural gas operations;
 - (d) The cutting of trees for maintaining existing, or during construction of, rights-of-way for public highways or public utilities, unless those trees are being sold or provided as raw material for commercial wood product purposes; or
 - (e) The cutting of trees by an individual, nonindustrial landowner on his own property, if the cutting is performed by the individual, nonindustrial landowner; and
- (9) "Water pollution" has the same meaning as in KRS 224.01-010.

➔Section 159. KRS 149.365 is amended to read as follows:

As used in KRS 149.360 to 149.430 and 149.991, unless the context requires otherwise:

- (1) "Secretary" means the secretary for **energy and environment**~~[environmental and public protection]~~.
- (2) "Cabinet" means the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet.
- (3) "Person" means an individual, corporation, partnership, association, municipality, state and federal government, or other public body or other legal entity, or any officer, employee or agent of any of the foregoing.
- (4) "Timberland" means any land which has enough timber or woody brush, standing or down, to constitute a fire menace to itself or adjoining lands, but does not include lands under cultivation or entirely in grass, nor land that is an isolated fire risk unless a fire on it would imperil the lands of an adjoining landowner.
- (5) "Flammable material" shall include but is not limited to refuse, debris, waste forest material, brush, stumps, logs, rubbish, fallen timber, grass, stubble, leaves, slash, and grain.

➔Section 160. KRS 149.370 is amended to read as follows:

No person shall:

- (1) Within or adjacent to timberland, dispose of a lighted match, cigarette, cigar, ashes, or other flaming or glowing substance, or any other substance or thing in such condition that it is likely to ignite a forest, brush, grass, or woods fire, or throw or drop any of the aforesaid objects or substances from a moving vehicle or drop or leave any of the aforesaid objects or substances within the limits of the right-of-way of any road or highway in such timberland. The driver of a moving vehicle shall be deemed prima facie liable where it cannot be determined which of the occupants of the moving vehicle threw or dropped any of the aforesaid objects or substances.
- (2) Smoke in timberland during an emergency period of fire danger as proclaimed in KRS 149.405.
- (3) Within or adjacent to timberland, set a backfire or cause a backfire to be set, except under the direct supervision of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet, or unless it can be established that the setting of such backfire is necessary for the purpose of saving life or valuable property.

- (4) Without authority, destroy, deface, or remove any notice, sign, or poster of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, posted for the better protection of wood lots, forests, or wild lands from fire or trespass.
- (5) Use or operate within or adjacent to timberland a welding torch, tarpot, or other device which may cause a fire, without clearing flammable material surrounding the operation or without taking such other reasonable precautions necessary to ensure against the starting and spreading of fire.
- (6) Discharge or cause to be discharged a gun firing incendiary or tracer bullets or tracer charge or combustible gun wadding onto or across any timberland.
- (7) Have in his possession on timberland any incendiary or tracer bullet or tracer charge, except in the course of transporting the same in conformity with law.
- (8) In or adjacent to timberland, set fire or direct another to set fire to any flammable material for debris removal, cooking, heating, or to provide light without first obtaining permission from the landowner and taking necessary precautions to prevent the fire from spreading to adjacent lands. All burning materials shall be attended until extinguished.

➔Section 161. KRS 149.405 is amended to read as follows:

- (1) It shall be unlawful, when the forest lands, brush lands and fields in this state or any part thereof have become so dry or parched as to create an extraordinary fire hazard endangering lives and property, for any person, except the owner, tenant or owner's authorized agent, persons regularly engaged in cutting, processing, or moving forest products, persons engaged in constructing, maintaining, and operating utility or pipeline rights-of-way, or persons on official duty, to enter or travel in any state, county, municipal or private forest lands, brush lands, fields or idle or abandoned lands in the area so affected except on public highways or well defined private roads.
- (2) When such an emergency is found to exist by the secretary for ***energy and environment***~~(environmental and public protection)~~, the Governor may proclaim such a condition to exist in the Commonwealth or any described part thereof. The provisions of subsection (1) shall be effective only during the time such proclamation is in force and only in the area where such emergency is declared to exist.
- (3) The Secretary of State shall cause notice of such proclamation or any amendments or rescission thereof to be published in a newspaper or newspapers of general circulation in the area affected.

➔Section 162. KRS 149.415 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall administer KRS 149.360 to 149.430 and shall have power to issue, amend and revise such rules and regulations as may be authorized hereby or as may reasonably be necessary to implement the same. The cabinet is authorized to make, conduct or participate in any investigations and surveys designed to establish the cause of and responsibility for a particular forest fire or forest fire conditions generally and to cooperate with any and all law enforcement officers of or in this state in the apprehension and prosecution of persons violating this law. Nothing contained in KRS 149.360 to 149.430 shall be construed to limit or otherwise impair the jurisdiction or powers of any other department, agency or officer of or in this state to investigate, apprehend, prosecute or punish violations of law.

➔Section 163. KRS 149.430 is amended to read as follows:

- (1) If any forest fire shall originate as a result of the violation by any person of any provision of KRS 149.360 to 149.430, such person shall be, in addition to the penalty prescribed under KRS 149.991, liable to the state and to each county for the full amount of all expenses incurred by the state and county respectively in suppressing each fire, such amounts to be recoverable by action brought by the secretary for ***energy and environment***~~(environmental and public protection)~~ in the name of the Commonwealth on behalf of the Commonwealth and by the county attorney on behalf of the county.
- (2) In addition to any penalty pursuant to KRS 149.991, any person violating any of the provisions of KRS 149.360 to 149.430 shall be answerable in damages to any persons suffering such damage for the cost incurred in the suppression of any fire resulting from such violation and for damage to property resulting from such fires.
- (3) Damages assessed under this section shall be ordered to be paid directly to the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet or to any other injured person or organization

specified by written order of the court. The court shall not direct that the damages be paid through the circuit clerk.

➔Section 164. KRS 149.510 is amended to read as follows:

As used in KRS 149.510 to 149.600, unless the context requires otherwise:

- (1) "Secretary" means the secretary for *energy and environment*~~[environmental and public protection]~~;
- (2) "Cabinet" means the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (3) "Timberland" means any land which has enough timber or woody brush, standing or down, to constitute a fire menace to itself or adjoining lands, but does not include lands under cultivation or entirely in grass, nor land that is an isolated fire risk unless a fire on it would imperil the lands of an adjoining landowner.

➔Section 165. KRS 149.520 is amended to read as follows:

- (1) It shall be the duty of the cabinet to establish and maintain a statewide system of forest fire prevention, detection and suppression.
- (2) The cabinet shall formulate a plan and program subject to the approval of the secretary for *energy and environment*~~[environmental and public protection]~~ to extend forest fire protection to all counties not now participating in the state program. The plan shall provide for the establishment of such protection in all the counties of the state on or before January 1, 1964.

➔Section 166. KRS 149.600 is amended to read as follows:

- (1) Any person aggrieved by a listing of any portion of his property as timberland by the property valuation administrator may file a protest with the county judge/executive, provided the protest is in writing and is made within thirty (30) days of receipt of notice of the listing. Protest may be made on the ground that the land or any portion so listed is not timberland, or that the timberland so listed will not be benefited by the forest fire protective system then in effect, or benefited by the proposed forest fire protective system if the assessment is being made for the first time in that county.
- (2) The county judge/executive shall hear all protests properly filed. Protests shall be heard within a reasonable time after the filing thereof, and reasonable notice shall be given to the protestant and the secretary for *energy and environment*~~[environmental and public protection]~~ as to the time and place of the hearing. The county judge/executive shall have authority to issue subpoenas to compel the attendance of any witness desired by any interested party, and he shall be authorized to administer the oath to any witness.
- (3) Proceedings for hearing any protest shall be summary and the findings of the county judge/executive shall be final, and an order shall be entered either dismissing the protest or directing the proper county officials to alter their records in accordance with the findings.

➔Section 167. KRS 149.610 is amended to read as follows:

The purpose of KRS 149.610 to 149.680 is to place in the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet, the authority and responsibility to control infestations or infections by insects or disease, which are hereby declared to be a public nuisance, in order to protect and preserve forest resources, enhance the growth and maintenance of forests, promote stability of forest-using industries, aid in fire control by reducing the menace created by dying and dead trees, conserve forest cover on watersheds, and protect recreational, wildlife and other values of the forests of the Commonwealth.

➔Section 168. KRS 149.620 is amended to read as follows:

The secretary for *energy and environment*~~[environmental and public protection]~~ shall make surveys and investigations to determine the threat or presence of infestations and control of forest pests. For this purpose duly designated representatives of the secretary may enter at reasonable times on public and private lands for the purpose of conducting such surveys, investigations and controls.

➔Section 169. KRS 149.630 is amended to read as follows:

Whenever the secretary for *energy and environment*~~[environmental and public protection]~~ finds that any forest area is infested, threatened to be infested, infected, or threatened to be infected with insects or disease, he shall determine whether measures of control are needed and are available and the area over which the control measures shall be

applied. He shall prescribe the proposed zone in which control measures are to be applied, and shall publish notice of the proposal, as required by law. Such notice shall include a brief description of the location of the proposed zone of infestation or infection and the approximate time when control measures will be executed.

➔Section 170. KRS 149.640 is amended to read as follows:

The secretary for ***energy and environment***~~{environmental and public protection}~~ may apply measures of infestation and infection control on public and private forests and other lands anywhere in the Commonwealth, to any trees, timber, plants or shrubs thereon harboring or which may harbor any insects or disease. The secretary may enter into agreements with owners of such lands covering the control work on their lands, and fix the pro rata basis on which the cost of such work will be shared between the Commonwealth and said owner; provided, that the failure of the secretary to offer an agreement to or execute an agreement with any owner shall not impair the right of the secretary's representatives to enter on the lands of said owner to conduct control operations.

➔Section 171. KRS 149.650 is amended to read as follows:

The secretary for ***energy and environment***~~{environmental and public protection}~~ is authorized to carry out control work on other adjacent or interior holdings, which, if uncontrolled, would cause a reinfestation or reinfection of the controlled area, and to contract with owners of land in the affected area relative to payment of the cost of such work.

➔Section 172. KRS 149.660 is amended to read as follows:

The secretary for ***energy and environment***~~{environmental and public protection}~~ may cooperate with the federal government or agencies thereof, other agencies of the Commonwealth, county or municipal governments, agencies of neighboring states, or other public or private organizations, or individuals and may accept such funds, equipment, supplies or services from cooperators and others as may be deemed appropriate. The secretary may provide in agreements with the federal government or its agencies for matching of federal funds as required under federal laws relating to forest pests.

➔Section 173. KRS 149.670 is amended to read as follows:

All moneys collected under the provisions of KRS 149.610 to 149.680, including such as may be contributed or paid by the federal government or any other public or private agency, organization or individual, shall be placed in the State Treasury to the credit of a revolving, trust or agency fund account for use by the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet in carrying out the purposes of KRS 149.610 to 149.680.

➔Section 174. KRS 149.680 is amended to read as follows:

The secretary for ***energy and environment***~~{environmental and public protection}~~ is authorized as required by law, to employ necessary personnel, procure necessary equipment, supplies and services; to enter into contracts in the name of the secretary and to provide funds to any agency of the United States for work or services under the forest pest control program. The secretary for ***energy and environment***~~{environmental and public protection}~~ may prescribe rules and regulations for carrying out the purposes of KRS 149.610 to 149.680.

➔Section 175. KRS 150.175 is amended to read as follows:

The kinds of licenses and tags authorized by this chapter, and the acts authorized to be performed under the licenses and tags, subject to the other provisions of this chapter and subject to administrative regulations promulgated under this chapter, shall be as follows:

- (1) Statewide resident sport fishing license, which authorizes the holder to take fishes by angling, or take crayfish by a minnow seine, or by hand, to take minnows by the use of a minnow seine, minnow trap, or dip net, or to take fishes by grabbing, gigging, snagging, snaring, jugging, and bow and arrow, and to take frogs and turtles from any waters in any county of this state open for such purposes and subject to the limitations in this chapter and additional limitations that the department may from time to time prescribe. This license shall not authorize the holder to sell fish;
- (2) A short-term sport fishing license, which authorizes the holder to perform all acts authorized by a statewide sport fishing license and subject to the same limitations or prescribed administrative regulations. This license shall not authorize the holder to sell fish;
- (3) A resident commercial fishing license and a nonresident commercial fishing license, which authorize a holder to perform any act authorized by a sport fishing license and to take rough fishes from the waters of the state by the use of commercial fishing gear as prescribed by administrative regulation. The license shall also authorize the holder to sell rough fishes, other than those protected by administrative regulation;

- (4) A commercial fishing gear tag, which shall be attached to each piece of commercial fishing gear including hoop nets, slat traps, trotline, wing nets, and to each one hundred (100) feet of linear gear or portion thereof in use, including commercial seines, gill nets, or trammel nets. Commercial gear tags may be issued only to a person holding a resident or nonresident commercial fishing license;
- (5) Live fish and bait dealer's licenses, resident and nonresident, which authorize the holder to sell bait and live fish as may be prescribed by administrative regulation;
- (6) Musseling licenses, resident and nonresident, which authorize the holder to take mussels for commercial purposes as may be prescribed by administrative regulation;
- (7) A statewide resident hunting license, which authorizes the holder to take or pursue wild animals, wild birds, frogs, and turtles with gun, bow and arrow, dog, or falcon, or to participate in a fox-hunting party engaged in the hunting or pursuing of foxes with dogs for sport, according to the provisions of the laws and administrative regulations of the department;
- (8) A junior statewide hunting license, which may be issued to a person before he *or she* has reached his *or her* sixteenth birthday, and which authorizes the holder to exercise all the privileges authorized by a statewide hunting license. No junior hunting license shall be issued without the written permission of parent, guardian, or person having custody of the person under sixteen (16) years of age;
- (9) Trapping licenses, resident and nonresident, which authorize the holder to take wild animals by trapping upon his *or her* own lands or upon the lands of another person, if the holder of the license has first obtained oral or written consent as provided in KRS 150.092 and administrative regulation;
- (10) Taxidermist licenses, commercial and noncommercial, which authorize the holder to engage in the act of preparing, stuffing, and mounting the skins of wildlife;
- (11) A commercial guide's license, which authorizes the holder to guide hunting and fishing parties according to the provisions of the laws and administrative regulations of the department;
- (12) Fur buyer's licenses, resident and nonresident, which authorize the holder to buy raw furs from licensed trappers and hunters and to sell raw furs so purchased. Applicants for the license shall state the number of premises to be used and shall display at each a copy of the license as furnished by the department, except that the commissioner may limit the number of copies furnished and may revoke the license for violation;
- (13) A fur processor's license, which may be issued only to a resident, a partnership, firm, or corporation of this state and which authorizes the holder to buy raw furs when in legal possession for processing, manufacture, or retention in cold storage or for resale;
- (14) A nonresident sport fishing license, which authorizes the holder to perform any act authorized by a resident statewide sport fishing license. This license shall not authorize the holder to sell fish;
- (15) A nonresident annual hunting license, which authorizes the holder to perform any act authorized by a resident statewide hunting license;
- (16) Shoot-to-retrieve field trial permits, four (4) day and single day, which authorize a permit holder to conduct a shoot-to-retrieve field trial on private or government-owned lands. With a four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the permitted field trial, and the permit shall expire four (4) days after the date on which the field trial began. With the single day permit, the permit is valid for one (1) day and all participants shall have a valid resident or nonresident annual Kentucky hunting license. A permit is not required to conduct a shoot-to-retrieve field trial on a licensed shooting preserve; however, all participants that take or attempt to take game shall have in their possession a resident or nonresident annual Kentucky hunting license;
- (17) Game permits and junior game permits, which, in combination with a valid statewide hunting license or a valid junior statewide hunting license, authorize the holder to take or pursue the specified game species in any designated open area of this state, during the open season and according to the provisions of the laws and administrative regulations governing the hunting;
- (18) A combination hunting and fishing license, which authorizes only resident holders to perform all acts valid under either a sport fishing or hunting license;

- (19) A trout permit, which in combination with a valid statewide fishing license, authorizes the holder to take trout by angling or as may be prescribed by administrative regulation;
- (20) A commercial waterfowl permit, which authorizes the holder to establish and operate a commercial waterfowl hunting preserve;
- (21) A short-term hunting license, which authorizes the holder to perform all acts authorized by a statewide hunting license according to the provisions of the laws and administrative regulations of the department;
- (22) A joint statewide resident sport fishing license issued to a husband and wife which authorizes them to take fish as provided in subsection (1) of this section. The license fee for this joint license shall be ten percent (10%) less than the license fee set by the commission for two (2) statewide resident sport fishing licenses;
- (23) A Kentucky waterfowl permit, which in combination with a valid statewide hunting license and compliance with applicable federal law, authorizes the holder to take or pursue waterfowl and migratory shore or upland game birds;
- (24) A pay lake license which authorizes the holder to operate privately owned impounded waters for fishing purposes for which a fee is charged;
- (25) A migratory game bird permit, which, in combination with a statewide hunting license and compliance with applicable federal law, allows the holder to take migratory shore or upland game birds;
- (26) A senior/disabled combination hunting and fishing license, which authorizes the holder to perform all acts valid under a sport fishing license, a sport hunting license, or a state permit to take deer, turkey, trout, waterfowl, or migratory shore or upland game birds, and which shall be available to a Kentucky resident who is:
 - (a) Sixty-five (65) years of age or older; or
 - (b) An American veteran at least fifty percent (50%) disabled as a result of a service-connected disability; or
 - (c) Declared permanently and totally disabled by the Federal Social Security Administration, the United States Office of Personnel Management, the Teachers' Retirement System of the State of Kentucky, the **Department**~~Office~~ of Workers' Claims, or its equivalent from another state, or the United States Railroad Retirement Board.

The senior/disabled combination license shall not be valid unless the holder carries proof of residency and proof of age or disability, as the department may require by administrative regulation, on his or her person while performing an act authorized by the license;

- (27) A sportsman's license for residents that includes an annual hunting and fishing license and such permits as allowed by administrative regulations promulgated by the department; and
- (28) A special license for residents and nonresidents for the purpose of hunting on licensed shooting areas. This license shall be valid only for the shooting areas for which it was issued and shall remain in effect for one (1) year. If the hunter holds either a nonresident or resident statewide hunting license for the current year, the special license shall not be required.

➔Section 176. KRS 151.035 is amended to read as follows:

- (1) The Kentucky Geological Survey shall be designated as the Commonwealth's official repository for all information relating to the occurrence and quality of groundwater as defined in KRS 151.100.
- (2) The **Energy and Environment** Cabinet~~for Environmental and Public Protection~~, the Cabinet for Health and Family Services, and any other cabinet, department, commission, board, or governmental agency, except as provided in subsection (4) of this section, that, by statute, administrative regulation, or as part of its routine activities, collects or generates information about groundwater, shall transmit or cause to be transmitted that information to the Kentucky Geological Survey within ninety (90) days of receipt or generation, or a time determined between the Geological Survey and the other party.
- (3) The information to be transmitted may include:
 - (a) Drillers logs and completion reports of wells drilled or dug for the purpose of producing, testing, or monitoring groundwater;

- (b) Geophysical logs of water wells;
 - (c) Water quality analyses of both organic and inorganic constituents;
 - (d) Results of all pump, extraction, and injection tests;
 - (e) Flow determinations of surface discharges of groundwater; and
 - (f) Any additional data as the Kentucky Geological Survey shall require.
- (4) All institutions of higher learning shall be encouraged, but not required, to submit to the Kentucky Geological Survey copies of all research data, including theses and dissertations relating to the occurrence or quality of groundwater.

➔Section 177. KRS 151.100 is amended to read as follows:

As used in KRS 151.110 to 151.460 and 151.990, the words listed herein shall have the following respective meanings, unless another or different meaning or intent shall be clearly indicated by the context:

- (1) The word "authority" shall mean the Water Resources Authority of Kentucky;
- (2) The word "cabinet" shall mean the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet;
- (3) The word "stream" or "watercourse" shall mean any river, creek or channel, having well defined banks, in which water flows for substantial periods of the year to drain a given area, or any lake or other body of water in the Commonwealth;
- (4) The word "diffused surface water" shall mean that water which comes from falling rain or melting snow or ice, and which is diffused over the surface of the ground, or which temporarily flows vagrantly upon or over the surface of the ground as the natural elevations and depressions of the surface of the earth may guide it, until such water reaches a stream or watercourse;
- (5) The word "ground water" or "subterranean water" shall mean all water which fills the natural openings under the earth's surface including all underground watercourses, artesian basins, reservoirs, lakes, and other bodies of water below the earth's surface;
- (6) The word "floodway" shall mean that area of a stream or watercourse necessary to carry off flood water as determined by the secretary;
- (7) The word "floodplain" shall mean the area in a watershed that is subject to inundation;
- (8) The word "watershed" shall mean all the area from which all drainage passes a given point downstream;
- (9) The word "domestic use" shall mean the use of water for ordinary household purposes, and drinking water for poultry, livestock, and domestic animals;
- (10) The word "water resources project" or "project" shall mean any structural or nonstructural study, plan, design, construction, development, improvement or any other activity including programs for management, intended to conserve and develop the water resources of the Commonwealth and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures;
- (11) The word "withdraw" or "withdrawal of water" shall mean the actual removal or taking of water from any stream, watercourse or other body of public water;
- (12) The word "dam" shall mean any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
 - (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre-feet or more;
- (13) "Embankment dam" shall mean any dam constructed of excavated natural materials or of industrial waste materials;
- (14) "Gravity dam" shall mean a dam constructed of concrete or masonry that relies on its weight for stability;

- (15) The word "person" shall mean any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (16) "Secretary" shall mean the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (17) "Authorized representative" shall mean an individual specifically authorized by the secretary to act in his behalf;
- (18) The word "reservoir" shall mean any basin which contains or will contain the water impounded by a dam; and
- (19) "Owner" shall mean any person who owns an interest in, controls, or operates a dam.

➔Section 178. KRS 151.550 is amended to read as follows:

- (1) There is hereby created a Community Flood Damage Abatement Program within the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) It is hereby declared to be the purpose of the program to provide funds and technical assistance to local governments to initiate flood control projects and programs.
- (3) This program shall be administered by the secretary according to standards designed to promote adequate planning, construction and conservation measures to deal with water drainage problems.
- (4) Any local sponsoring community desiring to qualify for funding, must:
 - (a) Make application to the cabinet which shall be in the form and manner prescribed by the cabinet;
 - (b) Provide at no expense to the cabinet, all lands and easements necessary for project construction;
 - (c) Agree to operate and maintain the project in a manner acceptable to the Commonwealth to insure the continued capacity of the project to prevent or minimize flood damages;
 - (d) Submit evidence of the history of flooding within the last five (5) years;
 - (e) Submit evidence of flood damage in dollars within the last five (5) years.
- (5) The cabinet shall have and exercise the power and authority to annually inspect the completed project to insure compliance with any of the provisions of this section or with any rules, regulations or orders adopted pursuant thereto, or with any of the conditions contained in subsection (4)(c) of this section.

➔Section 179. KRS 151.614 is amended to read as follows:

- (1) Stream Restoration and Mitigation Authorities established under KRS 151.610 to 151.615 shall work in close partnership with local, state, and federal agencies in actively advocating for the restoration, protection, and enhancement of the watershed through stream restoration and mitigation projects. To this end, an authority may:
 - (a) Recommend proposed stream restoration and mitigation projects to the 404 Mitigation Review Team for its consideration; and
 - (b) Undertake the management of stream restoration and mitigation projects and may, in accordance with policies and regulations of the USACE, seek approval to be designated by the USACE as a qualified mitigation organization.
- (2) Stream Restoration and Mitigation Authorities may:
 - (a) Establish a technical advisory committee, soliciting participation from representatives of area utilities and water, sewer, and sanitation districts, federal, state, and local governments, and agencies thereof, consultants, colleges, and universities to assist the authority in the prioritization of proposed mitigation projects, the management of mitigation projects and in other efforts to improve watershed management;
 - (b) Review and comment on plans developed by federal, state, and local government agencies which relate to the watershed management and identify and recommend areas in which improved coordination of planning and project design could, on a case-by-case and a systemic basis, result in greater efficiencies and better outcomes for watershed management and water resource protection;
 - (c) Initiate, sponsor, and participate in educational programs to increase public awareness and stakeholder involvement in water resources protection and watershed management;

- (d) Prepare a six (6) year work plan, with annual review, for improvement of the water resources of the watershed, including the:
 - 1. Identification and prioritization of site-specific stream restoration projects;
 - 2. Development of recommendations for coordination of infrastructure improvements and water resource enhancement;
 - 3. Solicitation of public participation in development of the work plan and of other strategies for water resource improvement and watershed management; and
 - 4. Description of accomplishment during the previous year and the status of projects undertaken by the authority of other entities within the watershed;
 - (e) Review project proposals for mitigation or restoration within the watershed to ensure that the appropriate benchmarks and monitoring of preproject and postproject hydrologic and biologic conditions are included in the mitigation and restoration projects in order to measure success in achievement of the project goals;
 - (f) Conduct pilot or demonstration projects for stream restoration and mitigation; and
 - (g) Contract for technical assistance in undertaking any of the responsibilities authorized under KRS 151.610 to 151.615.
- (3) Stream Restoration and Mitigation Authorities shall report to the Legislative Research Commission by October 31 of each year on any stream restoration and mitigation work performed by the authority in the watershed, including the amount of mitigation funds received from USACE or from a permittee under a Section 404 permit approved by the USACE, and any funding received from all sources and a listing of upcoming restoration and mitigation projects authorized by the USACE or the Department for Environmental Protection.
 - (4) When performing any stream restoration or mitigation activity, the authority shall comply with all permitting procedures set out in federal and state statutes and associated regulations of the USACE and the Kentucky **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, and other local, state, and federal agencies, as appropriate.
 - (5) The work plan provided for in paragraph (d) of subsection (2) of this section shall not be construed as amending or affecting plans developed under local, state, or federal law, including plans developed under Section 208 of the Federal Water Pollution Act, 33 U.S.C. sec 1288.

➔Section 180. KRS 151.710 is amended to read as follows:

- (1) The Governor shall appoint members to the Kentucky River Authority, created to carry out the essential public purpose of protecting the health and welfare of the people of the Commonwealth as declared in KRS 151.700.
- (2) The Governor shall appoint the secretaries of the Finance and Administration Cabinet and the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet and ten (10) other persons as the members of the authority. The secretaries may designate alternates. Of the ten (10) persons, one (1) shall be a registered engineer, one (1) an expert in water quality, one (1) a mayor, and one (1) a county judge/executive. The mayor and the county judge/executive shall be officers from counties which obtain the major portion of their water supply from the Kentucky River. Five (5) members shall reside in a county adjacent to the main stem of the Kentucky River, one (1) of the five (5) members residing in counties adjacent to locks and dams one (1) through four (4); and one (1) member shall reside in a county adjacent to either the North Fork, Middle Fork, or South Fork of the Kentucky River. Of the twelve (12) members, only one (1) may be an employee of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (3) Of the ten (10) members first appointed, two (2) shall continue in office for terms of one (1) year, two (2) for terms of two (2) years, three (3) for terms of three (3) years, and three (3) for terms of four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor shall appoint a successor to the authority for a term of four (4) years in each case. Members may be reappointed. A vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term. Any member whose term has expired may continue to serve and vote until his or her successor is appointed and qualified.

- (4) Each member shall receive as compensation one hundred dollars (\$100) per day for attending a meeting of the authority.
- (5) Any member who misses three (3) consecutive meetings of the authority shall be deemed to have vacated the office. The authority shall declare the office vacant and the office shall be filled as provided by subsections (2) and (3) of this section.
- (6) The authority annually shall elect one (1) of its members as chairman. A quorum for the transaction of business shall be seven (7) members, and a majority of the members present at a meeting may take action on any matter legally before the authority.
- (7) Members shall be paid their necessary travel expenses incurred in attending meetings and in the performance of their official duties, in addition to the per diem compensation of one hundred dollars (\$100).
- (8) The authority shall meet at least quarterly, and may meet upon the call of the chairman.
- (9) The chairman shall be paid necessary travel expenses and a one hundred dollar (\$100) per diem compensation for conducting official business of the authority.
- (10) The authority shall be attached for administrative purposes to the Finance and Administration Cabinet, and the cabinet shall provide the necessary personnel to provide administrative services for the authority.
- (11) The necessary travel expenses and per diem compensation of the members of the authority in attending meetings and in the performance of their official duties shall be paid by the authority.
- (12) The authority shall promulgate administrative regulations necessary to carry out its duties, and shall report annually to the Governor and the Legislative Research Commission.

➔Section 181. KRS 151.720 is amended to read as follows:

The Kentucky River Authority is authorized and empowered to:

- (1) Construct, reconstruct, provide for the major maintenance, or repair the locks and dams on the Kentucky River and all real and personal property pertaining thereto, as well as maintain the channel;
- (2) Acquire by purchase, exercise of the rights of eminent domain, grant, gift, devise, or otherwise, the fee simple title to or any acceptable lesser interest in any real or personal property and by lease or other conveyance, contract for the right to use and occupy any real or personal property selected in the discretion of the authority as constituting necessary, desirable, or acceptable sites to fulfill its statutory authority and power;
- (3) Lease its real or personal property to other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons as the authority deems necessary to carry out the purposes of this section;
- (4) Sell or otherwise dispose of its real or personal property in accordance with KRS 56.463 and 45A.045;
- (5) Collect water use fees from all facilities using water from the Kentucky River basin, except those facilities using water primarily for agricultural purposes. Facilities charged such a fee may pass on all or any part of the fee;
- (6) Issue revenue bonds in accordance with KRS 151.730;
- (7) Employ persons to carry out the authority's responsibilities with revenue from the water use fees, including an executive director who shall serve at the pleasure of the authority;
- (8) Contract for services with other state agencies, political subdivisions of the Commonwealth, corporations, partnerships, associations, foundations, or persons to perform its duties;
- (9) Promulgate administrative regulations providing for clean water, which shall not be less stringent than the state and federal regulations for clean water;
- (10) Exercise all other powers necessary to perform its public purpose to implement and enforce the plans developed by the authority pursuant to this section and KRS 151.727 and 151.728, and to enforce administrative regulations promulgated by the authority. The long-range water resource plan and drought response plan shall be implemented for the basin upon the direction of the authority;
- (11) Develop comprehensive plans for the management of the Kentucky River within the basin, including a long-range water resource plan and a drought response plan. Each county within the basin shall develop a long-

range water resource plan and submit it to the authority. The authority, after consultation with the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, shall develop a unified long-range water resource plan for the basin. The unified long-range water resource plan shall be implemented over short-range and long-range time periods. The short-range plan shall be for a period of six (6) years and the long-range plan shall be for a period of twenty (20) years. The authority shall conduct a public hearing on the plan prior to its adoption and amend the plan as appropriate based on the comments received. The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall review the draft unified plan and provide comment during the public comment period concerning the consistency of the plan with the state requirements under KRS Chapters 224 and 151. A drought response plan for the basin shall be developed by the authority and shall be coordinated with the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet to assure consistency with KRS Chapters 224 and 151, and this plan shall be implemented for the basin upon the direction of the authority;

- (12) Develop and promote a plan for the protection and use of groundwater within the basin. Administrative regulations may be promulgated implementing the plan, and these regulations shall not be less stringent than state and federal regulations protecting groundwater;
- (13) Promote private investment in the installation of hydroelectric generating units on all existing constructed and reconstructed Kentucky River dams under the jurisdiction of the authority, by developing a standard lease, establishing reasonable financial responsibility requirements, verifying that the proposed installation of the hydroelectric unit will not adversely affect the structural integrity of the dam, and adopting a schedule of reasonable fees for water used in the generation of hydroelectric power;
- (14) Develop recreational areas within the basin. These recreational areas may be operated and funded by the state Department of Parks, Kentucky State Nature Preserves Commission, or other governmental entity as specifically authorized or permitted within the biennial executive budget. There is hereby created the Kentucky River Park to be located as determined by the authority;
- (15) Utilize funds provided for recreational purposes within the biennial executive budget for major or minor maintenance if the authority certifies to the secretary of the Finance and Administration Cabinet that a significant need exists for the repairs and no other funds are available for the maintenance;
- (16) Coordinate the Kentucky River basin water resources activities among state agencies;
- (17) Report quarterly on all of its activities to the legislative Committee on Appropriations and Revenue;
- (18) Receive reports from state agencies on litigation concerning the Kentucky River, which agencies are hereby directed to report to the authority;
- (19) Credit to the authority any income derived from the interest earned on the investment of the water use fees collected, which shall be available for the authority's expenditure; and
- (20) Accomplish the watershed management mission of the authority, which is to fulfill the provisions of this section for the Kentucky River basin, the boundary of which shall be defined by a hydrologic map promulgated in an administrative regulation.

➔Section 182. KRS 151B.175 is amended to read as follows:

- (1) The executive director of the Office of Career and Technical Education is authorized to provide medical and accident insurance for students enrolled in the state secondary area technology centers and area vocational education centers. The Office of Career and Technical Education may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in state-operated schools under its jurisdiction. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and such coverage shall be approved by the ***commissioner***~~(executive director)~~ of insurance.
- (2) The executive director of the Office of Career and Technical Education shall promulgate administrative regulations to implement the medical and accident insurance program. The executive director of the Office of Career and Technical Education may fix the rate of fees for all secondary students, the provisions of KRS 151B.165 with respect to fees for secondary students notwithstanding, as he or she deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.

- (3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the executive director of the Office of Career and Technical Education.

➔Section 183. KRS 152.590 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall have the following general powers:

- (1) To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, and by lease or other contract the right to use and occupy any lands, selected in the discretion of the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet as constituting necessary, desirable or acceptable sites for projects of the cabinet, including any and all lands adjacent to a project site as in the discretion of the secretary may be necessary or suitable for satellite projects or restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;
- (2) To convey to private enterprise, or to lease to private enterprise for such term as in the discretion of the secretary of the Finance and Administration Cabinet may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with laws and regulations of the Commonwealth; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to the Commonwealth, or to the United States;
- (3) To construct, reconstruct, maintain, repair, operate and regulate projects at such locations within the Commonwealth as may be determined by the secretary;
- (4) To fix by contract, or to establish and revise from time to time and charge and collect revenues, rentals, rates and charges for use of the services and facilities of projects;
- (5) To combine for financing purposes any two (2) or more projects;
- (6) To establish and enforce rules and regulations for the use of any project;
- (7) Without reference to KRS Chapter 56, to acquire and hold real and personal property in the exercise of its powers and the performance of its functions and duties under this section, and to dispose of the same with due regard for public health and safety, except in the case of radioactive waste material sites, which may be disposed of only to the Commonwealth itself, or to the United States, except as provided in subsection (2);
- (8) To designate the locations and establish, limit and control such points of ingress to and egress from each project as the secretary may determine to be necessary or desirable to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;
- (9) To make and enter into such contracts and agreements with governmental agencies and private enterprise as may be necessary or incidental to the performance of its duties and the execution of its powers under this section;
- (10) To employ scientists, consulting engineers, health officers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in the judgment of the secretary and to fix their compensation;
- (11) To receive and accept from any governmental agency, or from private enterprise, appropriations, grants or contributions in money, property, labor or other things of value, to be held, used and applied for or in aid of any project;
- (12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this section.

➔Section 184. KRS 152.712 is amended to read as follows:

- (1) ~~[The Governor's Office of Energy Policy is created and attached for administrative purposes to the Office of the Governor. The Governor's Office of Energy Policy shall be headed by an executive director.]~~

~~(2)~~—The ***Department for Energy Development and Independence in the Energy and Environment Cabinet***~~{Governor's Office of Energy Policy}~~ shall:

- (a) Oversee the ~~{development and}~~ implementation of Kentucky's comprehensive energy strategy;
- (b) Provide leadership to enhance the benefits of energy efficiency and alternative energy through supporting awareness, technology development, energy preparedness, partnerships, and resource development;
- (c) Enhance the economic opportunities and benefits to Kentucky citizens and industry through expansion of current markets and the development of market opportunities for Kentucky coal, natural gas, petroleum, oil shale, tar sands, liquid and gaseous fuels from coal, and chemicals from coal;
- (d) To the extent funding is available, administer grant programs to support energy-related research, development, and demonstration, including the support of multistate cooperative regional partnerships and research initiatives;
- (e) Develop and implement programs for the development, conservation, and utilization of energy in a manner to meet essential human needs while maintaining the Kentucky economy at the highest feasible level. The programs shall include:
 - 1. Central access for collection, maintenance, and analysis of data and information on all forms of energy supply, demand, conservation, and related subjects;
 - 2. Formulation of a contingency plan to address any energy shortage which may occur from time to time. The contingency plan shall relate to the curtailment, allocation, planning, and management of all forms of energy;
 - 3. Development and implementation of major energy conservation programs involving all sectors of the Kentucky economy, including energy audits of educational facilities and state-owned buildings; and
 - 4. Provision for the application of appropriate technologies with regard to alternative energy development, including the development of solar and other renewable resources and small-scale hydroelectric plants, and promotion, when feasible, of the production of energy from other resources such as solid waste and biomass;
- (f) Provide technical assistance to the Finance and Administration Cabinet in implementing the Energy Efficiency in Government Buildings Program;
- (g) Enter into agreements, administer grant programs, and serve as a liaison with the federal government and other states in matters relating to energy; and
- (h) Participate in the review of applications and, upon request of the authority, assist the Kentucky Economic Development Finance Authority in monitoring tax incentive agreements as provided in Subchapter 27 of KRS Chapter 154.

~~(2)~~~~(3)~~ The ~~*department*~~~~{office}~~ may establish reasonable application fees to offset costs associated with reviewing and processing applications, including costs associated with hiring outside consultants.

~~(3)~~~~(4)~~ The ~~*department*~~~~{office}~~ is encouraged to use state funding available to it as a match for federal or private funding to increase the resources available to support energy research and development.

~~(4)~~~~(5)~~ The ~~*department*~~~~{office}~~ is encouraged to explore and develop regional partnerships and cooperative research initiatives with other states and governmental entities to enhance resources available for energy research and development.

➔Section 185. KRS 152.713 is amended to read as follows:

- (1) For purposes of this section, "renewable energy" has the same meaning as in KRS 154.20-400.
- (2) The Center for Renewable Energy Research and Environmental Stewardship is hereby created and attached to the ***Energy and Environment Cabinet***~~{Governor's Office of Energy Policy}~~ for administrative purposes. The ***Energy and Environment Cabinet***~~{Governor's Office of Energy Policy}~~ shall provide consultation, coordination services, technical assistance, and staff support to the board of directors created in subsection (4)

of this section, on an as-needed basis, and perform other necessary administrative functions until the center is deemed fully operational. The ~~secretary~~~~executive director~~ of the ~~cabinet~~~~office~~ or his or her designee shall coordinate the development of the center and act as the chair of the board of directors created in subsection (4) of this section until the board is established and is operational.

- (3) The Center for Renewable Energy Research and Environmental Stewardship shall:
 - (a) Provide leadership, research, support, and policy development in renewable energy;
 - (b) Advance the goal of renewable energy;
 - (c) Promote technologies, practices, and programs that increase efficiency in energy utilization in homes, businesses, and public buildings;
 - (d) Emphasize energy policies that would result in cost-conscious, responsible development of Kentucky's energy resources and a commitment to environmental quality;
 - (e) Promote partnerships among the state's postsecondary education institutions, private industry, and nonprofit organizations to actively pursue federal research and development resources that are dedicated to renewable energy;
 - (f) Promote the continued development of public-private partnerships dedicated to promoting energy efficiency through education and outreach;
 - (g) Establish research priorities with approval of the board of directors created in subsection (4) of this section, relating to renewable energy, and develop procedures and processes for awarding research grants to eligible recipients as defined by the board and to the extent that funding is available;
 - (h) Collaborate with the **Department for Energy Development and Independence**~~Governor's Office of Energy Policy~~ to avoid duplication of efforts, provide appropriate data and information, and support the implementation of Kentucky's comprehensive energy strategy; and
 - (i) Carry out other activities to further the efficient and environmentally responsible use of renewable energy.
- (4)
 - (a) There is hereby created a governing board of directors to provide policy direction, establish a strategic research agenda and operating policies, and provide financial and operational oversight for the Center for Renewable Energy Research and Environmental Stewardship. The initial board shall be appointed within sixty (60) days following July 15, 2008.
 - (b) The board shall consist of thirteen (13) members:
 1. One (1) member to represent the **Department for Energy Development and Independence**~~Governor's Office of Energy Policy~~ as designated by its ~~commissioner~~~~executive director~~;
 2. Three (3) members representing postsecondary education interests who shall be appointed by the Governor;
 3. One (1) member to be designated by the governing body of the Kentucky Science and Technology Corporation;
 4. One (1) member from an energy conservation organization who shall be appointed by the Governor;
 5. The secretary of the Economic Development Cabinet or the secretary's designee;
 6. One (1) member who shall be a recognized consumer advocate to be appointed by the Governor;
 7. Three (3) members to represent companies that are focused on renewable energy who shall be appointed by the Governor;
 8. One (1) member who shall represent environmental interests to be appointed by the Governor; and
 9. One (1) member who shall be selected to represent local government interests to be appointed by the Governor.

- (c) The members appointed by the Governor shall serve two (2) year terms and may be reappointed. The members representing specific agencies shall serve for as long as the respective agencies determine appropriate.
- (5) The board shall:
 - (a) Adopt operating procedures, including a meeting schedule;
 - (b) Meet at least quarterly;
 - (c) Select a chair and co-chair annually who may be reelected, not to exceed three (3) consecutive terms;
 - (d) Establish working groups or subcommittees of the board as the board determines is needed;
 - (e) Establish qualifications and job descriptions, set the compensation and benefits, and employ staff as it determines necessary to carry out its responsibilities under this section; and
 - (f) Provide an annual program and financial report to the Legislative Research Commission within ninety (90) days of the close of each fiscal year.

➔Section 186. KRS 152.714 is amended to read as follows:

From a list of potential sites developed by the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ and suitable for development of alternative fuel facilities, gasification facilities, or renewable energy facilities as defined in KRS 154.27-010, the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ may expend state funds for preliminary environmental and baseline assessments, inventories, and other activities on or for the potential sites in furtherance of environmental or other permitting required for the development of an eligible project.

➔Section 187. KRS 152.715 is amended to read as follows:

As used in KRS 152.710 to ***152.720***~~{152.725}~~, unless the context requires otherwise:

- (1) "Alternative transportation fuels" means crude oil or transportation fuels produced by processes that convert coal, waste coal, or biomass resources or that extract oil from oil shale or tar sands to produce crude oil or fuels for powering vehicles, aircraft, and machinery. "Alternative transportation fuels" may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass;
- (2) "Synthetic natural gas" means pipeline quality or industrial quality natural gas produced from coal through gasification processes;
- (3) "Fossil energy resources" means reserves of coal, oil shale, and natural gas; and
- (4) "Biomass resources" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.

➔Section 188. KRS 152.720 is amended to read as follows:

To ensure that Kentucky will lead the states in securing the energy independence of the United States and will consequently benefit from economic growth and stabilization of the Commonwealth's coal industry and agriculture, the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ shall develop and implement a strategy for production of alternative fuels and synthetic natural gas from fossil energy resources and biomass resources. The strategy shall address:

- (1) Technologies available or in use for producing alternative fuels and synthetic natural gas from fossil energy resources and biomass resources and the relative advantages of these in terms of process efficiencies, environmental performance, and marketable products, including chemicals, industrial feedstocks, and electricity;
- (2) Research, demonstration, and commercial-scale construction and operation of one (1) or more technologies, and follow-up expansion;
- (3) The essential nature of efficient cooperation, coordination, and synergy between the efforts of the ***Department for Energy Development and Independence***~~{Governor's Office of Energy Policy}~~ and those of Kentucky's

universities in order to maximize Kentucky's opportunities to access federal funds and to receive research grants and awards from federal and other sources to fund the development of clean coal technology, coal-to-liquid-fuel conversion, synthetic natural gas, alternative transportation fuels, and biomass resources;

- (4) The identification of federal funds available for research, development, construction, and operation of alternative fuels or synthetic natural gas plants at laboratory, demonstration, and commercial scale;
- (5) Establishment of a major federal energy research laboratory in Kentucky;
- (6) Industry participation, both by single firms and by consortia, in research, development, construction, and operation of alternative transportation fuels or synthetic natural gas plants;
- (7) Establishment or expansion of Kentucky state government incentives for development, construction, or operation of alternative transportation fuels and synthetic natural gas production facilities, including but not limited to financial incentives, tax incentives, mandating or providing incentives for use of alternative transportation fuels and synthetic natural gas by state government, school districts, or utilities, authority to issue bonds, and acquisition and preliminary environmental assessment of industrial sites; and
- (8) Development of incentives to encourage energy conservation and renewable fuel and energy use and deployment of renewable energy, including solar power, wind power, hydropower, and other sources.

➔Section 189. KRS 152.590 is amended to read as follows:

The ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet shall have the following general powers:

- (1) To acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, and by lease or other contract the right to use and occupy any lands, selected in the discretion of the secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet as constituting necessary, desirable or acceptable sites for projects of the cabinet, including any and all lands adjacent to a project site as in the discretion of the secretary may be necessary or suitable for satellite projects or restricted areas; but in all instances lands which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;
- (2) To convey to private enterprise, or to lease to private enterprise for such term as in the discretion of the secretary of the Finance and Administration Cabinet may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease in the event the grantee or lessee, as the case may be, shall cease to use the premises or facilities in the conduct of business or activities consistent with laws and regulations of the Commonwealth; provided, however, radioactive waste material sites may be leased but may not otherwise be disposed of except to the Commonwealth, or to the United States;
- (3) To construct, reconstruct, maintain, repair, operate and regulate projects at such locations within the Commonwealth as may be determined by the secretary;
- (4) To fix by contract, or to establish and revise from time to time and charge and collect revenues, rentals, rates and charges for use of the services and facilities of projects;
- (5) To combine for financing purposes any two (2) or more projects;
- (6) To establish and enforce rules and regulations for the use of any project;
- (7) Without reference to KRS Chapter 56, to acquire and hold real and personal property in the exercise of its powers and the performance of its functions and duties under this section, and to dispose of the same with due regard for public health and safety, except in the case of radioactive waste material sites, which may be disposed of only to the Commonwealth itself, or to the United States, except as provided in subsection (2);
- (8) To designate the locations and establish, limit and control such points of ingress to and egress from each project as the secretary may determine to be necessary or desirable to insure the proper operation and maintenance of such project, and to prohibit entrance to such project from any point or points not so designated;

- (9) To make and enter into such contracts and agreements with governmental agencies and private enterprise as may be necessary or incidental to the performance of its duties and the execution of its powers under this section;
- (10) To employ scientists, consulting engineers, health officers, attorneys, accountants, construction and financial experts, superintendents, managers and such other employees and agents as may be necessary in the judgment of the secretary and to fix their compensation;
- (11) To receive and accept from any governmental agency, or from private enterprise, appropriations, grants or contributions in money, property, labor or other things of value, to be held, used and applied for or in aid of any project;
- (12) To do all acts and things necessary or convenient to carry out the powers expressly granted in this section.

➔Section 190. KRS 153.420 is amended to read as follows:

The Kentucky Center for the Arts Corporation:

- (1) Shall supervise construction of the Kentucky Center for the Arts in conjunction with the Finance and Administration Cabinet, and shall provide all management functions for the facility and for any other property acquired or leased pursuant to its powers under this section;
- (2) May take, acquire and hold property, and all interests therein, by deed, purchase, gift, devise, bequest, lease or eminent domain, or by transfer from the State Property and Buildings Commission, and may dispose of any property so acquired in any manner provided by law. In the exercise of its power of eminent domain, it shall proceed in the manner provided in the Eminent Domain Act of Kentucky, KRS 416.540 to 416.680;
- (3) May consult or enter into agreements with other segments of the arts and entertainment industry to provide technical, professional, or management support or assistance, consistent with its purpose and mission;
- (4) May issue revenue bonds, subject to procedures which shall be established by the Finance and Administration Cabinet, solely payable from the charges, revenues, rentals, and other funds pledged for their payment for the purpose of paying all or any part of the cost of any project or for the acquisition of property;
- (5) Shall promote the growth and development of the arts, convention trade, tourism and the hotel industry within Jefferson County and the Commonwealth, through utilization of the Kentucky center and activities authorized in this section to enhance these and the public interest;
- (6) May adopt administrative regulations, as provided in KRS Chapter 13A, governing the operation, maintenance or use of property under its custody and control;
- (7) May levy a surcharge on tickets for all functions held within the center to contribute to operating revenue;
- (8) May receive tax revenues from any governmental unit, and financial contributions of local governments, private persons and foundations;
- (9) Shall have exclusive control of all exhibitions, performances and concessions in the Center for the Arts. The corporation shall have a prior lien upon the property of any private exhibitor, concessionaire, or other person holding an exhibition or performance or operating a concession in the center, and may sell such property upon ten (10) days' notice to satisfy any indebtedness;
- (10) Shall develop in conjunction with local hotels, and the arts and entertainment industry, tourist packages including performance and group plans, and shall participate with local hotels and convention bureaus in attracting non-arts related conferences and conventions;
- (11) May establish an executive committee from among its membership with full authority to act between its meetings to the extent delegated by the corporation;
- (12) May sue and be sued and maintain and defend legal actions in its corporate name;
- (13) May, if the corporation elects, be exempt from the provisions of KRS 56.065 to 56.180, and, with the approval of the secretary of the Finance and Administration Cabinet and the ~~Department~~~~Office~~ of Insurance, purchase from the funds allotted to the corporation property insurance for buildings and contents from responsible insurance companies doing business in this state; and

- (14) May purchase liability insurance for the protection of the corporation and its employees from liability arising in the operation of the center.

➔Section 191. KRS 154.01-010 is amended to read as follows:

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

- (1) "Agribusiness" or "agricultural business entity" means any person, partnership, limited partnership, corporation, limited liability company, or any other entity engaged in a business that processes raw agricultural products, including timber, or provides value-added functions with regard to raw agricultural products;
- (2) "Approved business network" or "approved flexible industrial network" means a business network comprising three (3) or more business firms or industries which have been identified as key industries and targeted by the state's strategic economic development plan for special consideration and assistance by the agencies of the Commonwealth;
- (3) "Authority" means the Kentucky Economic Development Finance Authority, consisting of a committee as set forth in KRS 154.20-010;
- (4) "Board" means the Kentucky Economic Development Partnership, an administrative body within the meaning of KRS 12.010, and the governing body of the Cabinet for Economic Development, as created and established in KRS 154.10-010;
- (5) "Business network" or "flexible industrial network" means a formalized, collaborative mechanism organized by and operating among three (3) or more industrial entities, business enterprises, or private sector firms for the purposes of, but not limited to: pooling expertise; improving responses to changing technology or markets; lowering the risks to individual entities of accelerated modernization; encouraging new technology investments, new market development, and employee skills improvement; and developing a system of collective intelligence among participating entities;
- (6) "Cabinet" means the Cabinet for Economic Development as established under KRS 12.250, and governed by the Kentucky Economic Development Partnership;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Cost of a project" means the cost of the acquisition, construction, reconstruction, conversion, or leasing of any industrial, commercial, health care, agricultural, or forestry enterprise, or any part thereof, to carry out the purposes and objectives of this chapter, including but not limited to acquisition of land or interest in land, buildings, structures, or other planned or existing planned improvements to land, including leasehold improvements, machinery, equipment, or furnishings; working capital; and administrative costs, including but not limited to engineering, architectural, legal, and accounting fees which are necessary for the project;
- (9) "Local and regional economic development interest" means any local business or economic development interest, including but not limited to chambers of commerce, business development associations, industrial development organizations, area development districts, and public economic development entities;
- (10) "Industrial entity" means any corporation, limited liability company, partnership, limited partnership, person, or any other legal entity, domestic or foreign, which will itself or through its subsidiaries or affiliates, engage in an industrial improvement project in the Commonwealth;
- (11) "Industrial improvement project" means and includes the acquisition, construction, or implementation of new manufacturing, processing, or assembling facilities, equipment, methods or processes, or improvements to or repair of existing manufacturing, processing, or assembling facilities, equipment, methods, or processes, including repair, restoration, or conversion of tobacco warehouses, as well as improvements to the real estate upon which the facilities are located, and includes any capital improvement to any existing facility, including any restructuring, retooling, rebuilding, reequipping, or any other form of upgrading such existing facility and equipment and any other improvements to such real estate, existing facility, or manufacturing, processing, or assembling equipment, method, or process;
- (12) "Key industry" means an industry or business within an industrial sector which has been identified in and targeted by the state's economic development strategic plan as having major importance to the sustained economic growth of the Commonwealth and in which member firms sell goods or services into markets for which national or international competition exists, including but not limited to secondary forest products manufacturing, agribusiness, and high technology and biotechnology manufacturing and services;

- (13) "Military" and "defense" mean all military and defense installations, entities, activities, and personnel located, operating, or living in Kentucky;
- (14) "Municipality" means a county, city, village, township, development organization, an institution of higher education, a community or junior college, a subdivision or instrumentality of any of the foregoing, or any entity created by two (2) or more municipalities pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300;
- (15) "Network broker" means a person who is trained to assist private sector firms to form business networks and make other similar efforts to provide for joint manufacturing, marketing, technology development, information dissemination, and other activities;
- (16) "Non-appropriation-supported bond" means any long-term financial borrowing instrument for which regular debt service does not originate from an appropriation of the General Assembly;
- (17) "Non-appropriation-supported note" means any short-term financial borrowing instrument for which loan payments do not originate from an appropriation of the General Assembly;
- (18) "Person" means an individual, partnership, joint venture, military facility operated by a department or agency of the United States, profit or nonprofit corporation including a public or private college or university, limited liability company, or other entity or association of persons organized for agricultural, commercial, health care, or industrial purposes; or a public utility or local industrial development corporation;
- (19) "Private sector" means any source other than the authority, a state or federal entity, or an agency thereof;
- (20) (a) "Project" means an endeavor approved by the cabinet or authority and related to industrial, manufacturing, mining, mining reclamation for economic development, commercial, health care, or agricultural enterprise.
- (b) "Project" shall include but is not limited to agribusiness, agricultural or forestry production, harvesting, storage, or processing facilities or equipment; equipment or facilities designed to produce energy from renewable resources; research parks; office facilities; engineering facilities; research and development laboratories; repair, restoration, or conversion of tobacco warehouses for an economic development or commercial use; warehousing facilities; parts distribution facilities; depots or storage facilities; port facilities; railroad facilities, including trackage, right-of-way, and appurtenances; airports and airport renovation; water and air pollution control equipment or waste disposal facilities; tourist facilities; theme or recreational parks; health care and health related facilities; farms, ranches, forests, and other agricultural or forestry commodity producers; agricultural harvesting, storage, transportation, or processing facilities or equipment; grain elevators; shipping heads and livestock pens; livestock; wharves and dock facilities; water, electricity, hydroelectric, coal, petroleum, or natural gas provision facilities; dams and irrigation facilities; sewage, liquid, and solid waste collection, disposal treatment, and drainage services and facilities.
- (c) Except for airport-related facilities and tax increment financing projects approved under Subchapter 30 of this chapter, "project" shall not include that portion of an endeavor devoted to the sale of goods at retail or that portion of an endeavor devoted to housing which does not consist of the manufacture of housing;
- (21) "Reclamation development fund" means the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;
- (22) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under subsection (20) of this section;
- (23) "Reclamation development plan" means a plan submitted to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;
- (24) "Secretary" means the chief executive officer and secretary of the Cabinet for Economic Development;
- (25) "State" means the Commonwealth of Kentucky; and

- (26) "Tax revenues" means any revenues received by the Commonwealth directly or indirectly as a result of the industrial improvement project, including state corporate income taxes, the limited liability entity tax imposed by KRS 141.0401, state income taxes paid by employees who work in the project, state property taxes, state corporation license taxes, or state sales and use taxes.

➔Section 192. KRS 154.10-010 is amended to read as follows:

- (1)
 - (a) The Kentucky Economic Development Partnership, a board governing the Cabinet for Economic Development, is created and established, performing essential governmental and public functions and purposes essential to improving and promoting the health and general welfare of the people of the Commonwealth through sustainable economic development, as prescribed in KRS 154.01-020.
 - (b) The board shall have reorganization powers and authority as prescribed in KRS 12.028 and shall constitute an administrative body as defined in KRS 12.010, but it and the cabinet shall not be subject to the reorganization by the Governor, KRS Chapter 12 notwithstanding.
 - (c) The board shall serve as the governing body of the cabinet and shall exercise all powers and authorities conferred upon it by statute, including, but not limited to, the following functions:
 1. Strategic planning;
 2. Finance;
 3. Business assistance;
 4. Marketing and promotion;
 5. Community development;
 6. Workforce development;
 7. Innovation; and
 8. All economic development powers and authorities not specifically conferred by statute to another agency or authority of state government.
- (2) The board shall consist of **thirteen (13)**~~eleven (11)~~ voting members and two (2) nonvoting members. The **thirteen (13)**~~eleven (11)~~ voting members shall consist of the Governor, the secretary of the Finance and Administration Cabinet, the secretary of the ~~Environmental and~~ Public Protection Cabinet, **the secretary of the Energy and Environment Cabinet, the secretary of the Labor Cabinet,** and eight (8) private sector members who shall be appointed by the Governor. The secretary of the Governor's Executive Cabinet shall serve as a voting member upon the absence of the Governor. The secretary of the Cabinet for Economic Development and the secretary of the Tourism, Arts and Heritage Cabinet shall serve as nonvoting members.
- (3) By no later than thirty (30) days after July 14, 1992, the governing bodies of each of the following organizations shall meet and nominate two (2) persons from each of the six (6) Congressional districts of the Commonwealth and two (2) persons from the state at large, as candidates for the initial appointment as private sector members to the board:
 - (a) The Kentucky Industrial Development Council;
 - (b) The Associated Industries of Kentucky;
 - (c) The Kentucky State AFL-CIO;
 - (d) The Kentucky Farm Bureau Federation;
 - (e) The Kentucky Chamber of Commerce; and
 - (f) The Kentucky Economic Development Corporation.
- (4) The Governor shall select the original eight (8) private sector members from the aggregation of the lists provided pursuant to subsection (3) with at least one (1) appointment being chosen from each organization's list and at least one (1) appointment being chosen from each Congressional district. After the initial appointments, appointments to vacancies shall be made in the same manner as prescribed in subsection (3) of this section, except that there is no requirement that the vacancy be filled from the same organization's list as the original appointment.

- (5) The terms of office of the initial appointments of the private sector members to the board shall be staggered so that one-fourth (1/4) of all appointments shall expire one (1), two (2), three (3), and four (4) years, respectively, from the date of their appointment. All succeeding appointments shall be for four (4) years.
- (6) In making appointments to the board, the Governor shall assure broad geographical representation, as well as representation from the major sectors of Kentucky's economy by leading executives with a knowledge of the problems of large and small businesses, local economic development, and the transfer of research and development from the laboratory to the marketplace. In filling vacancies, the Governor shall attempt to assure the continuing representation on the board of broad constituencies of Kentucky's economy, including manufacturing and agriculture.
- (7) Vacancies on the board which may occur from time to time shall be filled as follows:
 - (a) Any vacancy which occurs shall be filled for the unexpired term in accordance with the procedures established for the original appointment.
 - (b) If any private sector member misses more than two (2) consecutive meetings of the board, then that position shall be declared vacant and filled in accordance with this section.
- (8) The board shall meet quarterly and at other times upon call of the chairman or a majority of the board.
- (9) A quorum shall be a majority of the voting membership of the board.
- (10) A quorum shall be required to organize and conduct the business of the board, except that an affirmative vote of seven (7) or more members of the entire board shall be required to fire the cabinet's secretary, and to adopt or amend the strategic plan.
- (11) Private sector members shall serve without compensation but shall be reimbursed for all reasonable, necessary, and actual expenses.
- (12) All existing duties, responsibilities, functions, personnel, programs, funds, obligations, records, and real and personal property of the Cabinet for Economic Development, as of July 14, 1992, shall be under the authority and control of the board.

➔Section 193. KRS 154.10-090 is amended to read as follows:

- (1) The secretary and the directors of other state agencies and entities receiving state funds for programs and activities which may affect state economic development shall cooperate in the coordination of those programs and activities to achieve the successful implementation of the state's strategic economic development plan.
- (2) The board shall compile a list of state agencies and the extent to which they have direct programmatic involvement in Kentucky's economic development systems. This information shall be presented to the General Assembly before each even-numbered-year regular session for the purpose of considering programmatic and budget adjustments.
- (3) Nothing in this chapter shall be construed as modifying, superseding, or repealing any provisions of KRS Chapter 146, 151, 224, or 350, or the obligations of the ***Energy and Environment*** ~~Environmental and Public Protection~~ Cabinet under those chapters.

➔Section 194. KRS 154.12-203 is amended to read as follows:

- (1) There is created the Kentucky Commission on Military Affairs. The commission shall be a separate administrative body of state government within the meaning of KRS Chapter 12.
- (2) It shall be the purpose of the Kentucky Commission on Military Affairs to:
 - (a) Address matters of military significance to Kentucky;
 - (b) Maintain a cooperative and constructive relationship between state agencies and the military entities in Kentucky, as necessary to ensure coordination and implementation of unified, comprehensive, statewide strategies involved with, or affected by, the military;
 - (c) Advise the Governor, the General Assembly, the Kentucky congressional delegation, and other appropriate government officials on all matters in which the military services and the Commonwealth have mutual interests, needs, and concerns;

- (d) Take action to promote and optimize state and Department of Defense initiatives that will improve the military value of Kentucky's National Guard, active, and reserve military force structure and installations, and improve the quality of life for military personnel residing in the Commonwealth;
 - (e) Coordinate, as necessary, the state's interest in future Department of Defense base closure and restructuring activities;
 - (f) Recommend state, federal, and local economic development projects which would promote, foster, and support economic progress through military presence in the Commonwealth;
 - (g) Promote and assist the private sector in developing spin-off investments, employment, and educational opportunities associated with high-technology programs and activities at Kentucky's military installations;
 - (h) Recommend to the Kentucky Economic Development Partnership the long-range options and potential for the defense facilities located in Kentucky;
 - (i) Develop strategies to encourage military personnel to retire and relocate in Kentucky and promote those leaving the military as a viable quality workforce for economic development and industrial recruitment; and
 - (j) Allocate available grant money to qualified applicants to further the purposes of paragraphs (a) to (i) of this subsection.
- (3) The Kentucky Commission on Military Affairs shall consist of:
- (a) The Governor, or his designated representative;
 - (b) The secretary of the Cabinet for Economic Development, or his designated representative;
 - (c) The adjutant general of the Commonwealth, or his designated representative;
 - (d) The executive director of the Kentucky Long-Term Policy Research Center, or his designated representative;
 - (e) The executive director of the Office of Homeland Security, or his designated representative;
 - (f) The secretaries of the following cabinets, or their designees:
 - 1. Finance and Administration;
 - 2. Justice;
 - 3. **Energy and Environment**~~Environmental and Public Protection~~;
 - 4. Transportation;
 - 5. Education;
 - 6. Health and Family Services;~~and~~
 - 7. Personnel;
 - 8. **Labor; and**
 - 9. **Public Protection;**
 - (g) The Attorney General, or his designee;
 - (h) The commissioner of the Department of Veterans' Affairs or a designee;
 - (i) The executive director of the Kentucky Commission on Military Affairs or a designee;
 - (j) Kentucky's Civilian Aides to the Secretary of the United States Army;
 - (k) Two (2) members of the Kentucky General Assembly, with experience in or an interest in military and defense-related issues, one (1) member to be appointed by the President of the Senate, and one (1) member to be appointed by the Speaker of the House;
 - (l) The commander or the designee of the commander of each of the following as nonvoting, ex officio members:

1. Fort Campbell;
 2. Fort Knox;
 3. United States Army Recruiting Command;
 4. Bluegrass Army Depot;
 5. Louisville District of the United States Army Corps of Engineers;
 6. The One Hundredth Training Division;
 7. Naval Surface Warfare Center - Port Hueneme Division, Louisville Detachment; and
 8. Any other installation or organization, including but not limited to the United States Coast Guard, Air Force, Navy, and Marine Corps, with a military mission in the Commonwealth; and
- (m) Five (5) at-large members appointed by the Governor who shall be residents of counties significantly impacted by military installations.
- (4) The terms of the five (5) at-large members shall be staggered so that two (2) appointments shall expire at two (2) years, one (1) appointment shall expire at three (3) years, and two (2) appointments shall expire at four (4) years, from the dates of initial appointment.
- (5) (a) The commission shall establish an executive committee consisting of the secretary of the Cabinet for Economic Development, the adjutant general of the Commonwealth, the commissioner of the Department of Veterans' Affairs, the executive director of the Kentucky Commission on Military Affairs, and the five (5) at-large members. The chair and vice chair of the Kentucky Commission on Military Affairs shall be appointed by the Governor from among the members of the executive committee.
- (b) The chair and vice chair of the commission shall also serve as chair and vice chair of the executive committee.
- (c) The executive committee shall serve as the search committee for an executive director of the commission and shall have any other authority the commission delegates to it.
- (6) The commission shall meet two (2) times each year, and may meet at other times on call of the chair, to establish the commission's goals and to review issues identified and recommendations made by the executive committee. A majority of the members shall constitute a quorum for the transaction of the commission's business. Members' designees shall have voting privileges at commission meetings.
- (7) Members of the commission shall serve without compensation, but shall be reimbursed for their necessary travel expenses actually incurred in the discharge of their duties on the commission, subject to Finance and Administration Cabinet administrative regulations.
- (8) The commission may establish committees or work groups composed of commission members and citizens as necessary to advise the commission in carrying out its responsibilities, duties, and powers. Citizen members of committees or work groups shall not have a vote.
- (9) The commission may promulgate necessary administrative regulations as prescribed by KRS Chapter 13A.
- (10) The commission may adopt bylaws and operating policies necessary for its efficient and effective operation.
- (11) There shall be an executive director, who shall be the administrative head and chief executive officer of the commission, recommended by the executive committee, approved by the commission, and appointed by the Governor. The executive director shall have authority to hire staff, contract for services, expend funds, and operate the normal business activities of the commission.
- (12) The Kentucky Commission on Military Affairs and its executive committee shall be an independent agency attached to the Office of the Governor.

➔Section 195. KRS 154.12-205 is amended to read as follows:

- (1) There is hereby created an independent, de jure corporation of the Commonwealth with all the general corporate powers incidental thereto which shall be known as the "Bluegrass State Skills Corporation." The

corporation shall be a political subdivision of the state and shall be attached to the Cabinet for Economic Development.

- (2) The corporation is created and established to improve and promote the employment opportunities of the citizens of the Commonwealth by creating and expanding programs of skills training and education which meet the needs of business and industry.
- (3) The corporation shall be governed by a board of directors consisting of eighteen (18) members, including the following six (6) ex officio members: the commissioner of the Department of Workforce Investment or his or her designee, the secretary of the Cabinet for Economic Development, the ~~secretary~~~~commissioner~~ of the ~~Department of Labor~~ **Cabinet**, the president of the Council on Postsecondary Education, the secretary of the Education and Workforce Development Cabinet, and the president of the Kentucky Community and Technical College System. The twelve (12) other members shall be appointed by the Governor, including persons having knowledge and experience in business and industry, skills training, education, and minority employment; and at least one (1) of the twelve (12) members shall be appointed to represent labor organizations. Each member appointed by the Governor shall serve for a term of four (4) years, except that in making the initial appointments, the Governor shall appoint three (3) members to serve for one (1) year, three (3) members to serve for two (2) years, three (3) members to serve for three (3) years, and three (3) members to serve for four (4) years. All succeeding appointments shall be for a term of four (4) years.
- (4) In the event of a vacancy, the Governor may appoint a replacement member who shall hold office during the remainder of the term so vacated.
- (5) Any member may be removed from his appointment by the Governor for cause.
- (6) The Governor shall designate a member of the board as its chairman.
- (7) Members of the board of directors of the corporation, except for ex officio members, shall be entitled to compensation for their services in the amount of one hundred dollars (\$100) for each regular or special called meeting of the corporation, and all members shall be entitled to reimbursement for any actual and necessary expenses incurred in the performance of their duties.
- (8) The board of directors of the corporation shall annually elect a vice chairman, a secretary, and a treasurer. The secretary shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, and its official seal.
- (9) The secretary of the Cabinet for Economic Development shall hire an executive director and establish his salary. The executive director shall be the chief administrative and operational officer of the corporation and shall direct and supervise its administrative affairs and general management subject to the policies, control, and direction of the board.
- (10) All officers and employees of the corporation having access to its funding shall give bond to the corporation, at its expense, in the amount and with the surety as the board may prescribe.

➔Section 196. KRS 154.20-105 is amended to read as follows:

Moneys in the reclamation development fund:

- (1) Shall be used to foster reclamation development projects described in a reclamation development plan submitted to the authority as part of the application for reclamation development fund moneys, except that no money in the reclamation development fund shall be used for any reclamation development project until the reclamation development plan with respect to that project has been approved by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet pursuant to KRS Chapter 350; and
- (2) May be made available to any person or entity, public or private, organized for profit or not for profit; and
- (3) Shall be made on the terms and conditions the authority, in its sole discretion, determines to be reasonable, appropriate, and consistent with the purposes and objectives of the authority and this chapter, which may include, but not be limited to, the pledging of adequate security.

➔Section 197. KRS 154.20-277 is amended to read as follows:

- (1) Each investment fund manager shall cause the books and records of the investment fund to be audited on an annual basis by an independent certified public accountant in accordance with generally accepted accounting principles consistently applied. The audit shall address the financial condition of the investment fund and compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284. Each year the audit

report shall be completed and certified by the independent certified public accountant and delivered to the authority within ninety (90) days after the end of the investment fund's fiscal year.

- (2) The authority and the Department of Revenue, individually or collectively, may examine, under oath, any of the officers, trustees, partners, members, managers, directors, agents, employees, or investors of an investment fund regarding the affairs and business of the investment fund. The authority and the Department of Revenue, individually or collectively, may issue subpoenas and subpoenas duces tecum and administer oaths. Refusal to obey such a subpoena or subpoena duces tecum may be reported to the Franklin Circuit Court, which shall enforce the subpoena or subpoena duces tecum according to the rules of civil or criminal procedure, as applicable.
- (3) In addition to the audits required by this section, the authority or the Department of Revenue may audit one (1) or more investment funds or investment fund managers in any year on a random basis or for cause. The authority or the Department of Revenue may also audit, for cause, any small business in which an investment fund has made a qualified investment. Nothing in this section shall be construed to prohibit the Department of Revenue from conducting any audit relating to the administration or enforcement of the tax laws of the Commonwealth which the Department of Revenue determines to be appropriate.
- (4) If any audit conducted pursuant to this section discloses that an investment fund or investment fund manager is not in compliance with the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284, the authority and the Department of Revenue may consult with one another with respect to this noncompliance and the Department of Revenue may exercise any of its powers to protect the Commonwealth's interest and to enforce the provisions of KRS 141.068 and KRS 154.20-250 to 154.20-284.
- (5) The authority may give an investment fund manager written notice of any noncompliance with the provisions of KRS 154.20-250 to 154.20-284 and specify a period of time the investment fund manager shall have to cure any noncompliance. Failure to cure any such noncompliance within the period of time specified by the authority may result in further action by the authority pursuant to this section.
- (6) Nothing in this section shall be construed to prohibit the **Department**~~Office~~ of Financial Institutions, Division of Securities, or any other securities regulatory organization or body with jurisdiction over the activity of an investment fund or the investment fund manager from conducting any examination or investigation relating to the securities activities of the investment fund or investment fund manager. If any examination or investigation conducted pursuant to any securities laws or regulations discloses that an investment fund or investment fund manager is not in compliance with any provision of any applicable securities laws or regulations, the appropriate securities regulator may take whatever action it deems appropriate in accordance with such securities laws and regulations to respond to the noncompliance, notwithstanding any action the authority or the Department of Revenue may or may not take with respect to the noncompliance.

➔Section 198. KRS 154.20-530 is amended to read as follows:

The authority may cause to be established, by any number of natural persons not in excess of fifteen (15), a Kentucky nonprofit corporation which shall have as its purpose the insurance of mortgage loans entered into by and between lenders and persons or corporations located in Kentucky and offering gainful employment to the inhabitants of the Commonwealth. The mortgage insurance corporation shall not be deemed to have been established for the purposes of this chapter unless and until its articles of incorporation shall have been approved by the authority, and if so approved, no approval by the **Department**~~Office~~ of Insurance shall be required. Such articles of incorporation, in order to secure such approval, shall contain, inter alia, the following provisions:

- (1) The corporation shall be designated "Kentucky Mortgage Insurance and Guarantee Corporation;"
- (2) No member of the board of directors of the insurance corporation shall receive any emoluments for his services thereon, except that he may be reimbursed for expenditures incurred by him in the performance of duties for the insurance corporation;
- (3) All assistance fees received by the insurance corporation shall be held in a trust account in one or more banks and trust companies having a principal place of business in the Commonwealth;
- (4) The trust account shall be held for the security of the holders of mortgage loans or bonds guaranteed by the insurance corporation, except that provision may be made for the payment of expenses of the insurance corporation from the trust account or a segregated portion thereof;

- (5) The trust account shall be governed by a trust agreement entered into by and between the insurance corporation and the trustee or trustees. Said trust agreement shall contain such lawful provisions and limitations as may be deemed appropriate, and may include a pledge of premiums and other moneys deposited in the fund to the payment of the obligations insured by the insurance corporation; and
- (6) The trust agreement shall make appropriate provisions for the investment by the trustee or trustees of funds in the trust account for the benefit of the insurance corporation and of any claimants against the trust account. The moneys so pledged and thereafter received by the trust account shall be subject to the lien of such pledge without any further act, and the lien of such pledge shall be valid and binding against all parties in accordance with the terms of the trust agreement.

➔Section 199. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3)
 - (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.
 - (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 and 154.27-060, that were subject to the tax imposed by KRS 143.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9)
 - (a) "Capital investment" means:
 - 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 - 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 - 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;

4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020; or
 - (b) A renewable energy facility meeting the investment requirements of KRS 154.27-020;
- (16) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (17) (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
- (b) "Facility" shall not include any mining operations;
- (18) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (19) (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;

2. Synthetic natural gas;
3. Chemicals;
4. Chemical feedstocks; or
5. Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;

(20) "Kentucky gross profits" shall have the same meaning as in KRS 141.0401;

(21) "Kentucky gross receipts" shall have the same meaning as in KRS 141.0401;

(22) ~~["Office" means the Governor's Office of Energy Policy created by KRS 152.712;~~

~~(23)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;

~~(23)~~~~(24)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:

- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
- (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;

~~(24)~~~~(25)~~ "Resident" shall have the same meaning as in KRS 141.010;

~~(25)~~~~(26)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;

~~(26)~~~~(27)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;

~~(27)~~~~(28)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;

~~(28)~~~~(29)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and

~~(29)~~~~(30)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 200. KRS 154.27-030 is amended to read as follows:

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
 - (a) The name of the applicant and identification of any affiliates of the applicant;
 - (b) The type of eligible project;
 - (c) A description of the location;
 - (d) A full description of the eligible project scope, including but not limited to:

1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
 3. Any feasibility studies, including supporting documents;
 4. Anticipated sources of eligible project funding;
 5. The total anticipated capital investment and the time period over which the capital investment will occur;
 6. The proposed feedstock and the estimated volume of feedstock use per year;
 7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;
 8. The planned capacity of the facility after construction, retrofit, or upgrade;
 9. The estimated output of the facility upon completion; and
 10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
- (e) Identification of the specific incentives sought;
- (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
- (g) Other information as required by the authority.
- (3) The authority shall forward the application to the ***Department of Revenue***~~[department]~~ and the ***Department for Energy Development and Independence***~~[office]~~ for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:
1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
 2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
 4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
 5. Any other requirements established by the authority.
- (b) The ***Department of Revenue and the Department for Energy Development and Independence*** shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
- (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:

1. The receipt of comments and recommendations from the ***Department for Energy Development and Independence***~~[office]~~, the ***Department of Revenue***~~[department]~~, and the Center for Applied Energy Research, if applicable; or
 2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;
- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
 - (c) Prior to final approval:
 1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
 2. The authority shall, in consultation with the ***Department for Energy Development and Independence***~~[office]~~ or any other entity, verify the representations of the applicant.
 - (d)
 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.
 2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the ***Department for Energy Development and Independence***~~[office]~~ in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
 3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.
 - (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
 - (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
 - (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.
 - (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.

- (10) The authority, with input from the ***Department for Energy Development and Independence***~~[office]~~ and the ***Department of Revenue***~~[department]~~, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.

➔Section 201. KRS 154.27-040 is amended to read as follows:

The terms and conditions of the tax incentive agreement shall be negotiated between the authority and the approved company. The tax incentive agreement may include one (1) or more of the incentives available under this subchapter or any combination of the incentives as negotiated between the authority and the approved company. The tax incentive agreement shall include but not be limited to the following provisions:

- (1) The duties and responsibilities of the parties;
- (2) The specific identification of incentives included in the tax incentive agreement, including the permissible percentage recovery under each included incentive;
- (3) A detailed description of the eligible project, including an estimate of the capital investment;
- (4) If the eligible project is an alternative fuel facility or a gasification facility, a requirement that the facility be carbon capture ready;
- (5) The minimum capital investment required and the maximum capital investment that may be recovered;
- (6) The time within which the minimum capital investment shall be made;
- (7) The activation date and the termination date. The agreement shall commence on the activation date and shall terminate upon the earlier of full receipt of the maximum amount of incentives by the approved company or twenty-five (25) years from the activation date;
- (8) A target percentage of the workforce that is Kentucky residents during the construction, retrofit, or upgrade of the facility, and at the facility upon completion of construction;
- (9) If the wage assessment permitted by KRS 154.27-080 is included, the percentage rate at which the assessment shall be imposed;
- (10) If the advance disbursement employment incentive permitted by KRS 154.27-090 is included:
 - (a) The estimated labor component and the estimated Kentucky resident factor as determined under KRS 154.27-090;
 - (b) A schedule for the disbursement of funds during the construction period;
 - (c) A provision that requires a reduction or adjustment in the receipt of post-construction incentives for which the approved company is eligible under the tax incentive agreement until the advance disbursement has been repaid by the approved company;
 - (d) A provision addressing an alternate payment method if the incentives are not sufficient to repay the advance disbursement; and
 - (e) A repayment schedule that includes the amount of reduction, the incentives the reduction shall apply to, the amount of interest due, the time period over which the advance disbursement amount shall be recouped, and the amount that shall be recouped in each year. To the extent possible, the repayment schedule shall include uniform incremental payments;
- (11) That the approval of the company is not a guarantee of incentives and that actual receipt of the incentives shall be contingent on the approved company filing the required requests for incentives and meeting the requirements established by the tax incentive agreement and by KRS 139.517, 141.421, 143.024, 154.27-060, 154.27-070, 154.27-080, and 154.27-090 that apply to the incentives included;
- (12) That the approved company shall provide the authority with documentation of capital expenditures in a manner acceptable to the authority;
- (13) Negotiated terms relating to repayment or similar remedies for incentives received prior to the completion of construction if the approved company fails to comply with the terms of the tax incentive agreement;

- (14) That, if the authority determines that the approved company has failed to comply with any of its obligations under the tax incentive agreement:
- (a) The authority shall have the right to suspend the incentives available to the approved company;
 - (b) Both the authority and the department shall have the right to pursue any remedy provided under the tax incentive agreement;
 - (c) The authority may terminate the tax incentive agreement; and
 - (d) Both the authority and the department may pursue any other remedy at law to which it may be entitled;
- (15) A requirement that the authority monitor the tax incentive agreement;
- (16) A requirement that the approved company provide to the authority the information necessary to monitor the tax incentive agreement and authorization for the authority to share that information with the **Department of Revenue**~~[department]~~, the **Department for Energy Development and Independence**~~[office]~~, or any other entity the authority determines is necessary for the purposes of monitoring and enforcing the terms of the tax incentive agreement; and
- (17) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the tax incentive agreement.

➔Section 202. KRS 154.27-050 is amended to read as follows:

- (1) The department may release to an approved company any sales tax incentives under KRS 139.517 and 154.27-070 after review of the request for incentives required by KRS 139.517 and determination of the amount due regardless of whether the minimum capital investment has been made as required by the tax incentive agreement.
- (2) The authority shall monitor all tax incentive agreements. The authority may seek assistance from the **Department for Energy Development and Independence**~~[office]~~, the **Department of Revenue**~~[department]~~, the Center for Applied Energy Research, or other entities or individuals in performing its monitoring functions.
- (3) The department shall track the amount of revenues released and incentives received for each eligible project under each tax incentive agreement and shall provide the authority the information upon request.
- (4) On or before December 1, 2008, and every December 1 thereafter, the authority and the department shall jointly prepare a report for the Legislative Research Commission. The report shall include a list of all companies with which tax incentive agreements have been entered into and a summary of the terms of each agreement, including the type of facility approved, product to be produced, estimated output upon completion, required minimum capital investment and maximum recovery, incentives approved by type of tax and amount, activation date, and termination date.

➔Section 203. KRS 154.27-090 is amended to read as follows:

- (1) An approved company may be eligible for the advance disbursement of a portion of the post-construction period incentives for which it has been approved. The amount of the advance disbursement shall be based on the employment of Kentucky residents during the construction of the facility, shall be negotiated with the authority as part of the tax incentive agreement, and shall not exceed the limitations established by this section.
- (2) The authority shall compute the maximum amount of the advance disbursement employment incentive as follows:
 - (a) The base amount shall equal the total capital investment specified in the tax incentive agreement multiplied by the labor intensity factor as determined in paragraph (c) of this subsection;
 - (b) The base amount shall then be multiplied by the Kentucky resident factor as determined in paragraph (d) of this subsection. The resulting amount shall be the maximum advance disbursement employment incentive that the authority may approve;
 - (c) The labor intensity factor shall be:
 - 1. Twenty-five percent (25%), if the estimated labor component for the eligible project is greater than thirty percent (30%) of the total capital investment;

2. Twenty percent (20%), if the estimated labor component for the eligible project is greater than twenty-five percent (25%) but less than or equal to thirty percent (30%) of the total capital investment; or
 3. Fifteen percent (15%), if the estimated labor component for the eligible project is equal to or less than twenty-five percent (25%) of the total capital investment; and
 - (d) The Kentucky resident factor shall be four percent (4%) multiplied by a fraction, the numerator of which shall be the estimated total gross wages that will be paid to Kentucky residents who are working on the construction, retrofit, or upgrade of the eligible project, and the denominator of which shall be the estimated total gross wages that will be paid to all workers working on the construction, retrofit, or upgrade of the eligible project.
- (3) The tax incentive agreement shall include a schedule for the disbursement of the advance disbursement employment incentive during the construction period. In negotiating the disbursement schedule, the authority shall consider the possible increased risk to the Commonwealth associated with the disbursement of funds prior to construction completion.
- (4) (a) The approved company shall repay the advance disbursement through a reduction in the post-construction period incentive amounts it would otherwise receive. The amount by which the post-construction period incentive amounts are reduced shall be applied as a credit against the amount owed by the approved company.
- (b) The amount of the annual reduction, the incentives the reduction shall apply to, interest due, the time period over which the advance disbursement amount shall be recouped, and alternate payment methods if incentives are not sufficient to repay the advance disbursement shall be negotiated between the authority and the approved company as part of the tax incentive agreement.
- (c) The repayment schedule included in the tax incentive agreement shall require uniform incremental payments, to the extent possible, and shall continue until the entire advance disbursement amount has been repaid by the approved company.
- (d) The tax incentive agreement shall include a provision addressing an alternate method for payment if incentives are not sufficient to repay the advance disbursement.
- (e) The total post-construction incentive payments for which an approved company is eligible shall be tracked by the department. That portion of the incentive amounts identified in the tax incentive agreement as being devoted to the repayment of the advance disbursement amount shall be credited against the balance due from the approved company and shall not be paid to or retained by the approved company.
- (f) The department shall forward the amounts credited to the repayment of the advance disbursement amount to the Cabinet for Economic Development, Department of Financial Incentives for deposit in the Energy Projects Economic Development Bond Pool.
- (g) During the period for which any portion of the post-construction incentive payments are being credited toward the advance disbursement amount, the approved company shall, at the direction of the authority or the department, file all required requests for incentives, submit all required remittances, make all required tax payments, and provide to the department and the authority any information that would normally be required for the approved company to receive the incentives.
- (5) The authority may, for purposes of administering the provisions of this section, solicit information or consultation from one (1) or more of the following sources:
- (a) *The Department for Energy Development and Independence*~~{office}~~;
 - (b) The Center for Applied Energy Research;
 - (c) The Department for Workforce Investment; or
 - (d) Any public postsecondary education institution within the Commonwealth.

➔Section 204. KRS 154.47-025 is amended to read as follows:

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

- (1) Developing, in conjunction with other agencies, workforce training plans for the secondary wood products industry as provided for in KRS 154.47-055;
- (2) Reviewing and recommending to the Cabinet for Economic Development the approval of proposals to establish business networks for businesses and industries engaged in any value-added processing of raw wood products or the manufacturing of wood products as set forth in KRS 154.47-040, and cooperating with the Cabinet for Economic Development to promote the development of business networks among secondary wood products businesses and industries;
- (3) Advising the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet on regulatory matters which impact the economic competitiveness and development of the state's secondary wood products industry;
- (4) Advising the ~~(Department of)~~ Labor **Cabinet** regarding modifications to the state workers' compensation laws in an effort to make Kentucky's secondary wood products industry more competitive;
- (5) Advising the Finance and Administration Cabinet regarding procurement of Kentucky-made secondary wood products by state agencies, including the procurement of these products by the Kentucky Department of Parks as part of any proposed state parks renovation projects;
- (6) Soliciting, borrowing, accepting, receiving, investing, and expending funds from any public or private source, including, but not limited to, general fund appropriations of the Commonwealth of Kentucky, grants or contributions of money, property, labor, or other things of value to be used to carry out the corporation's operations, functions, and responsibilities;
- (7) Entering into contracts or agreements necessary or incidental to the performance of its duties, functions, and responsibilities;
- (8) Establishing benchmarks for the purpose of evaluating workforce training and technology transfer programs applicable to the secondary wood products industry;
- (9) Employing consultants and other persons as may be required in the judgment of the board to be essential to the board's operations, functions, and responsibilities; and
- (10) Promulgating administrative regulations, in accordance with KRS Chapter 13A, governing its statutory powers, duties, and responsibilities.

➔Section 205. KRS 154.47-075 is amended to read as follows:

- (1) The Kentucky Division of Forestry shall develop and implement a program to provide training and assistance to private woodland owners in best management practices of forest development and sustainability. The training and assistance program shall provide advice and assistance in matters relating to productivity, management priorities, stewardship, planning, timber quality, forest improvement, and proper ecological management.
- (2) The board, in cooperation with the Kentucky Division of Forestry, the ~~(Department of)~~ Labor **Cabinet**, and representatives from the University of Kentucky, Eastern Kentucky University, and Morehead State University, shall develop and implement a program to provide training and assistance in the area of worker safety for both the primary and secondary wood industry.

➔Section 206. KRS 154.47-110 is amended to read as follows:

- (1) To encourage the continued development of Kentucky's primary and secondary wood products industries, the Kentucky Forest Products Council is established.
- (2) The council shall work with members of the primary and secondary wood products industries and owners of forest resources to foster cooperation in the planning and implementation of forest resources technical assistance and education efforts, including, but not limited to, silvicultural best management practices, a forest stewardship program, a master logger program, guidelines for water quality management, forest fire prevention and other technical assistance and education efforts focused on sustaining the development and productivity of the Commonwealth's forest resources.
- (3) The council shall be comprised of the following members:

- (a) The secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet or his designee, who shall serve ex officio;
 - (b) The director of the Division of Forestry or his designee;
 - (c) The chairman of the University of Kentucky Department of Forestry or his designee;
 - (d) The chairman of the Kentucky Soil and Water Conservation Commission or his designee;
 - (e) A representative of the Kentucky Forest Industries Association appointed by the Governor;
 - (f) A representative of the primary wood products industry appointed by the Governor;
 - (g) A representative of the secondary wood products industry appointed by the Governor;
 - (h) A representative of the Kentucky Farm Bureau Federation appointed by the Governor;
 - (i) A certified tree farmer or forest steward appointed by the Governor;
 - (j) A representative of the Kentucky paper products industry appointed by the Governor; and
 - (k) Two representatives of public interest groups active in natural resource conservation or environmental protection issues appointed by the Governor from three (3) nominees, one (1) from the Cumberland Chapter of the Sierra Club, one (1) from the Kentucky Resources Council; and one (1) from Kentuckians for the Commonwealth.
- (4) The initial term of office of members appointed by the Governor shall be staggered so that the three (3) members shall serve for two (2) years each, two (2) members shall serve for three (3) years each, and two (2) members shall serve a four (4) year term. Subsequent appointments shall be for a term of four (4) years each. Vacancies shall be filled in the same manner as for the original appointment. Members appointed by the Governor may be reappointed by the Governor for succeeding terms.
 - (5) The council chairperson shall be appointed from the membership by the Governor for a term of two (2) years and may be reappointed by the Governor for succeeding terms.
 - (6) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall provide staff services to the council.

➔Section 207. KRS 154.48-010 is amended to read as follows:

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

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 - 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty

percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;
- (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, or a limited partnership if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company if the same persons own:
 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership or limited partnership and a limited liability company if the same persons own:
 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Approved company" means any eligible company for which the authority has granted final approval of its application pursuant to KRS 154.48-025;
 - (4) "Approved costs" means one hundred percent (100%) of the eligible skills upgrade training costs and up to twenty-five percent (25%) of the eligible equipment costs approved by the authority that an approved company may recover through the inducements authorized by KRS 154.48-010 to 154.48-035;
 - (5) "Authority" means the Kentucky Economic Development Finance Authority created by KRS 154.20-010;
 - (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training in the Department of Workforce Investment within the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:

- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Eligible company" means any entity that undertakes an environmental stewardship project;
- (9) "Eligible costs" means eligible equipment costs plus eligible skills upgrade training costs expended after preliminary approval of the environmental stewardship project;
- (10) "Eligible equipment costs" means:
- (a) Obligations incurred for labor and to vendors, contractors, subcontractors, builders, suppliers, deliverymen, and materialmen in connection with the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (b) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, equipping, and installation of an environmental stewardship project which is not paid by the vendor, supplier, deliveryman, contractor, or otherwise provided;
 - (c) All costs of architectural and engineering services, including estimates, plans and specifications, preliminary investigations, and supervision of construction, rehabilitation and installation, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (d) All costs required to be paid under the terms of any contract for the acquisition, construction, equipping, and installation of an environmental stewardship project;
 - (e) All costs paid for by the approved company that are required for the installation of utilities, including but not limited to water, sewer, sewer treatment, gas, electricity, communications, and access to transportation, and including off-site construction of the facilities necessary for implementation of an environmental stewardship project; and
 - (f) All other costs of a nature comparable to those described in this subsection.
- (11) "Eligible skills upgrade training costs" means:
- (a) Fees or salaries required to be paid to instructors who are employees of the approved company, instructors who are full-time, part-time, or adjunct instructors with an educational institution, and instructors who are consultants on contract with an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (b) Administrative fees charged by educational institutions in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (c) The cost of supplies, materials, and equipment used exclusively in an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (d) The cost of leasing a training facility where space is unavailable at an educational institution or at the premises of an approved company in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;
 - (e) Employee wages to be paid in connection with an occupational training program sponsored by an approved company for its full-time employees and specifically relating to an environmental stewardship project;

- (f) Travel expenses paid by the approved company as incurred by its full-time employees resulting directly from the costs of transportation, lodging and meals that are directly related to an occupational training program necessary for the implementation of an environmental stewardship project; and
- (g) All other costs of a nature comparable to those described in this subsection;
- (12) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k) or similar plans;
- (13) "Environmental stewardship product" means any new manufactured product or substantially improved existing manufactured product that has a lesser or reduced adverse effect on human health and the environment or provides for improvement to human health and the environment when compared with existing products or competing products that serve the same purpose. Such products may include but are not limited to those which contain recycled content, minimize waste, conserve energy or water, and reduce the amount of toxics disposed or consumed, but shall not include products that are the result of the production of energy or energy producing fuels;
- (14) "Environmental stewardship project" or "project" means:
 - (a) The acquisition, construction, and installation of new equipment and, with respect thereto:
 - 1. The construction, rehabilitation, and installation of improvements to facilities necessary to house the new equipment, including surveys;
 - 2. Installation of utilities including water, sewer, sewage treatment, gas, electricity, communications, and similar facilities;
 - 3. Off-site construction of utility extensions to the boundaries of the real estate on which the facilities are located;

All of which are utilized by an approved company or its affiliate to manufacture an environmental stewardship product as reviewed and recommended to the authority by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet; and
 - (b) The provision of an occupational training program to provide the employees of an approved company or its affiliate with the knowledge and skills necessary to manufacture the new product;
- (15) "Final approval" means the action taken by the authority designating an eligible company that has previously received a preliminary approval as an approved company and authorizing the execution of an environmental stewardship agreement between the authority and the approved company;
- (16) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (17) "Inducement" means the Kentucky tax credit as authorized by KRS 154.48-010 to 154.48-035;
- (18) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing that results in a change in the condition of the property and any related activity or function, together with the storage, warehousing, distribution, and related office facilities;
- (19) "Preliminary approval" means the action taken by the authority designating an eligible company as a preliminarily approved company, and conditioning final approval by the authority upon satisfaction by the eligible company of the requirements set forth in the preliminary approval;
- (20) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (21) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 208. KRS 155.080 is amended to read as follows:

- (1) Any financial institution may request membership in the corporation by making application to the board of directors on such form and in such manner as said board of directors may require, and membership shall become effective upon acceptance of such application by said board.
- (2) Except for short term loans which members may make at their discretion, each member of the corporation shall make loans to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by the board of directors, subject to the following conditions:

- (a) All loan limits shall be established at the thousand-dollar (\$1,000) amount nearest to the amount computed in accordance with the provisions of this section.
- (b) No loan to the corporation shall be made if immediately thereafter the total amount of the obligations of the corporation would exceed twenty (20) times the amount then paid in on the outstanding capital stock of the corporation.
- (c) The total amount outstanding on loan to the corporation made by any member at any one (1) time when added to the amount of the investment in the capital stock of the corporation then held by such member shall not exceed:

The following limit, to be determined as of the time such member becomes a member on the basis of the audited balance sheet of such member at the close of its fiscal year immediately preceding its application for membership, or, in the case of an insurance company, its last annual statement to the ~~commissioner~~~~executive director~~ of insurance; two percent (2%) of the capital and surplus of commercial banks and trust companies; one percent (1%) of the total outstanding loans made by a building and loan association: provided, however, that any business development corporation created pursuant to this section, KRS 155.010 and 155.090 may in its articles of incorporation, or by appropriate amendment thereto, provide that the loan limit of a building and loan association member shall be only one-half of one percent (0.5%) of the total outstanding loans made by such building and loan association member; one percent (1%) of the capital and unassigned surplus of stock insurance companies, except fire insurance writing companies; one percent (1%) of the unassigned surplus of mutual insurance companies, except fire insurance writing companies; one-tenth of one percent (0.1%) of the assets of fire insurance writing companies; and such limits as may be approved by the board of directors of the corporation for other financial institutions.

➔Section 209. KRS 155.160 is amended to read as follows:

The corporation shall be subject to the examination of the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions, and shall make reports of its condition not less often than annually to said ~~commissioner~~~~executive director~~, who in turn shall make copies of such reports available to the ~~commissioner~~~~executive director~~ of insurance and to the Governor. The corporation shall also furnish such other information as may from time to time be required by the Secretary of State.

➔Section 210. KRS 160.325 is amended to read as follows:

- (1) In an effort to reduce the rising energy costs that are straining school budgets, on or before January 1, 2010, each board of education shall enroll in the Kentucky Energy Efficiency Program that is offered by the Kentucky Pollution Prevention Center at the University of Louisville in order to obtain information regarding the potential energy savings for every board-owned and board-operated facility.
- (2) The Kentucky Pollution Prevention Center may prioritize the provision of assistance and development of energy management plans based upon available resources.
- (3) On or before December 1, 2011, and on or before December 1 of each year thereafter, the Kentucky Pollution Prevention Center shall file a report for the preceding fiscal year with the **Department for Energy Development and Independence**~~Governor's Office of Energy Policy~~ and the Legislative Research Commission. The report shall include:
 - (a) The number of boards of education enrolled in the Kentucky Energy Efficiency Program;
 - (b) The status of the development of energy management plans by those boards of education and anticipated savings to be obtained by those plans; and
 - (c) The amount and disposition of grants provided by the **Department for Energy Development and Independence**~~Governor's Office of Energy Policy~~ and any state appropriations for support of the Kentucky Energy Efficiency Program.

➔Section 211. KRS 162.060 is amended to read as follows:

The chief state school officer shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. He shall examine or cause to be examined all such plans and specifications and shall approve or disapprove them in accordance with the rules

and regulations of the Kentucky Board of Education. Plan reviews for conformance with the Uniform State Building Code shall be conducted only by the **Department**~~[Office]~~ of Housing, Buildings and Construction. No board of education may award a contract for the erection of a new building or contract for an addition to or alteration of an old building until the plan has been approved by the chief state school officer.

➔Section 212. KRS 164.2842 is amended to read as follows:

- (1)
 - (a) The spouse, regardless of age, and any child of a permanently and totally disabled law enforcement officer, firefighter, or volunteer firefighter injured while in active service or in training for active service, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
 - (b) For the spouse or child to be entitled to benefits under this section, the disabled law enforcement officer, firefighter, or volunteer firefighter shall be rated permanently and totally disabled for pension purposes or one hundred percent (100%) disabled for compensation purposes by the Kentucky Justice and Public Safety Cabinet, the appropriate city or county law enforcement agency which employed the disabled, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, or if deceased, the claim to benefits is to be based on the rating held by the law enforcement officer, firefighter, or volunteer firefighter at the time of death. The parent's or spouse's service and rating shall be evidenced by certification from the records of the Kentucky Justice and Public Safety Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes.
 - (c) In the absence of certification of permanent and total disability by the Kentucky **Department**~~[Office]~~ of Workers' Claims, the Kentucky Justice and Public Safety Cabinet, the appropriate local law enforcement agency, the administrative agency for the fire department or fire protection district recognized for funding under KRS 95A.262, or the administrative agency having jurisdiction over any paid firefighters of all counties and cities of all classes, medical evidence showing permanent and total disability or the existence of permanent and total disability for a period of at least thirty (30) days immediately prior to death may be accepted, if this evidence is signed by a physician licensed to practice or an official of an accredited medical hospital.
 - (d) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.
 - (e) To entitle a spouse or child to benefits under this section the disabled law enforcement officer, firefighter, or volunteer firefighter shall have been a resident of the Commonwealth of Kentucky upon becoming a law enforcement officer, firefighter, or volunteer firefighter.
- (2)
 - (a) The spouse, regardless of age, and any child of a person who was an employee participating in a state-administered retirement system and not otherwise covered by subsection (1) of this section and who was disabled as a result of a duty-related injury as described in KRS 61.621, who is over the age of seventeen (17) and under the age of twenty-three (23) shall not be required to pay any matriculation or tuition fee upon his admission to any state-supported university, community college, or vocational training institution for a period not in excess of thirty-six (36) months in order to obtain a diploma, nor in excess of the lesser number of months required for a certificate of completion.
 - (b) The parent-child relationship shall be shown by birth certificate, legal adoption papers, or other documentary evidence. The spousal relationship shall be shown by a marriage certificate or other documentary evidence.
- (3) The marriage of an eligible child shall not serve to deny full entitlement to the benefits provided in this section.

➔Section 213. KRS 164.587 is amended to read as follows:

- (1) The board of regents may provide medical and accident insurance for students enrolled in the Kentucky Community and Technical College System institutions. The president, on behalf of the system, may enter into a contract or contracts with one (1) or more sureties or insurance companies or their agents to provide appropriate medical and accident insurance coverage and to provide group coverage to all students enrolled in institutions within the system. The appropriate group coverage shall be issued by one (1) or more sureties or insurance companies authorized to transact business in this state, and the coverage shall be approved by the **commissioner**~~executive director~~ of insurance.
- (2) The board shall approve policies upon recommendation of the president to implement the medical and accident insurance program. The board may fix the rate of fees for all postsecondary and adult students as it deems necessary to meet the expense in whole or in part for appropriate student medical and accident insurance.
- (3) The limits of liability and other appropriate provisions for student medical and accident insurance authorized by this section shall be set by the board.

➔Section 214. KRS 164.6903 is amended to read as follows:

As used in KRS 164.6901 to 164.6935, unless the context requires otherwise:

- (1) "Agency contract" means an agreement in which a student-athlete authorizes a person to negotiate or solicit on behalf of the student-athlete a professional-sports-services contract or an endorsement contract;
- (2) "Athlete agent" means an individual who enters into an agency contract with a student-athlete or, directly or indirectly, recruits or solicits a student-athlete to enter into an agency contract. The term includes an individual who represents to the public that the individual is an athlete agent. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student-athlete or an individual acting solely on behalf of a professional sports team or professional sports organization;
- (3) "Athletic director" means an individual responsible for administering the overall athletic program of an educational institution or, if an educational institution has separately administered athletic programs for male and female students, the athletic program for males or the athletic program for females, as appropriate;
- (4) "Contact" means a communication, direct or indirect, between an athlete agent and a student-athlete, to recruit or solicit the student-athlete to enter into an agency contract;
- (5) "**Office**~~Division~~" means the **Office**~~Division~~ of Occupations and Professions in the~~Environmental and~~ Public Protection Cabinet;
- (6) "Endorsement contract" means an agreement under which a student-athlete is employed or receives consideration to use on behalf of the other party any value that the student-athlete may have because of publicity, reputation, following, or fame obtained because of athletic ability or performance;
- (7) "Intercollegiate sport" means a sport played at the collegiate level for which eligibility requirements for participation by a student-athlete are established by a national association for the promotion or regulation of collegiate athletics;
- (8) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity;
- (9) "Professional-sports-services contract" means an agreement under which an individual is employed, or agrees to render services, as a player on a professional sports team, with a professional sports organization, or as a professional athlete;
- (10) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;
- (11) "Registration" means registration as an athlete agent pursuant to KRS 164.6901 to 164.6935;
- (12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States; and
- (13) "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, any intercollegiate sport. If an individual is permanently ineligible to participate in a particular intercollegiate sport, the individual is not a student-athlete for purposes of that sport.

➔Section 215. KRS 164.6905 is amended to read as follows:

- (1) By acting as an athlete agent in this state, a nonresident individual appoints the **Office**~~[Division]~~ of Occupations and Professions as the individual's agent for service of process in any civil action in this state related to the individual's acting as an athlete agent in this state.
- (2) The **office**~~[division]~~ may issue subpoenas for any material that is relevant to the administration of KRS 164.6901 to 164.6935.
- (3) The **office**~~[division]~~ may promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to carry out the provisions of KRS 164.6901 to 164.6935.

➔Section 216. KRS 164.6909 is amended to read as follows:

- (1) An applicant for registration shall submit an application for registration to the **office**~~[division]~~ in a form prescribed by the **office**~~[division]~~. An application filed under this section is a public record. The application must be in the name of an individual, and except as otherwise provided in subsection (2) of this section, signed or otherwise authenticated by the applicant under penalty of perjury and state or contain:
 - (a) The name of the applicant and the address of the applicant's principal place of business;
 - (b) The name of the applicant's business or employer, if applicable;
 - (c) Any business or occupation engaged in by the applicant for the five (5) years next preceding the date of submission of this application;
 - (d) A description of the applicant's:
 1. Formal training as an athlete;
 2. Practical experience as an athlete agent; and
 3. Educational background relating to the applicant's activities as an athlete agent;
 - (e) The names and addresses of three (3) individuals not related to the applicant who are willing to serve as references;
 - (f) The name, sport, and last known team for each individual for whom the applicant acted as an athlete agent during the five (5) years next preceding the date of submission of the application;
 - (g) The names and addresses of all persons who are:
 1. With respect to the athlete agent's business if it is not a corporation, the partners, members, officers, managers, associates, or profit-sharers of the business; and
 2. With respect to a corporation employing the athlete agent, the officers, directors, and any shareholder of the corporation having an interest of five percent (5%) or greater;
 - (h) Whether the applicant or any person named pursuant to paragraph (g) of this subsection has been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony, and identify the crime;
 - (i) Whether there has been any administrative or judicial determination that the applicant or any person named pursuant to paragraph (g) of this subsection has made a false, misleading, deceptive, or fraudulent representation;
 - (j) Any instance in which the conduct of the applicant or any person named pursuant to paragraph (g) of this subsection resulted in the imposition of a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event on a student-athlete or educational institution;
 - (k) Any sanction, suspension, or disciplinary action taken against the applicant or any person named pursuant to paragraph (g) of this subsection arising out of occupational or professional conduct; and
 - (l) Whether there has been any denial of an application for, suspension or revocation of, or refusal to renew, the registration or licensure of the applicant or any person named pursuant to paragraph (g) of this subsection as an athlete agent in any state.

- (2) An individual who has submitted an application for, and holds a certificate of, registration or licensure as an athlete agent in another state, may submit a copy of the application and certificate in lieu of submitting an application in the form prescribed pursuant to subsection (1) of this section. The ~~office~~~~[division]~~ shall accept the application and the certificate from the other state as an application for registration in this state if the application to the other state:
- (a) Was submitted in the other state within six (6) months next preceding the submission of the application in this state and the applicant certifies that the information contained in the application is current;
 - (b) Contains information substantially similar to or more comprehensive than that required in an application submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.

➔Section 217. KRS 164.6911 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, the ~~office~~~~[division]~~ shall issue a certificate of registration to an individual who complies with KRS 164.6909(1) or whose application has been accepted under KRS 164.6909(2).
- (2) The ~~office~~~~[division]~~ may refuse to issue a certificate of registration if the ~~office~~~~[division]~~ determines that the applicant has engaged in conduct that has a significant adverse effect on the applicant's fitness to act as an athlete agent. In making the determination, the ~~office~~~~[division]~~ may consider whether the applicant has:
 - (a) Been convicted of a crime that, if committed in this state, would be a crime involving moral turpitude or a felony;
 - (b) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as an athlete agent;
 - (c) Engaged in conduct that would disqualify the applicant from serving in a fiduciary capacity;
 - (d) Engaged in conduct prohibited by KRS 164.6925;
 - (e) Had a registration or licensure as an athlete agent suspended, revoked, or denied, or been refused renewal of registration or licensure as an athlete agent in any state;
 - (f) Engaged in conduct the consequence of which was that a sanction, suspension, or declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was imposed on a student-athlete or educational institution; or
 - (g) Engaged in conduct that significantly adversely reflects on the applicant's credibility, honesty, or integrity.
- (3) In making a determination under subsection (2) of this section, the ~~office~~~~[division]~~ shall consider:
 - (a) How recently the conduct occurred;
 - (b) The nature of the conduct and the context in which it occurred; and
 - (c) Any other relevant conduct of the applicant.
- (4) An athlete agent may apply to renew a registration by submitting an application for renewal in a form prescribed by the ~~office~~~~[division]~~. An application filed under this section is a public record. The application for renewal must be signed by the applicant under penalty of perjury and must contain current information on all matters required in an original registration.
- (5) An individual who has submitted an application for renewal of registration or licensure in another state, in lieu of submitting an application for renewal in the form prescribed pursuant to subsection (4) of this section, may file a copy of the application for renewal and a valid certificate of registration or licensure from the other state. The ~~office~~~~[division]~~ shall accept the application for renewal from the other state as an application for renewal in this state if the application to the other state:
 - (a) Was submitted in the other state within six (6) months next preceding the filing in this state and the applicant certifies the information contained in the application for renewal is current;

- (b) Contains information substantially similar to or more comprehensive than that required in an application for renewal submitted in this state; and
 - (c) Was signed by the applicant under penalty of perjury.
- (6) A certificate of registration or a renewal of registration is valid for one (1) year.

➔Section 218. KRS 164.6913 is amended to read as follows:

- (1) The ~~office~~~~division~~ may suspend, revoke, or refuse to renew a registration for conduct that would have justified denial of registration under KRS 164.6911(2).
- (2) The ~~office~~~~division~~ may deny, suspend, revoke, or refuse to renew a certificate of registration or licensure only after proper notice and an opportunity for a hearing in accordance with KRS Chapter 13B.
- (3) The ~~office~~~~division~~ may issue a temporary certificate of registration while an application for registration or renewal of registration is pending.

➔Section 219. KRS 164.6915 is amended to read as follows:

An application for registration or renewal of registration must be accompanied by a fee in the following amount:

- (1) An initial application for registration fee determined by the ~~office~~~~division~~, not to exceed three hundred dollars (\$300);
- (2) An annual renewal fee determined by the ~~office~~~~division~~, not to exceed three hundred dollars (\$300); or
- (3) An application for registration fee based upon certification of registration or licensure issued by another state determined by the ~~office~~~~division~~, not to exceed two hundred fifty dollars (\$250).

➔Section 220. KRS 164.6923 is amended to read as follows:

- (1) An athlete agent shall retain the following records for a period of five (5) years:
 - (a) The name and address of each individual represented by the athlete agent;
 - (b) Any agency contract entered into by the athlete agent; and
 - (c) Any direct costs incurred by the athlete agent in the recruitment or solicitation of a student-athlete to enter into an agency contract.
- (2) Records required to be retained in subsection (1) of this section are open to inspection by the ~~office~~~~division~~ during normal business hours.

➔Section 221. KRS 164.6929 is amended to read as follows:

- (1) An educational institution has a right of action against an athlete agent or a former student-athlete for damages caused by a violation of KRS 164.6901 to 164.6935. In an action under this section, the court may award to the prevailing party costs and reasonable attorney's fees.
- (2) Damages of an educational institution under subsection (1) of this section include losses and expenses incurred because, as a result of the conduct of an athlete agent or former student-athlete, the educational institution was injured by a violation of KRS 164.6901 to 164.6935 or was penalized, disqualified, or suspended from participation in athletics by a national association for the promotion and regulation of athletics, by an athletic conference, or by reasonable self-imposed disciplinary action taken to mitigate sanctions likely to be imposed by such an organization.
- (3) A right of action under this section does not accrue until the educational institution discovers or by the exercise of reasonable diligence would have discovered the violation by the athlete agent or former student-athlete.
- (4) Any liability of the athlete agent or the former student-athlete under this section is several and not joint.
- (5) The ~~office~~~~division~~ may assess a civil penalty against an athlete agent not to exceed twenty-five thousand dollars (\$25,000) for a violation of KRS 164.6901 to 164.6935.
- (6) KRS 164.6901 to 164.6935 does not restrict rights, remedies, or defenses of any person under law or equity.

➔Section 222. KRS 164.760 is amended to read as follows:

The authority shall be subject to the supervision and examination of the ~~Department~~~~Office~~ of Financial Institutions (or any successor), but shall not be deemed to be a banking organization nor required to pay a fee for any such supervision or examination. The authority shall file an annual audited financial report with the Governor within ninety (90) days after the close of the fiscal year. The annual audit shall be made by an independent certified public accountant. The annual audited financial report shall include but may not be limited to the financial condition of the authority as of the end of the fiscal year and the revenues and expenditures for the fiscal year. The fiscal year shall be from July 1 through June 30.

➔Section 223. KRS 164.948 is amended to read as follows:

As used in KRS 164.9481, 164.9483, and 164.9485, unless the context requires otherwise:

- (1) "Campus" means all property owned, managed, or controlled by an institution of postsecondary education including but not limited to academic buildings; student housing and recreational facilities; residential facilities operated by any officially recognized student organization; all sections of public property such as streets, sidewalks, and parking facilities immediately contiguous to campus buildings; and remote facilities leased for use as classroom space or student living.
- (2) "Campus security authority" means campus police, security officers, and any official at a postsecondary education institution who has significant responsibility for student and campus activities, including student discipline, student housing, student judicial affairs, and student life administration. Professional mental health, pastoral, and other licensed counselors when functioning in that capacity are not considered campus security authorities.
- (3) "Crime" means murder, manslaughter, reckless homicide, assault, menacing, wanton endangerment, terroristic threatening, stalking, forcible or nonforcible sex offenses, burglary, criminal damage to property, arson, theft, motor vehicle theft, robbery, weapons possession, and criminal attempt for any of the aforementioned crimes, and arrests for drug-related violations and liquor law violations.
- (4) "Immediately" means before the last fire unit has left the scene in order for the ~~state fire marshal~~~~marshal's office~~ to have the opportunity to speak with fire unit personnel before they leave the scene, but no later than two (2) hours following the time the fire or threat of fire is discovered. In the event of a minor fire to which the local fire officials are not called or do not respond, "immediately" means no later than one (1) hour following the discovery of the fire.
- (5) "Postsecondary education institution" means any Kentucky public four (4) year institution or two (2) year community college or technical college that grants a postsecondary education credential, and any private college or university that is licensed by the Council on Postsecondary Education under KRS 164.945 to 164.947.

➔Section 224. KRS 164.9483 is amended to read as follows:

- (1) Under the provisions of KRS Chapter 227, the state fire marshal shall have jurisdiction over all property in the state including property of public postsecondary education institutions and property of any private college or university that is licensed by the Council on Postsecondary Education as provided for by KRS 164.945 to 164.947, insofar as it is necessary for the administration and enforcement of any duty imposed on the office by law or administrative regulation and all laws, ordinances, regulations, and orders designed to protect the public from fire loss.
- (2) The state fire marshal or the ~~state~~ fire marshal's employee or appointee may, without delay or advance notice and at all reasonable hours of the day or night, enter in or upon any property defined under KRS 227.200 located on the campus to make an inspection, investigation, or any other action necessary for the purpose of preventing fire loss or determining the origin of any fire.
- (3) No person shall obstruct, hinder, or delay such an officer in the performance of his or her duty.
- (4) Upon learning of a fire or threat of fire, a campus security authority designated by the college or university president to be responsible and liable for reporting shall immediately report each fire or threat of fire to the state fire ~~marshal~~~~marshal's office~~ in Frankfort and the local deputies, assistants, and employees appointed under KRS 227.230. No fire scene located on a campus shall be cleared or cleaned without the express consent of the state fire marshal to do so after a representative of the ~~state~~ fire ~~marshal~~~~marshal's office~~ has had an opportunity to investigate the scene.

➔Section 225. KRS 164A.585 is amended to read as follows:

- (1) Subject to authorization by the General Assembly and KRS 164A.580, the governing boards may make plans and specifications, advertise for bids, let contracts or incur any financing commitments, either in the way of a charge against institution funds or in the way of negotiations for issuance of revenue bonds, for any capital construction projects involving the improvement of lands or the construction, alteration, reconstruction, or major repair of any building or other structure, or sewage disposal, water supply system or other utility system.
- (2) Review of construction plans for conformance with the uniform state building code shall be conducted by the **Department**~~Office~~ of Housing, Buildings and Construction. The board shall not approve any such project requiring its approval in any instance where it finds that the project is not needed, or that the proposed method of financing is not sound, or in cases where the project will exceed the amount of the funds available therefor, or the work contemplated will be insufficient to accomplish the purpose of the project, or that after providing for the ordinary recurring expenses of administration and debt service and for payments under existing allotments for extraordinary expenses and capital outlay, cash will not be available in the Treasury to promptly pay for the work or that the work is to be done by employees of the institution.
- (3) Any capital construction project, except as provided in subsection (4) of this section, shall be contracted for on a competitive bid basis, and the execution of such contracts shall be approved and authorized by the board. When a capital construction project has been approved as provided in this section, in whole or in part, the board shall prepare the plans and specifications, advertise for bids, award the contracts, supervise the construction and handle the financial negotiations.
 - (a) The governing board shall ensure that every invitation for bids or request for proposals shall provide that an item equal to that named or described in the specifications may be furnished.
 - (b) The specifications may identify a sole brand in cases where, in the written opinion of the chief procurement officer, documented unique and valid conditions require compatibility, continuity, or conformity with established standards.
 - (c) An item shall be considered equal to the item named or described if, in the opinion of the governing board and the design professional responsible for the specifications:
 1. It is at least equal in quality, durability, strength, design, and other criteria deemed appropriate;
 2. It will perform at least equally the function imposed by the general design for the public work being contracted for or the material being purchased; and
 3. It conforms substantially to the detailed requirements for the item in the specifications.
- (4) A capital construction project, the total cost of completion of which will not exceed two hundred fifty thousand dollars (\$250,000), may be performed by the employees of the institution or by individuals hired specifically for the project. Necessary materials and supplies shall be procured in accordance with the standard purchasing procedures and policies of the board as defined in KRS 164A.575.

➔Section 226. KRS 164A.840 is amended to read as follows:

Each fiscal year all license, permit, and acreage fees, collected by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet and which are related to mining or minerals, shall be deposited to the credit of the mining and minerals trust fund in an amount not to exceed the annual debt service required for a mining and minerals building.

➔Section 227. KRS 165A.340 is amended to read as follows:

- (1) There is hereby established a State Board for Proprietary Education which shall~~be attached to the Environmental and Public Protection Cabinet, Division of Occupations and Professions, and shall~~ consist of eleven (11) voting members to be appointed by the Governor as follows:
 - (a) Three (3) members representative of privately owned educational institutions appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
 - (b) Three (3) members representative of technical schools appointed from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools; and
 - (c) Five (5) members representative of the public at large.

- (2) The term of each member shall be four (4) years or until a successor is appointed. If a vacancy occurs on the board, a new member shall be appointed to serve the remainder of the unexpired term.
- (3) The director of the **Office**~~[Division]~~ of Occupations and Professions in the ~~[Environmental and]~~ Public Protection Cabinet shall serve as executive director of the board. Members of the board shall annually elect one (1) of their number as chairman. The board may make all rules and regulations, including the establishment of fees and other charges consistent with the provisions of this chapter, as may be necessary to carry out the provisions and purposes of this chapter.
- (4) The board shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places as the board may designate and the majority of the members shall constitute a quorum.
- (5) The board may sue and be sued in its own name.
- (6) The members of the board shall receive one hundred dollars (\$100) per day for each meeting attended and may be paid their travel and other expenses while employed upon the business of the board.
- (7) The board shall administer the provisions of law pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.
- (8) The board shall have the power to subpoena witnesses and school records as it deems necessary.

➔Section 228. KRS 174.410 is amended to read as follows:

- (1) The secretary shall be responsible for controlling and regulating the movement of all radioactive materials and the intrastate transport of other hazardous materials transported by all carrier modes within the Commonwealth.
- (2) The secretary, in consultation with the secretary of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet and the secretary of the Cabinet for Health and Family Services, shall adopt by reference or in entirety, the Federal Hazardous Materials Transportation Regulations, 49 C.F.R. (1978), as amended, to effectively carry out the intent of KRS 174.400 to 174.425.
- (3) The cabinet and the Justice and Public Safety Cabinet shall cooperate with and assist the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet in implementing and enforcing the transportation provisions of any state hazardous waste regulations promulgated pursuant to KRS Chapter 224. The specific nature and details of the assistance effort shall be established by a formal cooperative agreement acceptable to the cabinets, and all activities shall occur in accordance with the terms of the agreement. The agreement shall address and include but not necessarily be limited to the following items:
 - (a) As a part of routine and periodic transportation checks and inspections, ensure that shipments of hazardous waste do not present a threat to the public or the environment; are accompanied by the required hazardous waste manifest or such other shipping or delivery documents as may be acceptable to the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet; and comply with applicable shipping standards;
 - (b) Upon receipt of a written request from the secretary or general counsel of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet, actively conduct field investigations relating to the illegal, improper, or unauthorized transport of hazardous waste in the state. Such investigations may, at a minimum, include passive and active surveillance, apprehension, and reporting, with the scope and extent of each investigation to be previously agreed to by the involved cabinets;
 - (c) Compile and maintain such necessary records that may normally be required to carry out the provisions of this subsection and shall for minor violations report quarterly, and for major violations report weekly, to the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet on the status of the interagency hazardous-waste transportation monitoring and enforcement activity for irregularities or violations;
 - (d) Provide any information, evidence, and other support, either in written form or in the form of oral testimony during a legal proceeding or both, as may be required by the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet to fully carry out its statutory responsibility under the appropriate sections of KRS Chapter 224;

- (e) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall, unless specifically agreed otherwise, have primary responsibility for initiating and conducting all legal proceedings arising from the terms and provisions of this subsection; and
- (f) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall provide sufficient training, technical assistance, and other support to the appropriate cabinets to prepare representatives of the cabinets to adequately carry out the responsibilities set forth in this subsection.

➔Section 229. KRS 174.420 is amended to read as follows:

- (1) Any person transporting hazardous materials in the Commonwealth shall carry a copy of the shipping papers required in 49 C.F.R. (1978), as amended, in the transporting vehicle while in the Commonwealth.
- (2) In the event of an accident involving hazardous material, the operator of the vehicle shall:
 - (a) Notify the Department of Kentucky State Police of the accident within one (1) hour, who shall then notify the local jurisdiction and any other appropriate state agency with emergency action responsibility, and
 - (b) Provide the shipping papers to state and local emergency response authorities, and immediately bring to their attention the fact that the vehicle is transporting hazardous materials.
- (3) In addition to the other requirements of this section, any person transporting hazardous wastes shall carry in the transporting vehicle a copy of a manifest in a form approved by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.

➔Section 230. KRS 176.054 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall furnish to the Department of Highways such seedlings or young trees as the department may require, or as may be available. The Department of Highways shall pay to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet the reasonable value thereof as may be agreed upon between such departments.

➔Section 231. KRS 177.977 is amended to read as follows:

- (1) The Transportation Cabinet shall publish a directory, including supporting maps and other documents, designating the official coal road system in coal impact and coal producing counties which shall include all public highways, roads, bridges, and streets over which quantities of coal sufficient to significantly affect the condition and state of repair of such highways, roads, bridges, and streets have been transported in the immediately preceding year. The cabinet shall further publish the total county mileage of the official coal road system and the total ton-miles within each coal impact and coal producing county for said preceding year.
- (2) Every person, producer or processor shipping or transporting coal over the public highways, roads, bridges, and streets, shall file with the Transportation Cabinet information at intervals as the cabinet shall designate by administrative regulation promulgated pursuant to KRS Chapter 13A, for the purpose of identifying those highways, roads, and streets comprising the coal road system and the quantities of coal transported thereon, in order that the cabinet can accurately calculate total ton-miles within each coal impact and coal producing county. A copy of the information furnished to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet pursuant to the provisions of KRS 350.0285 and a copy of the information furnished to the Department for Natural Resources pursuant to the provisions of KRS 351.070 and 352.420 shall be submitted to the Transportation Cabinet to satisfy the reporting requirements of this subsection and the transportation plan shall be annually updated to reflect in route changes.

➔Section 232. KRS 183.125 is amended to read as follows:

- (1) The cabinet may purchase necessary insurance to provide adequate protection for the public; its authorized pilots and employees; pilots employed by other departments of state government; aircraft owned, leased or operated by the cabinet; aircraft owned, leased or operated by other departments of state government; the health and lives of persons being transported in aircraft owned, leased or operated by authorized pilots employed by the state.
- (2) The ***commissioner***~~[executive director]~~ of insurance, upon recommendation of the secretary of the Transportation Cabinet, shall initiate and be responsible for the purchase of such insurance. If other departments of state government desire that their pilots, employees, aircraft and passengers shall be insured

under such policy, then the **commissioner**~~executive director~~ of insurance shall prorate the cost of the insurance among the departments participating.

- (3) Each policy shall contain a provision reciting that the defense of immunity of the state against such liability shall be waived, but only to the extent of the limits of the policy. Judgment against the state in any case shall not exceed the limits of the policy. The venue of action shall be as provided by the civil rules. The limits of liability of the policy shall be determined by the **commissioner**~~executive director~~ of insurance, the secretary of the Transportation Cabinet and the commissioners of any other participating departments.
- (4) Any policy purchased under this section, shall be purchased only from insurers authorized to do business in this state and shall be countersigned by a licensed resident agent.

➔Section 233. KRS 186.021 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, a county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration for renewal to any person who on January 1 of any year owned a motor vehicle on which state, county, city, urban-county government, school, or special taxing district ad valorem taxes are delinquent.
- (2) Pursuant to KRS 134.810(4), the owner as defined in KRS 186.010(7)(a) and (c) on January 1 of any year shall be liable for taxes due on a motor vehicle. A person other than the owner of record who applies to a county clerk to transfer the registration of a motor vehicle may pay any delinquent ad valorem taxes due on the motor vehicle to facilitate the county clerk's transferring registration of the motor vehicle. The person applying shall not be required to pay delinquent ad valorem taxes due on any other motor vehicle owned by the owner of record from which he is purchasing his motor vehicle as a condition of registration.
- (3) A county clerk shall not issue a replacement plate, decal, or registration certificate as provided in KRS 186.180, or a registration renewal for any motor vehicle that is not insured in compliance with KRS 304.39-080. Each applicant for registration renewal shall present proof of compliance to the county clerk in a manner prescribed in administrative regulations issued by the **Department**~~Office~~ of Insurance. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042.

➔Section 234. KRS 186.065 is amended to read as follows:

- (1) Every state-owned motor vehicle, except as provided in subsection (2), shall have an official license plate. Except as provided in subsections (2), (3), and (4) on one (1) door on each side of every state-owned vehicle shall be the great seal of the Commonwealth and the words "For Official Use Only."
- (2) The Department of Revenue, the ~~{Cabinets of}~~ Transportation **Cabinet**, the Justice **and Public Safety Cabinet**, ~~the {and Environmental and}~~ Public Protection **Cabinet**, and the Attorney General may authorize registration under KRS 186.020 and be issued regular license plates for vehicles used for investigatory purposes. The Administrative Office of the Courts may authorize registration under KRS 186.020 and be issued regular license plates for vehicles used by justices and judges of the Supreme Court and Court of Appeals.
- (3) The Governor and the Lieutenant Governor may each use one (1) state-owned motor vehicle on which it shall not be necessary to have the state seal or the words "For Official Use Only."
- (4) The Justices and Judges of the Supreme Court and Court of Appeals may each use state-owned motor vehicles on which it shall not be necessary to have the state seal or the words "For Official Use Only."

➔Section 235. KRS 186.190 is amended to read as follows:

- (1) When a motor vehicle that has been previously registered changes ownership, the registration plate shall remain upon the motor vehicle as a part of it until the expiration of the registration year.
- (2) A person shall not purchase, sell, or trade any motor vehicle without delivering to the county clerk of the county in which the sale or trade is made the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle. Any unexpired registration shall remain valid upon transfer of the vehicle to the new owner. Except for transactions handled by a motor vehicle dealer licensed pursuant to KRS Chapter 190, the person who is purchasing the vehicle shall present proof of insurance in compliance with KRS 304.39-080 to the county clerk before the clerk transfers the registration on the vehicle. Proof of insurance shall be in the manner prescribed in administrative

regulations promulgated by the ~~Department~~~~Office~~ of Insurance pursuant to KRS Chapter 13A. On and after January 1, 2006, if the motor vehicle is a personal motor vehicle as defined in KRS 304.39-087, proof of insurance shall be determined by the county clerk as provided in KRS 186A.042.

- (3) Upon delivery of the title, and a notarized affidavit if required and available under KRS 138.450 attesting to the total and actual consideration paid or to be paid for the motor vehicle to the county clerk of the county in which the sale or trade was made, the seller shall pay to the county clerk a transfer fee of two dollars (\$2), which shall be remitted to the Transportation Cabinet. If an affidavit is required, and available, the signatures on the affidavit shall be individually notarized before the county clerk shall issue to the purchaser a transfer of registration bearing the same data and information as contained on the original registration receipt, except the change in name and address. The seller shall pay to the county clerk a fee of six dollars (\$6) for his services.
- (4) If the owner junks or otherwise renders a motor vehicle unfit for future use, he shall deliver the registration plate and registration receipt to the county clerk of the county in which the motor vehicle is junked. The county clerk shall return the plate and motor vehicle registration receipt to the Transportation Cabinet. The owner shall pay to the county clerk one dollar (\$1) for his services.
- (5) A licensed motor vehicle dealer shall not be required to pay the transfer fee provided by this section, but shall be required to pay the county clerk's fee provided by this section.
- (6) The motor vehicle registration receipt issued by the clerk under this section shall contain information required by the Department of Vehicle Regulation.

➔Section 236. KRS 186.290 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the emissions test status of vehicles registered in the Commonwealth of Kentucky. The Department of Vehicle Regulation shall provide appropriate emissions test and compliance status to the Department of Information Systems for inclusion in the AVIS database.
- (2) Upon notification to the Department of Vehicle Regulation from a county air pollution control district or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet of expiration of a vehicle emissions compliance certificate, the Department of Vehicle Regulation shall immediately notify the person who owns the vehicle that unless evidence of compliance is received within thirty (30) days, the department shall revoke the registration of the motor vehicle until:
 - (a) The person presents an emissions certificate to the county clerk and pays the reinstatement fee required under KRS 186.180; or
 - (b) The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that failure to obtain a current emissions certificate is the result of the inoperable condition of the motor vehicle.
- (3) The provisions of this section and KRS 186.180, 186.990, 224.20-760, and 224.20-765 shall not prevent the Transportation Cabinet, a county air pollution district, or the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet from seeking the enforcement or operation of any other statute or ordinance that ensures the compliance of motor vehicles in the Commonwealth under KRS Chapter 186, KRS 224.20-710 to 224.20-765, or KRS Chapter 77.
- (4) The provisions of this section and KRS 186.180, 186.990, 224.20-760, and 224.20-765 shall apply to vehicles that are registered in a county authorized under KRS 224.20-710 to 224.20-765 or KRS Chapter 77 to conduct vehicle emissions tests.

➔Section 237. KRS 186A.015 is amended to read as follows:

- (1) Except as provided for in KRS 235.050, the titling and registration of motorboats as defined in KRS 235.010 shall be administered through the automated motor vehicle and trailer registration and titling system developed and implemented under the provisions of KRS 186A.010.
- (2) The Transportation Cabinet, the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, the Department of Revenue, and all other agencies of state government affected by the system are hereby directed to cooperate in the orderly implementation of this system.
- (3) The Transportation Cabinet, as far as practicable, and not inconsistent with the provisions of KRS Chapter 235, shall promulgate administrative regulations requiring the procedures for boat titling and registration to be

consistent with motor vehicle titling and registration. These administrative regulations may pertain but shall not be limited to the following:

- (a) Conditions and characteristics of certificate of title forms;
- (b) Comparison and identification of hull identification numbers;
- (c) Application for title or registration;
- (d) Processing of title applications;
- (e) Form of certificate of title;
- (f) Notation of security interests or title;
- (g) Title lien statements;
- (h) Transfer of boat ownership;
- (i) Duplicate certificate of title or registration; and
- (j) Salvage titles.

➔Section 238. KRS 186A.040 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall provide and receive information on the insurance status of vehicles registered in the Commonwealth of Kentucky pursuant to KRS 304.39-087 and 304.39-085. The department shall provide appropriate insurance information to the Commonwealth Office of Technology for inclusion in the AVIS database to assist in identifying uninsured motor vehicles.
- (2) (a) Upon notification to the Department of Vehicle Regulation from an insurance company of cancellation or nonrenewal of a policy pursuant to KRS 304.39-085, or on and after January 1, 2006, if the vehicle identification number (VIN) of a personal motor vehicle does not appear in the database created by KRS 304.39-087 for two (2) consecutive reporting months, the department shall immediately make a determination as to the notification of the insured. Notification to the insured shall state that the insured's policy is no longer valid and that the insured shall have thirty (30) days to show proof of insurance to the county clerk. The department shall further inform the insured that if evidence of insurance is not received within thirty (30) days the department shall revoke the registration of the motor vehicle until:
 - 1. The person presents proof of insurance to the county clerk and pays the reinstatement fee required by KRS 186.180;
 - 2. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the inoperable condition of the motor vehicle;
 - 3. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that the failure to maintain motor vehicle insurance on the vehicle specified in the department's notification is the result of the seasonal nature of the vehicle. The affidavit shall explain that when the vehicle is out of dormancy and when the seasonal use of the vehicle is resumed, the proper security will be obtained; or
 - 4. The person presents proof in the form of an affidavit stating, under penalty of perjury as set forth in KRS 523.030, that he or she requires a registered motor vehicle in order to carry out his or her employment and that the motor vehicle that he or she drives during the course of his or her employment meets the security requirement of Subtitle 39 of KRS Chapter 304. The person shall also declare in the affidavit that he or she will operate a motor vehicle only in the course of his or her employment. If a person has his or her motor vehicle registration revoked in accordance with this subsection three (3) times within any twelve (12) month period, the revocations shall constitute a violation of KRS 304.39-080. The department shall notify the county attorney to begin prosecution for violation of subtitle 39 of KRS Chapter 304.
- (b) The Department of Vehicle Regulation shall be responsible for notification to the appropriate county attorney that a motor vehicle is not properly insured, if the insured does not respond to notification set out by paragraph (a) of this subsection. The notice that the department gives to the county attorney in

accordance with paragraph (a) of this subsection shall include a certified copy of the person's driving record which shall include:

1. The notice that the department received from an insurance company that a person's motor vehicle insurance policy has been canceled or has not been renewed; and
2. A dated notice that the department sent to the person requiring the person to present proof of insurance to the county clerk.

Upon notification by the department, a county attorney shall immediately begin prosecution of the person who had his or her motor vehicle registration revoked three (3) times within any twelve (12) month period in accordance with paragraph (a) of this subsection.

- (c) The certified copies sent by the department described in paragraph (b) of this subsection, shall be prima facie evidence of a violation of KRS 304.39-080.
 - (d) If the insured provides proof of insurance to the clerk within the thirty (30) day notification period, the department shall ensure action is taken to denote a valid insurance policy is in force.
- (3) (a) In developing the mechanism to electronically transfer information pursuant to KRS 304.39-087, the commissioner of the Department of Vehicle Regulation shall consult with the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance and insurers of personal motor vehicles to adopt a standardized system of organizing, recording, and transferring the information so as to minimize insurer administrative expenses. The commissioner *of vehicle regulation* shall to the maximum extent possible utilize nationally recognized electronic data information systems such as those developed by the American National Standards Institute or the American Association of Motor Vehicle Administrators.
- (b) Notwithstanding any other provision of law, information obtained by the department pursuant to KRS 304.39-087 shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884, and shall not be disclosed, used, sold, accessed, utilized in any manner, or released by the department to any person, corporation, or state and local agency, except in response to a specific individual request for the information authorized pursuant to the federal Driver's Privacy Protection Act, 18 U.S.C. secs. 2721 et seq. The department shall institute measures to ensure that only authorized persons are permitted to access the information for the purposes specified by this section. Persons who knowingly release or disclose information from the database created by KRS 304.39-087 for a purpose other than those described as authorized by this section or to a person not entitled to receive it shall be guilty of a Class A misdemeanor for each release or disclosure.

➔Section 239. KRS 186A.060 is amended to read as follows:

The Department of Vehicle Regulation is directed to develop, in cooperation with county clerks, auto dealers, and the Department of Revenue, ~~Department~~~~Office~~ of Insurance, and Department of Kentucky State Police, the forms required to record all information pertinent to the initial registration, or titling and taxation, or transfer of registration or title of a vehicle. The Department of Vehicle Regulation shall make every effort to minimize and reduce the amount of paperwork required to apply for, or transfer, a vehicle title. When possible, the title document itself shall be used as the primary form used to effect a transfer of vehicle ownership. When no in-state title exists, then forms shall be designed by the department that require only the appropriate and essential information to effect the application for title. The department shall constantly review the information needs of government agencies and other organizations with the goal of reducing, or eliminating, unnecessary documentation. Information being sought for application for title relevant to, but not limited to, vehicle identification, owner, buyer, usage tax, county clerk or inspector shall be set forth by the cabinet in such a way as to promote flexibility in reaching this goal, except that an applicant for a motor vehicle title shall not be required to provide his or her social security number as part of the application process. The use of an electronic medium shall be employed so that forms can be printed by the automated system. Existing statutory language in this chapter and KRS Chapter 186 pertaining to application, signature, forms, or application transfer record may be construed to be electronic in nature at the discretion of the cabinet as provided for by administrative regulation. Any person who knowingly enters, or attests to the entry of, false or erroneous information in pursuit of a certificate of title shall be guilty of forgery in the second degree.

➔Section 240. KRS 190.100 is amended to read as follows:

- (1) (a) Every retail installment contract shall be in writing in at least eight (8) point type, shall contain all the agreements of the parties, shall be signed by the retail buyer, and a copy thereof shall be furnished to such retail buyer at the time of the execution of the contract;

- (b) No provision of a retail installment contract which purports to provide for the inclusion of title to or a lien upon any goods other than the motor vehicle, accessories and special or auxiliary equipment used in connection therewith which either are the subject of the retail installment sale or are substitution in whole or in part therefor, as security for payment of such time sale price shall be valid or enforceable; but the other provisions of the retail installment contract shall not be affected thereby;
 - (c) No provisions for confession of judgment, power of attorney therefor, or wage assignment contained in any retail installment contract shall be valid or enforceable;
 - (d) If the finance charge applicable to a retail installment contract has been determined by a pre-computed method, the holder of a retail installment contract may collect a delinquency and collection charge on each installment in arrears for a period not less than ten (10) days in an amount not in excess of five percent (5%) of each installment or five dollars (\$5), whichever is the less. In addition to such delinquency and collection charge, the retail installment contract may provide for the payment of attorneys' fees not exceeding fifteen percent (15%) of the amount due and payable under such contract where such contract is referred to an attorney not a salaried employee of the holder of the contract for collection, plus the court costs;
 - (e) Unless notice has been given to the retail buyer of actual or intended assignment of a retail installment contract, payment thereunder or tender thereof made by the retail buyer to the last known holder of such contract shall be binding upon all subsequent holders or assignees; and
 - (f) Upon written request from the retail buyer, the holder of the retail installment contract shall give or forward to the retail buyer a written statement of the total amount unpaid under such contract. A retail buyer shall be given a written receipt for any payment when made in cash.
- (2) The retail installment contract shall contain the following:
- (a) The cash sale price of the motor vehicle which is the subject matter of the retail installment sale;
 - (b) The amount of the retail buyer's down payment, whether made in money or goods, or partly in money or partly in goods;
 - (c) The difference between paragraphs (a) and (b) of this subsection;
 - (d)
 - 1. Amount, if any, included for insurance and other benefits; and
 - 2. Types of coverage and benefits;
 - (e) Official fees as defined in KRS 190.090; and
 - (f) Principal balance, which is the sum of paragraphs (c), (d), and (e) of this subsection.
- (3) The retail installment contract shall contain a definite statement in twelve (12) point bold type or larger, that the insurance, if any included in the retail installment sale provides or does not provide coverage for personal liability and property damage caused to others, as the case may be.
- (4) The amount, if any, included for insurance, shall not exceed the premiums chargeable in accordance with applicable rate filings made with the ~~commissioner~~^{executive director} of insurance. Every retail seller or sales finance company, if insurance on the motor vehicle is included in a retail installment contract shall within thirty (30) days after execution of the retail installment contract send or cause to be sent to the retail buyer a policy or policies or certificate of insurance, which insurance shall be written by a company authorized to do business in this state, clearly setting forth the amount of the premium, the kind or kinds of insurance and the scope of the coverage and all the terms, exceptions, limitations, restrictions and conditions of the contract or contracts of the insurance. The buyer of a motor vehicle under a retail installment contract shall have the privilege of purchasing such insurance from an agent or broker of his own selection and of selecting an insurance company acceptable to the seller; provided, however, that the inclusion of the insurance premium in the retail installment contract when the buyer selects the agent, broker or company, shall be optional with the seller. If any such policy is canceled, the unearned insurance premium refund received by the holder of the contract shall be credited to the final maturing installments of the retail installment contract. For purposes of this subsection, single interest insurance insuring the retail seller or sales finance company shall not be considered insurance on the motor vehicle. Neither a copy of the policy nor a certificate of insurance of this type of insurance shall be sent to the retail buyer.

- (5) Any sales finance company hereunder may purchase or acquire from any retail seller any retail installment contract on such terms and conditions as may be agreed upon between them. No filing of the assignment, no notice to the retail buyer of the assignment, and no requirement that the retail seller shall be deprived of dominion over the payments thereunder or the goods covered thereby if repossessed by the retail seller shall be necessary to the validity of a written assignment of a retail installment contract as against creditors, subsequent purchasers, pledgees, mortgagees, and lien claimants of the retail seller.
- (6) An acknowledgment in the body of the retail installment contract by the retail buyer of the delivery of a copy thereof shall be conclusive proof of delivery in any action or proceeding by or against any assignee of a retail installment contract.
- (7)
 - (a) A "debt cancellation agreement" is a written provision in a retail installment contract, or separate addendum thereto, which provides for cancellation of all or part of an obligation of the buyer or obligor upon the occurrence of a specified event.
 - (b) In accordance with subsection (2)(d) of this section, a debt cancellation agreement shall be itemized by type on the retail installment contract and considered an "other benefit" for which the seller, sales finance company, or other holder may charge the buyer or obligor.
 - (c) A debt cancellation agreement shall not be considered a contract of, or for, insurance.

➔Section 241. KRS 194A.150 is amended to read as follows:

When federal programs require a particular citizens' council within or attached to the cabinet to include state officials as voting members, the secretary shall, for the specific purposes of those federal programs, be authorized to vote in those council meetings and shall further be authorized to call upon either the secretary of the Cabinet for Health and Family Services, the secretary of the Finance and Administration Cabinet, the chief state school officer, the secretary of the Justice and Public Safety Cabinet, the secretary of the ~~Environmental and~~ Public Protection Cabinet, *the secretary of the Energy and Environment Cabinet, the secretary of the Labor Cabinet*, the secretary of the Cabinet for Economic Development, the executive director of the Council on Higher Education, or any combination of the above as may be appropriate, to be voting members of expanded citizens' councils for the purposes of these federal programs. The secretary shall exercise this prerogative only when the federal programs specifically require that state officials be voting members of the citizens' councils.

➔Section 242. KRS 194A.622 is amended to read as follows:

- (1) There is hereby created the Kentucky Commission on Autism Spectrum Disorders, which shall consist of the following twenty-two (22) members who shall be initially appointed by July 1, 2005:
 - (a) The secretary of the Cabinet for Health and Family Services or his or her designee;
 - (b) The commissioner of the Department for Medicaid Services or his or her designee;
 - (c) The director of the Kentucky Early Intervention System, Department for Public Health, or his or her designee;
 - (d) The commissioner of the Department for Mental Health and Mental Retardation Services or his or her designee;
 - (e) The commissioner of the Department for Aging and Independent Living or his or her designee;
 - (f) The chair of the Council on Postsecondary Education or his or her designee;
 - (g) The director of the Division of Exceptional Children Services or his or her designee;
 - (h) The commissioner of the Department of Vocational Rehabilitation or his or her designee;
 - (i) The *commissioner*~~executive director~~ of the *Department*~~Office~~ of Insurance or his or her designee;
 - (j) Two (2) nonvoting ex officio members from the House of Representatives, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the Speaker of the House;
 - (k) Two (2) nonvoting ex officio members from the Senate, one (1) representing the majority party and one (1) representing the minority party, who shall be appointed by and serve at the pleasure of the President of the Senate;

- (l) Four (4) professional ASD treatment providers, including at least one (1) mental health provider, one (1) physical health provider, and one (1) complex needs consultant from a special education cooperative, to be appointed by the Governor; and
 - (m) Five (5) parents, including three (3) who, at the time of their appointment to the commission, have a child with an ASD who is under eighteen (18) years of age and two (2) who, at the time of their appointment to the commission, have a child with an ASD who is eighteen (18) years of age or older, to be appointed by the Governor.
- (2) In making appointments to the commission, the Governor shall ensure broad representation of Kentucky's citizens who are concerned with the health and quality of life of individuals with an ASD, may appoint individuals who are also members of the Kentucky Council on Developmental Disabilities, and shall consider candidates recommended by the Autism Spectrum Disorders Advisory Consortium of Kentucky.
 - (3) Members shall serve without compensation but shall be reimbursed for their actual expenses incurred in the performance of commission duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder. Members of the commission shall serve until the commission ceases to exist, a successor has been appointed, or until removed for good cause.
 - (4) The Cabinet for Health and Family Services shall provide staff and administrative support for the commission.
 - (5) The chair of the commission shall be designated by the Governor and may be a member in addition to those listed in subsection (1) of this section. The chair of the commission shall establish procedures for the commission's internal procedures.
 - (6) The commission shall meet at least three (3) times per year. The commission shall also meet as often as necessary to accomplish its purpose upon the call of the chair, the request of four (4) or more members, or the request of the Governor.
 - (7) The commission shall develop a comprehensive state plan for creating an integrated system of training, treatments, and services for individuals of all ages with an ASD. The commission shall utilize relevant data and research and consult with appropriate professionals, agencies, institutions, and organizations representing the private and public sectors, including the Kentucky Autism Training Center, to develop the state plan. The state plan shall include the following:
 - (a) An assessment of the diverse needs for services and supports for individuals with an ASD;
 - (b) Identification of state, federal, private, and any other appropriate funding sources;
 - (c) Development of a comprehensive training plan, which shall include the Kentucky Autism Training Center, to meet training needs;
 - (d) An analysis of standards for provider training and qualifications, best practice standards for services, and the need for additional service providers;
 - (e) An evaluation of health benefit plans and insurance coverage for the treatment of ASD;
 - (f) A plan for the identification of individuals of all ages with an ASD and for the creation of a statewide ASD registry;
 - (g) An analysis of program and service eligibility criteria;
 - (h) An assessment of the need for coordinated, enhanced, and targeted special education and treatment programs for children with an ASD; and
 - (i) A timeline for implementing and monitoring the recommendations of the plan statewide. The timeline shall include input from the following:
 - 1. The Cabinet for Health and Family Services;
 - 2. The Department for Medicaid Services;
 - 3. The Department for Public Health;
 - 4. The Department for Mental Health and Mental Retardation Services;
 - 5. The Kentucky Early Intervention System;

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

➔Section 243. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
- (a) The following nine (9) state government members, or their duly appointed designees: the commissioner of education; commissioner of the Governor's Office for Local Development; ~~commissioner~~~~{executive director}~~ of the ~~Department~~~~{Office}~~ of Housing, Buildings and Construction; secretary of the ~~Energy and Environment~~~~{Environmental and Public Protection}~~ Cabinet; secretary of the Cabinet for Health and Family Services; executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation;
 - (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:

1. Public housing authorities;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;
7. Rural nonprofit housing organizations;
8. Urban advocates for the homeless;
9. Rural advocates for the homeless;
10. Residents of economically diverse urban neighborhoods;
11. Residents of economically diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties; and

(c) One (1) member of the Senate and one (1) member of the House of Representatives.

- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.
- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may

authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

➔Section 244. KRS 198A.040 is amended to read as follows:

The corporation shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including but without limiting the generality of the foregoing the power:

- (1) To make or participate in the making of insured construction loans to sponsors of land development or residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that construction loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (2) To make or participate in the making of insured mortgage loans to sponsors of residential housing; provided, however, that such loans shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (3) To purchase or participate in the purchase of insured mortgage loans made to sponsors of residential housing or to persons of lower and moderate income for residential housing; provided, however, that any such purchase shall be made only upon the determination by the corporation that mortgage loans have been refused in writing, wholly or in part, from private lenders in the Commonwealth of Kentucky upon reasonably equivalent terms and conditions;
- (4) To make temporary loans from the housing development fund;
- (5) To collect and pay reasonable fees and charges in connection with making, purchasing and servicing its loans, notes, bonds, commitments, and other evidences of indebtedness;
- (6) To acquire real property, or any interest therein, by purchase, foreclosure, lease, sublease, or otherwise; to own, manage, operate, hold, clear, improve, and rehabilitate such real property; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber such real property where such use of real property is necessary or appropriate to the purpose of the Kentucky Housing Corporation;
- (7) To sell, at public or private sale, all or any part of any mortgage or other instrument or document securing a construction, land development, mortgage, or temporary loan of any type permitted by this chapter;
- (8) To procure insurance against any loss in connection with its operations in such amounts, and from such insurers, as it may deem necessary or desirable;
- (9) To consent, whenever it deems it necessary or desirable in the fulfillment of its corporate purposes, to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms of any mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract, or agreement of any kind to which the corporation is a party;
- (10) To acquire, establish, operate, lease, and sublease residential housing for persons and families of lower and moderate income and to enter into agreements or other transactions with any federal, state, or local governmental agency for the purpose of providing adequate living quarters for such persons and families in cities and counties where a need has been found for such housing and where no local housing authorities or other organizations exist to fill such need;
- (11) To include in any borrowing such amounts as may be deemed necessary by the corporation to pay financing charges, interest on the obligations for a period not exceeding two (2) years from their date, consultant, advisory, and legal fees and such other expenses as are necessary or incident to such borrowing;
- (12) To make and publish rules and regulations respecting its lending programs and such other rules and regulations as are necessary to effectuate its corporate purposes;
- (13) To provide technical and advisory services to sponsors of residential housing and to residents and potential residents thereof, including but not limited to housing selection and purchase procedures, family budgeting, property use and maintenance, household management, and utilization of community resources;
- (14) To promote research and development in scientific methods of constructing low cost residential housing of high durability;
- (15) To encourage community organizations to participate in residential housing development;

- (16) To make, execute, and effectuate any and all agreements or other documents with any governmental agency or any person, corporation, association, partnership, or other organization or entity, necessary to accomplish the purposes of this chapter;
- (17) To accept gifts, devises, bequests, grants, loans, appropriations, revenue sharing, other financing and assistance, and any other aid from any source whatsoever and to agree to, and to comply with, conditions attached thereto;
- (18) To sue and be sued in its own name and plead and be impleaded;
- (19) To maintain an office in the city of Frankfort and at such other place or places as it may determine;
- (20) To adopt an official seal and alter the same at pleasure;
- (21) To adopt bylaws for the regulation of its affairs and the conduct of its business and to prescribe rules, regulations, and policies in connection with the performance of its functions and duties;
- (22) To employ fiscal consultants, engineers, attorneys, real estate counselors, appraisers, and such other consultants and employees as may be required in the judgment of the corporation and to fix and pay their compensation from funds available to the corporation therefor, provided that any personal service contracts entered into shall be subject to review by the Government Contract Review Committee of the Legislative Research Commission;
- (23) To invest any funds held in reserve or in sinking fund accounts or any moneys not required for immediate disbursement in obligations guaranteed by the Commonwealth, the United States, or their agencies or instrumentalities; provided, however, that the return on such investments shall not violate any rulings of the Internal Revenue Service regarding the investment of the proceeds of any federally tax exempt bond issue;
- (24) To make or participate in the making of rehabilitation loans to the sponsors or owners of residential housing; provided, however, that any such rehabilitation loan shall be made only upon the determination by the corporation that the rehabilitation loan was not otherwise available wholly or in part from private lenders upon reasonably equivalent terms and conditions;
- (25) To insure or reinsure construction, mortgage, and rehabilitation loans on residential housing; provided, however, that any such insurance, reinsurance, or waiver shall be made only upon the determination by the corporation:
 - (a) That such insurance or reinsurance is not otherwise available wholly or in part from private insurers upon reasonably equivalent terms and conditions; and
 - (b) That such loan is a reasonably sound business investment; and provided further that insurance may be waived only where the corporation finds that the amount of the loan does not exceed eighty-five percent (85%) of the development costs, or eighty-five percent (85%) of the value of the property secured by the mortgage as determined by at least two (2) appraisers who are independent of the sponsors, builders, and developers;
- (26) To make grants from appropriated funds, agency and trust funds, and any other funds from any source available to the corporation, to sponsors, municipalities, local housing authorities, and to owners of residential housing for the development, construction, rehabilitation, or maintenance of residential housing and such facilities related thereto as corporation shall deem important for a proper living environment, all on such terms and conditions as may be deemed appropriate by the corporation;
- (27) To make periodic grants to reduce principal and interest payments on mortgages or rentals payable by persons and families of lower and moderate income;
- (28) (a) To make a grant to reduce principal and interest payments on a mortgage or a rental payable by a regular member of the United States Armed Forces who names Kentucky as home of record for military purposes, during that member's deployment on active duty outside the United States, or payable by a member of a state National Guard or a Reserve component who names Kentucky as home of record for military purposes, during that member's federal active duty. To qualify for a grant, a member shall meet reasonable standards established by the corporation, including having family income equal to or less than two hundred percent (200%) of the state or area median income; and

- (b) To provide a member identified in paragraph (a) of this subsection and that member's Kentucky resident spouse with the educational, technical, and ombudsman services that are necessary to maintain a mortgage during that member's federal active duty; and
- (29) To establish a program to assist persons and families of lower and moderate income to help defray the cost of assessment and decontamination services required under KRS 224.01-410. To qualify for the program, a person shall meet reasonable standards established by the corporation. A person shall not be eligible for the program if convicted of a felony or found by the corporation to be responsible for contamination of the relevant property through methamphetamine production. The corporation shall report on the establishment and use of this program to the Legislative Research Commission by October 1 of each year.

The Kentucky Housing Corporation shall be exempt from the regulations of the ~~Department~~~~Office~~ of Insurance and the laws of the Commonwealth relating thereto.

➔Section 245. KRS 198B.010 is amended to read as follows:

As used in this chapter, unless otherwise provided:

- (1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:
 - (a) Armories;
 - (b) Assembly halls;
 - (c) Auditoriums;
 - (d) Bowling alleys;
 - (e) Broadcasting studios;
 - (f) Chapels;
 - (g) Churches;
 - (h) Clubrooms;
 - (i) Community buildings;
 - (j) Courthouses;
 - (k) Dance halls;
 - (l) Exhibition rooms;
 - (m) Gymnasiums;
 - (n) Hotels;
 - (o) Lecture rooms;
 - (p) Lodge rooms;
 - (q) Motels;
 - (r) Motion picture theaters;
 - (s) Museums;
 - (t) Night clubs;
 - (u) Opera houses;
 - (v) Passenger stations;
 - (w) Pool rooms;
 - (x) Recreation areas;
 - (y) Restaurants;
 - (z) Skating rinks;

- (aa) Television studios;
 - (bb) Theaters.
- (2) "Attic" means the space between the ceiling beams of the top habitable story and the roof rafters.
 - (3) "Basement" means that portion of a building the average height of which is at least half below grade, which is ordinarily used for purposes such as storage, laundry facilities, household tool shops, and installation and operation of heating, cooling, and ventilating facilities, but which is not ordinarily used for purposes of general household habitation.
 - (4) "Building" means any combination of materials, whether portable or fixed, which comprises a structure or nonmine underground area affording facilities or shelter for any human occupancy, whether infrequent or regular, and also means single-family dwellings, including those sold or constructed under a trade or brand name. The word "building" shall be construed wherever used herein as if followed by the words "or part or parts thereof and all equipment therein" unless the context clearly requires a different meaning. "Building" shall also mean swimming pools constructed below grade on site, but not swimming pools assembled above grade on site. "Building" shall not mean a manufactured home governed by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., or a farm dwelling or other farm buildings and structures incident to the operation and maintenance of the farm if the farm structures are located outside the boundary of a municipality and are not used in the business of retail trade or used as a place of regular employment for ten (10) or more people or structures used in the storage or processing of timber products.
 - (5) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business, the rendering or receiving of professional services, or the displaying, selling, or buying of goods, wares, or merchandise, or the housing of vehicles of transportation, except where occupancy is of high hazard, including among others:
 - (a) Banks;
 - (b) Barber shops;
 - (c) Beauty parlors;
 - (d) Department stores;
 - (e) Garages;
 - (f) Markets;
 - (g) Service stations;
 - (h) Offices;
 - (i) Stores;
 - (j) Radio stations;
 - (k) Telephone exchanges; and
 - (l) Television stations.
 - (6) "Certified building inspector" means a person who has been certified by the ~~department~~~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state building inspector within the Commonwealth.
 - (7) "Certified plans and specifications inspector" means a person who has been certified by the ~~department~~~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 to practice as a city, county, or state plans and specifications inspector within the Commonwealth.
 - (8) "Certified plumbing inspector" means a person who has been certified by the ~~department~~~~{office}~~ as having successfully completed the test requirements provided by KRS 198B.090 and 318.140, or 318.090 to practice as a city, county, or state plumbing inspector within the Commonwealth.
 - (9) "~~Commissioner~~~~{Executive director}~~" means the ~~commissioner~~~~{executive director}~~ of housing, buildings and construction.

- (10) "Construction" means the erection, fabrication, reconstruction, substantial alteration or conversion of a building, or the installation of equipment therein, but shall not include the ordinary repair of a building or structure.
- (11) "~~Department~~~~[Office]~~" means the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction.
- (12) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or of receiving educational instruction. "Educational occupancy" shall not include a building for occupancy or use by thirty-five (35) persons or less assembled to receive religious and educational instruction. "Educational occupancy" includes but is not limited to:
- (a) Academies;
 - (b) Care centers;
 - (c) Colleges;
 - (d) Kindergartens;
 - (e) Libraries;
 - (f) Preschools;
 - (g) Relocatable classroom units;
 - (h) Schools;
 - (i) Seminaries; and
 - (j) Universities.
- (13) "Equipment" means facilities or installations, including but not limited to heating, electrical, ventilating, air conditioning, and refrigerating facilities or installations.
- (14) "High hazard occupancy" means the occupancy or use of a building or structure or any portion thereof that involves highly combustible, highly flammable, or explosive materials or which has inherent characteristics that constitute a special fire hazard, including among others:
- (a) Aluminum powder factories;
 - (b) Charging or filling stations;
 - (c) Distilleries;
 - (d) Dry cleaning plants;
 - (e) Dry dyeing plants;
 - (f) Explosive-manufacture, sale or storage;
 - (g) Flour and feed mills;
 - (h) Gasoline bulk plants;
 - (i) Grain elevators;
 - (j) Lacquer factories;
 - (k) Liquefied petroleum gas;
 - (l) Mattress factories;
 - (m) Paint factories;
 - (n) Pyroxylin-factories, or warehouses; and
 - (o) Rubber factories.
- (15) "Industrial occupancy" means the occupancy or use of a building structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, except for occupancies of high hazard, including among others:
- (a) Assembly plants;

- (b) Creameries;
 - (c) Electrical substations;
 - (d) Factories;
 - (e) Ice plants;
 - (f) Laboratories;
 - (g) Laundries;
 - (h) Manufacturing plants;
 - (i) Mills;
 - (j) Power plants;
 - (k) Processing plants;
 - (l) Pumping stations;
 - (m) Repair garages;
 - (n) Smokehouses; and
 - (o) Workshops.
- (16) "Industrialized building system" means any structure or component thereof which is wholly or in substantial part fabricated in an off-site manufacturing facility for installation or assembly on a permanent foundation at the building site.
- (17) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment, or by persons involuntarily detained, including among others:
- (a) Asylums;
 - (b) Homes for the aged;
 - (c) Hospitals;
 - (d) Houses of correction;
 - (e) Infirmarys;
 - (f) Jails;
 - (g) Nursing homes;
 - (h) Orphanages;
 - (i) Penal institutions;
 - (j) Reformatories;
 - (k) Sanitariums; and
 - (l) Nurseries.
- (18) "Mobile home" means mobile home as defined in KRS 227.550.
- (19) "Ordinary repair" means any nonstructural reconstruction or renewal of any part of an existing building for the purpose of its maintenance, or decoration, and shall include but not be limited to the replacement or installation of nonstructural components of the building such as roofing, siding, windows, storm windows, insulation, drywall or lath and plaster, or any other replacement, in kind, that does not alter the structural integrity, alter the occupancy or use of the building, or affect, by rearrangement, exitways and means of egress; but shall not include additions to, or alteration of, or relocation of any standpipe, water supply, sewer, drainage, gas, soil, waste, vent or similar piping, electric wiring, or mechanical equipment including furnaces and hot water heaters or other work affecting public health or safety.

- (20) "Story" means that part of a building comprised between a floor and the floor or roof next above which is not a basement or an attic.
- (21) "Person with a physical disability" means a person confined to a wheelchair; a person who uses braces or crutches; a person who because of the loss of a foot or leg or because of an arthritic, spastic, pulmonary, or cardiac condition, walks with difficulty or insecurity; a person who suffers from a faulty coordination or palsy; a person who is blind or whose sight is so impaired that, functioning in a public area, he or she is insecure or exposed to danger; a person whose hearing is so impaired that he or she is unable to hear warning signals; and a person whose mobility, flexibility, coordination, and perceptiveness are significantly reduced by aging.
- (22) "Facility for persons with physical disabilities" means any convenience or device which facilitates the health, safety, or comfort of a person with a disability, including, but not limited to, ramps, handrails, elevators, and doors.
- (23) "Manufactured home" is defined as in KRS 227.550.

➔Section 246. KRS 198B.020 is amended to read as follows:

- (1) There is created the Kentucky Board of Housing, Buildings and Construction within the Kentucky ~~Department~~~~{Office}~~ of Housing, Buildings and Construction comprised of twenty-one (21) members to include: the ~~commissioner~~~~{executive director}~~ of the ~~department~~~~{office}~~, one (1) local government fire chief selected by the Governor from a list of three (3) submitted by the Kentucky Firemen's Association; the executive director of the Kentucky Housing Corporation; the commissioner of the Department for Public Health, Cabinet for Health and Family Services; the Attorney General or any assistant attorney general he or she may designate to represent the interests of consumers; one (1) professional homebuilder selected by the Governor from a list of three (3) submitted by the Home Builders Association of Kentucky; one (1) registered architect selected by the Governor from a list of three (3) submitted by the Kentucky Society of Architects; one (1) registered structural engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered mechanical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) registered electrical engineer selected by the Governor from a list of three (3) submitted by the Kentucky Society of Professional Engineers; one (1) citizen member selected by the Governor to represent the interests of low and moderate-income housing consumers within the Commonwealth of Kentucky; one (1) citizen member at large; one (1) practicing general contractor selected by the Governor from a list of three (3) submitted by the Kentucky Association of General Contractors; one (1) practicing code administrator selected by the Governor from a list of three (3) submitted by the Codes Administrators Association of Kentucky; one (1) realtor selected by the Governor from a list of three (3) submitted by the Kentucky Association of Realtors; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky State Building Trades Council; one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky Association of Plumbing, Heating and Cooling Contractors; one (1) member selected by the Governor from a list of three (3) submitted by the Mechanical Contractors Association; one (1) electrical contractor member selected by the Governor from a list of three (3) submitted by the National Electrical Contractors Association; one (1) retailer member selected by the Governor from a list of three (3) submitted by the Kentucky Retail Federation; and one (1) member selected by the Governor from a list of three (3) submitted by the Kentucky Building Materials Association.
- (2) Except for the ~~commissioner~~~~{executive director}~~ of the ~~department~~~~{office}~~, the commissioner of the Department for Public Health, the executive director of the Kentucky Housing Corporation, and the Attorney General or his or her designee, who shall serve on the board during the term of their existing office and shall be voting members, board members shall be appointed for four (4) year terms, except that initially four (4) shall be appointed for two (2) year terms, four (4) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms. No board member shall be appointed for more than one (1) successive term except as provided in subsection (3) of this section. The Governor shall, within the limitations of this subsection, set the length of term of each of the initial appointees to the board.
- (3) Vacancies occurring on the board among those members appointed by the Governor shall be filled by seeking nominations as in subsection (1) of this section from the organization which originally nominated the member who is to be replaced. A replacement for a board member shall be appointed immediately upon the expiration of the departing board member's term of service. Should a board member vacate his or her position on the board prior to the expiration of the member's term, a replacement member shall be appointed for the period of the unexpired term. Should the unexpired term be less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to one (1) successive four (4) year term.

- (4) Members may be removed from the board by the Governor for unethical conduct or for failure to attend three (3) or more successive meetings of the board without reasonable cause.
- (5) The board shall meet at least quarterly~~[-, and the first meeting shall occur no later than August 31, 1978].~~ Before assuming their duties, members of the board shall take an oath as specified in Section 228 of the Constitution of Kentucky.
- (6) The **commissioner**~~[executive director]~~ of the **department**~~[office]~~ shall serve as chairman of the board. The board may elect from its members other officers as are required to conduct its business, except that neither the commissioner of the Department for Public Health, the executive director of the Kentucky Housing Corporation, nor the Attorney General or his or her designee shall be elected to office on the board.
- (7) The board may adopt such rules, regulations, and bylaws as are necessary to conduct its internal business. Any administrative regulations promulgated by the board for any purpose other than internal business shall be subject to the requirements of KRS 198B.040(11).
- (8) No member of the board may vote on any matter which will result in his or her direct or indirect financial gain.
- (9) Those members of the board who are not salaried governmental employees shall be compensated for their time when attending board meetings or attending to official duties as directed by the board at the rate of fifty dollars (\$50) per day. All board members shall be compensated for expenses incurred in the conduct of board business.

➔Section 247. KRS 198B.030 is amended to read as follows:

- (1) There is hereby created the Kentucky **Department**~~[Office]~~ of Housing, Buildings and Construction within the ~~[Environmental and]~~Public Protection Cabinet. The ~~[secretary of the Environmental and Public Protection Cabinet shall appoint, with the approval of the]~~Governor **shall appoint a commissioner**~~[-, an executive director]~~ to head the **department**~~[office]~~. The **commissioner**~~[executive director]~~ shall receive for his or her services such compensation as the Governor shall determine.
- (2) The **commissioner**~~[executive director]~~ may employ sufficient staff to carry out the functions of the **commissioner's**~~[executive director's]~~ office. Neither the **commissioner**~~[executive director]~~ nor any member of his or her staff shall be employed, either directly or indirectly, in any aspect of the building industry as regulated by this chapter while employed by the **Department**~~[Office]~~ of Housing, Buildings and Construction.
- (3) The **department**~~[office]~~ shall serve as staff for the board of housing, buildings and construction as established by this chapter, and shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of this body. The board shall prescribe the duties of the **commissioner**~~[executive director]~~ in addition to those duties otherwise delegated to him or her by the Governor or secretary, or prescribed for the **commissioner**~~[executive director]~~ by law. The **department**~~[office]~~ or **commissioner**~~[executive director]~~ shall submit any proposed administrative regulation to the board and shall not promulgate the administrative regulation without giving the board the opportunity to produce written comments, as required by subsection (9) of this section. If the board chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (4) The **department**~~[office]~~ may enter into contracts or agreements with the federal government, its subdivisions and instrumentalities, other agencies of state government or with its subdivisions and instrumentalities, or with private profit or nonprofit organizations in order to effect the purposes of this chapter.
- (5) Subject to the direction of the board of housing, buildings and construction, the **commissioner**~~[executive director]~~ shall cooperate with the agencies of the United States and with the governing bodies and housing authorities of counties, cities, and with not for profit organizations and area development districts in relation to matters set forth in this chapter, and in any reasonable manner that may be necessary for the state to qualify for, and to receive grants or aid from such agencies. To these ends and subject to the direction of the board, the **commissioner**~~[executive director]~~ shall have the power to comply with each condition and execute such agreements as may be necessary, convenient, or desirable.
- (6) Nothing in this chapter shall preclude any other agency, board, or officer of the state from being designated as the directing or allocating agency, board, or officer for the distribution of federal grants and aid, or the performance of other duties to the extent necessary to qualify for and to receive grants and aid for programs under the administration of the **department**~~[office]~~.

- (7) The ~~commissioner~~~~[executive director]~~ is authorized to receive, for and on behalf of the state, the ~~department~~~~[office]~~, and the board of housing, buildings and construction, from the United States and agencies thereof, and from any and all other sources, grants and aid and gifts made for the purpose of providing, or to assist in providing, any of the programs authorized by this chapter, including expenses of administration. All such funds shall be paid into the state treasury and credited to a trust and agency fund to be used by the ~~department~~~~[office]~~ in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.
- (8) The Kentucky Board of Home Inspectors established in KRS 198B.704 shall be attached to the ~~department~~~~[office]~~ for administrative purposes.
- (9) (a) If the ~~department~~~~[office]~~ has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the ~~department~~~~[office]~~, the ~~department~~~~[office]~~ shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (b) of this subsection.
- (b) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (a) of this subsection, the ~~department~~~~[office]~~ shall distribute the proposed administrative regulation to the board or advisory committee.
2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
3. The time limits in this paragraph shall begin from the day the ~~department~~~~[office]~~ submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
4. If a board or advisory committee is not scheduled to meet or meets only at the call of the ~~department~~~~[office]~~, the ~~department~~~~[office]~~ shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the ~~department~~~~[office]~~ may proceed with the administrative changes at its discretion.
- (c) To the extent that any other statute relating to the ~~department's~~~~[office's]~~ authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (d) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (e) The rights and privileges enumerated in this subsection that apply to boards and advisory committees shall also be granted to the Kentucky Board of Housing, Buildings and Construction.
- (10) Any power or limitation relating to administrative regulations promulgated by the ~~department~~~~[office]~~ that are subject to subsection (9) of this section shall also apply to administrative regulations promulgated by the ~~commissioner~~~~[executive director]~~ of the ~~department~~~~[office]~~.

➔Section 248. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability, and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;

- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state, and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the Governor's Office for Local Development, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities, and amenities of this housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state, and local agencies in their programs as they relate to housing; and
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To promulgate administrative regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the ~~department[office]~~ to the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet for that cabinet's comments. Any such regulations shall require the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet's comments to be completed and submitted to the ~~department[office]~~ within sixty (60) days;
- (9) To promulgate administrative regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public sewage treatment plants will be submitted by the ~~department[office]~~ to the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet for that cabinet's comments. Any such regulations shall require the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet's comments to be completed and submitted to the ~~department[office]~~ within sixty (60) days; and
- (10) To promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.
- (11) (a) As used in this subsection, "main board" means the Kentucky Board of Housing, Buildings and Construction.
- (b) If the main board has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the main board, the main board shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (c) of this subsection.

- (c) 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (b) of this subsection, the main board shall distribute the proposed administrative regulation to the board or advisory committee.
 - 2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
 - 3. The time limits in this paragraph shall begin from the day the main board submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
 - 4. If a board or advisory committee is not scheduled to meet or meets only at the call of the main board, the main board shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the main board may proceed with the administrative changes at its discretion.
 - (d) To the extent that any other statute relating to the main board's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
 - (e) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (12) Any power or limitation relating to administrative regulations promulgated by the Kentucky Board of Housing, Buildings and Construction that are subject to subsection (11) of this section shall also apply to the **department**~~{office}~~ and **commissioner**~~{executive director}~~ as described in KRS 198B.030(9) and (10).
- ➔Section 249. KRS 198B.050 is amended to read as follows:
- (1) Within one (1) year from its initial meeting, after adequate notice in accordance with KRS Chapter 13A, the board shall adopt and promulgate a mandatory Uniform State Building Code which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state. The code shall provide that the review and approval, as necessary, of building plans for conformance with the Uniform State Building Code prior to construction approval shall be conducted only by the **department**~~{office}~~ or a local government or governments delegated such responsibilities by this chapter, and any exceptions to this policy shall be explicitly stated in the code.
 - (2) The code shall be comprehensive and shall include but not be limited to provisions for general construction; structural quality; mechanical systems to include heating, cooling, and ventilation; electrical systems; and life safety from hazards of fire, explosion, and other disasters, whether caused by acts of nature or man. The code shall encompass the Kentucky State Plumbing Code promulgated pursuant to KRS 318.130, boiler rules and regulations issued pursuant to KRS 236.030, and the national electrical code.
 - (3) This code shall be designed after and may be selected from the models offered by such model code agencies as the Building Officials and Code Administrators, International, Inc.; the International Conference of Building Officials; the Southern Building Code Congress; and other nationally recognized organizations which may include governmental agencies. The code shall:
 - (a) Provide uniform standards and requirements for construction and construction materials;
 - (b) To the extent practicable, set forth standards, specifications and requirements in terms of performance objectives, so as to facilitate the use of new technologies, techniques, and materials. The code shall not discriminate in favor of particular suppliers' materials, techniques, or technologies;
 - (c) Protect the public health, safety, and welfare within the state.
 - (4) Adoption of a code shall include provisions for the continuing review of, and the board shall adopt when deemed justified to fulfill the purposes of this chapter, new materials, technologies, and techniques in the building industry. The board may adopt a model code promulgated by a model code agency only if that agency

provides a method for democratic participation by the board and any local governments which may enforce the code, in a continuing review and possible adoption of new materials, technologies, and techniques in the building industry.

- (5) The board shall issue regulations, after notice in accordance with KRS Chapter 13A, which are necessary to implement the Uniform State Building Code or to carry out any other responsibility assigned to said board by this chapter.
- (6) The board shall monitor the effectiveness of agencies designated by local governments to enforce the provisions of the Uniform State Building Code.
- (7) If the board determines that an agency is not enforcing the provisions of the Uniform State Building Code, it shall direct the ~~department~~_{office} to determine where deficiencies exist. The ~~department~~_{office} shall require the local government to correct the deficiencies within sixty (60) days and report to the ~~department~~_{office} its method of correcting the deficiencies.
- (8) If the local government fails to correct the deficiencies, the ~~department~~_{office} shall recommend to the board that the ~~department~~_{office} be permitted to preempt the local program as provided for in KRS 198B.060(4).
- (9) The board shall provide for the supply, including amendments and revisions thereto, of sufficient copies of the Uniform State Building Code for all interested parties.

➔Section 250. KRS 198B.060 is amended to read as follows:

- (1) Each local government shall employ a building official or inspector and other code enforcement personnel as necessary, or shall contract for inspection and code enforcement services in accordance with subsections (8) and (11) of this section to enforce the Uniform State Building Code within the boundaries of its jurisdiction, except that permits, inspections, and certificates of occupancy shall not be mandatory for single-family residences unless a local government passes an ordinance requiring inspections of single-family residences.
- (2) Local governments shall be responsible for the examination and approval or disapproval of plans and specifications for churches having a capacity of four hundred (400) or less persons, and six thousand (6,000) or less square feet of total floor area, and buildings of no more than three (3) stories in height, exclusive of attic and basement, which do not contain more than twenty thousand (20,000) square feet of floor area, and are not intended for educational, institutional, or high hazard occupancy; or assembly, business, or industrial occupancy in excess of one hundred (100) persons, except churches as stated in this subsection, or for use as a frozen food locker plant as defined in KRS 221.010. Local governments shall be responsible for the issuance and revocation of building permits, licenses, certificates, and similar documents which cover activities within their area of responsibility, and the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. Each local government issuing a building or demolition permit or an initial certificate of occupancy on a new structure shall send a copy of the permit or certificate to the ~~commissioner~~_{executive director} for his or her use in maintaining an accurate housing inventory for Kentucky.
- (3) Urban-county governments may determine service districts within their boundaries within which farm dwellings and other farm buildings, not used in the business of retail trade or as a place of regular employment for ten (10) or more people, shall be exempt from the requirements of the Uniform State Building Code. The determination may be reviewed and altered by the board.
- (4) With the exception of single-family dwellings, the ~~department~~_{office} shall be responsible for the examination and approval or disapproval of plans and specifications for all buildings which are not the responsibility of local governments. The ~~department~~_{office} may issue and revoke permits, licenses, certificates, and similar documents within its area of responsibility, and shall have concurrent jurisdiction with local governments for the inspection of all buildings pursuant to the provisions of this chapter and the Uniform State Building Code. If the ~~commissioner~~_{executive director} determines that the local jurisdiction is not adequately performing any portion of its program, he or she may recommend to the board that the ~~department~~_{office} preempt that portion of a local program, except that the ~~commissioner~~_{executive director} shall not preempt or assert jurisdiction for the enforcement of the code on single-family dwellings. The ~~commissioner~~_{executive director} shall explain his or her reasons for preemption in writing and provide a copy to the board and the local jurisdiction. The local jurisdiction may appeal the recommended preemption directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. No

preemption by the ~~department~~~~{office}~~ shall take place until the final decision of the board. If the ~~department~~~~{office}~~ preempts any portion of a local program, it shall collect the fees applicable to that portion of the program.

- (5) Any local government may petition the ~~commissioner~~~~{executive director}~~ requesting that additional plan review functions be allocated to that local government. The petition shall include evidence of the local government's capability to perform additional plan review functions. The ~~commissioner~~~~{executive director}~~, after review of the petition and supporting evidence, may grant or deny to the local government any part of a request for additional responsibility. If the ~~commissioner~~~~{executive director}~~ denies any part of a petition, he or she shall explain his or her reasons for denial in writing, and provide a copy to the board and the local government. A local government may appeal the denial directly to the board, and the board shall review the appeal according to the procedures found in subsections (8) to (10) of KRS 198B.070. If the local government is granted additional responsibility by the ~~commissioner~~~~{executive director}~~ or the board, the ~~department~~~~{office}~~ shall hold concurrent jurisdiction over the additional responsibility, but the local government shall collect any fees for functions it performs pursuant to the additional responsibility.
- (6) Any local government may also petition the ~~commissioner~~~~{executive director}~~ requesting that plans and specifications inspection, building inspection, and approval responsibility relating to the application of local plumbing permits for local installations be allocated to the local government. The petition shall not be granted unless the local government has demonstrated to the ~~commissioner~~~~{executive director}~~ that it can perform these functions in accordance with the provisions of KRS 198B.050 to 198B.090.
- (7) The ~~commissioner~~~~{executive director}~~ shall expedite the review of plans and specifications by assigning responsibilities and coordinating review activities among the ~~department's~~~~{office's}~~ various functional divisions so as to prevent unnecessary duplication in the review of plans and specifications.
- (8) No building shall be constructed in this state until a local building official and an official representing the ~~department~~~~{office}~~, if the ~~department~~~~{office}~~ has jurisdiction, issue a permit for the construction. Nothing in this subsection shall require a single-family dwelling to be permitted or inspected unless a local government has established a building inspection program as set out in this section.
- (9) The local building official or the representative of the ~~department~~~~{office}~~ shall issue a permit if the proposed building satisfies the requirements of the Uniform State Building Code and if the party desiring to construct the building has complied with all other legal requirements concerning the location and construction of the building. The applicant for a building permit, by the act of applying for the permit, shall be deemed to have consented to inspection by the local government or the ~~department~~~~{office}~~, of the building during construction and upon the completion of construction for the purpose of determining that the building is constructed in compliance with the Uniform State Building Code.
- (10) (a) No permit for building, construction, reconstruction, renovation, demolition, or maintenance or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be issued by any building department or by any political subdivision of the Commonwealth of Kentucky to any person seeking the permit unless the person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, on activity covered by the permit shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) Any person who fails to comply with the assurances required under paragraph (a) of this subsection upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000) or an amount equal to the sum of all uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (c) The penalty imposed in paragraph (b) of this subsection shall be enforced by the county attorney for the county in which the violation occurred.
- (11) A certified electrical inspector shall be employed by, or contracted for, or contracted with a local government having responsibility over buildings as set out in this section as part of its building inspection program. After a certified electrical inspector has been provided for by the local government or the ~~department~~~~{office}~~, no utility shall initiate permanent electrical service to any new building, or any building which has been moved, until a final certificate of approval has been issued by a certified electrical inspector. Unless the ~~department~~~~{office}~~ shall notify the utility in writing as to which buildings are subject to ~~department~~~~{office}~~

approval, it shall be presumed by the utility that the building is subject to the jurisdiction of the local government. However, nothing in this section shall prohibit the supply or use of necessary electrical services during the construction and testing process.

- (12) This section shall apply to industrialized building systems, but destructive disassembly of industrialized building systems which carry a seal of approval pursuant to a manufactured building law in the state in which they were manufactured, which seal of approval is accepted by the Board of Housing, Buildings and Construction, shall not be performed in order to conduct the tests or inspections.
- (13) No building on which construction was begun nor any industrialized building system on which site preparation and assembly were begun after the Uniform State Building Code became effective shall be occupied until the local building official or a representative of the *department{office}* issues a certificate of occupancy certifying that the building was constructed in conformance with the standards of the Uniform State Building Code, or assembled or installed in conformance with applicable instructions. Nothing in this subsection shall be construed to require a certificate of occupancy to be issued for any single-family dwelling unless a local government has established jurisdiction for the enforcement of the Uniform State Building Code under this section.
- (14) A local government may associate with other local governments, and may seek the technical assistance of other agencies or area development districts in order to provide for the local enforcement of the Uniform State Building Code.
- (15) Local governments or associations of local governments may contract with a person, firm, or company to perform the plans and specifications inspection or building inspection functions required of the local government by the provisions of this section if:
 - (a) The person performing the plans and specifications inspection is certified by the *department{office}* as having successfully completed the test requirements provided by KRS 198B.090 to practice as a certified plans and specifications inspector;
 - (b) The person performing the building inspection is certified by the *department{office}* as having successfully completed the test requirements provided in KRS 198B.090 to practice as a certified building inspector;
 - (c) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities;
 - (d) The person performing the plumbing inspection is certified by the *department{office}* as having successfully completed the requirements provided in KRS 318.140 to practice as a certified plumbing inspector; and
 - (e) The person, firm, or company does not have a conflict of interest between its plan review or inspection functions and any other employment or business activities.
- (16) If the *department{office}* has reason to believe that an inspector is not enforcing, or is improperly enforcing, the provisions of the Kentucky building codes, it shall conduct an informal hearing to review the inspector's procedures and return in written form the required corrections resulting from the hearing to the inspector, or may take action to suspend or revoke the inspector's certificate.
- (17) If, after written notification from the *department{office}* to the inspector of any corrections required, the inspector fails to comply within sixty (60) days, the *department{office}* shall suspend the inspector's certification until the inspector complies. Any action to suspend or revoke an inspector's certificate may be appealed to the board, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (18) Each local government and the *department{office}* may establish a schedule of fees for the functions performed under the provisions of this chapter. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the *department{office}* shall be paid into the State Treasury and credited to a trust and agency fund to be used by the *department{office}* in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth.

➔Section 251. KRS 198B.070 is amended to read as follows:

- (1) The mayor or county judge/executive of a local government which is enforcing the Uniform State Building Code may, upon the approval of the local legislative body, appoint a local appeals board, consisting of five (5) technically qualified persons with professional experience related to the building industry, to hear appeals from the decisions of the local building official. At least three (3) members of the appeals board must not be employed by the local government hearing the appeal.
- (2) Local governments which are enforcing the Uniform State Building Code may cooperate with each other to provide a local appeals board and shall adhere to the provisions of KRS Chapter 65 when entering such cooperative agreements. No local building official or employee of a local inspection department may sit on a local appeals board if the board is hearing an appeal to a decision rendered by his or her department. No member of a local appeals board shall hear an appeal in a case in which he or she has a private interest.
- (3) Any party to a decision by the local building official may appeal that decision to the local appeals board. Upon receipt of an appeal from a qualified party, the local appeals board shall convene a hearing to consider the appeal within fifteen (15) days of receipt. All parties to the appeal shall be notified of the time and place of the hearing by letter mailed by certified mail no later than ten (10) days prior to the date of the hearing. The local appeals board shall render a decision within five (5) working days after the hearing.
- (4) A local appeals board may uphold, amend, or reverse the decision of a local building official, and there shall be no appeal from the decision of a local appeals board other than by appeal to the Board of Housing, Buildings and Construction. Appeals to the Board of Housing, Buildings and Construction shall include citation of those provisions of the Uniform State Building Code which are at issue, and an explanation of why the decision of the local appeals board or the local building official relative to those provisions is being contested.
- (5) The Board of Housing, Buildings and Construction shall serve to hear appeals from the decisions of local appeals boards, when these boards exist, or to hear appeals directly from the decisions of local building officials in cases where no local appeals board has jurisdiction. In no case shall the board hear an appeal directly from a party aggrieved by the decision of a local building official when there is a local appeals board with jurisdiction in the case.
- (6) The board shall hear appeals directly from a party aggrieved by the decision of an agent of the ~~department~~~~office~~. These appeals shall include citations of those provisions of the Uniform State Building Code which are at issue, and an explanation of why the decision of the agent of the ~~department~~~~office~~ relative to those provisions is being contested.
- (7) Appeals to the Board of Housing, Buildings and Construction shall be addressed to the ~~commissioner~~~~, executive director~~ who shall immediately notify the board when an appeal is received. The ~~commissioner~~~~, executive director~~ or a designated employee of his or her ~~department~~~~office~~ shall then investigate the evidence pertaining to the appeal and, based upon the results of the investigation, make recommendations to the board on the disposition of the case in question. No employee of the ~~department~~~~office~~ shall investigate or make recommendations on an appeal to his or her own decision, but shall defer in such cases to employees who were not party to the decision which led to the appeal. In conducting an investigation, the ~~commissioner~~~~, executive director~~ or his or her designated representatives, acting for the ~~department~~~~office~~, shall have the authority to administer oaths and affirmations, issue subpoenas authorized by law, rule upon offers of proof and receive relevant evidence, take or cause depositions to be taken, regulate the course of any informal or fact-finding hearings they may schedule, and hold conferences for the settlement or simplification of the issues by consent of the parties. The ~~commissioner~~~~, executive director~~ shall complete his or her investigations and forward a written report to the board within thirty (30) days after receiving an appeal.
- (8) If the matter is not settled by agreement of the parties through the procedure established in subsection (7) of this section, the board shall schedule an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (9) The board may appoint five (5) or more of its members, excluding the chairman of the board, to conduct the hearing, and those so appointed shall act in all matters concerning the appeal for the entire board.
- (10) The board may uphold, amend, or reverse the decision of a local appeals board, a local building official, or an agent of the ~~department~~~~office~~ by final order, and appeal from the board's final order shall be to the Circuit Court within whose jurisdiction the property in question is located in accordance with KRS Chapter 13B.

➔Section 252. KRS 198B.080 is amended to read as follows:

- (1) Any interested party may suggest amendments to the Uniform State Building Code to the **Department**~~{Office}~~ of Housing, Buildings and Construction. The **department**~~{office}~~ shall transmit all suggested amendments to the board with recommendations on the advisability of the suggested amendments.
- (2) The board may amend the Uniform State Building Code at any time, but only after notice in accordance with KRS Chapter 13A. Such amendments shall be effective statewide.
- (3) No amendment shall violate the performance orientation of the code, favor certain materials or suppliers, or weaken the life safety features of the Uniform State Building Code as specified in KRS 198B.050(3).

➔Section 253. KRS 198B.090 is amended to read as follows:

- (1) On or before July 1, 1983, the **department**~~{office}~~ shall create and administer a certification program with sufficient testing procedures to certify the following professional classifications:
 - (a) Building inspector;
 - (b) Plans and specifications inspector; and
 - (c) Plumbing inspector.
- (2) The testing procedures shall be sufficient to reflect the ability of the person applying for certification to inspect in accordance with those local, state, and federal building codes, fire codes, plumbing codes, or health and safety codes, that are applicable to the inspection duties for which he or she requests certification.
- (3) The **department**~~{office}~~ shall conduct or sponsor preentry and in-service education and training programs on the technical, legal, and administrative aspects of building code administration and enforcement. For this purpose it may cooperate and contract with educational institutions, area development districts, local, regional, state or national building officials' organizations, and any other appropriate organization.
- (4) On or before July 1, 1983, the **department**~~{office}~~ shall create and administer an educational program designed to prepare building officials, code enforcement officers and other persons interested in obtaining from the **department**~~{office}~~ a certification as a building inspector, plans and specifications inspector, or plumbing inspector. The program shall be so designed as to insure uniform statewide enforcement of the applicable state building and plumbing codes. Training material coverage shall be adequate to prepare the participants with a working knowledge of construction design, specification terms, and the state building codes applicable to the particular field in which the applicant requests certification.
- (5) Plumbing inspectors who are in compliance with KRS 318.090 as state inspectors and KRS 318.140 as city-county inspectors, shall be considered in accordance with subsections (1)(c) and (2) of this section and shall not be required to be retested by the **department**~~{office}~~ prior to consideration for certification as a plumbing inspector. The **department**~~{office}~~ shall review the plumbing inspector's qualifications and credentials for compliance with KRS 318.090 or 318.140 prior to issuing a certification to the inspector's certificate applicant.
- (6) Attendance at the training sessions shall not be mandatory prior to testing for certification if the applicant's previous education or experience qualifies the applicant to obtain a passing score on the required certification test.
- (7) Training sessions shall be held as frequently as is felt necessary by the **commissioner**~~{executive director}~~ to adequately provide for local and state building inspection needs.
- (8) The **department's**~~{office's}~~ plans and specifications review staff and the field inspection staff shall attend the training and become certified in accordance with the provisions of this section.
- (9) All building inspectors, plans and specification inspectors, and plumbing inspectors shall be certified or enrolled and actively pursuing **department**~~{office}~~ certification by October 1, 1983, or within ninety (90) days after employment as an inspector, whichever comes later.
- (10) The board shall establish a schedule of fees to cover the cost of the education, testing, and certification programs to be paid by the applicants for certification. The fees shall not exceed the actual cost of the services performed by the **department**~~{office}~~ to administer the programs listed in this section.
- (11) The **department**~~{office}~~ may reimburse building officials, code enforcement officers and other employees of the state and its subdivisions for related expenses incurred by them for attendance at in-service training programs approved by the **department**~~{office}~~.

➔Section 254. KRS 198B.095 is amended to read as follows:

- (1) The Board of Housing, Buildings and Construction may establish a building inspectors training program through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall provide training to encourage local governments to establish and improve building code enforcement programs and to encourage all building inspectors to upgrade their skills.
- (2) If the board chooses to establish the program authorized in subsection (1) of this section, there shall be created in the ~~Department~~~~Office~~ of Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive Training Program Fund". The fund shall be funded annually with a maximum of one hundred fifty thousand dollars (\$150,000) by increasing the ~~department's~~~~office's~~ plan review fees collected for each occupancy classification under KRS 198B.060 by one-half cent (\$.005) per calculated square foot. Any funds collected annually in excess of one hundred fifty thousand dollars (\$150,000) shall be used solely for the administration of the ~~department's~~~~office's~~ building inspection program. Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in this section.

➔Section 255. KRS 198B.110 is amended to read as follows:

- (1) In all local governments in a county containing a city of the first or second class, and in urban-county governments, the Uniform State Building Code shall become effective six (6) months after promulgation by the board. Any of said local governments may adopt the code prior to that time.
- (2) In all local governments in a county containing a city of the third or fourth class, but not a city of the first or second class, the Uniform State Building Code, as it pertains to buildings for which the ~~department~~~~office~~ has the responsibility for plan reviews, shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective two (2) years after promulgation by the board. Any of said local governments may adopt the code prior to such times.
- (3) In all local governments in a county containing no city or a city of the fifth or sixth class, but not a city of the first through fourth classes, the Uniform State Building Code as it pertains to buildings for which the ~~department~~~~office~~ has the responsibility for plan reviews shall become effective six (6) months after promulgation by the board and as it pertains to buildings for which local governments have responsibility for plan review shall become effective three (3) years after promulgation by the board. Any of said governments may adopt the code prior to such times.
- (4) Notwithstanding the provisions of KRS 198B.060(8) and (9), a building for which a permit was legally granted prior to the effective date of the Uniform State Building Code may be constructed and occupied under the provisions of relevant regulations in force at the time the permit was issued provided that substantial construction has commenced within one (1) year from the date the permit was issued.
- (5) A building for which plans were prepared at least three (3) months prior to the effective date of the Uniform State Building Code and upon which construction was begun prior to the effective date of the Uniform State Building Code in a locality not then requiring a building permit may be completed and occupied without a building permit.

➔Section 256. KRS 198B.120 is amended to read as follows:

The ~~department~~~~office~~ or any local government agency enforcing the Uniform State Building Code may obtain injunctive relief from any court of competent jurisdiction to enjoin the offering for sale, delivery, use, occupancy or construction of any building on which construction was begun after the effective date of said code, upon an affidavit of the ~~department~~~~office~~ or the local government agency specifying the manner in which the construction, or if a building existing prior to the effective date of said code, the reconstruction, alteration, repair or conversion does not conform to the requirements of this chapter or the Uniform State Building Code.

➔Section 257. KRS 198B.200 is amended to read as follows:

- (1) There is hereby created the Kentucky Single Family Dwellings Advisory Committee, which shall be attached to the ~~Department~~~~Office~~ of Housing, Buildings and Construction for administrative purposes.
- (2) The committee shall be composed of eight (8) members as follows:

- (a) Three (3) members who shall be home builders appointed by the Governor from a list of six (6) nominees submitted by the Home Builders Association of Kentucky. Each nominee shall have been actively engaged in the home building business for not less than five (5) years immediately preceding the date of his or her appointment to the committee;
 - (b) Three (3) members who shall be certified code inspectors appointed by the Governor from a list of six (6) nominees submitted by the Code Administrators Association of Kentucky. Each nominee shall have been actively engaged as a certified code inspector for not less than five (5) years immediately preceding the date of his or her appointment to the committee;
 - (c) One (1) member who shall be an architect appointed by the Governor from a list of three (3) nominees submitted by the Kentucky Chapter of the American Society of Architects. Each nominee shall have been actively engaged as a licensed architect for not less than five (5) years immediately preceding the date of his or her appointment to the committee; and
 - (d) The ***commissioner***~~{executive-director}~~ of the ***Department***~~{Office}~~ of Housing, Buildings and Construction, or his or her designee.
- (3) Each member of the committee shall be a citizen and resident of the Commonwealth of Kentucky.
- (4) (a) Appointed members shall serve staggered terms of three (3) years that shall expire on June 30 of the final year of the term, except that, of the initial appointments, three (3) members shall serve for a term of three (3) years, two (2) members shall serve for a term of two (2) years, and two (2) members shall serve for a term of one (1) year.
- (b) The ***commissioner***~~{executive-director}~~ of the ***Department***~~{Office}~~ of Housing, Buildings and Construction shall serve on the committee for the duration of his or her term of appointment to that state government position.
- (c) No member shall serve more than two (2) consecutive terms.
- (d) Members may serve until their successors are appointed and qualified.
- (e) A vacancy in an unexpired term shall be filled in the same manner as the original appointment.
- (5) The ***commissioner***~~{executive-director}~~ of the ***Department***~~{Office}~~ of Housing, Buildings and Construction, or his or her designee, shall serve as chair of the committee.
- (6) A majority of the members of the committee shall constitute a quorum for conducting business.
- (7) The committee shall meet at least once each calendar quarter in a location designated by the chair. The committee may meet upon special call by the chair or by a majority of the committee.
- (8) Each appointed member listed in subsection (2)(a), (b), and (c) of this section shall receive twenty-five (\$25) dollars per diem for attending each meeting and shall be reimbursed for actual and necessary expenses incurred in the performance of his or her official duties. The ***commissioner***~~{executive-director}~~ of the ***Department***~~{Office}~~ of Housing, Buildings and Construction shall not be eligible for a per diem.
- (9) The duties of the Kentucky Single Family Dwellings Advisory Committee shall be to:
- (a) Review and interpret the International Building Code and make recommendations to the Kentucky Board of Housing, Buildings and Construction as to which elements of the international code should be incorporated into the Kentucky State Residential Building Code; and
 - (b) Perform any other duties and responsibilities relating to the topic of single family dwellings that may be assigned by the Kentucky Board of Housing, Buildings and Construction.

➔Section 258. KRS 198B.250 is amended to read as follows:

- (1) There is hereby created an Architectural Barriers Advisory Committee which shall be attached to the ***Department***~~{Office}~~ of Housing, Buildings and Construction for administrative purposes. The committee members shall be appointed by the Governor to serve a term of two (2) years and shall be constituted as follows: three (3) persons having a physical disability, one (1) citizen at large, and the public advocate or his designee.

- (2) The committee shall meet at least quarterly or upon request of the board for the purposes of considering matters relating to accessibility and safety in facilities for persons with physical disabilities. The committee shall make recommendations to and otherwise advise the ~~department{office}~~ and the board on these matters.
- (3) The committee members will receive no compensation for their services, but will be reimbursed for their necessary travel expenses.

➔Section 259. KRS 198B.300 is amended to read as follows:

As used in KRS 198B.310 to 198B.330:

- (1) "Safety glazing material" means any glazing material, such as tempered glass, laminated glass, wire glass or rigid plastic, which meets the test requirements of ANSI Standard Z-97.1-1966 and such further requirements as may be adopted by the ~~Department{Office}~~ of Housing, Buildings and Construction and which is so constructed, treated, or combined with other materials as to minimize the likelihood of cutting and piercing injuries resulting from human contact with the glazing material;
- (2) "Hazardous locations" means those installations, glazed or to be glazed, in residential, commercial and public buildings known as sliding glass doors, framed or unframed glass doors and adjacent fixed glazed panels which may be mistaken for means of ingress or egress, storm doors, shower doors, and tub inclosures, whether or not the glazing in such doors, panels or inclosures is transparent, and in any other area wherein the use of other than safety glazing materials would constitute a hazard.

➔Section 260. KRS 198B.310 is amended to read as follows:

- (1) Each light of safety glazing material manufactured, distributed, imported, or sold for use in hazardous locations or installed in such a location within the Commonwealth of Kentucky shall be permanently labeled by such means as etching, sandblasting or firing ceramic material on the safety glazing material. The label shall identify the labeler, whether manufacturer, fabricator or installer, and the nominal thickness and the type of safety glazing material and the fact that said material meets the test requirements of ANSI Standard Z-97.1-1966 and such further requirements as may be adopted by the ~~Department{Office}~~ of Housing, Buildings and Construction. The label must be legible and visible after installation.
- (2) Such safety glazing labeling shall not be used on other than safety glazing materials.

➔Section 261. KRS 198B.400 is amended to read as follows:

As used in KRS 198B.410 to 198B.540, unless the context otherwise requires:

- (1) "Elevator" means all the machinery, construction, apparatus, and equipment used in raising and lowering a car, cage, or platform vertically between permanent rails or guides, and includes all elevators, power dumbwaiters, escalators, gravity elevators, and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists, or other similar temporary lifting or lowering apparatus.
- (2) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity.
- (3) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride.
- (4) "General inspector" means a state inspector examined and hired to inspect elevators for the ~~Department{Office}~~ of Housing, Buildings and Construction.
- (5) "Special inspector" means an inspector examined and certified by the ~~department{office}~~ to inspect elevators in the state.
- (6) "Inspector" means either a general or special inspector.
- (7) "~~Department{Office}~~" means the ~~Department{Office}~~ of Housing, Buildings and Construction.
- (8) "Certificate of operation" is a certificate issued by the ~~department{office}~~ authorizing the operation of an elevator which must be conspicuously posted on the elevator at all times.
- (9) "Escalator" means a moving stairway consisting of steps attached to a continuously circulating belt that is used to move persons from one (1) level to another.

- (10) "Moving sidewalk" means horizontal flat panels attached to a continuously circulating belt used to move people.
- (11) "Fixed guideway system" means any nonrail system, funicular, or automated people mover, either air-suspended or wheeled, that is not regulated by the Federal Transit Administration.

➔Section 262. KRS 198B.410 is amended to read as follows:

- (1) No person may act either as a general inspector or as a special inspector of elevators or fixed guideway systems unless he or she holds a certificate of competency from the **department**~~{office}~~.
- (2) Application for examination as an inspector of elevators shall be in writing, accompanied by a fee of ten dollars (\$10), upon a blank to be furnished by the **department**~~{office}~~, stating the school education of the applicant, a list of his or her employers, his or her period of employment, and the position held with each. An applicant shall also submit a letter from one (1) or more of his or her previous employers certifying as to his or her character and experience.
- (3) Applications shall be rejected which contain any willful falsification or untruthful statements. The applicant, if the **department**~~{office}~~ deems his or her history and experience sufficient, shall be tested by means of a written examination dealing with the construction, installation, operation, maintenance, and repair of elevators and their appurtenances, and the applicant shall be accepted or rejected on the merits of his or her application and examination.
- (4) The **department**~~{office}~~ shall promulgate administrative regulations establishing the training and certification requirements for inspectors of fixed guideway systems.
- (5) The **department**~~{office}~~ shall issue a certificate of competency in the inspection of elevators to any applicant found competent upon examination. A rejected applicant shall be entitled, after the expiration of ninety (90) days, and upon payment of an examination fee of ten dollars (\$10), to another examination. Should an applicant fail to pass the prescribed examination on second trial, he or she will not be permitted to be an applicant for another examination for a period of one (1) year after the second failure.

➔Section 263. KRS 198B.420 is amended to read as follows:

- (1) The **department**~~{office}~~ shall administer all aspects of the State Elevator and Fixed Guideway System Inspection Program.
- (2) The program shall be directed by a person with at least five (5) years' experience in the inspection or construction, installation, maintenance, and repair of elevators and their appurtenances.
- (3) The **commissioner**~~{executive director}~~ of housing, buildings and construction may appoint and hire, from the holders of certificates of competency, general inspectors of elevators.

➔Section 264. KRS 198B.440 is amended to read as follows:

A certificate to serve as an inspector issued under KRS 198B.410 may be suspended or revoked by the **department**~~{office}~~ for the incompetence or untrustworthiness of the holder thereof, or for the falsification of any matter or statement contained in his or her application or in a report of any inspection.

➔Section 265. KRS 198B.450 is amended to read as follows:

If a certificate is lost or destroyed a new one shall be issued in its place by the **department**~~{office}~~ without another examination, upon the payment of a fee of one dollar (\$1).

➔Section 266. KRS 198B.460 is amended to read as follows:

The owner or user of any elevator or fixed guideway system shall register with the **department**~~{office}~~ every elevator or fixed guideway system operated by him or her, giving the type, capacity, description, name of manufacturer, and purpose for which each is used. The registration shall be made on a form to be furnished by the **department**~~{office}~~.

➔Section 267. KRS 198B.480 is amended to read as follows:

- (1) Every inspector shall forward to the **department**~~{office}~~ a full report of each inspection made of any passenger elevator or fixed guideway system, showing the exact condition of the elevator or fixed guideway system, and the inspector shall leave a copy of the report at the elevator or fixed guideway system on the day the inspection is completed.

- (2) If any passenger elevator or fixed guideway system requires certain changes or repairs to make it reasonably safe to operate, recommendations shall be made by the inspector upon his or her report and a copy of the report as approved by the ~~department~~~~{office}~~ shall be given to the owner or operator of the elevator or fixed guideway system, and, unless appealed, upon compliance therewith and upon the payment of the fees required by law, the ~~department~~~~{office}~~ shall issue a certificate of operation for a capacity not to exceed that named in the report of inspection, which certificate shall be valid for one (1) year after the date of inspection.
- (3) If construction plans or an application of specifications is not approved, the ~~department~~~~{office}~~ shall state in writing the necessary changes to obtain approval and the owner or operator shall be given a copy thereof, and, unless appealed, upon compliance therewith, the ~~department~~~~{office}~~ shall approve the plans or specifications and issue a permit for construction.
- (4) Any owner or operator, within twenty (20) days from receipt of the copy of the report or statement of changes in plans or specifications, may make written application to the ~~department~~~~{office}~~ upon forms to be furnished by the ~~department~~~~{office}~~ for a hearing on the report or the statement regarding changes in plans or specifications as to whether the elevator or fixed guideway system in question is reasonably safe, or whether the elevator or fixed guideway system, if constructed in accordance with the plans and specifications, would be reasonably safe. The ~~department~~~~{office}~~ shall promptly consider the application and schedule a hearing to be conducted consistent with the provisions of this section and KRS Chapter 13B.
- (5) If it appears from the evidence presented at the hearing that the elevator or fixed guideway system will be reasonably safe to operate without those changes or repairs shown in the report or by making only a part or all thereof, or if none or only a part of all the changes in the plans or specifications are found necessary to make the elevator reasonably safe, the ~~department~~~~{office}~~ shall issue its final order accordingly. If the final order requires changes or repairs to be made in the elevator or fixed guideway system or changes in the plans or specifications of either, the ~~department~~~~{office}~~ shall, upon the payment of the required fees, issue a certificate of operation when the order has been executed or issue its approval of the plans or specifications. If the final order of the ~~department~~~~{office}~~ has been affirmed or modified by appeal on the grounds of reasonable safety considered by the ~~department~~~~{office}~~, then the ~~department~~~~{office}~~ shall, upon compliance with the final order and the payment of required fees, issue the certificate of operation or issue its approval of the plans and specifications; but, if the order of the ~~department~~~~{office}~~ has been vacated, the certificate of operation, upon the payment of fees or approval of plans and specifications, shall be issued forthwith. No elevator or fixed guideway system shall be operated after being inspected without having a certificate of operation conspicuously posted thereon, except pending a hearing on the issuance thereof.

➔Section 268. KRS 198B.490 is amended to read as follows:

The ~~commissioner~~~~{executive director}~~ of housing, buildings and construction shall make, alter, amend, and repeal rules and regulations exclusively for the safety and inspection of passenger elevators and fixed guideway systems. The ~~commissioner~~~~{executive director}~~ shall have the authority to prescribe, by regulation, the fee to be charged for each inspection. All fees established and regulated by this section shall be payable to the ~~department~~~~{office}~~ except as may be provided in a specific written agreement between the ~~commissioner~~~~{executive director}~~ and any agency authorized to inspect elevators or fixed guideway systems by the provisions of this chapter.

➔Section 269. KRS 198B.510 is amended to read as follows:

No certificate of operation for any passenger elevator or fixed guideway system shall be issued until the elevator or fixed guideway system has been inspected and the report thereof filed with the ~~department~~~~{office}~~. The certificate of operation, when issued, shall bear the date of inspection, and shall be renewed as of the date of the subsequent inspection, provided the inspection is made at least one (1) year after the issuance of such certificate. If the inspection is made during the year the certificate is in force, the renewal date shall be one (1) year from the date of the certificate being renewed and the renewal certificate shall show the date of inspection.

➔Section 270. KRS 198B.520 is amended to read as follows:

Before any new installation of an elevator or fixed guideway system of permanent nature shall be erected or before any existing elevator is removed to a different location, an application of specifications in duplicate shall be submitted to the ~~department~~~~{office}~~ giving such information concerning the construction, installation, and operation of said elevator or fixed guideway system as the ~~department~~~~{office}~~ may require on forms to be furnished by the ~~department~~~~{office}~~, together with complete construction plans in duplicate. In all cases where any changes or repairs are made which alter its construction or classification, grade, or rated lifting capacity, except when made pursuant to a report of an inspector, an application of specifications in duplicate shall be submitted to the ~~department~~~~{office}~~.

containing such information for approval, except for elevators in those municipal corporations which maintain their own elevator inspection departments, in which event the specifications shall be submitted to the elevator department of the municipal corporation for its approval and, if approved, a permit for the erection or repair of the elevator shall be issued by the municipal corporation. Upon approval of the application and construction plans, the ~~department{office}~~ shall issue a permit for the erection or repair of the elevator or fixed guideway system. No new elevator or fixed guideway system shall be operated until completion in accordance with the approved plans and specifications, unless a temporary permit is granted by the ~~department{office}~~.

➔ Section 271. KRS 198B.530 is amended to read as follows:

No person shall violate any law relative to the operation, construction, maintenance, and repair of passenger elevators or fixed guideway systems. All fines collected for a violation of this section shall be forwarded to the ~~department{office}~~, which shall pay the same into the State Treasury to the credit of the general revenue fund.

➔ Section 272. KRS 198B.540 is amended to read as follows:

- (1) If the ~~department's{office's}~~ inspector of elevators and fixed guideway systems or a general inspector of elevators or fixed guideway systems finds that a passenger elevator, fixed guideway system, or a part thereof does not afford reasonable safety, the ~~department{office}~~ or the general inspector may post a notice upon the elevator or fixed guideway system prohibiting further use of the elevator or fixed guideway system until the changes or alterations set forth in the notice have been made to the satisfaction of the ~~department{office}~~ or the inspector. Said notice shall contain a statement that operators or passengers are subject to injury by its continued use, a description of the alteration or other change necessary to be made in order to secure safety of operation, date of the notice, and name and signature of the ~~department{office}~~ or inspector issuing the notice.
- (2) If any inspector of elevators or fixed guideway systems finds a passenger elevator or fixed guideway system to be so unsafe as can be reasonably expected to offer imminent danger of death or physical injury, that unit shall be sealed out of service, a hazard notice posted thereon, and the ~~department{office}~~ shall be notified immediately as to the location and condition of the unit.
- (3) Any passenger elevator or fixed guideway system, once sealed, shall not be operated except for the purpose of effecting repairs and in the manner prescribed by the ~~department{office}~~, until all defects are corrected and the unit has been inspected and certified as safe by the ~~department{office}~~.
- (4) Sealing shall consist of rendering a passenger elevator unit or fixed guideway system inoperable by disconnecting power and/or by placing a sealing device on the operation switch and ordering additional measures to be effected by the owner, such as erection of barricades, as may be required to prevent use of or public access to the unit.
- (5) No seal, notice, or barricade placed on or around an elevator or fixed guideway system in accordance with the provisions of this chapter shall be removed, obstructed or in any way altered without the written consent of the ~~department{office}~~.

➔ Section 273. KRS 198B.550 is amended to read as follows:

As used in KRS 198B.555 to 198B.630, unless the context requires otherwise:

- (1) "~~Department{Office}~~" means the ~~Department{Office}~~ of Housing, Buildings and Construction.
- (2) "~~Commissioner{Executive director}~~" means the ~~commissioner{executive director}~~ of the ~~department{office}~~.
- (3) A "fire protection sprinkler contractor" is a person engaged in the preparation of technical drawings, installation, repair, alteration, extension, maintenance or inspection of fire protection sprinkler systems and has in his or her employment a certificate holder.
- (4) A "fire protection sprinkler contractor's license" is the license issued by the ~~commissioner{executive director}~~ to a fire protection sprinkler contractor upon application being approved, fee paid and the satisfactory completion of the requirements of KRS 198B.580. The license shall be issued in the name of the fire protection sprinkler contractor with the name or names of the certificate holder noted thereon.
- (5) A "certificate holder" is an individual who has satisfactorily met and has received a certificate from the ~~commissioner{executive director}~~ under the provisions of KRS 198B.570.

- (6) A "fire protection sprinkler system" is a system of piping for which technical drawings have been prepared by or preparation supervised by a certificate holder in accordance with fire protection engineering standards. The system is supplied from a reliable, constant, and sufficient water, gas, or chemical supply, such as a gravity tank, fire pump, reservoir, or pressure tank, or connection by underground piping to a city, county, municipal water district, authorized water main, or both. The sprinkler system is considered the fire protection sprinkler system for purposes of KRS 198B.550 to 198B.630, and is a network of specially sized or hydraulically designed piping installed overhead and underground in a building, structure, or area, and to which sprinklers are connected in systematic pattern. The system includes a controlling valve and a device for actuating an alarm when a system is in operation. The system is usually activated by heat from a fire and causes the discharge of water, gas, or chemical over the fire area. Fire protection sprinkler systems shall include the following types: wet-pipe systems, dry-pipe systems, pre-action systems, deluge systems, combined dry-pipe and pre-action systems, antifreeze systems and circulating closed loop systems, systems utilizing gasses or chemicals, and any other fire suppression system approved by the state fire marshal or the chief building code official of the *department*~~{office}~~.

➔Section 274. KRS 198B.555 is amended to read as follows:

- (1) The administration of KRS 198B.550 to 198B.630 is vested in the *Department*~~{Office}~~ of Housing, Buildings and Construction.
- (2) The *commissioner*~~{executive director}~~ shall:
- (a) Promulgate reasonable administrative regulations necessary for the administration of KRS 198B.550 to 198B.630;
 - (b) Set or make reasonable changes in the fees charged for permits, testing, and other aspects of the administration of KRS 198B.550 to 198B.630;
 - (c) Enforce the provisions of KRS 198B.550 to 198B.630; and
 - (d) Conduct investigations of complaints and conduct administrative hearings as are required by KRS 198B.620 and 198B.625 and in accordance with the provisions of KRS Chapter 13B.
- (3) The *commissioner*~~{executive director}~~ may:
- (a) Secure the advice of the Board of Housing, *Buildings*~~{Building}~~ and Construction with regard to administrative regulations;
 - (b) Have the competency test prepared by a source other than the *commissioner*~~{executive director}~~.

➔Section 275. KRS 198B.565 is amended to read as follows:

- (1) The design for any fire protection sprinkler system for buildings and structures shall be prepared by a licensed professional engineer or, if the licensed, professional engineer chooses not to prepare the design, a licensed fire protection sprinkler contractor whose certificate holder is a certified engineering technician, NICET Level III or Level IV, may prepare the design.
- (2) When a fire protection sprinkler system is designed by a professional engineer in accordance with subsection (1) of this section, the licensed fire protection sprinkler contractor shall submit to the professional engineer, for his approval, technical drawings and, when required, hydraulic calculations for the installation of the fire protection sprinkler system. Such technical drawings, after approved by the professional engineer, shall be submitted by the professional engineer to the *Department*~~{Office}~~ of Housing, Buildings and Construction, the insurance authority having jurisdiction, if any, and other authority when required by Kentucky law.
- (3) When a fire protection sprinkler system is designed by a licensed fire protection sprinkler contractor in accordance with subsection (1) of this section, the licensed fire protection sprinkler contractor shall submit such design and detailed plans to the *Department*~~{Office}~~ of Housing, Buildings and Construction, the insurance authority having jurisdiction, if any, and other authority when required by Kentucky law.

➔Section 276. KRS 198B.570 is amended to read as follows:

To become a certificate holder under KRS 198B.560, an applicant must satisfactorily pass a current examination prescribed and administered by the National Institute for Certification in Engineering Technologies entitled Fire Protection Engineering Technology Automatic Sprinkler System Design Level III, or the equivalent thereof, approved by the *commissioner*~~{executive director}~~.

➔Section 277. KRS 198B.580 is amended to read as follows:

To become a licensed fire protection sprinkler contractor under KRS 198B.560, a person must comply with the following:

- (1) Must have in his employ a certificate holder;
- (2) Comply with the minimum insurance requirements of KRS 198B.595; and
- (3) Make application to the **commissioner**~~[executive director]~~ for a license and pay the fees required.

➔Section 278. KRS 198B.585 is amended to read as follows:

- (1) Each certificate holder engaged in the activity described under KRS 198B.560 shall secure a seal with the design prescribed by regulation of the **commissioner**~~[executive director]~~.
- (2) All working drawings, specifications, and plans prepared by, or under the supervision of the certificate holder, must bear the imprint of this seal and shall bear the imprint of the seal of the licensed fire protection contractor.
- (3) No certificate holder shall assign or affix his or her seal to any drawings, specifications or plans which have not been prepared under his or her immediate supervision, and no licensed fire protection contractor shall affix his or her seal to such drawings, specifications, or plans unless same were prepared by certificate holder employee as provided for in KRS 198B.560 and 198B.580.

➔Section 279. KRS 198B.590 is amended to read as follows:

The license and certificate shall be signed by the **commissioner**~~[executive director]~~.

➔Section 280. KRS 198B.595 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall not issue a license under KRS 198B.560 and 198B.580, unless the fire protection sprinkler contractor applicant files with the **commissioner**~~[executive director]~~ proof of liability insurance coverage of not less than two hundred and fifty thousand dollars (\$250,000) one person/maximum and five hundred thousand dollars (\$500,000) one accident/maximum and workers' compensation insurance as provided for in KRS Chapter 342.
- (2) The workers' compensation insurance required by this section must be in the form of certificate of insurance executed by an insurer authorized to do business in this state. The liability insurance required by this section shall be liability insurance that covers the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as a fire protection sprinkler contractor or system designer and shall be in the form of certificate of insurance executed by an insurer authorized to do business in this state or exported by a licensed surplus lines broker to an eligible carrier pursuant to KRS 304.10-020 to 304.10-210. Insurance certificates filed with the **commissioner**~~[executive director]~~ under this section shall remain in force until the insurer has terminated future liability by a thirty (30) day notice to the **commissioner**~~[executive director]~~.
- (3) Failure to maintain the insurance required hereunder constitutes grounds for denial, suspension or revocation of a license under KRS 198B.620 by the **commissioner**~~[executive director]~~.

➔Section 281. KRS 198B.600 is amended to read as follows:

In no case shall a certificate holder be allowed to obtain a fire protection sprinkler contractor's license for more than one (1) fire protection sprinkler contractor at a time. If the certificate holder should leave the employment of the fire protection sprinkler contractor, he or she must notify the **commissioner**~~[executive director]~~ within thirty (30) days. The certificate holder shall not be eligible to obtain a fire protection sprinkler contractor's license for more than one (1) other fire protection sprinkler contractor for a period of twelve (12) months thereafter. If the certificate holder should leave the employment of the fire protection sprinkler contractor, or die, the contractor shall have six (6) months or until the expiration of the current license, whichever shall last occur, to submit a new application on another certificate holder and be issued a new license. If such application is not received and a new license issued within the allotted time, the **commissioner**~~[executive director]~~ shall revoke the license of the fire protection sprinkler contractor.

➔Section 282. KRS 198B.605 is amended to read as follows:

- (1) (a) All certificates issued under KRS 198B.570 shall expire on the last day of the certificate holder's birth month in the following year. The **department**~~[office]~~ may reduce the license fee on a pro rata basis for

initial certificates issued for less than twelve (12) months. Renewed certificates shall expire on the last day of the certificate holder's birth month of each year after the date of issuance of the renewed certificate. Application for a renewal shall be upon such form as is prescribed by the **commissioner**~~{executive director}~~ and the certificate holder shall furnish the information required by such form.

- (b) Failure of any certificate holder to secure his or her renewal certificate within sixty (60) days after the last day of the certificate holder's birth month shall constitute sufficient cause for the **commissioner**~~{executive director}~~ to revoke his or her license.
 - (c) The **commissioner**~~{executive director}~~ may restore a certificate that has been revoked for failure to pay the renewal fee, upon the receipt of payment of all delinquent fees.
- (2) A certificate holder may voluntarily surrender his or her certificate to the **commissioner**~~{executive director}~~ and thereby be relieved of the annual renewal fee. After surrendering of certificate, he or she shall not be known as a certificate holder and shall desist from the practice thereof. Within five (5) years from the time of surrender of the certificate, he or she may again qualify for a certificate without examination by the payment of the required fee. If five (5) years thereafter have lapsed, he or she shall return to the status of a new applicant.
- (3) (a) The initial license for a fire protection sprinkler contractor shall expire on the last day of the licensee's birth month in the following year. The **department**~~{office}~~ may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license. Application for a renewal shall be upon such form as is prescribed by the **commissioner**~~{executive director}~~ and license holder shall furnish the information required by such form.
- (b) Failure of any certificate holder to secure his renewal certificate within sixty (60) days after the last day of the certificate holder's birth month shall constitute sufficient cause for the **commissioner**~~{executive director}~~ to revoke his or her license.
 - (c) The **commissioner**~~{executive director}~~ may restore a license that has been revoked for failure to pay the renewal fee, upon the receipt of payment of all delinquent fees.

➔Section 283. KRS 198B.615 is amended to read as follows:

All license and certificate fees and charges collected by the **commissioner**~~{executive director}~~ under the provisions of KRS 198B.550 to 198B.630 and the rules and regulations of the **commissioner**~~{executive director}~~ adopted hereunder, shall be paid to the State Treasury and credited to a trust and agency fund to be used by the **commissioner's**~~{executive director's}~~ office in carrying out the provisions of KRS 198B.550 to 198B.630. Any money in the trust and agency fund at the end of the fiscal year shall lapse to the general fund of the Commonwealth.

➔Section 284. KRS 198B.620 is amended to read as follows:

- (1) Subject to a hearing conducted in accordance with KRS Chapter 13B, the **commissioner**~~{executive director}~~ may refuse to renew or may suspend or revoke the license of a licensed fire protection sprinkler contractor or the certificate of a certificate holder to engage in the business of fire protection sprinkler systems or in lieu thereof establish an administrative fine not to exceed two thousand dollars (\$2,000) for any of the following reasons:
- (a) Gross incompetency or gross negligence in the installation, repair, alteration, maintenance, inspection, or addition to fire protection sprinkler systems, as determined by the **commissioner**~~{executive director}~~;
 - (b) Conviction of a felony;
 - (c) Fraudulent or dishonest practices while engaging in the business of fire protection sprinkler systems;
 - (d) Use of false evidence or misrepresentation in an application for a license or certificate;
 - (e) Signing or affixing his or her seal to any plans, prints, specifications or reports, which have not been prepared by him or her personally or under his or her immediate supervision, or in violation of KRS 198B.585;
 - (f) Knowingly violating any provisions of KRS 198B.550 to 198B.630 or the regulations issued thereunder.

- (2) The ***commissioner***~~[executive director]~~ shall revoke, subject to a hearing in accordance with KRS Chapter 13B, the license of a licensed fire protection sprinkler contractor or a certificate holder who engages in the fire protection sprinkler system business while his or her or its license is suspended.
- (3) Any person who engages in the drawings, installation, repair, alteration, extension, maintenance, or inspection of fire protection sprinkler systems or uses any title, sign, card, or device indicating or intending to indicate that he or she is a certified fire sprinkler contractor without having first obtained the requisite license or certificate shall be guilty of a Class A misdemeanor. Each violation shall be regarded as a separate offense.
- (4) Any license or certificate holder who is aggrieved by a final order of the ***commissioner***~~[executive director]~~ suspending or revoking a license may appeal to the Franklin Circuit Court or the Circuit Court of the county of the license or certificate holder's place of business in accordance with KRS Chapter 13B.

➔Section 285. KRS 198B.625 is amended to read as follows:

- (1) Whenever, in the judgment of the ***commissioner***~~[executive director]~~, any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute a violation of the provisions of KRS 198B.560 and 198B.565, the ***commissioner***~~[executive director]~~ may inform the Attorney General, who may make application to the Circuit Court of the county where the violation occurred for an order enjoining such acts or practices.
- (2) If a person is practicing without the requisite license or certificate required under KRS 198B.560 and 198B.565, the ***commissioner***~~[executive director]~~ shall inform the Attorney General of the unlawful practice within seven (7) days of receiving notice of its occurrence. The Attorney General may apply to the Circuit Court of the county where the violation occurred for an order enjoining the acts or practices.
- (3) Additionally, the ***commissioner***~~[executive director]~~ may issue a cease and desist order, the violation of which shall be cause for the imposition of an administrative fine, suspension, or revocation as provided for in KRS 198B.620. Upon showing via the ***commissioner***~~[executive director]~~ that such person has engaged, or is about to engage, in any such acts or practices, an injunction or restraining order, or such other order as may be appropriate, shall be granted by the Circuit Court. Any order of the Circuit Court of the county where the violation occurred shall be enforceable and shall be valid anywhere in this Commonwealth and the order of that court shall be reviewable as provided for in the Rules of Civil Procedure, in the case of other injunctions and restraining orders.

➔Section 286. KRS 198B.650, in the version effective until July 1, 2010, is amended to read as follows:

As used in KRS 198B.650 to 198B.689, unless the context requires otherwise:

- (1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;
- (2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;
- (3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;
- (4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;
- (5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation, or air conditioning mechanic;
- (6) "***Commissioner***~~[Executive director]~~" means the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Housing, Buildings and Construction;
- (7) "***Department***~~[Office]~~" means the ***Department***~~[Office]~~ of Housing, Buildings and Construction;
- (8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include

fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;

- (9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;
- (10) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;
- (11) "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;
- (12) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;
- (13) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;
- (14) "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to insure the proper operation, and the removal and replacement of component parts. "Routine maintenance of heating, ventilation, or air conditioning" shall not include the installation of complete new heating, ventilation, or air conditioning systems; and
- (15) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

➔Section 287. KRS 198B.650, in the version effective July 1, 2010, is amended to read as follows:

As used in KRS 198B.650 to 198B.689, unless the context requires otherwise:

- (1) "Air conditioning or cooling system" means a system in which heat is removed from air, surrounding surfaces, or both;
- (2) "Apprentice heating, ventilation, and air conditioning mechanic" means an individual in the process of learning the heating, ventilation, and air conditioning trade who assists and is under the supervision of a master heating, ventilation, and air conditioning contractor and a journeyman heating, ventilation, and air conditioning mechanic;
- (3) "Board" means the Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors;
- (4) "Burner service" means the servicing of oil or gas burners used for heating air or water for purposes other than the transmission of heat;
- (5) "Certificate" means a document issued by the board to an apprentice heating, ventilation, and air conditioning mechanic to assist a master heating, ventilation, and air conditioning contractor or a journeyman heating, ventilation, or air conditioning mechanic;
- (6) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction;
- (7) "~~Department~~~~[Office]~~" means the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction;
- (8) "Heating system" means a system in which heat is transmitted by radiation, conduction, convection, or a combination of any of these methods to air, surrounding surfaces, or both. "Heating system" does not include fireplaces and free-standing stoves not incorporated into a primary heating system, electric thermal storage units, electric ceiling cable heating systems, or electric baseboard heating units;
- (9) "Hydronic system" means a heating and cooling system using liquids to transmit or remove heat;
- (10) "Initial heating, ventilation, or air conditioning system" means the first or original heating, ventilation, or air conditioning system installed in a building;

- (11) "Journeyman heating, ventilation, and air conditioning mechanic" means an individual who is licensed by the board to perform heating, ventilation, and air conditioning work under the supervision, direction, and responsibility of a master heating, ventilation, and air conditioning contractor;
- (12) "Maintenance person or maintenance engineer" means a person who is a regular and bona fide full-time employee or agent of a property owner, property lessor, property management company, or firm, not in the heating, ventilating, and air conditioning business that has jurisdiction of property where the routine maintenance of heating, ventilating, and air conditioning is being performed, provided the maintenance shall not include replacement of heating, ventilation, or air conditioning systems;
- (13) "Major repair" means the complete replacement of any of the following heating, ventilation, or air conditioning equipment:
 - (a) Furnaces;
 - (b) Condensing units;
 - (c) Heat pumps;
 - (d) Fan coil units;
 - (e) Chiller systems; or
 - (f) Heating boiler systems not covered by KRS Chapter 236;
- (14) "Master heating, ventilation, and air conditioning contractor" means a heating, ventilation, and air conditioning contractor who is licensed by the board to advertise and practice heating, ventilation, and air conditioning contracting in this Commonwealth;
- (15) "Permit" means a document issued by the ~~department~~~~office~~ or its authorized agent allowing the installation of an original heating, ventilation, or air conditioning system;
- (16) "Practice of heating, ventilation, and air conditioning contracting" means the installation, maintenance, altering, remodeling, or repair of heating systems, ventilation systems, hydronic systems, burner service, or cooling systems;
- (17) "Routine maintenance of heating, ventilation, or air conditioning" means the routine and periodic servicing of heating, ventilation, and air conditioning systems, including cleaning, inspection, and adjustments to ensure the proper operation, and the removal and replacement of component parts. "Routine maintenance of heating, ventilation, or air conditioning" shall not include the installation of complete new heating, ventilation, or air conditioning systems; and
- (18) "Ventilation system" means a natural or mechanical system of supplying air to or removing air from any space.

➔Section 288. KRS 198B.652 is amended to read as follows:

- (1) The Kentucky Board of Heating, Ventilation, and Air Conditioning Contractors is hereby created, which shall be attached to the ~~Department~~~~Office~~ of Housing, Buildings and Construction for administrative purposes. The board shall consist of eight (8) members, one (1) of whom shall be a member of the Home Builders Association of Kentucky; one (1) of whom shall be a member of the Kentucky Society of Professional Engineers; one (1) of whom shall be a member of the Kentucky Association of Plumbing-Heating-Cooling Contractors; one (1) of whom shall be a member of the Mechanical Contractors Association of Kentucky; one (1) of whom shall be a heating, ventilation, or air conditioning contractor; one (1) of whom shall represent the public and shall not be associated with or financially interested in heating, ventilation, and air conditioning contracting; one (1) of whom shall be the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction or his or her designee; and one (1) of whom shall be a local government official or employee, who shall have a background in the heating, ventilation, or air conditioning industry. Each member of the board shall be a citizen and resident of the Commonwealth of Kentucky.
- (2) All members of the board, except those who represent the public, local government, the ~~Department~~~~Office~~ of Housing, Buildings and Construction, and the Kentucky Society of Professional Engineers, shall:
 - (a) ~~For initial appointments to these positions, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board;~~

- (b) ~~For subsequent appointments to these positions for terms beginning prior to July 1, 2000, have been actively engaged in the heating, ventilation, and air conditioning contracting business for not less than five (5) years immediately preceding the date of the appointment to the board and hold a valid license or certificate as a master heating, ventilation, and air conditioning contractor; and~~
- (c) ~~For subsequent appointments to these positions for terms beginning on or after July 1, 2000,] have been actively engaged in the heating, ventilation, and air conditioning contracting business as a master heating, ventilation, and air conditioning contractor for not less than five (5) years immediately preceding the date of the appointment to the board and shall hold a valid license or certificate for that status.~~
- (3) Except for the **commissioner**~~[executive director]~~, who shall serve for so long as he or she holds his or her appointment as **commissioner**~~[executive director]~~, the terms of the board members shall be as follows. The remaining seven (7) board members shall be appointed by the Governor with initial appointments for three (3) members for terms of three (3) years, two (2) members for terms of two (2) years, and two (2) members for terms of one (1) year. All appointments shall expire on June 30 of the last year of the terms. Thereafter, these members shall be appointed by the Governor for terms of three (3) years. No person shall serve more than two (2) full consecutive terms. Members shall serve until their successors are appointed.
- (4) The **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Housing, Buildings and Construction, or his or her designee, shall serve as chairman of the board. A majority of the board shall constitute a quorum to conduct business. The board shall meet at least once each calendar quarter in a location designated by the chairman or **commissioner**~~[executive director]~~. The board may meet upon special call by the chairman, the **commissioner**~~[executive director]~~, or a majority of the board.
- (5) Each member of the board, except the **commissioner**~~[executive director]~~, shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for all necessary expenses incurred in the performance of his or her official duties.
- (6) Vacancies in the membership of the board for any cause shall be filled by appointment by the Governor for the balance of the unexpired term.

➔Section 289. KRS 198B.658 is amended to read as follows:

- (1) The board shall issue a master heating, ventilation, and air conditioning contractor's license to any person who:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades as a journeyman heating, ventilation, and air conditioning mechanic for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor; and
 - (c) Has passed an examination prescribed by the board to determine competency to practice heating, ventilation, and air conditioning contracting.
- (2) The board shall issue a journeyman heating, ventilation, and air conditioning mechanic's license to any person who:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has been regularly and principally employed or engaged in the heating, ventilation, and air conditioning trades for not less than two (2) years, under the direction and supervision of a master heating, ventilation, and air conditioning contractor, or who prior to July 1, 1995, under the direction and supervision of a person who qualifies under KRS 198B.662; and
 - (c) Has passed an examination prescribed by the board to determine competency to install, maintain, and repair heating and cooling systems, heating and cooling service, burner service, and hydronic systems.
- (3) The board shall issue an apprentice heating, ventilation, and air conditioning mechanic's certificate to any person who is registered with the board.
 - (a) The board shall establish by administrative regulation the minimum number of hours of experience required by apprentices and shall maintain an apprentice register to credit an apprentice for hours worked under the supervision of a master heating, ventilation, and air conditioning contractor and journeyman heating, ventilation, and air conditioning mechanic. Experience gained under the

supervision of a Kentucky licensed master heating, ventilation, and air conditioning contractor while registered as an apprentice with the Kentucky ~~{Department of }Labor~~ **Cabinet, Department{Office}** of Workplace Standards, in cooperation with the United States Department of Labor, Bureau of Apprenticeship and Training shall be accepted toward the two (2) year experience requirement for a journeyman heating, ventilation, and air conditioning mechanic license.

- (b) The apprentice register shall include the name, address, Social Security number, employer, and dates of employment of the apprentice.
 - (c) The apprentice shall notify the board in writing of any change in address or employer.
 - (d) Apprentices and pre-apprentices shall not be required to pay fees for a certificate of registration or a registration renewal fee.
- (4) The satisfactory completion of one (1) academic year of a board-approved curriculum or one (1) year of professional training in heating, ventilation, and air conditioning work may be considered as equivalent to one (1) year of employment required by subsection (2)(b) of this section, not to exceed one (1) year.
 - (5) The satisfactory completion of one (1) academic year of teaching experience in a board-approved or state-approved technical education program in heating, ventilation, and air conditioning shall be considered as equivalent to one (1) year of employment, as required by subsection (1)(b) or (2)(b) of this section. No more than one (1) year of approved teaching experience may be used in meeting the requirements of subsection (1)(b) or (2)(b) of this section.

➔Section 290. KRS 198B.6673 is amended to read as follows:

- (1) The board shall promulgate administrative regulations to establish a reasonable schedule of fees to implement the program. The fees shall not exceed the actual costs for the administration of the program. The board shall also establish heating, ventilation, and air conditioning inspection protocols that ensure timely inspections and minimal interruption to the construction process.
- (2) The ~~department{office}~~, with the approval of the board, upon the request of any individual local governing entity or combination of entities with existing heating, ventilation, and air conditioning permitting and inspection programs as of January 1, 2007, shall authorize them to administer, carry out, and enforce the rules and regulations of the ~~department{office}~~ relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of these functions. Nothing in KRS 198B.6671 to 198B.6678 shall prohibit these entities from continuing to include major repairs or substantial alterations to a heating, ventilation, or air conditioning system within their permitting and inspection program in the absence of a state requirement, if major repairs or substantial alterations were included in the entities' inspection program prior to January 1, 2007. The ~~department{office}~~, with the approval of the board, may authorize any other individual local government entities or combination of entities to administer, carry out, and enforce the rules and regulations of the ~~department{office}~~ relating to heating, ventilation, and air conditioning installations, issue permits, and make inspections within their respective boundaries, or perform any portion of those functions. When authorization is granted, the ~~department{office}~~ shall enter into contractual arrangements with the local governing entities, which shall remain in effect as long as the local entity continues to operate its program pursuant to guidelines adopted by the board. A heating, ventilation, and air conditioning permit issued by an authorized local governing entity shall be considered a permit issued by the ~~department{office}~~, and all fees collected by the authorized local government related to the same shall be retained by that local government.
- (3) Any local governing entity enforcing the permitting and inspection requirements of KRS 198B.650 to 198B.689 pursuant to subsection (2) of this section may appoint and fix the compensation of the local governing entity's heating, ventilation, and air conditioning inspectors. No person shall perform the duties of a heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years' experience as a licensed heating, ventilation, and air conditioning journeyman mechanic or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of employment, the heating, ventilation, and air conditioning inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.

- (4) No local governing entity may impose any other additional heating, ventilation, and air conditioning inspection or permit requirements, or establish any local inspection or permitting program, unless those provisions were in place before January 1, 2007.

➔Section 291. KRS 198B.6674 is amended to read as follows:

All fees and fines collected and paid into the State Treasury shall be credited to a revolving trust and agency account and shall be used only for the administration and enforcement of KRS 198B.650 to 198B.689 and the repayment of moneys borrowed from surplus trust and agency accounts of the ~~department{office}~~. The moneys in the account are hereby appropriated by the General Assembly for the purposes set forth in KRS 198B.650 to 198B.689, and shall not lapse at the close of the fiscal year.

➔Section 292. KRS 198B.6675 is amended to read as follows:

- (1) For the purpose of enforcing the provisions of KRS 198B.650 to 198B.689, officers, agents, and inspectors of the ~~department{office}~~ or an authorized local government shall have the power and authority to enter upon permitted premises at all reasonable times with the consent of the property owner in order to make inspections, interview all persons, and request proof of heating, ventilation, and air conditioning licenses, installation permits, and other evidence of compliance. Officers, agents, and inspectors of the ~~department{office}~~ or an authorized local government shall have the authority to issue a stop-work order to any owner, agent, or occupant of real property whenever the heating, ventilation, and air conditioning system under inspection is found to be in violation of KRS 198B.650 to 198B.689 or the Uniform State Building Code's heating, ventilation, and air conditioning mechanical sections.
- (2) Notwithstanding the existence or pursuit of any other civil or criminal penalties, the ~~department{office}~~ and its officers, agents, and inspectors are authorized to institute and maintain actions to restrain and enjoin any violation of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, or the rules or the administrative regulations of the ~~department{office}~~ relating thereto.
- (3) City and county attorneys, Commonwealth's attorneys, and the Attorney General may, within their respective jurisdictions, represent the ~~department{office}~~ and its officers, agents, and inspectors in the enforcement of provisions of KRS 198B.650 to 198B.689, the Uniform State Residential Code, and the Uniform State Building Code.

➔Section 293. KRS 198B.6676 is amended to read as follows:

- (1) The Circuit Court where a violation occurs shall have jurisdiction and venue in all civil and injunctive actions instituted by the ~~department{office}~~ for the enforcement of the provisions of KRS 198B.650 to 198B.689 and orders issued thereunder.
- (2) The District Court where a violation occurs shall have jurisdiction and venue in all criminal actions for the enforcement of the provisions of KRS 198B.650 to 198B.689, the Uniform State Building Code, the Uniform State Residential Code, and orders issued thereunder.

➔Section 294. KRS 198B.6677 is amended to read as follows:

- (1) If an installation for which a permit is required does not meet the requirements of the Uniform State Building Code or the Uniform State Residential Code, whichever is applicable, or if the property owner refuses to allow an inspection, the inspector shall refuse to approve the work covered by the permit. The ~~department{office}~~ or authorized local government may prohibit the continued use of a heating, ventilation, and air conditioning system that an authorized inspector determines was improperly installed or altered if continued use threatens human life or if the property owner refused to allow an inspection.
- (2) An applicant aggrieved by an action of an inspector or the ~~department{office}~~ may request a hearing in accordance with KRS Chapter 13B.

➔Section 295. KRS 198B.6678 is amended to read as follows:

- (1) The ~~department{office}~~ shall appoint and assign heating, ventilation, and air conditioning inspectors to each county subject to the provisions of KRS 198B.650 to 198B.689 and in numbers sufficient to implement the provisions of KRS 198B.650 to 198B.689.
- (2) No person shall be appointed as a heating, ventilation, and air conditioning inspector unless he or she has at least six (6) years' experience as a licensed heating ventilation, and air conditioning journeyman mechanic or a licensed master heating, ventilation, and air conditioning contractor, unless he or she is a certified building

inspector who has successfully passed the examinations relating to heating, ventilation, and air conditioning systems. At the time of his or her appointment, the inspector shall be licensed or certified in accordance with the provisions of KRS 198B.650 to 198B.689.

➔Section 296. KRS 198B.668 is amended to read as follows:

- (1) No person, firm, or corporation shall practice heating, ventilation, and air conditioning contracting unless that person, firm, or corporation maintains general liability insurance in an amount not less than five hundred thousand dollars (\$500,000) and property damage insurance in an amount not less than three hundred thousand dollars (\$300,000) underwritten by an insurance carrier licensed and approved by the Kentucky ~~Department~~~~Office~~ of Insurance.
- (2) Proof of insurance shall be submitted to the board prior to issuance or renewal of a license.
- (3) Proof of insurance, as required by subsection (1) of this section, shall exempt licensees from the requirement of obtaining separate insurance in local jurisdictions under any local licensing laws.
- (4) No license shall be valid without insurance as provided in this section. Insurance carriers shall notify the board upon cancellation of the insurance of any licensee required to maintain insurance.

➔Section 297. KRS 198B.700 is amended to read as follows:

As used in KRS 198B.700 to 198B.738, unless otherwise provided:

- (1) "Applicant" means an individual who applies for a license as a home inspector;
- (2) "Board" means the Kentucky Board of Home Inspectors established in KRS 198B.704;
- (3) "Client" means a person who contracts with a licensed home inspector to obtain a home inspection and subsequent written home inspection report;
- (4) "~~Department~~~~Office~~" means the Kentucky ~~Department~~~~Office~~ of Housing, Buildings and Construction;
- (5) "Home inspection" means a visual analysis for the purpose of providing a professional opinion by a licensed home inspector, of the condition of a residential dwelling and the dwelling's attached garages and carports, any reasonable accessible installed components, and the operation of the dwelling's systems, including any controls normally operated by the owner of the dwelling, for systems and components in the standards of practice established by the board. Home inspection shall not include a code compliance inspection, or an inspection required under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder, or KRS 227.600 regarding manufactured homes;
- (6) "Home inspection report" means a written report prepared by a licensed home inspector for compensation and issued after a home inspection. The report shall include the following:
 - (a) A report on any system or component inspected that, in the professional opinion of the inspector, is significantly deficient;
 - (b) The inspector's recommendation to repair or monitor deficiencies reported under paragraph (a) of this subsection;
 - (c) A list of any systems or components that were designated for inspection in the standards of practice adopted by the board but that were not inspected; and
 - (d) The reason a system or component listed under paragraph (c) of this subsection was not inspected;
- (7) "Home inspector" means an individual who performs home inspections for compensation;
- (8) "Licensee" means a person who performs home inspections and who is licensed under KRS 198B.700 to 198B.738 as a home inspector; and
- (9) "Residential dwelling" means a structure consisting of at least one (1) but not more than four (4) units, each designed for occupancy by a single family, whether the units are occupied or unoccupied.

➔Section 298. KRS 198B.702 is amended to read as follows:

KRS 198B.700 to 198B.738 shall apply to an individual who conducts home inspections for compensation, but shall not apply to the following:

- (1) An individual who is acting within the scope of the individual's employment as:
 - (a) A code enforcement official for the state or a political subdivision of the state; or
 - (b) A representative of a state or local housing agency or an individual acting under the authority of the United States Department of Housing and Urban Development;
- (2) An individual who is acting within the scope of the individual's license as a licensed:
 - (a) Architect under KRS Chapter 323;
 - (b) Professional engineer under KRS Chapter 322;
 - (c) Plumbing contractor or journeyman plumber under KRS Chapter 318;
 - (d) Electrician, master electrician, or electrical contractor under KRS Chapter 227A;
 - (e) Liquefied petroleum gas dealers under KRS Chapter 234; or
 - (f) Master heating, ventilation, and air conditioning contractor, journeyman heating, ventilation, and air conditioning mechanic, or an apprentice heating, ventilation, and air conditioning mechanic under this chapter;
- (3) An individual licensed under KRS Chapter 324 as a real estate broker, broker-salesperson, or salesperson and is acting within the scope of the individual's license;
- (4) An individual who is licensed under KRS Chapter 324A as a real estate appraiser and is acting within the scope of the individual's license;
- (5) An individual who holds a license under KRS Chapter 304 as an insurance adjuster and is acting within the scope of the individual's license;
- (6) An individual who holds a permit, certificate, or license to:
 - (a) Use and apply pesticides; or
 - (b) Make diagnostic inspections and reports for wood destroying pests and fungi under KRS Chapter 217B and is acting within the scope of the individual's certificate or license;
- (7) An individual who holds a license from a political subdivision as a tradesperson or home builder and is acting within the scope of the individual's license;
- (8) An individual who holds a current and valid license, certificate, or permit under KRS 227.550 to 227.660 and is acting within the scope of the individual's license, certificate, or permit as a:
 - (a) Manufactured home retailer;
 - (b) Manufactured home certified retailer; or
 - (c) Manufactured home certified installer; or
- (9) Employees of the ~~Department~~~~Office~~ of Housing, Buildings and Construction or the State Fire Marshall's Office acting in their official capacities as inspectors of buildings and manufactured housing.

➔Section 299. KRS 198B.704 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Home Inspectors.
- (2) The board shall be composed of ten (10) members appointed by the Governor.
 - (a) Five (5) of the members shall:
 1. Have been actively engaged in performing home inspections in Kentucky for at least five (5) years immediately before the member's appointment to the board, or have completed one hundred (100) fee paid inspections per year over the last five (5) years;
 2. Be licensed by the board as a home inspector; and

3. Be selected from a list of fifteen (15) names submitted to the Governor, and compiled by a selection committee composed of eight (8) members, two (2) each from the American Society of Home Inspectors, the Kentucky Real Estate Inspectors Association, the National Association of Certified Home Inspectors, and the National Association of Home Inspectors, respectively.
- (b) The other five (5) board members shall be qualified as follows:
1. One (1) person shall be a home builder who has been actively engaged in home building in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Home Builders Association of Kentucky;
 2. One (1) person shall be a licensed real estate salesperson or broker under KRS Chapter 324 who has been actively engaged in selling, trading, exchanging, optioning, leasing, renting, managing, or listing residential real estate in Kentucky for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Association of Realtors;
 3. One (1) person shall represent the public at large and shall not be associated with the home inspection, home building, or real estate business other than as a consumer. This member shall be appointed by the Governor, but shall not be selected from a submitted list of names;
 4. One (1) person shall be a licensed manufactured home retailer, certified retailer, or certified installer who has been actively engaged in such an occupation for at least five (5) years immediately before the member's appointment to the board. This member shall be selected from a list of three (3) names submitted to the Governor from the Kentucky Manufactured Housing Institute; and
 5. The ~~commissioner~~~~Executive Director~~ of the ~~Department~~~~Office~~ of Housing, Buildings~~,~~ and Construction, or his or her designee shall be a member of the board.
- (3) A board member required to have a license in accordance with subsection (2)(a)3. of this section, shall obtain the requisite license in accordance with KRS 198B.712, on or before July 1, 2006. If a board member does not obtain the requisite license on or before July 1, 2006, the board member shall be considered to have resigned from the board on July 1, 2006, and the Governor shall fill the vacancy in accordance with this section. If a board member resigns for failure to obtain a home inspectors license, the actions of the board member and board before July 1, 2006, shall be valid and viable.
- (4) The members of the board shall be residents of Kentucky.
- (5) The initial terms of office for the nine (9) members appointed to the board by the Governor are as follows:
- (a) Three (3) members for a term of three (3) years;
 - (b) Three (3) members for a term of two (2) years; and
 - (c) Three (3) members for a term of one (1) year.
- Thereafter, all members shall serve a term of three (3) years, or until a successor has been duly appointed.
- (6) The initial terms begin July 15, 2004.
- (7) The Governor may remove a board member at any time for incompetence, neglect of duty, or unprofessional conduct.
- (8) If a vacancy occurs in the membership of the board, the Governor shall appoint an individual to serve for the remainder of the unexpired term who has like qualifications required of the member who created the vacancy.
- (9) A member shall not serve on the board for more than six (6) consecutive years.
- (10) Each year the board shall elect a member as chairperson and a member as vice chairperson.
- (11) The chairperson and vice chairperson shall serve in their respective capacities for no more than one (1) year consecutively and until a successor is elected.

- (12) The chairperson shall preside at all meetings at which the chairperson is present. The vice chairperson shall preside at meetings in the absence of the chairperson and shall perform other duties as the chairperson directs.
- (13) If the chairperson and vice chairperson are absent from a meeting of the board when a quorum exists, the members who are present may elect a presiding officer who shall serve as acting chairperson until the conclusion of the meeting or until the arrival of the chairperson or vice chairperson.
- (14) The board shall meet at least quarterly each calendar year upon the call of the chairperson or the written request of a majority of the members of the board.
- (15) The chairperson shall establish the date, time, and place for each meeting.
- (16) A majority of the current members of the board constitutes a quorum.
- (17) The affirmative vote of a majority of the members in attendance at a duly constituted meeting of the board is necessary for the board to take official action.
- (18) Each member of the board is entitled to a minimum salary of thirty-five dollars (\$35) per diem. Each member of the board is entitled to reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties as established under KRS 45.101.
- (19) A member shall be automatically removed from the board and a vacancy shall be created if a member fails to adhere to a duly adopted code of ethics of the board. Failure to adhere to such a code shall be determined by official action of the board.

➔Section 300. KRS 198B.708 is amended to read as follows:

The ~~department office~~ shall provide the board with:

- (1) Clerical or other assistants, including investigators, necessary for the proper performance of the board's duties;
- (2) A place to hold board meetings and hearings; and
- (3) Office equipment and office space for board records, staff, and other effects necessary to carry out the requirements of KRS 198B.700 to 198B.738.

➔Section 301. KRS 198B.732 is amended to read as follows:

- (1) An individual is guilty of a Class B misdemeanor if the individual:
 - (a) Performs or offers to perform home inspections for compensation without being licensed as a home inspector and without being exempt from licensing;
 - (b) Presents as the individual's own the license of another;
 - (c) Intentionally gives false or materially misleading information to the board or to a board member in connection with a licensing matter;
 - (d) Impersonates another licensee; or
 - (e) Uses an expired, suspended, revoked, or otherwise restricted license.
- (2) An individual is guilty of a Class A misdemeanor if the individual is convicted of a second or subsequent offense under this section within five (5) years after a prior conviction of an offense under this section.
- (3) When entering a judgment for an offense under this section, the court shall impose a service fee of an amount equal to any fee or other compensation earned by the individual in the commission of the offense.
- (4) Each transaction involving unauthorized activities as described in this section shall constitute a separate offense.
- (5) In all actions for the collection of a fee or other compensation for performing home inspections, the party seeking relief shall allege and prove that, at the time that the cause of action arose, the party seeking relief was not in violation of KRS 198B.712.
- (6) The *Housing, Buildings and Construction Legal Division within the Office of Legal Services in the Public Protection Cabinet* ~~general counsel for the Office of Housing, Buildings and Construction~~ shall act as the legal adviser for the board and provide any legal assistance necessary to carry out this section.

➔Section 302. KRS 200.658 is amended to read as follows:

- (1) There is hereby created the Kentucky Early Intervention System Interagency Coordinating Council to be comprised of twenty-five (25) members to be appointed by the Governor to serve a term of three (3) years. The members of the council shall be geographically and culturally representative of the population of the Commonwealth and conform to the requirements of federal law and regulations. For administrative purposes, the council shall be attached to the Early Childhood Development Authority. Pursuant to federal law and regulations, the membership shall be as follows:
- (a) At least five (5) members shall be the parents, including minority parents, of a child with a disability who is twelve (12) years of age or less, with at least one (1) being the parent of a child six (6) years of age or less. Each parent shall have knowledge of or experience with programs for infants and toddlers with disabilities;
 - (b) At least five (5) members shall be public or private providers of early intervention services to infants and toddlers with disabilities;
 - (c) At least one (1) member shall be a member of the Kentucky General Assembly;
 - (d) At least one (1) member shall be representative of an entity responsible for personnel preparation and may include personnel from an institution of higher education or preservice training organization;
 - (e) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Public Health;
 - (f) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Medicaid Services;
 - (g) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Mental Health and Mental Retardation Services;
 - (h) At least one (1) member shall be the commissioner or individual serving in a position of equivalent authority, or the designee, from the Department for Community Based Services;
 - (i) At least one (1) member shall be the commissioner or designee of the Department of Education;
 - (j) At least one (1) member shall be the ~~commissioner~~~~executive director~~ or designee of the ~~Department~~~~Office~~ of Insurance;
 - (k) At least one (1) member shall be a representative of the Commission for Children with Special Health Care Needs;
 - (l) At least one (1) member shall be a representative for the Head Start program; and
 - (m) At least one (1) member shall be a representative of the Education of Homeless Children and Youth program.
- (2) In matters concerning the Kentucky Early Intervention System, the council shall advise and assist the cabinet in areas, including but not limited to the following:
- (a) Development and implementation of the statewide system and the administrative regulations promulgated pursuant to KRS 200.650 to 200.676;
 - (b) Achieving the full participation, coordination, and cooperation of all appropriate entities in the state, including, but not limited to, individuals, departments, and agencies, through the promotion of interagency agreements;
 - (c) Establishing a process to seek information from service providers, service coordinators, parents, and others concerning the identification of service delivery problems and the resolution of those problems;
 - (d) Resolution of disputes, to the extent deemed appropriate by the cabinet;
 - (e) Provision of appropriate services for children from birth to three (3) years of age;
 - (f) Identifying sources of fiscal and other support services for early intervention programs;
 - (g) Preparing applications to Part C of the Federal Individuals with Disabilities Education Act (IDEA) and any amendments to the applications;

- (h) Transitioning of infants and toddlers with disabilities and their families from the early intervention system to appropriate services provided under Part B of the Federal Individuals with Disabilities Education Act (IDEA) operated by the state Department of Education; and
 - (i) Developing performance measures to assess the outcomes for children receiving services.
- (3) The council shall prepare no later than December 30 of each year an annual report on the progress toward and any barriers to full implementation of the Kentucky Early Intervention System for infants and toddlers with disabilities and their families. The report shall include recommendations concerning the Kentucky Early Intervention System, including recommendations of ways to improve quality and cost effectiveness, and shall be submitted to the Governor, Legislative Research Commission, and the Secretary of the United States Department of Education.
 - (4) No member of the council shall cast a vote on any matter which would provide direct financial benefit to that member or otherwise give the appearance of the existence of a conflict of interest.

➔Section 303. KRS 205.619 is amended to read as follows:

- (1) By October 30, 2008, the Cabinet for Health and Family Services shall submit to the Center for Medicare and Medicaid Services an amendment to the State Medicaid Plan to permit the establishment of a Kentucky Long-Term Care Partnership Insurance Program that provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments made to or on behalf of an individual who is a beneficiary of the partnership insurance program that meets the requirements of KRS 304.14-640 and 304.14-642.
- (2) The secretary of the cabinet shall notify in writing the executive director of the **Department**~~{Office}~~ of Insurance and the co-chairs of the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Banking and Insurance within two (2) business days of the submission of the plan amendment and of the receipt of the response by the federal agency.
- (3) Upon approval by the federal government of the state plan amendment, the Department for Medicaid Services, in conjunction with the **Department**~~{Office}~~ of Insurance, shall establish the Kentucky Long-Term Care Partnership Insurance Program in accordance with KRS 304.14-640 and 304.14-642.
- (4) The department shall:
 - (a) Provide consultation, information, and materials to the **Department**~~{Office}~~ of Insurance to assist in the development and issuance of uniform training materials in accordance with KRS 304.14-642(4); and
 - (b) Collaborate in the preparation of the report required in KRS 304.14-642(6).

➔Section 304. KRS 207.130 is amended to read as follows:

As used in KRS 207.140 to 207.240 unless the context otherwise requires:

- (1) "Persons" means one (1) or more individuals, partnerships, municipalities, the state, or other political subdivisions within the state, associations, labor organizations, or corporations.
- (2) "Physical disability" means the physical condition of a person whether congenital or acquired, which constitutes a substantial disability to that person and is demonstrable by medically accepted clinical or laboratory diagnostic techniques.
- (3) "Employer" means a person or governmental unit or officer in this state having in his or its employ eight (8) or more individuals; and any person acting in the interest of an employer, directly or indirectly.
- (4) "Labor organization" means a labor organization and an agent of such an organization, and includes an organization of any kind, an agency or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and a conference, general committee, joint system or board, or joint council so engaged which is subordinate to a national or international labor organization.
- (5) "Unfair employment practice" means an act that is prohibited under KRS 207.150, 207.160 or 207.170.
- (6) "**Commissioner**" ~~means~~~~{Executive director" shall mean}~~ the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Workplace Standards, under the direction and supervision of the **secretary**~~{commissioner}~~ of the ~~{Department of}~~Labor **Cabinet**.

- (7) **"Department"** means ~~{Office" shall mean}~~ the **Department**~~{Office}~~ of Workplace Standards in the ~~{Department of}~~ Labor Cabinet.

➔ Section 305. KRS 207.200 is amended to read as follows:

- (1) The Kentucky **Department**~~{Office}~~ of Workplace Standards is authorized to enforce the employment provisions of KRS 207.130 to 207.240 in conjunction with the State Attorney General's office and the state and local courts.
- (2) Any individual with a disability requesting the intervention of the Kentucky **Department**~~{Office}~~ of Workplace Standards under this section shall, within one hundred and eighty (180) days of the alleged incident, submit with his request a signed, sworn statement specifying and describing the disability or disabilities which affect him. This statement may be used by the **commissioner**~~{executive director}~~ of workplace standards or his representative to determine if the individual does, or does not, have a "physical disability" as defined in KRS 207.130(2). If the **commissioner**~~{executive director}~~ of workplace standards or his representative determines that the aggrieved individual does have a disability which falls under the definition in KRS 207.130(2), the **Department**~~{Office}~~ of Workplace Standards shall provide a copy of the aggrieved individual's signed statement to the employer for his inspection.
- (3) In the event the employer wishes to challenge the validity of the statement, he shall so notify the **commissioner**~~{executive director}~~ of workplace standards, who shall in turn notify the aggrieved individual. If the aggrieved individual wishes the **Department**~~{Office}~~ of Workplace Standards to continue its involvement with the case, he shall be required to submit to the **commissioner**~~{executive director}~~ of workplace standards, within thirty (30) days of such notice, a signed, sworn statement from a licensed physician of his choice, or from one of the state or federal agencies serving individuals with disabilities:
 - (a) Specifying and describing the disability or disabilities affecting the individual; and
 - (b) Indicating any specific type of employment for which such disability should be considered a bona fide or necessary reason for limitation or exclusion.
- (4) (a) The state agencies which may be consulted under subsection (3) of this section may include, but are not limited to, the following:
 1. Department of Education, Office of Vocational Rehabilitation Services;
 2. Cabinet for Health and Family Services, Department for Public Health;
 3. Cabinet for Health and Family Services, Department for Disability Determination Services.
- (b) The **commissioner**~~{executive director}~~ of workplace standards, in conjunction with the agencies designated in this subsection, is authorized to adopt appropriate regulations governing the issuance and setting the standards of determinations of ability or disability;
- (c) The agencies designated in this subsection, and any other state agency which serves individuals with disabilities and which the **commissioner**~~{executive director}~~ of workplace standards deems proper, shall cooperate to the fullest with the **Department**~~{Office}~~ of Workplace Standards in issuing a statement of disability and limitations as specified in subsection (3) of this section within twenty (20) days of the date the individual with a disability presents himself before such agency for examination.
- (5) (a) For the purposes of KRS 207.130 to 207.240, the **commissioner**~~{executive director}~~ of workplace standards, or his authorized representative, shall have the power to enter the place of employment of any employer, labor organization, or employment agency to inspect and copy employment records, to compare character of work and operations on which persons employed by him are engaged, to question such persons, and to obtain such other information as is reasonably necessary to make a preliminary determination that the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied;
- (b) In the event that a preliminary determination is made that the aggrieved individual is not fully capable of carrying out the duties of the job which he or she had been denied, the aggrieved individual and the employer shall both be so advised;
- (c) The aggrieved individual, within ten (10) days of receiving such notification, may file with the **Department**~~{Office}~~ of Workplace Standards an application for reconsideration of the determination.

Upon such application, the ~~commissioner~~~~executive director~~ of workplace standards or his representative shall make a new determination within ten (10) days whether the aggrieved individual is, or is not, fully capable of carrying out the duties of the job which he or she had been denied. If the determination is again made that the aggrieved individual is not fully capable of carrying out these duties, the aggrieved individual and the employer shall both be so advised;

- (d) In the event that a preliminary determination has been made that the aggrieved individual is fully capable of carrying out the duties of the job which he or she had been denied, the employer, labor organization, or employment agency shall be so advised and encouraged to make an immediate offer to the aggrieved individual of the position which he or she had been denied. In the event the position has already been filled, the employer, labor organization, or employment agency shall be encouraged to make an offer to the aggrieved individual of the next available position for which he or she is qualified.

➔Section 306. KRS 207.210 is amended to read as follows:

- (1) If the employer, labor organization, or employment agency continues to refuse employment to the aggrieved individual, the aggrieved individual may file a formal administrative complaint with the ~~Department~~~~Office~~ of Workplace Standards and, upon that filing, the ~~commissioner~~~~executive director~~ of workplace standards or his representative shall conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) If the ~~Department~~~~Office~~ of Workplace Standards determines that the employer, labor organization, or employment agency has not engaged in an unfair employment practice, it shall after the hearing issue a final order dismissing the complaint.
- (3) If the ~~Department~~~~Office~~ of Workplace Standards determines that the employer, labor organization, or employment agency has engaged in an unfair employment practice, the department shall issue a final order requiring the employer, labor organization, or employment agency to cease and desist from the unlawful practice and to take affirmative action as in the judgment of the department will carry out the purposes KRS 207.130 to 207.240.
- (4) Affirmative action ordered under this section may include, but is not limited to:
 - (a) Hiring, reinstatement, or upgrading of employees with or without back pay. Interim earnings or amounts earnable with reasonable diligence by the aggrieved individual shall operate to reduce the back pay otherwise allowable;
 - (b) Admission or restoration of the aggrieved individual to union membership, admission to or participation in a guidance program, apprenticeship training program, on-the-job training program, or other occupational training or retraining program, and the utilization of objective criteria in the admission of individuals to these programs;
 - (c) The extension to all individuals of the full and equal enjoyment of the advantages, facilities, privileges, and services of the employer;
 - (d) Reporting as to the manner of compliance;
 - (e) Posting notices in conspicuous places in the employer's place of business in form prescribed by the ~~Department~~~~Office~~ of Workplace Standards.

➔Section 307. KRS 207.230 is amended to read as follows:

Notwithstanding the provisions of KRS 207.200 and 207.210, citizen suits may be commenced under the following terms and conditions:

- (1) Any person deeming himself injured by any act in violation of the provisions of this chapter shall have a civil cause of action in Circuit Court to enjoin further violations, and to recover the actual damages sustained by him, and upon judicial finding of any violation of KRS 207.150 to 207.190, shall recover the costs of the law suit, including a reasonable fee for his attorney of record, all of which shall be in addition to any other remedies contained in KRS 207.130 to 207.240.
- (2) Notice. No action may be commenced:
 - (a) Prior to thirty (30) days after the plaintiff has given notice of the violation to the ~~commissioner~~~~executive director~~ of workplace standards.

- (b) If the ***commissioner***~~[executive director]~~ of workplace standards has commenced and is diligently prosecuting a civil action to require compliance with KRS 207.130 to 207.240; however, the aforementioned conditions do not prohibit citizen-initiated civil enforcement action contemporaneously with criminal enforcement efforts by the state.
- (c) In any civil action under this section, the ***commissioner***~~[executive director]~~ of workplace standards, under the direction of the ***secretary***~~[commissioner]~~ of the ~~[Department of]~~Labor ***Cabinet***, if not a party, may intervene only with consent of the person bringing the action. If the administrator is allowed to intervene, he may not alter the cause of action, delay the proceedings, or make any decisions, settlement agreements, or agree to any consent orders or enforcement proceeding without the informed consent of the person initiating the citizens enforcement action.

➔Section 308. KRS 211.285 is amended to read as follows:

- (1) There is hereby created the "Malt Beverage Educational Fund" which shall provide moneys on a matching basis for educational information and materials that deter or eliminate underage drinking. The fund shall consist of moneys generated from one percent (1%) of the excise tax collected from the sale and distribution of malt beverages under KRS 243.720 and one percent (1%) of the wholesale tax collected from distributors of malt beverages under KRS 243.884.
- (2) The "Malt Beverage Educational Fund" shall be established in the State Treasury as a trust and revolving account under KRS 45.253. Moneys in the account shall be distributed by the State Treasurer to the Malt Beverage Educational Corporation, a nonprofit organization that is organized under the laws of this state, upon the authorization of the secretary of the Cabinet for Health and Family Services. The moneys shall be awarded to the corporation solely to fund educational programs to deter or eliminate underage drinking.
- (3) The secretary of the Cabinet for Health and Family Services shall authorize that moneys from the fund be disbursed to the corporation upon the secretary's receipt of a certification from the corporation showing the moneys the corporation has received from malt beverage distributors and other private sources since the last certification. The moneys disbursed from the fund shall be equal to the contributions that the corporation has received from its members and other private sources during that period. The moneys in the fund shall be disbursed in accordance with a schedule established by the secretary, and shall be disbursed until the moneys in the fund are exhausted or until the moneys in the fund lapse in accordance with subsection (4) of this section, whichever comes first.
- (4) Moneys that are credited to the fund and not issued to the corporation shall lapse at the end of the fiscal year and shall be returned to the general fund.
- (5) As a condition of receiving the governmental funds, the corporation's board of directors shall include the following among its directors:
 - (a) The Governor or his or her designee;
 - (b) The Attorney General or his or her designee;
 - (c) The President of the Senate or his or her designee;
 - (d) The Speaker of the House or his or her designee;
 - (e) The secretary of the Cabinet for Health and Family Services or his or her designee; and
 - (f) The ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Alcoholic Beverage Control or his or her designee.
- (6) All expenditures of moneys from the fund shall be approved by a majority of those persons set out in subsection (5)(a) to (f) of this section. If the moneys from the fund are not expended in their entirety, any moneys that remain unused by the corporation at the end of the fiscal year shall be returned to the general fund.
- (7) Any moneys from the fund that are not expended shall be returned to the general fund upon the dissolution of the corporation.
- (8) Any high school in the Commonwealth of Kentucky that was registered with the Department of Education as of July 1, 1997, may make an application to the Malt Beverage Education Corporation by February 28 of each

year and shall be granted a minimum of five hundred dollars (\$500) annually from the funds contributed by the Malt Beverage Educational Fund for the single purpose of supporting "Project Graduation" events.

➔Section 309. KRS 211.345 is amended to read as follows:

The Department for Public Health in the Cabinet for Health and Family Services shall establish a program for testing, upon request of the owner or user of the water supply, private water supplies for bacterial and chemical contamination, and for educating the public about proper siting and drilling of wells and treatment of wells and other private water supplies. The program shall consist of the following elements:

- (1) The development of policies, in conjunction with the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, for testing private water supplies and using relevant information in a groundwater database;
- (2) The development of a data collection system, in conjunction with the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, which shall contain the results of water sample tests and information on well location sufficient to locate the wells on an official map;
- (3) The development of a private water supply user's manual to be made available to the public; and
- (4) The development of a technical assistance program for private water supply users.

➔Section 310. KRS 211.350 is amended to read as follows:

- (1) The cabinet shall regulate the construction, installation, or alteration of on-site sewage disposal systems except for systems that have a surface discharge. The cabinet shall create and maintain an electronic database for Kentucky on-site wastewater systems information, which for each system shall include but not be limited to permit application date, permit application status, system installation date, system type, latitude and longitude of system, records of system plan and site evaluations, inspection dates, and the condition of system at time of inspection. The cabinet shall within twenty-four (24) months of July 12, 2006, annually report to the Governor and the Legislative Research Commission on the status of on-site systems statewide, including numbers and types of systems, summaries of conditions of systems, geographic distribution, observations of trends, and recommendation for future protection of public health and safety with on-site sewage disposal systems.
- (2) The Department for Public Health shall maintain a current list of approved and experimental on-site wastewater treatment technologies and shall make this list available, and guidance and expertise, to local health departments, which will provide it to on-site wastewater professionals and permit applicants.
- (3) Site evaluations shall be completed by the local health department within fifteen (15) working days of receipt of the application. If further information is required, the local health department shall promptly notify the applicant and shall have an additional ten (10) working days after that submittal of additional information in which to evaluate and issue or deny the permit. It shall be the responsibility of the property owner or owner's agent to protect and maintain the suitability of an approved site and to notify the local health department for a reinspection if site conditions substantively change. If a site previously determined to be suitable is thereafter declared unsuitable by the local health department, remedial measures shall be provided in writing to the property owner or owner's agent within fifteen (15) working days.
- (4) After the conclusion of the site evaluation, the local health department shall, upon request, provide a list of all options that may be approved for the property, including new and emerging technologies. It shall be the responsibility of the owner of advanced treatment, alternative, experimental, or new and emerging technology systems to contract with a management entity, certified system operator, or trained system operator to develop and implement an approved operations and maintenance plan specific to, and appropriate for, the approved system.
- (5) No person, firm, or corporation shall construct, install, alter, or cause to be constructed, installed, or altered, any on-site sewage disposal system subject to regulation by the cabinet without having first obtained an on-site sewage disposal permit from the local health department. In lieu of inspection and certification by the local health department a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky may perform site evaluations and approve system designs for an on-site sewage disposal system for the person, firm, or corporation and apply for the permit from the local health department. The final systems installation inspection shall be performed by the local health department as soon as practicable. All applicable provisions of KRS Chapter 322 shall govern the licensed professional engineer. A professional engineer shall not perform site evaluations, approve system designs, or certify system installations of an on-site sewage disposal system on property owned by himself, an employee, or a partner of an engineering firm by which he is

employed, or on property owned by the engineering firm. Nothing in this section shall be construed to deny a farmstead owner the right to obtain a permit. Except for farmstead owners on their own property, the construction, installation, or alteration shall be performed only by a person certified by the cabinet pursuant to KRS 211.357.

- (6) A local health department that issues a permit for an on-site sewage disposal system based on the site evaluation or system design of a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky shall not be held liable for any defects or failures of the on-site sewage disposal system due to the site evaluation or system design.
- (7) No person, firm, or corporation shall use or continue to use or permit the use or continued use of any on-site sewage disposal system that is constructed, installed, or altered under an on-site sewage disposal permit if the cabinet or local health department through a duly authorized inspector, employee, agent, or licensed professional engineer in private practice licensed by the Commonwealth of Kentucky finds that the system was not constructed, installed, or altered in conformance with the permit and regulations issued by the cabinet.
- (8) No certified electrical inspector acting under authority of KRS 227.491 shall issue the certificates of approval of temporary or permanent electrical wiring unless the inspector has in his or her possession a notice of release as described in paragraphs (a) and (b) of this subsection. The inspector shall record the number of the notice of release on the certificate of approval. The person requesting approval of electrical wiring shall be responsible for obtaining the release from the local health department and providing it to the electrical inspector. This requirement shall only apply to dwellings, mobile homes, manufactured housing, buildings, or other structures that are constructed or installed after July 15, 1998. This requirement shall not apply to structures that do not have sewage waste fixtures or to those that are connected to a sewage waste disposal system approved by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. Nothing in this section shall be construed to deny the continued use of any electrical service connected to wiring approved prior to July 15, 1998.
 - (a) An initial notice of release to allow temporary electrical power for construction shall be issued to the property owner or owner's agent by the local health department upon the application for a site evaluation.
 - (b) A final notice of release to allow for permanent electrical power shall be issued to the property owner or owner's agent by the local health department upon approval of an on-site sewage disposal plan.
 - (c) This section shall not apply to any county that has adopted the Uniform State Building Code and has and enforces on-site sewage disposal permitting.
- (9) All applications for on-site sewage disposal permits shall be accompanied by plans and specifications for the proposed system, including results of soils tests and other information as directed by the cabinet by regulation. If the site evaluation or approval of the system design is performed by a licensed professional engineer in private practice licensed by the Commonwealth of Kentucky, the application shall be accompanied by a statement by the engineer that he has met the requirements of the regulations issued by the cabinet for site evaluation and system design. Any action to deny an application shall be subject to appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (10) The cabinet shall fix a schedule of fees for the functions performed by the cabinet relating to the regulation of on-site sewage disposal systems. The fees shall be designed to fully cover the cost of the service performed but shall not exceed the cost of the service performed. Fees payable to the cabinet shall be paid into the State Treasury and credited to a trust and agency fund to be used by the cabinet in carrying out its responsibilities relating to the regulation of on-site sewage disposal systems. No part of the fund shall revert to the general fund of the Commonwealth.
- (11) Any regulation relating to on-site sewage disposal that is in effect on July 15, 1992, shall remain in effect until altered by the secretary. The secretary may issue additional regulations necessary to carry out the purposes of this section.
- (12) Nothing in this section shall authorize or allow the cabinet to inspect or take enforcement action against on-site sewage disposal systems installed on farmsteads prior to July 15, 1992, or modifications to those systems unless the actions are determined in writing by the cabinet, upon a written, verified complaint, to be necessary to prevent imminent harm or damage to the safety, life, or health of a person. In this instance, the cabinet shall

deliver to the landowner a copy of the written determination and the verified complaint prior to the commencement of the inspection or enforcement action.

➔Section 311. KRS 211.365 is amended to read as follows:

In order to provide for the issuance of plumbing installation permits pursuant to KRS Chapter 318 and on-site sewage disposal permits pursuant to this chapter in a manner convenient to the public, the Cabinet for Health and Family Services shall provide office space in the local departments of health for the district plumbing inspector without fee or charge to the **Department**~~{Office}~~ of Housing, Buildings and Construction.

➔Section 312. KRS 211.481 is amended to read as follows:

- (1) The Kentucky Cardiovascular Disease Initiative (KCDI) is hereby created with the program goals that include but are not limited to:
 - (a) Preventing and reducing the prevalence of cardiovascular disease in Kentucky through early detection and education;
 - (b) Reducing the incidence of deaths from cardiovascular disease in Kentucky;
 - (c) Measurably reducing health-care costs associated with cardiovascular disease in Kentucky;
 - (d) Conducting research and developing new intellectual property and ancillary health businesses that create new knowledge-based businesses in Kentucky;
 - (e) Improving access to best practices and protocols for cardiovascular disease for all Kentuckians through an e-health network; and
 - (f) Assisting in securing state, federal, and private funding to stimulate health information capacities.
- (2) The KCDI shall be governed by a board that shall be appointed by the secretary of the Cabinet for Health and Family Services, except as provided in paragraphs (q) to (s) of this subsection, no later than August 1, 2007, and composed of:
 - (a) One (1) member shall be appointed by the secretary of the Cabinet for Health and Family Services who shall serve as chair of the KCDI during the first year, and this individual shall remain as a board member for two (2) additional years. The board shall elect its chair after the first year and may reelect the current chair;
 - (b) The president of the University of Louisville, or a designee;
 - (c) The president of the University of Kentucky, or a designee;
 - (d) The secretary or designee of the Cabinet for Health and Family Services;
 - (e) The commissioner or designee of the Department of Commercialization and Innovation;
 - (f) The commissioner or designee of the Department for Public Health;
 - (g) The **commissioner**~~{executive director}~~ or designee of the **Department**~~{Office}~~ of Insurance;
 - (h) The chair of the Kentucky e-Health Network Board, or a designee;
 - (i) One (1) representative of a Kentucky comprehensive university and one (1) representative of the Kentucky Community and Technical College System;
 - (j) Two (2) physicians with experience in research and treatment of cardiovascular disease, one (1) recommended by the dean of the medical school at the University of Louisville and one (1) recommended by the dean of the medical school at the University of Kentucky;
 - (k) The executive director of the Kentucky Primary Care Association;
 - (l) The president of the Kentucky Academy of Family Physicians;
 - (m) One (1) member of a Kentucky chapter of the American Heart Association;
 - (n) Four (4) members representing the business community, from a list of eight (8) persons recommended by the Kentucky Chamber of Commerce;

- (o) Four (4) members representing private sector hospitals that treat the greatest number of cardiology patients as measured by the number of MDC 5 discharges and as reported by COMPdata or its successor;
 - (p) One (1) representative from a freestanding pediatric teaching hospital;
 - (q) One (1) at-large member appointed by the Governor;
 - (r) Two (2) members of the Senate, one (1) representing each major political party, appointed by the President of the Senate; and
 - (s) Two (2) members of the House of Representatives, one (1) representing each major political party appointed by the Speaker of the House.
- (3) (a) Members serving under paragraphs (b) to (h), (k), and (l) of subsection (2) of this section shall serve by virtue of their positions and shall not be subject to term limits.
 - (b) Members appointed under paragraphs (i) and (j) of subsection (2) of this section shall serve three (3) year terms and may be reappointed to no more than two (2) consecutive terms. Members shall continue to serve until a successor is appointed.
 - (c) Members appointed under paragraphs (m) to (p) of subsection (2) of this section shall serve staggered terms that shall not exceed three (3) year terms. Members shall continue to serve until a successor is appointed.
 - (d) Members appointed under paragraphs (q), (r), and (s) of subsection (2) of this section shall serve three (3) year terms.
- (4) The KCDI board shall meet at least quarterly or upon the call of the chair. All members may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement but shall not be otherwise compensated for duties associated with the board.
 - (5) The KCDI board may appoint committees, subcommittees, advisory councils, or other groups to assist in the furtherance of the goals of the KCDI. Members appointed under this subsection need not be members of the KCDI board and may receive reimbursement for expenses related to attendance at meetings and official functions of the board in accordance with state administrative regulations relating to travel reimbursement but shall not be otherwise compensated for duties associated with the board.
 - (6) No member of the board shall be subject to personal liability for a loss sustained or damage suffered as a result of board action or inaction.
 - (7) The KCDI board shall be attached to the Cabinet for Health and Family Services for administrative purposes.
- ➔Section 313. KRS 211.852 is amended to read as follows:
- (1) The location of a nuclear waste disposal facility in the Commonwealth of Kentucky shall require prior approval by a majority of the members of the Kentucky House of Representatives, a majority of the members of the Kentucky Senate, and the approval of the Governor of Kentucky.
 - (2) Before an application to locate a nuclear waste disposal facility in Kentucky can be submitted for approval to the Kentucky General Assembly, it must first receive the approval of the secretary of the Cabinet for Health and Family Services and the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet. It shall be the responsibility of the Cabinet for Health and Family Services and the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet to ensure that a comprehensive environmental impact statement is submitted and that public hearings are held in the county in which it is proposed to locate a nuclear waste disposal facility.
 - (3) This section shall not apply to nuclear waste disposal facilities in existence prior to June 17, 1978.
- ➔Section 314. KRS 211.894 is amended to read as follows:
- (1) The Governor, the secretary of the Cabinet for Health and Family Services, the secretary of the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet or any other state agency shall not enter into a contract or an agreement of any kind with the federal government relinquishing ownership of a low-level

nuclear waste disposal site located in the Commonwealth without prior approval of a majority of the members of the Kentucky House of Representatives and a majority of the members of the Kentucky Senate.

- (2) It shall be the policy of the Commonwealth to retain final authority for approving or disapproving the locating, opening, closing, or reopening of a nuclear waste disposal site or facility within its borders.
- (3) The Governor or appropriate state agencies may enter into contracts and agreements with the federal government relating to nuclear waste disposal sites located in the Commonwealth on July 15, 1980, that do not violate the provisions of subsections (1) and (2) of this section.

➔Section 315. KRS 211.896 is amended to read as follows:

- (1) Any nuclear waste disposal facility, licensed and regulated by the Kentucky Cabinet for Health and Family Services, which is closed either because there is doubt as to the public safety of the site, the integrity of the site, the economic feasibility of financing perpetual care and maintenance and decommissioning of the site, or compliance with cabinet regulations, shall not reopen without:
 - (a) A finding of fact by the secretary of the Cabinet for Health and Family Services and the secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet that all reasons for site closure have been addressed and resolved such that there is no longer any doubt as to the public safety or integrity of the site or the ability to adequately finance the perpetual care and maintenance and decommissioning of the site or the compliance of the site with cabinet regulations; and
 - (b) A public hearing and the taking of public comment on such findings of fact; and
 - (c) Approval of a majority of the members of the House of Representatives and a majority of the members of the Senate; and
 - (d) Approval of the Governor.
- (2) The Cabinet for Health and Family Services shall be responsible for organizing the public hearings, which shall be held in the county in which the nuclear waste disposal facility is located and shall be at a time and place convenient for public participation. Adequate notification shall be given to the public of the intention to reopen a nuclear waste disposal site and the cabinet shall make available to the public the data and information upon which its decision to recommend approval of reopening of the site is based.

➔Section 316. KRS 211.898 is amended to read as follows:

The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet shall proceed toward the stabilization and decommissioning of any nuclear waste facility owned by the Commonwealth on July 15, 1980, as expeditiously as is reasonably possible in order to place the facility in such a condition that active ongoing maintenance is eliminated and only surveillance and monitoring are required.

➔Section 317. KRS 216.265 is amended to read as follows:

- (1) The Kentucky e-Health Network Board is created and is attached to the Cabinet for Health and Family Services for administrative and technical support purposes.
- (2) The board shall consist of the following voting members:
 - (a) President, or a designee, of the University of Kentucky, who shall serve as co-chair of the board;
 - (b) President, or a designee, of the University of Louisville, who shall serve as co-chair of the board;
 - (c) Commissioner, or a designee, of the Department for Public Health;
 - (d) Commissioner, or a designee, of the Department for Medicaid Services;
 - (e) Executive director, or a designee, of the Commonwealth Office of Technology; and
 - (f) Nine (9) at-large members appointed by the Governor as follows:
 1. One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 2. One (1) member engaged in the business of health insurance who is employed by a company that has its headquarters in Kentucky;

3. Two (2) members from a list of four (4) individuals recommended by the Kentucky Hospital Association, one (1) representing rural hospitals, and one (1) representing urban hospitals;
 4. Two (2) physicians actively engaged in the practice of medicine in the Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 5. One (1) member from a company with at least one thousand (1,000) employees selected from a list of four (4) individuals submitted by the Associated Industries of Kentucky;
 6. One (1) member with experience as a physician practice manager; and
 7. One (1) member at large.
- (3) The board shall consist of the following ex officio members who may vote, but shall not be counted toward a quorum:
- (a) Commissioner, or a designee, of the Department of Commercialization and Innovation;
 - (b) President, or a designee, of the Council on Postsecondary Education;
 - (c) Secretary, or a designee, of the Cabinet for Health and Family Services;
 - (d) **Commissioner**~~Executive director~~, or a designee, of the **Department**~~Office~~ of Insurance;
 - (e) Two (2) members of the Senate who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the President of the Senate; and
 - (f) Two (2) members of the House of Representatives who are members of the Interim Joint Committee on Health and Welfare or the Interim Joint Committee on Banking and Insurance, appointed by the Speaker of the House.
- (4) Members of the board shall serve a term of four (4) years and may serve two (2) consecutive terms.
- (5) At the end of a term, a member of the board shall continue to serve until a successor is appointed. A member who is appointed after a term has begun shall serve the rest of the term and until a successor is appointed. A member of the board who serves two (2) consecutive full four (4) year terms shall not be reappointed for four (4) years after completion of those terms. Members designated in subsection (2)(a) to (e) of this section and members designated in subsection (3) of this section shall serve on the board only while holding their respective titles.
- (6) A majority of the full membership of the board shall constitute a quorum.
- (7) The board may employ staff or contract with consultants necessary for the performance of the duties of the board, subject to the appropriation of funds.
- (8) No member of the board shall be subject to any personal liability or accountability for any loss sustained or damage suffered on account of any action or inaction of the board.
- (9) Members of the board and all committees, except the advisory group created in KRS 216.267(2), shall be entitled to reimbursement for actual and necessary expenses when carrying out official duties of the board in accordance with state administrative regulations relating to travel reimbursements. The board shall meet at least monthly.
- (10) The board may appoint committees or subcommittees with the charge of investigating and making recommendations to the board on specific aspects of the Ke-HN, including but not limited to evidence-based clinical decision support, security of protected information, electronic data interchange, and clinical practice software packages, including the feasibility of developing a software purchasing alliance to decrease the cost of software and tax incentives to encourage members of the network to purchase software deemed by the board to meet the standards of KRS 216.267. The board may appoint the following committees:
- (a) Clinical Decision Support Committee;
 - (b) Privacy and Security of Protected Health Information Committee;
 - (c) Electronic Data Interchange Committee; and

- (d) Clinical Software Review Committee.
- (11) The members of committees or subcommittees appointed by the board do not need to be members of the board. The chairs of committees or subcommittees shall be appointed by the board. The frequency of committee or subcommittee meetings shall be established by the board.
- (12) The Clinical Decision Support Committee membership shall include at least the following members:
 - (a) One (1) physician with expertise in health informatics;
 - (b) Two (2) physicians actively engaged in the practice of medicine in this Commonwealth from a list of four (4) physicians recommended by the Kentucky Medical Association, or self-nominated;
 - (c) One (1) representative of a rural hospital and one (1) representative of an urban hospital;
 - (d) One (1) pharmacist;
 - (e) One (1) representative engaged in the business of health-care information technology;
 - (f) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (g) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated.
- (13) The Privacy and Security of Protected Health Information Committee shall include at least the following members:
 - (a) One (1) physician actively engaged in the practice of medicine in this Commonwealth;
 - (b) Two (2) members with expertise in HIPAA regulations;
 - (c) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (d) One (1) member who serves as a computer information officer within the health-care industry;
 - (e) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;
 - (f) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated; and
 - (g) One (1) representative of a hospital.
- (14) The Electronic Data Interchange Committee shall include at least the following members:
 - (a) Two (2) members engaged in the business of large-scale e-strategy and computer information technology;
 - (b) Two (2) members engaged in the business of health insurance who are recommended by the Kentucky Association of Health Plans, Incorporated;
 - (c) Chief information officer, or a designee, of the Office of Technology within the Cabinet for Health and Family Services;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice; and
 - (e) One (1) representative of a hospital.
- (15) The Clinical Software Review Committee shall include at least the following members:
 - (a) One (1) member from a company that develops computer software for physician practices;
 - (b) One (1) member engaged in the business of large-scale e-strategy and computer information technology;
 - (c) Three (3) physicians, with one (1) having experience in electronic information technology;
 - (d) Two (2) members with experience as physician practice managers, one (1) from a single-physician practice and one (1) from a multiphysician practice;

- (e) One (1) member engaged in the business of health insurance who is recommended by the Kentucky Association of Health Plans, Incorporated or employed by a company which has its headquarters in Kentucky; and
 - (f) One (1) representative of a hospital.
- (16) The Governor of the Commonwealth of Kentucky may reorganize the Kentucky e-Health Network Board to include the Kentucky Telehealth Board and to reorganize the Telehealth Board under the Cabinet for Health and Family Services. If the Governor deems it appropriate, the reorganization shall create a new Telehealth Committee of the Ke-HN board with the membership and responsibilities as described under KRS 194A.125 and shall be subject to confirmation by the General Assembly under the requirements of KRS 12.028.

➔Section 318. KRS 216.2923 is amended to read as follows:

- (1) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary may:
 - (a) Appoint temporary volunteer advisory committees, which may include individuals and representatives of interested public or private entities or organizations;
 - (b) Apply for and accept any funds, property, or services from any person or government agency;
 - (c) Make agreements with a grantor of funds or services, including an agreement to make any study allowed or required under KRS 216.2920 to 216.2929; and
 - (d) Contract with a qualified, independent third party for any service necessary to carry out the provisions of KRS 216.2920 to 216.2929; however, unless permission is granted specifically by the secretary a third party hired by the secretary shall not release, publish, or otherwise use any information to which the third party has access under its contract.
- (2) For the purposes of carrying out the provisions of KRS 216.2920 to 216.2929, the secretary shall:
 - (a) Publish and make available information that relates to the health-care financing and delivery system, information on charges for health-care services and the quality and outcomes of health-care services, the cost of workers' compensation health benefits, motor vehicle health insurance benefits, and health insurance premiums and benefits that is in the public interest;
 - (b) Periodically participate in or conduct analyses and studies that relate to:
 - 1. Health-care costs;
 - 2. Health-care quality and outcomes;
 - 3. Health-care providers and health services; and
 - 4. Health insurance costs;
 - (c) Promulgate administrative regulations pursuant to KRS Chapter 13A that relate to its meetings, minutes, and transactions related to KRS 216.2920 to 216.2929;
 - (d) Prepare annually a budget proposal that includes the estimated income and proposed expenditures for the administration and operation of KRS 216.2920 to 216.2929; and
 - (e) No later than thirty (30) days after July 15, 2005, appoint and convene a permanent cabinet advisory committee. The committee shall advise the secretary on the collection, analysis, and distribution of consumer-oriented information related to the health-care system, the cost of treatment and procedures, outcomes and quality indicators, and policies and regulations to implement the electronic collection and transmission of patient information (e-health) and other cost-saving patient record systems. At a minimum, the committee shall be composed of the following:
 - 1. Commissioner of the Department for Public Health;
 - 2. Commissioner of the Department for Mental Health and Mental Retardation Services;
 - 3. Commissioner of the Department for Medicaid Services;
 - 4. **Commissioner**~~Executive director~~ of the **Department**~~Office~~ of Insurance;
 - 5. Physician representatives;

6. Hospital representatives;
 7. Health insurer representatives;
 8. Consumers; and
 9. Nonphysician health-care providers.
- (f) The cabinet advisory committee shall utilize the Health Services Data Advisory Committee as a subcommittee, which shall include a member of the Division of Women's Physical and Mental Health, to define quality outcome measurements and to advise the cabinet on technical matters, including a review of administrative regulations promulgated pursuant to KRS Chapter 13A, proper interpretation of the data, and the most cost-efficient manner in which it should be published and disseminated to the public, state and local leaders in health policy, health facilities, and health-care providers. The Health Services Data Advisory Committee shall review and make recommendations to the cabinet advisory committee regarding exploration of technical matters related to data from other health-care providers and shall make recommendations on methods for risk-adjusting any data prepared and published by the cabinet.
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A that impose civil fines not to exceed five hundred dollars (\$500) for each violation for knowingly failing to file a report as required under KRS 216.2920 to 216.2929. The amount of any fine imposed shall not be included in the allowed costs of a facility for Medicare or Medicaid reimbursement.

➔Section 319. KRS 216.2925 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish by promulgation of administrative regulations pursuant to KRS Chapter 13A, no later than January 1, 1995, those data elements required to be submitted to the cabinet by all licensed hospitals and ambulatory facilities, including a timetable for submission and acceptable data forms. Thereafter, every hospital and ambulatory facility shall be required to report on a quarterly basis information regarding the charge for and quality of the procedures and health-care services performed therein, and as stipulated by administrative regulations promulgated pursuant to KRS Chapter 13A. The cabinet shall accept data which, at the option of the provider is submitted through a third party, including but not limited to organizations involved in the processing of claims for payment, so long as the data elements conform to the requirements established by the cabinet. The cabinet may conduct statistical surveys of a sample of hospitals, ambulatory facilities, or other providers in lieu of requiring the submission of information by all hospitals, ambulatory facilities, or providers. On at least a biennial basis, the cabinet shall conduct a statistical survey that addresses the status of women's health, specifically including data on patient age, ethnicity, geographic region, and payor sources. The cabinet shall rely on data from readily available reports and statistics whenever possible.
- (2) The cabinet shall require for submission to the cabinet by any group of providers, except for physicians providing services or dispensaries, first aid stations, or clinics located within business or industrial establishments maintained solely for the use of their employees, including those categories within the definition of provider contained in KRS 216.2920 and any further categories determined by the cabinet, at the beginning of each fiscal year after January 1, 1995, and within the limits of the state, federal, and other funds made available to the cabinet for that year, and as provided by cabinet promulgation of administrative regulations pursuant to KRS Chapter 13A, the following:
- (a) A list of medical conditions, health services, and procedures for which data on charge, quality, and outcome shall be collected and published;
 - (b) A timetable for filing information provided for under paragraph (a) of this subsection on a quarterly basis;
 - (c) A list of data elements that are necessary to enable the cabinet to analyze and disseminate risk-adjusted charge, quality, and outcome information, including mortality and morbidity data;
 - (d) An acceptable format for data submission which shall include use of the uniform:
 1. Health claim form pursuant to KRS 304.14-135 or any other universal health claim form to be determined by the cabinet if in the form of hard copy; or

2. Electronic submission formats as required under the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. sec. 300gg et seq., in the form of magnetic computer tape, computer diskettes, or other electronic media through an electronic network;
 - (e) Procedures to allow health-care providers at least thirty (30) days to review information generated from any data required to be submitted by them, with any reports generated by the cabinet to reflect valid corrections by the provider before the information is released to the public; and
 - (f) Procedures pertaining to the confidentiality of data collected.
- (3) The cabinet shall coordinate but not duplicate its data-gathering activities with other data-collection activities conducted by the **Department**~~{Office}~~ of Insurance, as well as other state and national agencies which collect health-related service, utilization, quality, outcome, financial, and health-care personnel data, and shall review all administrative regulations promulgated pursuant to KRS 216.2920 to 216.2929 to prevent duplicate filing requirements. The cabinet shall periodically review the use of all data collected under KRS 216.2920 to 216.2929 to assure its use is consistent with legislative intent.
 - (4) The cabinet shall conduct outcome analyses and effectiveness studies and prepare other reports pertaining to issues involving health-care charges and quality.
 - (5) The cabinet may independently audit any data required to be submitted by providers as needed to corroborate the accuracy of the submitted data. Any audit may be at the expense of the cabinet and shall, to the extent practicable, be coordinated with other audits performed by state agencies.
 - (6) The cabinet may initiate activities set forth in subsection (1) or (2) of this section at any time after July 15, 1996.
 - (7) The Cabinet for Health and Family Services shall collect all data elements under this section using only the uniform health insurance claim form pursuant to KRS 304.14-135, the Professional 837 (ASC X12N 837) format, the Institutional 837 (ASC X12N 837) format, or its successor as adopted by the Centers for Medicare and Medicaid Services.

➔Section 320. KRS 216.2960 is amended to read as follows:

- (1) By January 1, 1995, the **Department**~~{Office}~~ of Insurance shall promulgate administrative regulations pursuant to KRS Chapter 13A authorizing the establishment by March 1, 1995, of pilot projects for twenty-four (24) hour health coverage. The total number of participants in the pilot projects cannot exceed five percent (5%) of all insured persons who are covered both by workers' compensation and general health insurance. The administrative regulations for the pilot projects shall provide that:
 - (a) A twenty-four (24) hour policy may cover general health care for purposes of general health insurance, auto insurance, workers' compensation, or health care normally covered by any line of insurance written in the Commonwealth;
 - (b) A twenty-four (24) hour coverage policy shall not contain deductibles or copayments for medical services or treatment for work-related injuries or diseases; and
 - (c) There shall be no transfer of liabilities or expenses between or among particular lines of insurance whose medical or health components have been combined into a twenty-four (24) hour coverage for health care.
- (2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the **Department**~~{Office}~~ of Insurance.
- (3) Notwithstanding any other provision of the Kentucky Revised Statutes to the contrary, each insurer authorized or licensed to write insurance in the Commonwealth shall provide any information requested by the **department**~~{office}~~ for the purpose of developing a twenty-four (24) hour health policy.
- (4) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance.

- (5) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under KRS Chapter 342, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits, shall provide the total compensation required by KRS Chapter 342.
- (6) The participants in a pilot project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the **Department**~~{Office}~~ of Insurance.
- (7) Each insurer authorized or licensed to write insurance in the Commonwealth shall cooperate with the **department**~~{office}~~ and shall provide any information requested by the **department**~~{office}~~ for the purpose of studying twenty-four (24) hour health policy.
- (8) Each agency of state government shall cooperate with the **department**~~{office}~~ if requested to provide information for the purposes of this section.

➔Section 321. KRS 217.127 is amended to read as follows:

- (1) The secretary shall adopt regulations for the effective administration and enforcement of KRS 217.005 to 217.215.
- (2) The secretary shall adopt a state retail food code which shall include, among other things, provisions for regulating the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout including plumbing, lighting, ventilation, water supply, sewage disposal, and other facilities; food supply source and protection; health, disease control and cleanliness of personnel; design, construction, installation, and cleanliness of equipment and utensils; toilet and hand-washing facilities; solid waste disposal and vermin control; and any other matters deemed necessary to insure a safe and sanitary operation of a retail food establishment. Standards for construction, plumbing, lighting, and ventilation of fixed retail food establishments shall be effective only if they are approved by the Board of Housing, Buildings and Construction and are included in the Uniform State Building Code, or if they conform to the State Plumbing Code in the case of plumbing fixtures. Any review of plans for construction, plumbing, lighting, and ventilation required before construction of a fixed retail food establishment shall be conducted by the **Department**~~{Office}~~ of Housing, Buildings and Construction or authorized local building official pursuant to KRS Chapter 198B.
- (3) The donation of safe and apparently wholesome food by a retail food establishment or any other entity regulated under subsections (1) and (2) of this section shall be exempt from any further inspection or regulation if the donated food has been inspected under subsections (1) and (2) of this section.

➔Section 322. KRS 217.128 is amended to read as follows:

The state fire marshal or other duly authorized agents or representatives or other authorized agents pursuant to KRS Chapter 227 shall administer and enforce all state fire regulations, laws, standards of safety, and regulations adopted by the **commissioner**~~{executive director}~~ of housing, buildings and construction relating to retail food establishments.

➔Section 323. KRS 217.544 is amended to read as follows:

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

- (1) "Active ingredient" means any ingredient which will prevent, destroy, repel, control, or mitigate pests, or which will act as a plant regulator, defoliant, or desiccant, or as a functioning agent in a spray adjuvant;
- (2) "Adulterated" shall apply to any pesticide if its strength or purity falls below the professed standard or quality as expressed on its labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted;
- (3) "Animal" means all vertebrate and invertebrate species, including but not limited to man and other mammals, birds, fish, and shellfish;
- (4) "Antidote" means the most practical immediate treatment in case of poisoning and includes first-aid treatment;
- (5) "Board" means the Pesticide Advisory Board;
- (6) "Defoliant" means any substance or mixture of substances intended to cause the leaves or foliage to drop from a plant, with or without causing abscission;
- (7) "Desiccant" means any substance or mixture of substances intended to artificially accelerate the drying of plant tissue;

- (8) "Device" means any instrument or contrivance other than a firearm which is intended for trapping, destroying, repelling, or mitigating any pest or any other form of plant or animal life other than man and other bacteria, virus, or other microorganisms on or in living man or other living animals; but not including equipment used for the application of pesticides when sold separately therefrom;
- (9) "Distribute" means to offer for sale, hold for sale, sell, barter, ship, deliver for shipment, or receive and, having received, deliver or offer to deliver pesticides in this state;
- (10) "Environment" includes water, air, land, and all plants and man and other animals living therein and the interrelationships which exist among these;
- (11) "EPA" means the United States Environmental Protection Agency;
- (12) "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act as amended;
- (13) "Fungi" means all nonchlorophyll-bearing thallophytes; that is, all nonchlorophyll-bearing plants of a lower order than mosses and liverworts, as for example, rusts, smuts, mildews, molds, yeasts, bacteria, and viruses, except those on or in living man or other living animals, and except those in or on processed food, beverages, or pharmaceuticals;
- (14) "Highly toxic pesticide" means any pesticide determined to be highly toxic under the authority of sec. 25(c)(2) of FIFRA or by the department under this chapter;
- (15) "Imminent hazard" means a situation which exists when the continued use of a pesticide would likely result in unreasonable adverse effects on the environment or will involve unreasonable hazard to the survival of a species declared endangered by the secretary of the United States Department of Interior under Pub. L. 91-135 of the United States Congress;
- (16) "Inert ingredient" means an ingredient which is not an active ingredient;
- (17) "Ingredient statement" means a statement of the name and percentage of each active ingredient together with the total percentage of the inert ingredients in the pesticide and, when the pesticide contains arsenic in any form, a statement of the percentage of total and water-soluble arsenic, each stated as elemental arsenic;
- (18) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six (6) legged, usually winged forms, as for example, beetles, bugs, bees, flies, and to other allied classes of arthropods whose members are wingless and usually have more than six (6) legs, as, for example, spiders, mites, ticks, centipedes, and wood lice, also nematodes and other invertebrates which are destructive, constitute a liability, and may be classed as pests;
- (19) "Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or to any of its containers or wrappers;
- (20) "Labeling" means the label and other written, printed, or graphic matter:
 - (a) On the pesticide or device, or any of its containers or wrappers;
 - (b) Accompanying the pesticide or device at any time or referring to it in any other media used to disseminate information to the public; and
 - (c) To which reference is made on the label or in the literature accompanying the pesticide or device, except when accurate nonmisleading reference is made to current official publications of the United States Environmental Protection Agency, the Departments of Agriculture and Interior, the Department of Health, Education and Welfare, and other similar federal institutions, the College of Agriculture, University of Kentucky, Kentucky Agricultural Experiment Station, Cabinet for Health and Family Services, **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet, or other agencies of this state or other states when such agencies are authorized by law to conduct research in the field of pesticides;
- (21) "Land" means all land and water areas, including air space and all plants, animals, structures, buildings, contrivances, and machinery appurtenant thereto, or situated thereon, fixed or mobile, including any used for transportation;
- (22) "Misbranded" means a pesticide is misbranded if:

- (a) Its labeling bears any statement, design, or graphic representation relative thereto or to its ingredients which is false or misleading in any particular;
 - (b) It is an imitation of or is distributed under the name of another pesticide;
 - (c) The labeling accompanying it does not contain directions for use which are necessary for effecting the purpose for which the product is intended and, if complied with, together with any requirements imposed under section 3(d) of FIFRA are adequate to protect health and the environment;
 - (d) The labeling does not contain a statement of the use classification under which the product is registered by EPA;
 - (e) The label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under section 3(d) of FIFRA, is adequate to protect health and the environment;
 - (f) The label does not bear an ingredient statement on that part of the immediate container, and on the outside container or wrapper, if there be one, through which the ingredient statement on the immediate container cannot be clearly read, of the retail package which is presented or displayed under customary conditions of the purchase; provided, that the ingredient statement may appear prominently on another part of the container pursuant to section 2(q) 2(A) (i) (ii) of FIFRA if the size and form of the container makes it impractical to place it on that part of the retail package which is presented or displayed under customary conditions of purchase;
 - (g) Any word, statement, or other information required by KRS 217.542 to 217.630 or FIFRA to appear on the label or labeling is not prominently placed thereon with such conspicuousness, as compared to other words, statements, designs, or graphic matter in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
 - (h) The label does not bear the name, brand, or trademark under which the pesticide is distributed;
 - (i) The label does not bear the net weight or measure of the content;
 - (j) The label does not bear the name and address of the manufacturer, registrant, or person for whom manufactured; and
 - (k) The label does not bear the EPA registration number assigned to each establishment in which the product is produced and the EPA number assigned to the pesticide, if required by regulation under FIFRA;
- (23) "Nematode" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, plants or plant parts; may also be called nemas or eelworms;
- (24) "Person" means any individual, partnership, association, or any organized group of persons whether incorporated or not;
- (25) "Pest" means any insect, snail, slug, rodent, nematode, fungus, weed, and any other form of plant or animal life, or virus, bacteria, or other microorganism, except viruses, bacteria, or other microorganisms on or in living man or other living animals, which is normally considered to be a pest, or which the department may declare to be a pest;
- (26) "Pesticide" means any substance or mixture of substances intended to prevent, destroy, control, repel, attract, or mitigate any pest; any substance or mixture of substances intended to be used as a plant regulator, defoliant, or desiccant; and any substance or mixture of substances intended to be used as a spray adjuvant;
- (27) "Plant regulator" means any substance or mixture of substances, intended through physiological actions, to accelerate or retard the rate of growth or maturation, or to otherwise alter the behavior of plants, but shall not include substances insofar as they are intended to be used as plant nutrients, trace elements, nutritional chemicals, plant inoculants, or soil amendments;
- (28) "Protect health and the environment" means protection against any unreasonable adverse effects on the environment;
- (29) "Registrant" means a person who has registered any pesticide pursuant to the provisions of KRS 217.542 to 217.630;

- (30) "Restricted-use pesticide" means any pesticide classified for restricted use by the administrator, EPA, or by regulation of the department;
- (31) "Spray adjuvant" means any wetting agent, spreading agent, sticker, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent intended to be used with any other pesticide as an aid to the application or to the effect thereof, and which is in a package or container separate from that of the other pesticide with which it is to be used;
- (32) "Unreasonable adverse effects on the environment" means any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide;
- (33) "Weed" means any plant which grows where not wanted; and
- (34) "Wildlife" means all living things that are neither human, domesticated, nor as defined in KRS 217.542 to 217.630, pests, including but not limited to mammals, birds, and aquatic life.

➔Section 324. KRS 217.570 is amended to read as follows:

- (1)
 - (a) Except as provided by paragraph (b) of this subsection, every pesticide distributed within the state or delivered for transportation or transported in intrastate commerce or between points within the state through points outside the state shall be registered with the department.
 - (b) Registration is not required if:
 - 1. A pesticide is shipped from one (1) plant or warehouse to another plant or warehouse operated by the same person and used solely at the plant or warehouse as a constituent part to make a pesticide which is registered under the provisions of KRS 217.542 to 217.630; or
 - 2. If the pesticide is distributed under the provisions of an experimental use permit issued under the provisions of KRS 217.542 to 217.630 or an experimental use permit issued by EPA.
 - (c) All registrations shall expire on the thirty-first day of December of the calendar year for which they were issued.
- (2) The applicant for registration shall file with the department, a statement containing:
 - (a) The name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the applicant's;
 - (b) The name of the pesticide and its EPA registration number;
 - (c) A complete copy of the labeling accompanying the pesticide and a statement of all claims made or to be made for it including directions for use and a request that the pesticide be classified for nonrestricted use, for restricted use, or for both as provided for in FIFRA. In the case of renewal of registration, a statement shall be required only with respect to information which is different from that furnished when the pesticide was registered or last reregistered, unless the department requests a copy of the labeling; and
 - (d) Other necessary information as specified by the department on the application for registration form.
- (3) The department may require a full description of the tests made and results of the tests upon which the claims are based on any pesticide not registered in accordance with Section 3 of FIFRA, or on any pesticide on which restrictions are being considered.
- (4)
 - (a) The applicant desiring to register a pesticide in this state shall make application on forms furnished by the department, and, for the purposes identified in paragraph (b) of this subsection, shall pay to the department an annual fee of two hundred fifty dollars (\$250) for each and every brand or grade to be offered for sale in this state. There shall be issued to the registrant by the department a license entitling the registrant to sell all duly registered brands in this state until the expiration of the license.
 - (b) The annual fees received by the department shall be used to fund:
 - 1. The Kentucky Agriculture and Environment in the Classroom program, a program administered by the department;
 - 2. The farm chemical and container disposal program, a program administered by the department;

3. The cost-sharing program through the department and the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, Division of Conservation, for the use of farmers in implementing agricultural production practices that protect the quality of soil and water resources; and
 4. Expenses incurred in the enforcement of KRS 217.542 to 217.630.
- (5) The department, when necessary in the administration of KRS 217.542 to 247.630, may require the submission of the complete formula of any pesticide, including the active and inert ingredients.
 - (6) The department may refuse to register, or to cancel the registration of, any brand of pesticide upon satisfactory proof that the registrant has been guilty of fraudulent and deceptive practices in evasions or attempted evasions of the provisions of KRS 217.542 to 217.630 or any administrative regulations promulgated under KRS 217.542 to 217.630. No registration shall be revoked or refused until the registrant has been given a hearing by the department.
 - (7) Registrants desiring to renew registrations shall file with the department an application for renewal prior to January 1. Any registration in effect on the thirty-first day of December and for which a renewal application has been made and the proper fee paid shall continue in full force and effect until the department has notified the applicant that the registration has been renewed, or denied.
 - (8) If the renewal of a pesticide registration is not filed prior to January 15 of any year, or if a new product is sold or offered for sale prior to registration, an additional fee of ten dollars (\$10) shall be assessed and added to the original fee before the registration of that pesticide is renewed or a new registration is accepted. The additional fee shall not apply if the applicant furnishes an affidavit certifying that he did not distribute any unregistered pesticides during the period of nonregistration. The payment of the additional fee is not a bar to any prosecution for doing business without proper registry.
 - (9) Upon certification by the administrator of EPA to register pesticides in accordance with Section 24(c) of FIFRA, the department may register the pesticides if it determines that:
 - (a) Its composition warrants the proposed claims for it;
 - (b) Its labeling and other material required to be submitted meet with the requirements of KRS 217.542 to 217.630;
 - (c) It will perform its intended function, and when used in accordance with widespread and commonly recognized practice, will not cause unreasonable adverse effects on the environment; and
 - (d) The registration is not disapproved by the administrator of EPA.

➔Section 325. KRS 219.041 is amended to read as follows:

- (1) The secretary shall adopt regulations for the effective administration and enforcement of KRS 219.011 to 219.081.
- (2) The secretary shall adopt a state hotel code which shall include, among other things, requirements for the issuance, suspension, and revocation of permits to operate; submission of plans for construction and equipment layout; plumbing; lighting; ventilation; water supply; sewage disposal; sanitary standards for operation; and such other matters deemed necessary to insure a safe and sanitary operation of a hotel. Standards for construction, plumbing, lighting, and ventilation shall be effective only if they are approved by the Board of Housing, Buildings and Construction and are included in the Uniform State Building Code, or if they conform to the State Plumbing Code in the case of plumbing fixtures. Any review of plans for construction, plumbing, lighting, and ventilation required before construction of a hotel shall be conducted by the ***Department***~~(Office)~~ of Housing, Buildings and Construction.

➔Section 326. KRS 219.051 is amended to read as follows:

The state fire marshal or his duly authorized agents or representatives shall administer and enforce all state fire regulations, laws, standards of safety, and regulations adopted by the ***commissioner***~~(executive director)~~ of housing, buildings and construction relating to hotels and food service establishments.

➔Section 327. KRS 219.350 is amended to read as follows:

No community shall be constructed or altered without a permit as provided in KRS 219.310 to 219.410. An application for a permit to construct or alter a community shall be made to the cabinet upon forms provided by it. The

application shall include plans for construction or alteration of the community and shall contain such information in regard to the proposed community as the cabinet may reasonably require, which may include affirmative evidence of ability to comply with requirements of KRS 219.310 to 219.410 and regulations adopted by the secretary. All plans for the construction, installation, or alteration of buildings shall be forwarded by the cabinet to the ~~Department[Office]~~ of Housing, Buildings and Construction. Only the ~~Department[Office]~~ of Housing, Buildings and Construction shall review such plans for conformance with the Uniform State Building Code. The ~~Department[Office]~~ of Housing, Buildings and Construction shall expedite the review of such plans and return them to the Cabinet for Health and Family Services for completion of the application process. Each application for a permit to construct or alter a community shall be accompanied by a permit fee of forty-seven dollars (\$47). The cabinet may, by administrative regulation, increase this fee by no more than five percent (5%) per year, not to exceed a maximum fee of seventy dollars (\$70). Each permit to construct shall be issued only for the person and premises, including the number of spaces named in the application and shall not be transferable. Each permit to construct shall expire one (1) year from date of issuance.

➔Section 328. KRS 219.390 is amended to read as follows:

- (1) For the purpose of assisting in the developing and review of standards and regulations for the administration of KRS 219.310 to 219.410, there is hereby created a State Advisory Committee on Manufactured, Mobile Home, and Recreational Vehicle Communities. The committee shall be composed of twelve (12) members. The secretary for health and family services or his designee shall be an ex officio member. The other members shall be appointed by the secretary for health and family services, three (3) of whom shall represent manufactured and mobile home community owners, two (2) of whom shall represent manufactured and mobile home dealers, two (2) of whom shall represent recreational vehicle dealers or community owners, two (2) of whom shall represent local health departments, one (1) of whom shall represent the ~~Office of the~~ state fire marshal, and one (1) member who shall be a citizen at large.
- (2) All appointed members shall serve for a term of four (4) years except that, of the original appointees, two (2) shall serve for one (1) year, two (2) shall serve for two (2) years, two (2) shall serve for three (3) years, and two (2) shall serve for four (4) years. All vacancies shall be filled in the manner of original appointment for the unexpired portion of the term only.
- (3) Members of the committee shall receive no compensation for their services, but may be reimbursed for necessary travel expenses.

➔Section 329. KRS 220.020 is amended to read as follows:

The secretary of the ~~Energy and Environment[Environmental and Public Protection]~~ Cabinet shall, in addition to his other duties, act as commissioner of sanitation districts, and is vested with jurisdiction, power and authority, when the conditions set forth in KRS 220.010 to 220.520 and certified to by the county board of health are found to exist, to establish sanitation districts within any county of the Commonwealth.

➔Section 330. KRS 220.135 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 220.080, the jurisdictional boundaries of a sanitation district organized or operating under KRS Chapter 220 shall be coextensive with the jurisdictional boundaries of the counties it was organized to serve if the district was organized to serve two (2) or more counties, and no other district has been organized to serve the counties. All cities of the second through sixth class located in a county which is part of a sanitation district as described in this section shall be included in the jurisdictional boundaries of the sanitation district.
- (2)
 - (a) Effective July 1, 1995, the operational sewer and drainage system of each city located within the jurisdictional boundaries of the district, together with all assets, other than cash accounts, and liabilities of the system, as of January 1, 1994, including but not limited to, sewers, easements, manholes, pumping stations, force mains, and real property, shall become the property, personal and real, of the sanitation district.
 - (b) If funds in a cash account are in escrow or otherwise contractually connected to a certificate of indebtedness related to the sewer and drainage system, the funds shall become the property of the district. If funds in a cash account are derived from a sewer user fee or sanitation bill surcharge, the city may use them to reduce its obligation to the district created by subsection (5)(a) of this section, or the city may return the funds to the citizens. If the funds in a cash account were generated from a general

fund source and are not in escrow or otherwise obligated, the city may retain the funds for its own purposes.

- (3) Any city within the jurisdictional boundaries of the district may, before September 1, 1994, state by ordinance its intention not to become a part of the district. In this case, the provisions of subsection (2) of this section shall not apply, and the city shall retain ownership and control of and responsibility for its sewer and drainage system. The city shall be solely responsible for compliance with applicable regulations promulgated by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (4) Any municipal subdistrict established prior to July 15, 1994, shall be dissolved effective July 1, 1995, and the assets and liabilities of the subdistrict, as of January 1, 1994, shall become the property, personal and real, of the sanitation district, unless the city, no later than September 1, 1994, provides by ordinance that the municipal subdistrict shall revert to the city. If the city provides for the reversion of the subdistrict to the city, the assets and liabilities of the subdistrict shall become the property, personal and real, of the city. The city shall be solely responsible thereafter for compliance with applicable regulations promulgated by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (5)
 - (a) When a municipal subdistrict is dissolved pursuant to subsection (4) of this section, or a city sewer and drainage system is transferred pursuant to subsection (2) of this section, and its assets are transferred to the district, the city, or municipal subdistrict, shall pay the district fifty percent (50%) of the cost of necessary repairs to its facilities as identified through the district's sanitary sewer inspection program. These costs shall be payable upon completion of the repairs identified by the district, and may be paid by lump sum or in installments over a period of time agreeable to the city or the municipal subdistrict and the district.
 - (b) A city may continue its sewer maintenance surcharge until the accumulated principal plus interest thereon is sufficient to pay the charges levied by the district pursuant to paragraph (a) of this subsection.
 - (c) Any county that joins the district after July 15, 1994, may levy sewer surcharges or other fees, which shall be added to the customers' district bill for the purpose of enabling the county to pay pre-existing obligations to the district.
 - (d) For a period of ten (10) years, the district may grant to each city or county a credit for each new residential customer added which shall not exceed three hundred dollars (\$300) against the debt created by subsection (5)(a) of this section, or any other contractual liability pre-existing on June 30, 1994. The district may adopt a general policy establishing a credit of a different amount for each new nonresidential customer added.
- (6)
 - (a) After July 15, 1994, no new package sewage treatment plant shall be constructed or begin operation within the jurisdictional boundaries of the district unless the district, after review of the plans for construction and operation of the plant, approves the plans.
 - (b) After January 1, 1995, no privately owned package sewage treatment plant shall operate within the jurisdictional boundaries of the district unless it has been issued a permit by the district or by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
 - (c) On or before January 1, 2000, the district shall assume ownership of all publicly owned package sewage treatment plants within its jurisdictional boundaries, including all assets and liabilities as of January 1, 1994, and all property, real and personal.
 - (d) The district shall plan for, and when economically feasible, transfer the function of sewage treatment from package plants to central treatment facilities.
- (7)
 - (a) Effective July 1, 1995, the district shall be responsible for the planning, construction, improvement, operation, and maintenance of all sewer and drainage facilities under its ownership, including combined sewer overflows, and for compliance with all applicable regulations promulgated by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
 - (b) The district shall establish uniform rates for its services throughout its jurisdiction, and district rates shall vary only on the basis of consumption.

➔Section 331. KRS 220.240 is amended to read as follows:

Upon the completion of the plan the board of directors shall submit it to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet for approval. If the ***Energy and Environment***~~[Environmental and Public Protection]~~

Cabinet refers the plan back for amendment, the board of directors shall prepare and submit an amended plan. If the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet rejects the plan, the board of directors shall proceed as provided in KRS 220.220 to prepare another plan. If the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet approves the plan, a copy of the action of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall be filed with the secretary of the board of directors and by him incorporated into the records of the district.

➔ Section 332. KRS 220.260 is amended to read as follows:

After the establishment of the district and the organization of the board of directors, no person or public corporation shall install within the district any laterals, trunk lines, interceptors for the collection or discharge of sewage or other liquid waste, treatment or disposal works, until the plans therefor have been submitted to and approved by the board of directors of the district and the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet. Any installation contrary to the provisions of this section shall constitute a nuisance and shall be abated by injunction upon proper application by anyone aggrieved, including the district, the commissioner, or the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.

➔ Section 333. KRS 220.320 is amended to read as follows:

Where necessary in order to secure the best results from the construction, operation and maintenance of the works and improvements of the district or construction subdistricts and to prevent their damage from misuse, the board of directors may make and enforce regulations pertaining to the use by persons and public corporations of the works and improvements of the district or construction subdistricts. Such regulations may prescribe the design, construction and use of sewers within the district or construction subdistricts and the manner in which connections to laterals, trunk sewers, intercepting sewers and to other works of the district or construction subdistricts shall be made, may prevent the unnecessary pollution of any watercourse or supply within the district or construction subdistricts and may prohibit the discharge into such sewers of any wastes deemed detrimental to the works and improvements of the district or construction subdistricts. Such regulations shall have no effect until approved by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet. The board may recover by civil action from any person or public corporation violating such regulations, a sum not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, together with costs. The directors may enforce by mandamus or otherwise all necessary and authorized regulations made by them, and may remove any improper construction or close any connections made improperly or in violation of the regulations. Any person or public corporation willfully failing to comply with the regulations shall be liable for damages caused by such failure and for the cost of renewing any construction damaged or destroyed.

➔ Section 334. KRS 220.510 is amended to read as follows:

- (1) The board of directors shall, by resolution, determine the rates and compensation or rentals to be charged for the use of the sanitary works. The board of directors may provide for a sewer service charge to be imposed and collected, beginning at the time the plan for the improvement has been approved by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet and work is begun on plans and specifications for the improvement. The rates shall at all times be reasonable, taking into account the cost of the works, the cost of operation and maintenance, and the amount necessary for the amortization of the bonds issued to finance the works. The same schedule of rates and charges shall apply to all users of the same class. The rates shall be binding upon all users of the system. The board may alter and revise the rates in its discretion. In case of failure of any user to pay for services rendered, the board may compel payment and may enjoin further use until the payment is made, or it may institute an action in any court having jurisdiction for the recovery of charges for services rendered, or the board may, by a notice in writing, signed by its chairman or any member of said board, notify the municipality, or person, firm, or corporation, which furnishes water to the user's premises, to shut off the water service to said user's premises, until such time as all delinquent charges, plus a reasonable charge for turning off and on the water service, against said user, are paid in full. Upon receipt of such notice in writing, the municipality, or the person, firm, or corporation, which furnishes water to the said user's premises shall immediately shut off and discontinue the water service to the said user's premises. Upon full payment of such account, plus a reasonable charge for turning off and on the water service, the chairman, or any member of said board, shall notify the said municipality, person, firm, or corporation, which furnishes water to said user, that the account is paid in full, including such reasonable charge for turning off and on the water service, and that the said water service can again be provided to said user's premises. The board of directors shall promptly pay to such municipality, person, firm, or corporation, such fee or charge collected for turning off and on such water service. The board may enter into contracts with public corporations or other

large users of sewer services. The board may provide by resolution any provisions and stipulations it deems necessary for the administration of the revenue of the district, and for the security of the bondholders.

- (2) No moneys received on account of the existence or operation of construction subdistricts shall be used for the payment of district obligations, and no other moneys received by the district shall be used for the payment of construction subdistrict bonds or obligations. Except as provided in the preceding sentence the use of all moneys of the district received from any and all sources is hereby limited exclusively and shall be devoted solely to the payment of all obligations of the district and board created by KRS 220.010 to 220.540, and no funds from any sources authorized by KRS 220.010 to 220.540 shall be diverted to any other purposes than those in KRS 220.010 to 220.540 set forth, except that the district shall pay from district area revenues an equitably allocable share of the cost of constructing and operating any nondistrict area facilities to which sewage from the district area is diverted in order to relieve district facilities from excessive sewage and costs described in KRS 220.561 but otherwise paid for.

➔Section 335. KRS 221.030 is amended to read as follows:

- (1) The cabinet, through its secretary or his or her authorized agents, shall have the authority of supervising and enforcing the provisions of KRS 221.010 to 221.100.
- (2) The secretary may promulgate and enforce administrative regulations deemed necessary to carry into effect the full intent and meaning of KRS 221.010 to 221.100. Construction standards for buildings used as frozen food locker plants shall be effective only if approved by the Board of Housing, Buildings and Construction and included in the Uniform State Building Code. Any construction plan reviews for such buildings required prior to approval for construction shall be conducted by the **Department**~~{Office}~~ of Housing, Buildings and Construction.
- (3) In any administrative hearing conducted under KRS 221.010 to 221.100, the provisions of KRS Chapter 13B shall be followed.

➔Section 336. KRS 223.160 is amended to read as follows:

- (1) It is the intent of KRS 223.160 to 223.220 and 223.991 that every operator in responsible charge of a water treatment plant or water distribution system be required to hold a valid and effective certificate of competency issued by the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet in a class equal to or higher than the class of the particular treatment plant or distribution system where he is currently employed in order to protect the public health. Operators other than those in responsible charge of such facilities shall also be eligible to apply for certification.
- (2) An operator of a water treatment facility for a school and for a semipublic water supply shall be entitled to a limited certificate of competency for his particular facility provided he has demonstrated that he has the knowledge and experience required to operate properly the particular water treatment facility for which he is responsible. A limited certificate of competency so issued is not transferable to any other water treatment facility, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (1) of this section.

➔Section 337. KRS 223.170 is amended to read as follows:

The **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet shall certify persons as to their qualifications to supervise successfully the operation of water treatment plants or water distribution systems after considering the recommendations of a board of certification which shall be appointed by the secretary of the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet or his designee. The board shall consist of the following: two (2) members who are currently employed as waterworks operators holding valid certificates; one (1) member employed by a municipality who holds the position of either city manager, city engineer, director of public works, or the equivalent thereof; one (1) member who is a faculty member of a college, university, or professional school whose major field is related to water supply; and one (1) ex officio member representing the **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet. Board members shall serve for a four (4) year term or until their successors are appointed and qualify. The **Energy and Environment**~~{Environmental and Public Protection}~~ Cabinet representative shall serve as executive secretary and treasurer of the board and be responsible for maintaining records. The members of the board shall serve without compensation, but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties.

➔Section 338. KRS 223.180 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall classify all water treatment plants and water distribution systems with due regard to size, type, physical conditions affecting such treatment plants and distribution systems, and according to the skill, knowledge and experience that the operator must have to supervise successfully the operation of such water treatment plants and water distribution systems so as to protect the public health.

➔ Section 339. KRS 223.190 is amended to read as follows:

All water treatment plants and water distribution systems, whether publicly or privately owned, shall be under the supervision of an operator whose competency is certified to by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet in a grade corresponding to the classification of the water supply system to be supervised. All operators holding valid and effective certificates issued under existing regulations of the State Board of Health on June 16, 1966, may, within the discretion of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, be issued new certificates without examination for any appropriate new classifications that may be established by the regulations adopted hereunder or such certificates may be continued in effect.

➔ Section 340. KRS 223.200 is amended to read as follows:

The secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, with the advice of the board of certification, shall adopt rules and regulations as are reasonably necessary to carry out the intent of KRS 223.160 to 223.220 and 223.991. The rules and regulations may include, but are not limited to, provisions establishing standards for classification of water treatment plants and water distribution systems, provisions establishing qualifications of applicants and procedures for examination of candidates, membership, and duties of the board of certification, provisions relating to the renewal, cancellation or revocation of certificates, including the specifications of the grounds therefor, and such other provisions as are necessary for the administration of KRS 223.160 to 223.220 and 223.991.

➔ Section 341. KRS 223.210 is amended to read as follows:

It shall be unlawful for any person, firm, or corporation (municipal or private) to operate a water treatment plant or water distribution system unless the competency of the operator who is in direct responsible charge is duly certified to by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet under the provisions of KRS 223.160 to 223.220 and 223.991. It shall be unlawful for any person to perform the duties of an operator, in direct responsible charge, without being duly certified under the provisions of KRS 223.160 to 223.220 and 223.991. The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet may, however, issue provisional certificates for emergency situations.

➔ Section 342. KRS 223.220 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet is authorized to fix a reasonable schedule of fees and charges by regulation to be paid by applicants for examinations, certificates, and renewal certificates. All such fees and charges and other moneys collected by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet under the provisions of KRS 223.160 to 223.220 and 223.991 or the rules and regulations of the cabinet shall be paid into the State Treasury and credited to a trust and agency fund to be used by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet in carrying out the provisions of KRS 223.160 to 223.220 and 223.991.

➔ Section 343. KRS 223.400 is amended to read as follows:

As used in KRS 223.405 to 223.460, unless the context requires otherwise:

- (1) "Alteration or repair of a water well" means any maintenance, addition, or change of well or pitless adapter, but does not include replacement or repair of a water pump or associated piping.
- (2) "Board" means the Kentucky Water Well Certification Board;
- (3) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (4) "Certificate" means a certificate of competency issued by the secretary stating that the water well driller has met all the requirements for the appropriate classification set forth in KRS 223.405 to 223.460 or by regulation;

- (5) "Person" means an individual, corporation, partnership, association, municipality, state and federal government, or other public body or other legal entity, or any officer, employee, or agent of any of the foregoing.
- (6) "Secretary" means the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (7) "Water well" or "well" means any excavation or opening in the surface of the earth that is drilled, cored, bored, washed, driven, jetted, or otherwise constructed when the actual or intended use in whole or part of an excavation is the removal of water for any purpose, including but not limited to culinary and household purposes, animal consumption, food manufacture, use of geothermal resources for domestic heating purposes and industrial, irrigation, and dewatering purposes, but not including wells to be used for watering stock or for general farmstead use if the wells do not provide water for human consumption;
- (8) "Water well driller" means a person who is qualified to engage in the drilling, alteration, or repair of a water well as defined in this chapter.

➔Section 344. KRS 224.01-010 is amended to read as follows:

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

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

- (10) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any waste into or on any land or water so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters;
- (11) "District" means an air pollution control district as provided for in KRS Chapter 77;
- (12) "Effluent limitations" means any restrictions or prohibitions established under state law which include, but are not limited to, effluent limitations, standards of performance for new sources, and toxic effluent standards on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged into waters;
- (13) "Generator" means any person, by site, whose act or process produces waste;
- (14) "Materials recovery facility" means a solid waste management facility that provides for the extraction from solid waste of recyclable materials, materials suitable for use as a fuel or soil amendment, or any combination of those materials;
- (15) "Municipal solid waste disposal facility" means any type of waste site or facility where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including other waste allowed under Subtitle D of the Federal Resource Conservation and Recovery Act of 1976, as amended, and includes, but is not limited to, incinerators and waste-to-energy facilities that burn municipal solid waste, and contained and residential landfills, but does not include a waste site or facility which is operated exclusively by a solid waste generator on property owned by the solid waste generator which accepts only industrial solid waste from the solid waste generator or industrial solid waste generated at another facility owned and operated by the generator or wholly-owned subsidiary, or a medical waste incinerator which is owned, operated, and located on the property of a hospital or university which is regulated by the cabinet and used for the purpose of treatment, prior to landfill, of medical waste received from the generator exclusively or in combination with medical waste generated by professionals or facilities licensed or regulated or operated by the Commonwealth;
- (16) "Municipal solid waste reduction" means source reduction, waste minimization, reuse, recycling, composting, and materials recovery;
- (17) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (18) "Post-closure monitoring and maintenance" means the routine care, maintenance, and monitoring of a solid waste or hazardous waste treatment, storage, or disposal facility following closure of the facility;
- (19) "Publicly owned treatment works" means any device or system used in the treatment (including recycling and recovery) of municipal sewage or industrial wastes of a liquid nature which is owned by the Commonwealth or a political subdivision of the Commonwealth;
- (20) "Recovered material" means those materials, including but not limited to compost, which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing, but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis. Notwithstanding any provision of law to the contrary, tire-derived fuel, as defined in subsection (54) of this section, shall be considered a recovered material;
- (21) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material, but does not mean a solid waste management facility if solid waste generated by a recovered material processing facility is managed pursuant to this chapter and administrative regulations adopted by the cabinet;
- (22) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials or products, including refuse-derived fuel when processed in accordance with administrative regulations established by the cabinet, but does not include the incineration or combustion of materials for the recovery of energy;

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

clay, and concrete products; textile manufacturing; transportation equipment; and water treatment; and

4. "Municipal solid waste" means household solid waste and commercial solid waste; and
- (b) "Hazardous waste" means any discarded material or material intended to be discarded or substance or combination of such substances intended to be discarded, in any form which because of its quantity, concentration or physical, chemical or infectious characteristics may cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness or pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed;
- (32) "Waste management district" means any county or group of counties electing to form under the provisions of KRS Chapter 109 and operate in conformance with the provisions of KRS Chapter 109 and with Section 4006, Resource Conservation and Recovery Act of 1976, as amended (Public Law 94-580);
- (33) "Water" or "waters of the Commonwealth" means and includes any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface or underground water, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction;
- (34) "Water pollution" means the alteration of the physical, thermal, chemical, biological, or radioactive properties of the waters of the Commonwealth in such a manner, condition, or quantity that will be detrimental to the public health or welfare, to animal or aquatic life or marine life, to the use of such waters as present or future sources of public water supply or to the use of such waters for recreational, commercial, industrial, agricultural, or other legitimate purposes;
- (35) "Pollutant" means and includes dredged spoil, solid waste, incinerator residue, sewage, sewage sludge, garbage, chemical, biological or radioactive materials, heat, wrecked or discarded equipment, rock, sand, soil, industrial, municipal or agricultural waste, and any substance resulting from the development, processing, or recovery of any natural resource which may be discharged into water;
- (36) "NPDES" means National Pollutant Discharge Elimination System;
- (37) "Manifest" means the form used for identifying the quantity, composition, and the origin, routing, and destination of waste during its transportation from the point of generation to the point of disposal, treatment, or storage;
- (38) "Open dump" means any facility or site for the disposal of solid waste which does not have a valid permit issued by the cabinet or does not meet the environmental performance standards established under regulations promulgated by the cabinet;
- (39) "Solid waste management" means the administration of solid waste activities: collection, storage, transportation, transfer, processing, treatment, and disposal, which shall be in accordance with a cabinet-approved county or multicounty solid waste management plan;
- (40) "Solid waste management area" or "area" means any geographical area established or designated by the cabinet in accordance with the provisions of this chapter;
- (41) "Solid waste management facility" means any facility for collection, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether such facility is associated with facilities generating such wastes or otherwise, but does not include a container located on property where solid waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility which is subject to regulation pursuant to the chapter for control of environmental impacts and to prevent any public nuisance;
- (42) "Hazardous constituent" shall conform to the requirements of the Resource Conservation and Recovery Act (RCRA), as amended;
- (43) "Land disposal" includes but is not limited to any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave;

- (44) "Key personnel" means an officer, partner, director, manager, or shareholder of five percent (5%) or more of stock or financial interest in a corporation, partnership, or association or parent, subsidiary, or affiliate corporation and its officers, directors, or shareholders of five percent (5%) or more of stock or financial interest;
- (45) "Universal collection" means a municipal solid waste collection system which is established by ordinance and approved by the cabinet and requires access for each household or solid waste generator in a county. A commercial or industrial entity which transports or contracts for the transport of the municipal solid waste it generates or which operates a solid waste management facility for its exclusive use may be excluded from participation;
- (46) "Governing body" means a county, a waste management district, an entity created pursuant to the Interlocal Cooperation Act, a taxing district created pursuant to the provisions of KRS 65.180 to 65.192, a special district created pursuant to the provisions of KRS 65.160 to 65.176, or counties acting under contract pursuant to KRS 109.082;
- (47) "Convenience center" means a facility that is manned during operating hours for the collection and subsequent transportation of municipal solid wastes;
- (48) "Transfer facility" means any transportation related facility including loading docks, parking areas, and other similar areas where shipments of solid waste are held or transferred during the normal course of transportation;
- (49) "Collection box" means an unmanned receptacle utilized to collect municipal solid waste;
- (50) "Newsprint" means that class or kind of paper chiefly used for printing newspapers and weighing more than twenty-four and one-half (24 1/2) pounds, but less than thirty-five (35) pounds for five hundred (500) sheets of paper two (2) feet by three (3) feet in size, on rolls that are not less than thirteen (13) inches wide and twenty-eight (28) inches in diameter and having a brightness of less than sixty (60);
- (51) "Postconsumer waste paper" means discarded paper after it has served its intended use by a publisher;
- (52) "Publisher" means a person engaged in the business of publishing newspapers, advertisement flyers, telephone books, and other printed material;
- (53) "Recycled content" means the proportion of fiber in newsprint that is derived from postconsumer waste paper;
- (54) "Tire-derived fuel" or "TDF" means a product made from waste tires to the exact specifications of a system designed to accept tire-derived fuel as a primary or supplemental fuel source, that have been reduced to particle sizes not greater than two (2) inches by two (2) inches and that is destined for transportation from the waste tire processor for use as a fuel. "Tire-derived fuel" shall not mean refuse-derived fuel; and
- (55) "Industrial energy facility" means a facility that produces transportation fuels, synthetic natural gas, chemicals, or electricity through a gasification process using coal, coal waste, or biomass resources, and costing in excess of seven hundred fifty million dollars (\$750,000,000) at the time of construction.

➔Section 345. KRS 224.01-205 is amended to read as follows:

- (1) The environmental trust fund may be used to support scientific, technical, or environmental research needed to develop and guide environmental protection and natural resource management policies. Research topics may include but shall not be limited to air quality; water quality, including groundwater protection; water resource management; environmental impacts of natural resource extractions, including surface mining and oil and gas production; waste management, including solid and hazardous waste; environmental impact of noise; soil conservation; and forest resource management. Research activities may include collecting baseline environmental data and studying environmental problems existing in or of concern to the Commonwealth.
- (2) The environmental trust fund may be used to finance research and development projects that promote the use of innovative solutions to environmental problems existing in or of concern to the Commonwealth. Research and development projects shall have cosponsors who will cooperate in the gathering and sharing of research data. Cosponsors may include but shall not be limited to local governments, universities, state agencies, nonprofit organizations, and private persons.
- (3) The environmental trust fund may be used to collect and disseminate information derived from any activities conducted pursuant to KRS 224.01-200 to 224.01-220.
- (4) The environmental trust fund may be used to support educational and training programs relating to the protection of the environment.

- (5) The board created in KRS 224.01-210 shall take into consideration state and federal moneys available for projects prior to expending money in the environmental trust fund.
- (6) The environmental trust fund shall not be used to support or finance the routine day-to-day activities and responsibilities of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.

➔Section 346. KRS 224.01-210 is amended to read as follows:

- (1) The Environmental Board is established, which shall control and manage the environmental trust fund. The board shall be composed of eight (8) members as follows: the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, the chairman of the Environmental Quality Commission, and six (6) members at large to be appointed by the Governor. The board members shall elect the chairman.
- (2) The six (6) members at large shall be appointed for terms of four (4) years. The remaining members shall be permanent members. The six (6) members at large shall be appointed from the following: two (2) from manufacturers, mineral extraction industry, or agribusiness; two (2) from the state-supported university system; one (1) from public health or environmental citizen groups; and one (1) an educator specializing in environmental education. Vacancies in the members at large appointments shall be filled in the same manner as originally appointed, and appointments to fill these vacancies shall be for the remainder of the unexpired term.
- (3) The board shall meet at least once each calendar quarter or more often on the call of the chairman.
- (4) No member of the board shall receive any salary, fee, or other remuneration for services as a member of the board but each member shall be reimbursed for travel expenses incurred in the performance of duties as a board member.
- (5) The secretary and the staff of the cabinet shall serve as staff for the board.
- (6) The cabinet may provide legal representation to the board or the board may enter into personal service contracts pursuant to KRS Chapter 45 to obtain legal counsel.
- (7) Five (5) members of the board shall constitute a quorum for conducting business. Each member shall have one (1) vote and a majority vote of the members present shall control on all questions.
- (8) The cabinet shall annually prepare a proposed program and a list of projects for public comment and review for the board's consideration.

➔Section 347. KRS 224.01-300 is amended to read as follows:

- (1) For purposes of KRS 224.01-300 and 224.01-310 only, "pollution control facility" shall mean and include:
 - (a) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of, or ground level concentration of, particulate matter, dust, fumes, gas, mist, smoke, vapor, or odorous substances, or any combination thereof which renders air harmful or inimical to the health of persons or to property within this Commonwealth;
 - (b) Any disposal system or any treatment works, pretreatment works, appliance, equipment, machinery, or installation constructed, used, or placed in operation primarily for the purpose of reducing, controlling, or eliminating thermal pollution or water pollution caused by industrial waste, or what would be industrial waste, if discharged into the waters of the Commonwealth;
 - (c) Any disposal system or any appliance, equipment, machinery or installation constructed, used or placed in operation primarily for disposing of waste, converting waste into an item of real economic value or converting hazardous waste to nonhazardous waste;
 - (d) Any property designed, constructed, or installed as a component part of any commercial or industrial premises for the primary purpose of eliminating or reducing the emission of sound which is harmful or inimical to the health of persons or to property, or materially reduces the quality of the environment in this Commonwealth;
 - (e) Any property designed, constructed, or installed for the primary purpose of removing substances from raw materials, which substances, if permitted to become a component part of the finished product, would have a deleterious effect on the environment when the finished product was utilized.

- (2) "Industrial waste" means any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, trade, or business, or from the development, processing, or recovery of any natural resource, together with such sewage as is present, which pollutes the waters of the Commonwealth.
- (3) "Solid waste" means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining (excluding coal mining waste), and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).
- (4) "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing, or holding sewage, industrial waste, or other wastes.
- (5) "Water pollution" shall mean the placing of any noxious or deleterious substances in any waters of the Commonwealth which render such waters harmful or inimical to aquatic life, or to the use of such waters for domestic water supply, or industrial or agricultural purposes or for recreation.
- (6) "Waters of the Commonwealth" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this Commonwealth, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural surface or underground waters.
- (7) "Cabinet" shall mean the Kentucky **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (8) "Pollution control tax exemption certificate" shall mean that certificate issued by the cabinet pursuant to KRS 224.01-310.

➔Section 348. KRS 224.01-410 is amended to read as follows:

- (1) The General Assembly finds that properties contaminated with hazardous chemical residues created by the manufacture of methamphetamine endanger innocent members of the public due to exposure to these residues where properties are not properly decontaminated prior to the subsequent rental, sale, or use of the properties. Remediation of properties has been frustrated by a lack of comprehensive standards and procedures for decontamination of properties found to have been involved with methamphetamine production. The purpose of this section where law enforcement has found evidence of the manufacture of methamphetamine is to protect the public health, safety, and welfare by providing specific cleanup standards and procedures.
- (2) As used in this section, the following definitions shall apply:
 - (a) "Clandestine methamphetamine lab" means any inhabitable property used for the manufacture of methamphetamine as defined by KRS 218A.1431;
 - (b) "Contaminated property" means any inhabitable property that has been used to manufacture methamphetamine and has been assessed as containing methamphetamine contamination;
 - (c) "Decontamination standards" means standards used to determine that a contaminated property has become decontaminated;
 - (d) "Inhabitable property" means any building or structure and any related curtilage, water, water system, or sewer system used as a clandestine methamphetamine drug lab that is intended to be primarily occupied by people, including a mobile home or an individual unit of a multifamily housing unit, that may be sold, leased, or rented for any length of time. "Inhabitable property" shall not include a hotel, as defined in KRS 219.011;
 - (e) "Surface material" means any porous or nonporous substance common to the interior of a building or structure, including but not limited to ceilings and walls, window coverings, floor and floor coverings, counters, furniture, heating and cooling duct work, and any other surface to which inhabitants of the building or structure may be exposed; and

- (f) "Related hazardous material or hazardous waste" means any hazardous waste as defined in this chapter or hazardous material as defined in KRS 174.405 that is related to the clandestine production of methamphetamine.
- (3) (a) The cabinet shall promulgate administrative regulations providing for decontamination standards for contaminated property, including:
 - 1. Decontamination standards for methamphetamine and methamphetamine precursors;
 - 2. Decontamination standards for materials used in methamphetamine production, including related hazardous material or hazardous waste; and
 - 3. Sampling and testing standards for contaminated properties with a tiered response system for decontamination services.
- (b) Absent administrative regulations described in this subsection, the decontamination standard for methamphetamine inside inhabitable property is less than or equal to one-tenth of one (0.1) microgram of methamphetamine per one hundred (100) square centimeters of surface material.
- (4) The Department of Kentucky State Police shall promulgate administrative regulations establishing assessment procedures for determining if an inhabitable property is a contaminated property.
- (5) Upon a determination that an inhabitable property is a contaminated property under subsection (4) of this section, the state or local law enforcement agency shall notify the cabinet of its findings and results of assessment.
- (6) (a) The cabinet shall promulgate administrative regulations to establish a reasonable, appropriate, and protective tiered response system to address the level of decontamination services required for a contaminated property based upon the degree of methamphetamine production and the degree of potential contamination resulting from methamphetamine production as indicated by the results of assessment by responding state or local law enforcement.
- (b) Tier 1 shall be for a transient contaminated property where the manufacturing of methamphetamine with anhydrous ammonia was initiated but only limited amounts of reagents or precursors are present and open, and where minimal spill and staining may be observed.
- (c) Tier 2 shall be for a transient contaminated property where the manufacturing of methamphetamine with moderate activity or the use of red phosphorous is evident but only limited amounts of methamphetamine, reagents, or precursors were produced over a relatively short period of time, and where spills and staining may be observed.
- (d) Tier 3 shall be for an entrenched contaminated property where precursors and reagent production has occurred over an extended period of time, from many weeks to several months, and where spills, staining, and burn pits may be observed. This tier designation shall be considered as the default tier designation for homes and rental property with recurring methamphetamine production.
- (e) Tier 4 shall be for a mass production contaminated property where large quantities, such as multiple pounds, of methamphetamine, reagents, or precursors are present, and where potentially severe environmental effects may be indicated because of the large quantities of drummed or buried waste is discovered. Due to the potential for significant releases of hazardous substances, pollutants, or contaminants, law enforcement agencies shall consult with the cabinet prior to making this tier recommendation.
- (7) Any contaminated property, regardless of the initial level of methamphetamine contamination, shall meet the decontamination standard set forth in subsection (3) of this section and, regardless of the results of testing or assessment, shall require at least a Tier 1 cleanup response. A property owner shall certify to the cabinet that the property has been cleaned to the standard set forth in subsection (3) of this section.
- (8) (a) Only contractors certified by the cabinet shall be authorized to conduct the decontamination services for inhabitable properties following the protocols of the tiered response system. The cabinet shall maintain a list of vendors and contractors with current certification to provide decontamination services. In order to become a certified contractor, a contractor shall:
 - 1. Register with the cabinet;

2. Post a surety bond or obtain other financial assurance, which shall include but is not limited to a corporate guarantee, financial test-based self-insurance, irrevocable letter of credit, or any combination of assurances, in the amount of one hundred thousand dollars (\$100,000) for a Tier 1, 2, or 3 cleanup and two hundred fifty thousand dollars (\$250,000) for a Tier 4 cleanup, which may be aggregated;
 3. Provide a certificate issued by an insurance company licensed to do business in Kentucky, certifying that the contractor has a public liability insurance policy in an amount deemed sufficient by the cabinet for any personal or property damages that might occur to third parties arising from the performance of decontamination services for inhabitable properties by the contractor or his or her employees or agents;
 4. Certify that decontamination will be performed safely and in accordance with 803 KAR 2:403; and
 5. Certify that each cleanup conducted meets the decontamination standard required by subsection (3) of this section.
- (b) Any contractor who is certified by the cabinet, and whose certification is in good standing, prior to July 15, 2008, shall retain that certification without having to be recertified.
 - (c) Upon registration, the cabinet shall either accept or deny the contractor's certification. The cabinet may revoke the certification of any contractor for cause and may collect the forfeited financial assurance of any contractor found to be in violation of this section. Forfeited financial assurance may be used by the cabinet to decontaminate inhabitable properties.
 - (d) The cabinet shall promulgate administrative regulations to establish standards and procedures for contractor certification and to establish reasonable fees to implement this section.
- (9) When a state or local law enforcement agency investigates an inhabitable property that it has reason to believe has been used as a clandestine methamphetamine drug lab, the state or local law enforcement agency shall, at the request of the state or local health department under its respective authority pursuant to KRS Chapter 211 or 212, post a methamphetamine contamination notice on each exterior door of the inhabitable property, except that in the case of a multifamily housing unit, it shall post the notice on each entrance door to the individual unit. The Department for Public Health shall promulgate administrative regulations establishing the notice requirements and the process for removing the notice from inhabitable properties. Any homeowner listed on the deed of the dwelling may request an administrative hearing pursuant to KRS Chapter 13B to determine whether the methamphetamine contamination notice is proper by filing a request for appeal with the Department for Public Health within thirty (30) days of the methamphetamine contamination notice having been posted on the property. The responding state or local law enforcement agency shall, within three (3) business days of when the notice is posted, report it by fax or e-mail to the local health department.
 - (10) Any owner of contaminated property who leases, rents, or sells contaminated property upon which a methamphetamine contamination notice has been posted under subsection (9) of this section shall disclose in writing to any potential lessee, tenant, or buyer that the property is contaminated with methamphetamine and has not been decontaminated pursuant to the requirements set forth in this section. If the property has been decontaminated and released by the cabinet from the need for further action, notice under this subsection shall not be required. The Department for Public Health shall promulgate administrative regulations setting forth the disclosure requirements.
 - (11) Once contaminated property has been decontaminated in accordance with standards set forth in subsection (3) of this section, the cabinet shall make available to owners of contaminated property who lease or rent the inhabitable property information about federal income tax deductions or credits available to compensate for damage done to the property in commission of a crime, including methamphetamine production done by someone other than the owner.
 - (12) To effect the provisions and promote the purposes of this section, the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall integrate their efforts with other state agencies to provide information and training to the public about the health hazards associated with methamphetamine laboratories.
 - (13) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet, the Cabinet for Health and Family Services, and the Justice and Public Safety Cabinet shall pursue funds from the federal government,

through grants or any other funding source, to help pay for the cost of assessment and decontamination of inhabitable properties.

➔ Section 349. KRS 224.10-020 is amended to read as follows:

- (1) There is established within the cabinet a Department for Natural Resources, a Department for Environmental Protection, *and* a Department *for Energy Development and Independence* ~~of Labor, and a Department of Public Protection~~. Each department shall be headed by a commissioner appointed by the secretary with the approval of the Governor as required by KRS 12.050. The commissioners shall be directly responsible to the secretary and shall perform such functions, powers, and duties as provided by law and as the secretary may prescribe.
- (2) There is established within the Department for Natural Resources a Division of Forestry, a Division of Conservation, *a Division* ~~an Office~~ of Technical and Administrative Support, a Division of Mine Reclamation and Enforcement, a Division of Mine Permits, a Division of Abandoned Mine Lands, a Division of Oil and Gas ~~Conservation~~, and an Office of Mine Safety and Licensing. There shall be established within the Office of Mine Safety and Licensing a Division of Safety Inspection and Licensing ~~of a Division of Explosives and Blasting, a Division of Investigation,~~ and a Division of Safety Analysis, Training, and Certification. *The Kentucky Mining Board is attached to the Office of Mine Safety and Licensing for administrative purposes.* Each division shall be headed by a director and each office shall be headed by an executive director. Directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050 ~~and, as appropriate, KRS 353.530~~, except for the director of the Division of Conservation, who shall be appointed in accordance with KRS 146.100. Both directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.
- (3) *There is established within the Department for Environmental Protection a Division of Water, a Division for Air Quality, a Division of Waste Management, a Division of Enforcement, a Division of Compliance Assistance, and a Division of Environmental Program Support. Each division shall be headed by a director appointed by the secretary with the approval of the Governor as required by KRS 12.050. Directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.*
 - ~~[(a) There is established within the Department of Labor an Office of Occupational Safety and Health, an Office of Labor Management Relations and Mediation, an Office of Workplace Standards, and a Division of Administrative Services. Each division shall be headed by a director and each office shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. The directors and the executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.]~~
 - ~~[(b) The following agencies are attached to the Department of Labor for administrative purposes only:~~
 - ~~1. Kentucky Labor Management Advisory Council;~~
 - ~~2. Kentucky Employees' Insurance Association;~~
 - ~~3. State Labor Relations Board;~~
 - ~~4. Workers' Compensation Funding Commission;~~
 - ~~5. Workers' Compensation Advisory Council;~~
 - ~~6. Occupational Safety and Health Standards Board;~~
 - ~~7. Prevailing Wage Review Board;~~
 - ~~8. Apprenticeship and Training Council;~~
 - ~~9. Employers' Mutual Insurance Authority;~~
 - ~~10. Workers' Compensation Nominating Commission; and~~
 - ~~11. Office of Workers' Claims.]~~

- (4) *There is established within the Department for Energy Development and Independence a Division of Energy Efficiency and Conservation, a Division of Renewable Energy, a Division of Biofuels, a Division of Energy Generation, Transmission and Distribution, a Division of Carbon Management, and a Division of Fossil Energy Development. Each division shall be headed by a director. Directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050.*

~~[(a) There is established within the Department of Public Protection a Division of Administrative Services, an Office of Financial Institutions, an Office of Insurance, an Office of Housing, Buildings and Construction, an Office of Charitable Gaming, and an Office of Alcoholic Beverage Control. Each division shall be headed by a division director and each office shall be headed by an executive director. Division directors and executive directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050. Division directors and executive directors shall be directly responsible to the commissioner and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.]~~

~~(b) The following agencies are attached to the Department of Public Protection for administrative purposes only:~~

- ~~1. Kentucky Public Service Commission;~~
- ~~2. Crime Victims Compensation Board;~~
- ~~3. Board of Claims;~~
- ~~4. Board of Tax Appeals;~~
- ~~5. Kentucky Boxing and Wrestling Authority; and~~
- ~~6. Kentucky Horse Racing Authority.]~~

➔Section 350. KRS 224.10-022 is amended to read as follows:

There is established in the Office of the Secretary an Office of ~~[Communications and Public Outreach, an Office of Administrative Hearings, an Office of Regulatory Affairs,]~~ **and** an Office of Legislative and Intergovernmental Affairs~~[, an Office of Inspector General, an Office of Legal Services, and an Office of Administrative and Information Services].~~ Each *of these offices*~~[office]~~ shall be headed by an executive director appointed by the secretary with the approval of the Governor as required by KRS 12.050. ***There is also established in the Office of the Secretary an Office of General Counsel, headed by a general counsel appointed by the secretary with the approval of the Governor in accordance with KRS 12.050 and 12.210.*** The executive directors ***and the general counsel*** shall be directly responsible to the secretary and shall perform the functions, powers, and duties as provided by law and as prescribed by the secretary.~~[The Workers' Compensation Board and the Kentucky Occupational Safety and Health Review Commission shall be attached to the Office of the Secretary.]~~ The Environmental Quality Commission, which shall be headed by an executive director appointed by the secretary with the approval of the Governor, shall be attached to the Office of the Secretary. The Kentucky State Nature Preserves Commission, which shall be headed by a director, and the Mine Safety Review Commission, whose members shall be appointed by the Governor with the consent of the General Assembly, shall be attached to the Office of the Secretary. ***The Kentucky Public Service Commission, which shall be headed by an executive director appointed by the commission in accordance with KRS 278.100, shall be attached to the Office of the Secretary for administrative purposes.***

➔Section 351. KRS 224.10-052 is amended to read as follows:

- (1) The ~~Office~~~~[Division]~~ of Occupations and Professions ***in the Public Protection Cabinet*** shall provide administrative services, technical assistance, and advice to the following boards and commissions at the request of the individual boards or commissions, all of which maintain their identity and their full authority for making policy decisions in the fields that they regulate: the State Board of Accountancy, the Kentucky Board of Architects, the Kentucky Board of Barbering, the Kentucky Board of Hairdressers and Cosmetologists, the State Board of Podiatry, the Kentucky State Board of Chiropractic Examiners, the Kentucky Board of Dentistry, the State Board of Embalmers and Funeral Directors, the State Board of Registration for Professional Engineers and Land Surveyors, the Kentucky Board of Nursing, the Kentucky Board of Ophthalmic Dispensers, the Kentucky Board of Optometric Examiners, the Kentucky Board of Pharmacy, the State Board of Physical Therapy, the State Board of Examiners of Psychologists, the Kentucky Real Estate Commission, the Kentucky Board of Veterinary Examiners, the Board of Auctioneers, the State Board for Proprietary Education, the State Board of Examiners and Registration of Landscape Architects, the State Board of Medical Licensure, the Board of Speech-Language Pathology and Audiology, the Kentucky Board of

Licensure for Nursing Home Administrators, the Kentucky Licensing Board for Specialists in Hearing Instruments, the Kentucky Board of Social Work, and such other boards and commissions as are created to license, certify, register, or otherwise regulate any occupational or professional category.

- (2) To the extent that the **office**~~[division]~~ provides administrative services, the respective boards and commissions are relieved of the power and duty to provide the services for themselves. The **office**~~[division]~~ shall charge each board or commission a reasonable amount for administrative services provided pursuant to subsection (1) of this section. The **office**~~[division]~~ may employ persons previously employed by boards or commissions.
- (3) The **office**~~[division]~~ may receive complaints against the conduct of licensees granted licensure by the boards and commissions assigned to the **office**~~[division]~~ for administrative purposes. The **office**~~[division]~~ shall cause such complaints to be reduced to writing and forwarded to the appropriate board or commission for investigation and a determination of the validity of the complaint. The **office**~~[division]~~ shall keep a record of all complaints received by it and forwarded to a board or commission.
- (4) Any board or commission listed in subsection (1) of this section, shall accept personal checks in payment of license renewal fees.

➔Section 352. KRS 224.10-110 is amended to read as follows:

The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall enforce the rules and regulations adopted by the secretary of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet for the regulation and control of the matters set out below and shall formulate, promote, establish and execute policies, plans and programs relating to natural resources and environmental protection, including but not limited to the following matters:

- (1) The proper disposal of waste;
- (2) The purification of water for public and semipublic use;
- (3) The proper construction and operation of public water distribution systems and water treatment systems in public water purification plants and swimming pools;
- (4) The review, approval or disapproval of plans for construction, modification or extension of water purification and distribution systems and water treatment systems in swimming pools; and
- (5) The certification of water and sewage plant operators.

➔Section 353. KRS 224.10-220 is amended to read as follows:

- (1) The **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall adopt administrative regulations establishing reasonable timetables for the issuance of all permits by the cabinet, except those permits for which a timetable is set out by statute. The timetables shall set specific time periods for actions to be taken in the consideration of permit applications.
- (2) The timetables adopted pursuant to subsection (1) of this section shall be proposed for adoption and filed with the Legislative Research Commission no later than January 1, 1993. In the event that the timetables required by subsection (1) of this section are not proposed for adoption and filed with the Legislative Research Commission by the January 1, 1993 deadline, the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall cease the collection of permit fees for all permits for which timetables have not been established until the required timetables have been proposed for adoption.
- (3) The cabinet shall waive the permit fee for any permit not acted upon, either favorably or unfavorably, in accordance with the established timetables. The approach of an impending deadline for action on a permit pursuant to the established timetables shall not be a reason for denial of a permit. However, nothing in this section shall require the cabinet to issue a permit which would violate this chapter or the administrative regulations adopted pursuant thereto.

➔Section 354. KRS 224.10-225 is amended to read as follows:

- (1) The secretary of the **Energy and Environment**~~[Environmental and Public Protection]~~ Cabinet shall facilitate the permitting of coal-fired electric generation plants or industrial energy facilities in the Commonwealth by developing procedures for one (1) stop shopping for environmental permits.

- (2) Upon request by an applicant for environmental permits for an industrial energy facility, the secretary, in consultation with the applicant, shall establish specific time periods for actions to be taken in the consideration of its permit applications. The time periods established shall not exceed those adopted by administrative regulations promulgated pursuant to KRS 224.10-220.

➔Section 355. KRS 224.10-470 is amended to read as follows:

- (1) Appeals may be taken from all final orders of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet. Except as provided in subsection (3) of this section, the appeal shall be taken to the Franklin Circuit Court within thirty (30) days from entry of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition which states fully the grounds upon which a review is sought and assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that such record is its entire original record or a true copy thereof, which shall be filed by the clerk of the Circuit Court and such record shall then become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties and upon proper showing and in the discretion of the court be permitted to intervene. Upon hearing of the appeal the findings of the cabinet shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet.
- (2) Appeals to the Court of Appeals from orders of the Circuit Court, shall be taken in the manner provided in the Kentucky Rules of Civil Procedure.
- (3) Final orders of the cabinet regarding environmental permits for an industrial energy facility as defined in KRS 224.01-010 shall be subject to expedited review by the Circuit Court located in the county where the industrial energy facility is proposed to be located.

➔Section 356. KRS 224.10-620 is amended to read as follows:

The Kentucky Environmental Education Council, the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, and the Department of Education shall establish a program to educate the citizens of the Commonwealth of the importance of reducing and managing waste effectively, the need for individual action to reduce the amount and toxicity of solid waste being disposed, the need for alternative disposal methods to landfilling for toxic materials commonly used in or around households such as cleaners, solvents, pesticides, and automotive and paint products, and the necessity of implementing environmentally protective management and disposal mechanisms for the solid waste that is generated. In helping develop the educational programs, the Department of Education shall identify and adopt mechanisms to inform students throughout the Commonwealth of the importance of reducing and managing solid waste effectively.

➔Section 357. KRS 224.10-650 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet shall assume the primary responsibility in state government for implementing a source separation and collection program for waste materials generated as a result of state agency operations, including, at a minimum, aluminum, high grade office paper, and corrugated paper.
- (2) The cabinet shall establish procedures for collection and storage of recovered material and contractual or other arrangements for transportation and purchase of recovered materials. Every state agency of the executive, legislative, and judicial branches of state government and all state-supported institutions of higher education, in cooperation with the cabinet, shall develop a plan to conduct source separation and collection activities for recovered materials.
- (3) A state agency or institution may elect to operate its own source separation program upon review and approval by the cabinet.
- (4) The secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet shall take or cause to be taken such actions as may be necessary to:
- (a) Identify the geographical location of existing or potential markets for recovered materials and energy generated;
 - (b) Identify the economic and technical barriers to the use of recovered materials and energy generated;

- (c) Identify sound technologies, techniques, and processes for resource recovery and energy generated applicable to both urban and rural areas of Kentucky;
 - (d) Encourage the development of new uses for recovered materials; and
 - (e) Encourage and promote the development of new markets for recovered materials.
- (5) Funds received by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet from the source separation and collection program as described in this section shall be utilized by the cabinet to defray the cost of conducting the activities outlined in this section. Funds received by any other state agency or institution from an approved source separation collection program may be used to offset costs of the program. Any moneys generated by the cabinet or other state agencies or institutions in excess of the amounts needed to conduct these activities shall be placed in the resource conservation and recovery fund and be used for other litter abatement activities.
- (6) There is created within the State Treasury a trust and agency fund, which shall not lapse, to be known as the resource conservation and recovery fund. Any appropriations, gifts, grants or program revenues received by the cabinet relating to resource recovery and litter abatement shall be deposited in the fund. Moneys in the fund shall be used for resource recovery and litter abatement activities.

➔Section 358. KRS 224.10-660 is amended to read as follows:

- (1) The Kentucky Recycling and Marketing Assistance Program, referred to in this section as the "program," is created to develop a recycling infrastructure within the Commonwealth. The program shall:
 - (a) Encourage the collection, processing, and marketing of recovered materials;
 - (b) Provide assistance for the development of community and regional recycling;
 - (c) Identify resources to help market recyclables; and
 - (d) Promote the development of the market for recyclables.
- (2) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall administer the program and assist local governments and commercial businesses seeking to recycle materials.
- (3) The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall create a Kentucky Recycling and Marketing Assistance Advisory Committee to act in an advisory capacity to the cabinet. In addition to its other duties, this committee shall develop and submit an annual report by October 1 to the Interim Committee on Agriculture and Natural Resources.

➔Section 359. KRS 224.18-210 is amended to read as follows:

Pursuant to Article III of the compact set forth in KRS 224.18-200, the Governor shall appoint four (4) commissioners in addition to the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet as members of the Interstate Air Pollution Control Commission. The commissioners shall promulgate rules and regulations to carry out more effectively the terms of the compact. The commissioners shall cooperate with all cabinets, agencies, and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact and all such cabinets, agencies, and officers shall cooperate with the commissioners.

➔Section 360. KRS 224.18-220 is amended to read as follows:

Any payments necessary to discharge any financial obligations imposed upon the State of Kentucky by the compact, as provided in KRS 224.18-200, shall be made from the general fund appropriations to the Interstate Air Pollution Control Commission upon presentation to the Finance and Administration Cabinet of itemized vouchers signed by the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.

➔Section 361. KRS 224.18-710 is amended to read as follows:

- (1) A three (3) member Interstate Water Sanitation Board is established. The members of the board shall serve as Kentucky's members of interstate water sanitation control commissions created by compacts to which Kentucky is a party, which compacts are composed of states forming a river basin, and which compacts require a three (3) member representation from each state. The Governor shall appoint one (1) of the board members, who shall be a resident and citizen of this state. The member shall be appointed for a term of four (4) years, and shall hold office until his successor is appointed and qualified, subject to removal at the pleasure of the

Governor. The Lieutenant Governor and the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall, ex officio, be the second and third members of the board. Except as otherwise provided by the respective compacts, an ex officio member may delegate to any deputy or other subordinate in his cabinet the power to be present and participate, including the right to vote, as his representative or substitute at any meeting, hearing or other proceeding of the commissions.

- (2) The membership of the first Interstate Water Sanitation Board shall be composed of the membership of the Ohio River Valley Water Sanitation Commission existing on June 19, 1958, and the terms of the appointed members shall be effective from the date of their appointment to the Ohio River Valley Water Sanitation Commission.

➔Section 362. KRS 224.20-120 is amended to read as follows:

In exercising the power conferred upon it by this chapter the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall give due recognition to the policy as heretofore expressed in KRS 224.20-100. The cabinet, in fixing standards, shall require the use of all available, practical, and reasonable methods to prevent and control air pollution in the Commonwealth of Kentucky. It shall give due recognition to the quantity of characteristics of air contaminants or the duration of their presence in the atmosphere. It shall take into consideration in this connection such factors, among others, found by it to be proper and just, existing physical conditions, public benefit, that the degree of conformance therewith that may be proper as to an essentially residential area of the state may not be proper as to a highly industrial area of the state, and, further, the relationship between the intensity and composition of air pollution and the health of the public and damage to or interference with enjoyment of property. It shall give reasonable consideration to the interests of all parties concerned.

➔Section 363. KRS 224.20-510 is amended to read as follows:

- (1) There is hereby established the Small Business Stationary Source Compliance Advisory Panel, referred to hereafter as "the panel," to determine the overall effectiveness of Kentucky's Small Business Stationary Source Technical and Environmental Compliance Assistance Program. The panel shall be attached to the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet for administrative purposes.
- (2) The eleven (11) member panel shall be appointed as follows:
 - (a) Two (2) members, who are not owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent the general public;
 - (b) Two (2) members, who are owners, or representatives of owners, of small business stationary sources, shall be selected by the Governor to represent small business stationary sources;
 - (c) Two (2) members shall be selected by the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet to represent that agency;
 - (d) One (1) member shall be selected by the secretary of the Cabinet for Economic Development; and
 - (e) Four (4) members who are owners, or representatives of owners of small business stationary sources, shall be selected by the Kentucky General Assembly as follows:
 1. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the Senate, and
 2. One (1) member selected by the minority leadership and one (1) member selected by the majority leadership of the House of Representatives.
- (3) Members who were appointed before July 15, 1998, shall continue in office until October 30, 1998. The Governor shall then designate the members who have been appointed in accordance with subsection (2) of this section to serve initial terms as follows:
 - (a) Three (3) members shall serve in office for four (4) years;
 - (b) Three (3) members shall serve in office for three (3) years;
 - (c) Three (3) members shall serve in office for two (2) years; and
 - (d) Two (2) members shall serve in office for one (1) year.

When those initial terms expire, members shall serve in office for four (4) year terms.

- (4) Any vacancy in an unexpired term shall be filled for the unexpired portion of the term in the same manner as the original appointment to that term.
- (5) Members of the panel shall receive no compensation, but shall be reimbursed for actual expenses incurred in accordance with Kentucky statutes and administrative regulations while performing official duties.
- (6) The panel shall select one (1) of its members as chair and another as vice chair.
- (7) Staff services for the panel shall be performed, insofar as practicable, by personnel of the cabinet.

➔Section 364. KRS 224.30-105 is amended to read as follows:

- (1) "Secretary" means the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (3) "Local government" means any county or city.
- (4) "Environmental noise" and "ambient noise" means the intensity, duration, and character of sounds from all sources.
- (5) "Ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.
- (6) "Person" means an individual, corporation, partnership, or association, and includes any officer, employee, department, agency, or instrumentality of the United States, a state, or any political subdivision of a state.
- (7) "Noise" means the intensity, frequency, duration, and character of sounds from a source or number of sources. Noise includes vibrations of subaudible frequency.
- (8) "Product" means any manufactured article or goods or component thereof.

➔Section 365. KRS 224.40-340 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall not revoke, refuse to issue or refuse to renew permits to operators of solid waste disposal sites or facilities solely because the operator uses an incinerator for disposing of solid waste material. Provided, however, that the cabinet shall be empowered to revoke, refuse to issue or refuse to renew solid waste disposal permits if the operator has not complied with its regulations relating to permits to use incinerators, refuse burners and open burning. This section shall not prevent the cabinet from revoking, refusing to issue or refusing to renew solid waste disposal permits due to the use of incinerators, refuse burning and open burning which it has not authorized.

➔Section 366. KRS 224.40-605 is amended to read as follows:

- (1) The cabinet shall promulgate regulations which establish standards for the operator of any waste site or facility or portion thereof, whether publicly or privately owned, requiring such operators to do the following:
 - (a) Attend a training session concerning the operation of the appropriate type *of* waste facility conducted by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
 - (b) Indicate sufficient skill and competency for proper operation of the waste site by adequate performance on an examination prescribed by the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
 - (c) Pay a reasonable fee related to the cost of conducting training and certification sessions to be utilized to defray the cost of conducting the sessions; and
 - (d) Renew the certificates of competence at reasonable intervals.
- (2) No person shall authorize or allow any person who does not hold a certificate issued pursuant to subsection (1) of this section to have primary responsibility for the operation of any waste site or facility or portion thereof.

➔Section 367. KRS 224.43-080 is amended to read as follows:

- (1) On July 15, 1994, and annually thereafter, each publisher shall submit a report to the cabinet. The report shall indicate the amount of newsprint used in the preceding year, its recycled content, along with any other information required by the cabinet.

- (2) The Governor shall appoint a Newsprint Recycling Task Force consisting of the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet or a designee; the chairman of the Kentucky Recycling and Marketing Assistance Advisory Committee or a designee; the executive director of the Kentucky Press Association or a designee; three (3) members from environmental organizations; and five (5) members representing the Kentucky newsprint publishing industry and newsprint manufacturers doing business in Kentucky. A list of names of potential task force members shall be provided by the president of the Kentucky Press Association.
- (3) The task force members shall each serve a two (2) year term. The initial five (5) industry representatives appointments shall consist of two (2) two (2) year terms and three (3) one (1) year terms.
- (4) The Newsprint Recycling Task Force shall meet as necessary to monitor the use of newsprint in the state for the following goals:
 - (a) To increase the demand for recycled newsprint in Kentucky;
 - (b) To increase the availability for the product;
 - (c) To establish Kentucky as a reliable source of old newsprint for recycling; and
 - (d) To identify, develop, and advance initiatives to recycle and reuse discarded newspapers and paper products with an emphasis on recycling these materials instead of diverting them for disposal.
- (5) The Newsprint Recycling Task Force and the Kentucky Press Association shall encourage all Kentucky industries and businesses, their trade or professional organizations, and all public agencies at the state and local level to increase their use of recycled newsprint.
- (6) The Newsprint Recycling Task Force shall take steps to attract a recycled newsprint mill or related facility to Kentucky by identifying potential sites and potential manufacturers. The task force shall also work with the Kentucky Recycling and Marketing Assistance Advisory Committee in recommending appropriate economic and tax incentives to encourage such a project.
- (7) The Newsprint Recycling Task Force shall promote the increased recovery of old newspapers and, with the Commonwealth of Kentucky representatives, work with communities to develop processing and collection programs to provide quality material to the marketplace.
- (8) The Newsprint Recycling Task Force shall report to the Interim Joint Committee on Agriculture and Natural Resources by October 1, 1995, on the availability and cost of adequate supplies of newsprint which contain a recycled content of fifty percent (50%) or more, or any other information or recommendations deemed appropriate.

➔Section 368. KRS 224.43-090 is amended to read as follows:

Exclusive venue for any appeal of a violation, determination, finding of noncompliance, or any other action of the Finance and Administration Cabinet, ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, or other state agency relating to any county, urban-county, charter county, consolidated local government, city, special district, or other governmental unit specified in this subchapter and KRS 30A.190, 109.011, 109.041, 109.0415, 224A.011, 224A.100, 431.100, 433.753, 433.757, and 512.070 shall be in the court of competent jurisdiction of the county which is the subject of the action by the state agency.

➔Section 369. KRS 224.43-310 is amended to read as follows:

- (1) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet of the Commonwealth of Kentucky is designated as the official planning and management agency of the Commonwealth of Kentucky in the field of solid waste. The cabinet shall have primary responsibility for coordinating the solid waste planning and management activities of waste management districts, counties, cities, area development districts, and any combination thereof and for the approval of solid waste management facilities. In doing so it shall be the goal of the cabinet to reduce the amount of solid waste disposed in municipal solid waste disposal facilities within the Commonwealth and to encourage regional management of solid waste.
- (2) The cabinet shall have the primary responsibility to develop, review, report on, and triennially update a statewide solid waste reduction and management plan. A draft plan shall be prepared and made available for public inspection by December 1, 1991; a proposed final plan shall be submitted to the General Assembly by February 1, 1992; and a final plan shall be submitted to the General Assembly by March 1, 1992. The plan shall be designed to address the following:

- (a) Coordination of area plans and provision of support for area planning efforts;
 - (b) Elimination of existing open dumps and prevention of new open dumps;
 - (c) Proper closure, characterization, and corrective action for municipal solid waste disposal facilities that ceased accepting waste before July 1, 1992;
 - (d) Reductions in solid waste disposed in municipal solid waste disposal facilities within the Commonwealth by actively promoting reuse and reduction consistent with the policies and goals established by KRS 224.43-010;
 - (e) Adequate capacity exists for recycling or disposal of solid waste generated within the Commonwealth for five (5), ten (10), and twenty (20) year planning periods;
 - (f) Maintenance of disposal capacity for solid waste generated in the Commonwealth if the cabinet acts to close a solid waste management facility;
 - (g) Encouragement of regional alternatives for waste reduction and management in the planning process;
 - (h) Priority in grants and loans for projects and practices consistent with the policies and goals established by KRS 224.43-010;
 - (i) Minimum standards and procedures for solid waste management plans as established by the cabinet in administrative regulations;
 - (j) A description of the status of solid waste reduction and management efforts in Kentucky;
 - (k) Identification of state actions and responsibilities necessary to implement this chapter; and
 - (l) Identification of problems impeding the attainment of the policies and goals of this chapter.
- (3) The statewide solid waste reduction and management plan shall not establish maximum disposal capacity limitations for the Commonwealth.
- (4) The cabinet, beginning July 1, 1992, shall report annually to the Governor and to the General Assembly on the status of solid waste management in the Commonwealth. The report filed July 1, 1992, shall present the current status of solid waste planning and management in the Commonwealth. Subsequent annual reports shall include but not be limited to:
- (a) The status of solid waste planning and management;
 - (b) The number and types of recycling and solid waste management facilities in the Commonwealth;
 - (c) The status of actions taken to:
 - 1. Eliminate existing open dumps and prevent new open dumps; and
 - 2. Undertake proper closure, characterization, and corrective action for municipal solid waste disposal facilities that ceased accepting waste before July 1, 1992;
 - (d) The remaining permitted capacity of each permitted solid waste management facility;
 - (e) The number and types of solid waste grants or loans made to cities, counties, waste management districts, and area development districts;
 - (f) A compilation and analysis of solid waste reduction and management data provided to the cabinet;
 - (g) A statement of progress achieved in meeting the policies and goals established by KRS 224.43-010;
 - (h) A statement of progress achieved in solid waste management education;
 - (i) A statement of progress achieved in establishing regional solid waste management approaches;
 - (j) Any revisions in the statewide solid waste reduction and management plan; and
 - (k) Recommendations for improving the reduction and management of solid waste in the Commonwealth.
- (5) On March 1 of each year, each governing body shall report annually to the cabinet on the status of solid waste management in its area. The annual report shall include but not be limited to:

- (a) The amount of in-area and out-of-area municipal solid waste disposed in municipal solid waste disposal facilities in the area;
- (b) The total cumulative progress made toward meeting the policies and goals established by KRS 224.43-010;
- (c) The remaining permitted capacity of disposal facilities;
- (d) Recycling and composting activities in existence;
- (e) Public information and education activities during the reporting period including public campaigns urging participation in a municipal solid waste collection system and public campaigns promoting anti-litter and anti-dumping behavior with an accounting by the governing body of funds spent, labor expended, volunteer time and money expended, and an estimation of the campaign's effect;
- (f) The number of households within the area served by the governing body and the methods of public or private municipal solid waste collection available to them, the cost to the households using the collection system, the percentage of households using each method of municipal solid waste collection available to them, the cost to the governing body of providing a municipal solid waste collection system, how the cost is paid for by the governing body, and the percentage of the cost that is recovered through service fees, including a complete accounting for collected fees, uncollected fees, and success in recovering uncollected fees;
- (g) Progress made since the last report on cleaning up illegal open dumps, including the number of open dumps eliminated since the last report or the last solid waste management plan revision, the total and average cost per open dump elimination, and identification of new open dumps or cleaned up open dumps that have been used again for illegal dumping;
- (h) Fees for solid waste management assessed and collected;
- (i) Costs of any projects undertaken pursuant to the solid waste management plan; and
- (j) Any other pertinent information as may be required by the cabinet.

➔Section 370. KRS 224.46-315 is amended to read as follows:

- (1) There shall be established a Center for Pollution Prevention, which shall be a technical information and assistance office to be located at a state-owned university, which shall facilitate and promote the commercial implementation of pollution prevention technologies and procedures by providing technical and financial assistance, as available, to business and industry. The center shall be governed by a board of directors representing the following organizations:
 - (a) The secretary of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or a designee of the secretary;
 - (b) The dean of the University of Louisville School of Engineering or a designee of the dean;
 - (c) The dean of the University of Kentucky School of Engineering or a designee of the dean;
 - (d) A representative of the industrial community appointed by the Governor;
 - (e) A representative of the environmental protection community appointed by the Governor;
 - (f) A representative of local government appointed by the Governor;
 - (g) An environmental engineer appointed by the Governor;
 - (h) An at-large member appointed by the Governor representing an industrial facility;
 - (i) An at-large member appointed by the Governor representing an agricultural producer; and
 - (j) An at-large member appointed by the Governor representing the public.
- (2) Board members may designate proxies who shall have voting privileges at board meetings. The members identified in subsection (1)(a) to (1)(d) of this section shall serve as permanent members of the board. Of the six (6) members identified in subsections (1)(e) to (j) of this section, two (2) shall continue in office for two (2) years, two (2) shall continue in office for three (3) years, and two (2) shall continue in office for four (4) years, as the Governor designates. At the expiration of the original terms and for all succeeding terms, the Governor

shall appoint a successor to the board for three (3) years. Members may be reappointed. The Governor shall appoint a chairperson for the board.

- (3) Meetings of the board shall be held at least quarterly, but may be held more frequently if necessary. The chair or a majority of members may call a special meeting. Five (5) members of the board shall constitute a quorum for doing business. Each member shall have one (1) vote and a majority vote of the members present shall control on all questions. No member shall receive a salary, fee, or other remuneration for services as a member of the board, but each member shall be reimbursed for ordinary travel expenses, including meals and lodging, incurred in the performance of the member's duties.
- (4) The board shall:
 - (a) Formulate policies and procedures necessary to carry out the purposes stated in KRS 224.46-305;
 - (b) Promulgate administrative regulations solely to carry out the purposes of KRS 224.46-320 to assure the proper distribution of funds available to the center;
 - (c) Review and authorize pollution prevention projects and programs to be undertaken and financed pursuant to KRS 224.46-305, 224.46-320, 224.46-330, and 224.46-580;
 - (d) Review and approve all progress and final research reports on projects authorized by KRS 224.46-305 and 224.46-320;
 - (e) Assure that funds available to the center are not diverted to any uses inconsistent with KRS 224.46-305 to 224.46-335 and KRS 224.46-580, and that all authorized projects are directed toward improvement of the environment, specifically toward pollution prevention and toward preserving and strengthening industry in Kentucky;
 - (f) Provide to the Governor and the General Assembly an annual report showing the status of funds appropriated for the purposes of KRS 224.46-305 to 224.46-335 and KRS 224.46-580 for pollution prevention and progress of the board in terms of its research and pollution prevention technology implementation efforts;
 - (g) Advise the Governor and the General Assembly each year of the need for continuation of the center and its board through levy of the hazardous waste assessment fund for the purpose of financing pollution prevention programs;
 - (h) Approve and release public statements relating to the progress and results of pollution prevention programs and research;
 - (i) Hire a technical advisor if deemed necessary; and
 - (j) Approve the budget and expenditures of the center.

➔Section 371. KRS 224.46-505 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds, determines, and declares as follows:

- (1) That technological progress and increases in the amounts of manufacturing are continuing to result in increasing quantities of hazardous waste being generated and prohibiting the generation of hazardous waste would result in a competitive economic disadvantage for the Commonwealth;
- (2) That the Commonwealth is the site of much improper and inadequately regulated handling, treatment, transportation, storage, and disposal of hazardous waste which presents a threat to the public health, safety, and welfare and the environment;
- (3) That by the enactment by the Congress of the United States of the Resource Conservation and Recovery Act of 1976, as amended (PL 94-580), the generation, transportation, treatment, storage, recycling, and disposal of hazardous waste has been determined to be a matter of national importance, recognizing that hazardous waste presents, in addition to the problems generally associated with nonhazardous waste, special dangers to health and requires a greater degree of regulation than does nonhazardous waste;
- (4) That the primary responsibility for proper hazardous waste management rests with the generators, transporters, treaters, storers, recyclers, and disposers of hazardous waste, subject to rules, regulations, guidelines, and standards promulgated by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet and

also subject to registration or permitting by the cabinet for the purpose of effectuating safe and proper management at all steps in the hazardous waste cycle;

- (5) That the participation of the private sector and the interested public in any aspect of hazardous waste management not expressly reserved as state or federal authority as set forth in KRS 224.46-510 to 224.46-570 or other statutes is encouraged, moreover, it is preferable for hazardous waste management functions to be performed by the private sector when such is in the best interest of the public and conforms with the policies and provisions set forth in KRS 224.46-510 to 224.46-570;
- (6) That as a matter of policy the prevention of pollution or reduction of waste at its source is the preferred management option. Pollutants that cannot be prevented should be recycled in an environmentally-safe manner whenever feasible. Pollution that cannot be prevented or recycled should be treated; and, disposal or other release into the environment should only be employed when no other feasible option is available; and
- (7) That as a result of the conditions described in the foregoing findings, the problems of hazardous waste generation, transportation, treatment, storage, recycling, and disposal have become a matter of extreme state concern necessitating action by the General Assembly to protect the public health, safety, and welfare and the environment of the Commonwealth.

➔Section 372. KRS 224.46-580 is amended to read as follows:

- (1) The General Assembly declares that it is the purpose of this section to promote the development of statewide programs, under the responsibility of a single agency, which are intended to protect the health of the citizens and the environment of the Commonwealth from present and future threats associated with the management of hazardous wastes and the release of toxic chemicals regulated under Title III, Section 313 of the Superfund Amendments and Reauthorization Act of 1986, including disposal, treatment, recycling, storage, and transportation. The intent of the General Assembly is to add to and coordinate, and not replace, existing efforts and responsibilities in the areas of hazardous waste management, toxic chemical manufacture, processing, or other use, and to leave the primary burden and responsibility for hazardous waste and toxic chemical reduction on private industry; and further to finance assistance and coordination by imposing assessments on the generation of hazardous waste. The assessments are intended to produce a reduction in waste generated; to promote the use of new techniques in recycling, treatment, and alternatives other than land disposal; and to place the burden of financing additional hazardous waste management activities necessarily undertaken by state agencies on the users of those products associated with the generation of hazardous waste. The General Assembly further finds that Kentucky's industries need assistance in developing and implementing pollution prevention goals and that a fund should be established to provide technical and financial assistance to those industries.
- (2) The **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet is given the authority to administer the provisions and programs of this section and the responsibility to achieve the purposes of this section.
- (3) In addition to all specific responsibilities contained elsewhere in this chapter, the cabinet shall:
 - (a) Respond effectively and in a timely manner to emergencies created by the release of hazardous substances, as defined in KRS 224.01-400, into the environment. The cabinet shall provide for adequate containment and removal of the hazardous substances in order that the threat of a release or actual release of the substance may be abated and resultant harm to the environment minimized. The provisions of KRS 45A.695 to 45A.725 may be suspended by the cabinet if necessary to respond to an environmental emergency.
 - (b) Provide for post-closure monitoring and maintenance of hazardous waste disposal sites upon termination of post-closure monitoring and maintenance responsibilities by persons permitted to operate the facility pursuant to this chapter.
 - (c) Identify, investigate, classify, contain, or clean up any release, threatened release, or disposal of a hazardous substance where responsible parties are economically or otherwise unavailable to properly address the problem and the problem represents an imminent danger to the health of the citizens and the environment of the Commonwealth.
- (4) The cabinet shall have the authority to finance the nonfederal share of the cost for clean up of sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (Pub. L. 96-510).

- (5) The cabinet shall recover, when possible, actual and necessary expenditures incurred in carrying out the duties under this section. Any expenditures recovered shall be placed in the hazardous waste management fund.
- (6) It is the expressed purpose of this section to accomplish effective hazardous waste and toxic chemical management that results in a reduction of the generation of hazardous wastes and the release of toxic chemicals within the Commonwealth; further, it is a purpose of this chapter to allocate a portion of the cost of administering necessary governmental programs related to hazardous waste and toxic chemical management to those industries whose products are reasonably related to the generation of hazardous waste.
- (7) There is hereby imposed upon every person engaged within this state in the generation of hazardous waste an annual hazardous waste assessment to be determined pursuant to this section according to the quantity by weight of hazardous waste generated, except that no assessment shall be levied against generators for any quantity of "special wastes," waste oil, or spent material from air pollution control devices controlling emissions from coke manufacturing facilities. The assessment shall not be imposed upon any person for any quantities of hazardous waste generated by others for which that person is a secondary handler that stores, processes, or reclaims the waste. The assessment shall be reported and paid to the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet for the generation of hazardous waste on an annual basis on January 1 of each year. The payment shall be accompanied by a report or return in a form that the cabinet may prescribe. If a federal law is enacted which accomplishes or purports to accomplish the purposes set forth in this section and which levies an assessment or tax upon any business assessed pursuant to this section, the amount of the assessment to be levied upon the business under this section shall be reduced by the amount of the federal assessment or tax upon the business. The reduction shall only be authorized when funds raised by the federal assessment or tax are made available to the state for any of the activities to be funded under this section. If federal moneys are available to carry out the duties imposed by subsection (3) of this section, the assessment shall cease to be levied and collected until such time as federal moneys are no longer available to the Commonwealth for these purposes. The assessment shall be charged against generators of hazardous waste until June 30, 2016. After this date, no further hazardous waste management assessment shall be charged against generators. The hazardous waste assessment shall be waived for any generator owing less than fifty dollars (\$50) for the year. However, a return must be filed by generators to whom a payment waiver applies.
- (8) The assessment on generators shall be one and two-tenths cents (\$0.012) per pound if the waste is liquid, or two-tenths of a cent (\$0.002) per pound if the waste is solid.
- (a) Hazardous waste that is injected into a permitted underground injection well shall be assessed on a dry weight basis;
 - (b) Hazardous waste treated, detoxified, solidified, neutralized, recycled, incinerated, or disposed of on-site shall be assessed at one-half (1/2) of the appropriate rate, except for recycled waste used in the steel manufacturing process which shall be exempt;
 - (c) Waste that is subject to regulation under Section 402 or 307B of the Federal Clean Water Act shall be exempt;
 - (d) Emission control dust and sludge from the primary production of steel that is recycled by high temperature metals recovery or managed by stabilization of metals shall be exempt; and
 - (e) Waste that is delivered from the generator to an on-site or off-site industrial boiler or furnace and burned for energy recovery in accordance with state and federal laws and regulations shall be assessed at one-half (1/2) of the appropriate rate.
- (9) Except for waste brought into the state by a company to an affiliated manufacturing facility of the company receiving the waste, any person who transports hazardous waste into the state for land disposal or treatment which is generated outside of the state shall pay an assessment to the hazardous waste facility which first receives the waste for storage, treatment, or land disposal. The assessment rate shall be identical to the rate described in subsection (8) of this section. The facility shall remit the assessment to the cabinet on an annual basis on January 1 of each year. The payment shall be accompanied by a return the cabinet shall prescribe.
- (10) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails or refuses to file a return or furnish any information requested in writing by the cabinet, the cabinet may, from any information in its possession, make an estimate and issue an assessment against the generator or

hazardous waste facility and add a penalty of ten percent (10%) of the amount of the assessment so determined. This penalty shall be in addition to all other applicable penalties in this chapter.

- (11) If any generator or hazardous waste facility subject to the provisions of subsection (8) or (9) of this section fails to make and file a return required by this chapter on or before the due date of the return or the due date as extended by the cabinet, unless it is shown to the satisfaction of the cabinet, that the failure is due to reasonable cause, five percent (5%) of the assessment found to be due by the cabinet shall be added to the assessment for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it is filed, but the total penalty shall not exceed twenty-five percent (25%) of the assessment.
- (12) If the assessment imposed by this chapter, whether assessed by the cabinet, or the generator, or any installment or portion of the assessment is not paid on or before the date prescribed for its payment, there shall be collected, as a part of the assessment, interest upon the unpaid amount at the rate of eight percent (8%) per annum from the date prescribed for its payment until payment is actually made to the cabinet.
- (13)
 - (a) There is hereby created within the State Treasury a trust and agency fund which shall not lapse to be known as the hazardous waste management fund. The fund shall be deposited in an interest-bearing account. The cabinet shall be responsible for collecting and receiving funds as provided in this section, and all such assessments collected or received by the State Treasury shall be deposited in the hazardous waste management fund. All interest earned on the money deposited in the fund shall be deposited to the fund. When the State Treasurer certifies to the cabinet that the uncommitted balance of the hazardous waste management fund exceeds six million dollars (\$6,000,000), assessments shall not be collected until the State Treasurer certifies to the cabinet that the balance in the hazardous waste management fund is less than three million dollars (\$3,000,000). The implementation of the cap on the fund shall be suspended from July 13, 1990, until July 1, 1991. In addition, for assessments paid after July 1, 1991, the cabinet shall refund or grant a credit against the next assessment to come due, on a pro-rated basis, any money collected in one (1) year in excess of the cap.
 - (b) In any fiscal year in which the fees assessed under this section total less than one million eight hundred thousand dollars (\$1,800,000) in fiscal year 2007-2008 dollars, adjusted annually to reflect any increase in the cost-of-living index, the difference between the fee receipts and the adjusted minimum balance shall be transferred from funds collected pursuant to KRS 224.60-130.
 - (c) The cabinet shall file with the Legislative Research Commission a biennial report, beginning two (2) years after July 15, 2008, on the revenues and expenditures of the fund.
- (14) There is hereby created within the State Treasury a trust and agency account which shall not lapse to be known as the pollution prevention fund. The fund shall be placed in an interest-bearing account. The fund shall be administered by the Center for Pollution Prevention. The cabinet shall remit to the fund each fiscal year twenty percent (20%) of the funds received by the hazardous waste management fund subject to the enacted budget bill.
- (15) Upon request of the secretary, moneys accumulated in the hazardous waste management fund shall be released in amounts necessary to accomplish the performance of the duties imposed by subsection (3) of this section. However, moneys from the fund shall not be used when federal moneys are available to carry out these duties, except when immediate action is required to protect public health or the environment, in which case the cabinet shall actively pursue reimbursement of the fund by any available federal moneys.
- (16) If any person responsible for a release or threatened release of a hazardous substance fails to take response actions or to make reasonable progress in completing response actions ordered by the cabinet, the cabinet may bring an action to compel performance or may take appropriate response actions and order the responsible person to reimburse the cabinet for the actual costs incurred by the cabinet.
- (17) If disposal activities have occurred at a hazardous waste site, the cabinet shall record in the office of the county clerk in the county in which a waste site is situated a notice containing a legal description of the property that discloses to any potential transferee that the land was used to dispose hazardous waste and that further information on the hazardous waste site may be obtained from the cabinet.
- (18) No person shall affect the integrity of the final cover, liners, or any other components of any containment system after closure of a hazardous waste site on or in which hazardous waste remains without prior written approval of the cabinet.

➔Section 373. KRS 224.46-810 is amended to read as follows:

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

- (1) "Board" means the Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board.
- (2) "Certificate" means a certificate of environmental safety and public necessity.
- (3) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (4) "Regional integrated waste treatment and disposal demonstration facility" means a model hazardous waste facility receiving wastes from a region larger than the county boundaries in which it is located, from more than one (1) person, and utilizing multiple treatment and disposal technologies, one (1) of which must be a secure landfill, and one (1) of which must be a high technology incinerator, and designed so as to promote resource recovery and energy generation from hazardous waste and the use of state-of-the-art techniques for rendering waste nonhazardous, and the disposal of waste in a manner that minimizes the risk to public health and long term environmental impacts.

➔Section 374. KRS 224.46-850 is amended to read as follows:

- (1) It is the intent of the General Assembly that a regional integrated waste treatment and disposal demonstration facility contain an industrial park component. The approved site for a regional integrated waste treatment and disposal demonstration facility shall be of sufficient size to accommodate new industrial and commercial concerns that can utilize the energy by-products of the treatment technologies.
- (2) It shall be the responsibility of the ***Department for Energy Development and Independence***~~[Office of Energy Policy]~~ to establish a plan for and develop the industrial park component of a regional integrated waste treatment and disposal demonstration facility. The industrial park component, located on property contiguous with the treatment and disposal technologies, shall be designed so as to utilize energy generated from the waste treatment technologies.

➔Section 375. KRS 224.46-870 is amended to read as follows:

The ***Department for Energy Development and Independence***~~[Office of Energy Policy]~~ shall provide the cabinet with the information deemed necessary by the cabinet to project hazardous waste generation in the Commonwealth as required by KRS 224.10-100(24) and 224.46-830(2)(d).

➔Section 376. KRS 224.60-105 is amended to read as follows:

- (1) Owners of any underground storage tank, currently existing, or taken out of operation after January 1, 1974, shall notify the cabinet of the existence of such tanks and a description of the tank and its use in accordance with regulations promulgated by the cabinet.
- (2) The cabinet shall regulate underground storage tanks by requiring minimum construction and performance standards, leak detection, record keeping, reporting releases, corrective actions, closure, financial responsibility, and any other requirement deemed necessary by the cabinet to protect the public health and environment. In promulgating regulations to carry out this section the cabinet may distinguish between types, classes, and ages of underground storage tanks.
- (3) It is the intent of the General Assembly that the cabinet shall establish a program to regulate underground storage tanks which implements federal regulatory requirements for underground storage tanks. The cabinet shall develop and implement a program and promulgate administrative regulations for underground storage tanks which shall be submitted for approval to the United States Environmental Protection Agency pursuant to federal regulations.
- (4) KRS 224.60-105 to 224.60-160 and administrative regulations promulgated under authority of KRS 224.60-105 to 224.60-160 shall supercede and preempt all local laws, ordinances, and regulations pertaining to petroleum underground storage tanks, except:
 - (a) Any applicable *state* fire marshal regulations or local building permit procedures for petroleum storage tank installations;
 - (b) Any local law, ordinance, or regulation promulgated before July 15, 1990; or
 - (c) Any local restrictions or conditions imposed pursuant to KRS Chapter 100.

➔Section 377. KRS 224.60-115 is amended to read as follows:

As used in KRS 224.60-120 to 224.60-150, unless the context otherwise requires:

- (1) "Bodily injury and property damage" means only those actual economic losses to an individual or the individual's property resulting from bodily injuries and damages to property caused by a release into the environment from a petroleum storage tank. In this context, property damage includes damage to natural resources;
- (2) "Cabinet" means the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (3) "Claim" means any demand in writing for a certain sum;
- (4) "Corrective action" means those actions necessary to protect human health and the environment in the event of a release from a petroleum storage tank. Corrective action includes initial responses taken pursuant to KRS 224.60-135, remedial actions to clean up contaminated groundwater, surface waters, or soil, actions to address residual effects after initial corrective action is taken, and actions taken to restore or replace potable water supplies. Corrective action also includes actions necessary to monitor, assess, and evaluate a release, as well as actions necessary to monitor, assess, and evaluate the effectiveness of remedial action after a release has occurred;
- (5) "Dealer" means a person required to be licensed as a gasoline or special fuels dealer as defined in KRS 138.210(2);
- (6) "Division" means the Division of Waste Management;
- (7) "Facility" means, with respect to any owner or operator, all petroleum storage tanks which are owned or operated by an owner or operator and are located on a single parcel of property or on any contiguous or adjacent property;
- (8) "Federal regulations" means regulations for underground petroleum storage tanks promulgated by the United States Environmental Protection Agency pursuant to Subtitle I of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act;
- (9) "Free product" means a regulated substance that is present as a non-aqueous phase liquid;
- (10) "Fund" means the petroleum storage tank environmental assurance fund and its subaccounts, the financial responsibility account and the petroleum storage tank account established pursuant to KRS 224.60-140;
- (11) "Gasoline" means gasoline as defined in KRS 138.210(4);
- (12) "Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, that is typically used in the operation of a motor engine, jet fuel, and any petroleum or petroleum-based substance typically used in the operation of a motor vehicle, including used motor vehicle lubricants and oils;
- (13) "Occurrence" means a release, or releases, of an accidental nature, requiring corrective action, from a petroleum storage tank or tanks located at the same facility, due to continuous or repeated exposure to conditions. An additional release or releases at the same facility in which the area requiring remedial action is separate from a previous remediation area or areas shall be considered a separate occurrence;
- (14) "Person" means an individual, trust, firm, joint stock company, federal agency, corporation, the state, a municipality, commission, or political subdivision of the state. The term includes a consortium, a joint venture, the United States government, or a commercial entity;
- (15) "Petroleum" and "petroleum products" means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at sixty (60) degrees Fahrenheit and 14.7 pounds per square inch absolute. The term includes motor gasoline, gasohol, other alcohol-blended fuels, diesel fuel, heating oil, special fuels, lubricants, and used oil;
- (16) "Petroleum storage tank" means an underground storage tank, as defined by KRS 224.60-100, which contains petroleum or petroleum products but, for the purpose of participation or eligibility for the fund, shall only include tanks containing motor fuels and shall not include petroleum storage tanks used exclusively for storage of fuel used in the operation of a commercial ship or vessel or tanks used exclusively for storage of fuel used for the purposes of powering locomotives or tanks owned by a federal agency or the United States government;
- (17) "Petroleum storage tank operator" means any person in control of, or having responsibility for, the daily operation of a petroleum storage tank;

- (18) "Petroleum storage tank owner" means the person who owns a petroleum storage tank, except that petroleum storage tank owner does not include any person who, without participation in the management of a petroleum storage tank, holds indicia of ownership primarily to protect a security interest in the tank;
- (19) "Received" means the same as defined in KRS 138.210(5);
- (20) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from a petroleum storage tank into groundwater, surface water, or surface or subsurface soils. The term shall not include releases that are permitted or authorized by the state or federal law;
- (21) "Special fuels" means special fuels as defined in KRS 138.210(4); and
- (22) "Third party" means a person other than the owner or operator of a facility, or the agents or employees of the owner or operator, who sustains bodily injury or property damage as a result of a release from that facility.

➔ Section 378. KRS 224.60-130 is amended to read as follows:

- (1) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet, Department for Environmental Protection, Division of Waste Management, shall:
 - (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;
 - (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division. To ensure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
 - (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or

operator shall meet the eligibility requirements established by administrative regulation promulgated by the division;

- (d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2013. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$.01) from the one and four-tenths cent (\$.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;
- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may

collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;

- (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10) days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and
- (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.
- (2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
- (3) The division may sue and be sued in its own name.
- (4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

➔Section 379. KRS 224.70-120 is amended to read as follows:

- (1) As used in this section, "cabinet" shall mean the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a filing fee by the cabinet in the amount of twenty percent (20%) of the discharge permit fee.
- (3) An applicant for a permit to discharge pollutants into waters of the Commonwealth shall be subject to a discharge permit fee by the cabinet upon receiving the cabinet's determination that the permit will be issued and the fee shall be equal to the cost of review but shall not exceed the following amounts:
 - (a) Major industry: three thousand two hundred dollars (\$3,200);
 - (b) Minor industry: two thousand one hundred dollars (\$2,100);
 - (c) Nonprocess industry: one thousand dollars (\$1,000);
 - (d) Large, non-publicly-owned treatment works: one thousand seven hundred dollars (\$1,700);
 - (e) Intermediate, non-publicly-owned treatment works: one thousand five hundred dollars (\$1,500);
 - (f) Small, non-publicly-owned treatment works: one thousand dollars (\$1,000);
 - (g) Agriculture: one thousand two hundred dollars (\$1,200); and
 - (h) Surface mining operation: one thousand two hundred dollars (\$1,200).
- (4) The cabinet may impose the maximum fee if a discharge falls into multiple categories.

➔Section 380. KRS 224.71-110 is amended to read as follows:

- (1) The Agriculture Water Quality Authority is created and administratively attached to the cabinet. The authority shall be a multidiscipline peer group that shall evaluate, develop, and improve best-management practices in conservation plans, compliance plans, and forest stewardship management plans; establish statewide and regional agriculture water quality plans; and otherwise promote soil and water conservation activities that protect waters of the Commonwealth from the adverse impacts of agriculture operations within the Commonwealth. The cabinet shall provide staff to the authority.

- (2) Within six (6) months of July 15, 1994, the Soil and Water Conservation Commission shall submit to the Governor for appointment to the Agriculture Water Quality Authority a list of three (3) persons recommended by each of the following state agencies and organizations:

- (a) Kentucky Association of Conservation Districts;
- (b) Kentucky Department of Agriculture;
- (c) University of Kentucky College of Agriculture Cooperative Extension Service;
- (d) Kentucky Farm Bureau Federation, Inc.;
- (e) Division of Conservation, ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (f) Division of Forestry, ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet;
- (g) Kentucky Geological Survey; and
- (h) Environmental organizations.

The membership of the Agriculture Water Quality Authority appointed by the Governor shall consist of one (1) representative from each of the groups identified in paragraphs (a) to (h) of this subsection and three (3) members at large from agriculture operations. The Soil and Water Conservation Commission shall solicit nominations from Kentucky agriculture operations organizations and submit those names to the Governor for selection of the three (3) members at large from agriculture operations. The Governor shall select four (4) members to serve two (2) year initial terms, four (4) members to serve three (3) year initial terms, and three (3) members to serve four (4) year initial terms. All succeeding terms shall be four (4) year terms. A representative from the United States Soil Conservation Service and a representative from the United States Agriculture Stabilization and Conservation Service may also be appointed by the Governor to serve on the authority. One (1) representative each from the Division of Water, ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet and the Division of Public Health Protection and Safety, Cabinet for Health and Family Services shall serve as ex officio members.

- (3) It shall be the responsibility of the Agriculture Water Quality Authority to establish, at a minimum, the following four (4) committees for agriculture operations, with membership outside the Agriculture Water Quality Authority:

- (a) Livestock, including but not limited to, beef, swine, dairy, poultry, and equine;
- (b) Crops, including but not limited to, tobacco, corn, soybeans, small grains, fruits and vegetables, pasture and timber;
- (c) Pesticides, fertilizers, and other agricultural chemicals; and
- (d) Farmstead issues.

- (4) The Agriculture Water Quality Authority shall have the following responsibilities:

- (a) Review water quality data as available;
- (b) Review university research on water quality and alternative best-management practices research;
- (c) Evaluate the adoption and effectiveness of best-management practices, and modify best-management practice design standards to improve water quality protection practices;
- (d) Develop by July 1, 1996, statewide agriculture water quality plans to address identifiable water pollution problems from agriculture operations, and continue to evaluate and modify the agriculture water quality plans, as necessary to prevent water pollution from agriculture operations;
- (e) Assist with the review of state-funded and other water quality monitoring data and with the establishment of agriculture water priority protection regions;
- (f) Provide technical assistance to persons engaged in agriculture operations and to the Soil and Water Conservation Commission in its efforts to coordinate water quality protection as related to agriculture operations;
- (g) Work with the United States Soil Conservation Service, United States Agriculture Stabilization and Conservation Service, and conservation districts to disseminate to agriculture operations the best-

management practices, conservation plans, compliance plans, forest stewardship management plans, and agriculture water quality plans which address the protection of groundwater and surface water;

- (h) Provide the Governor and the Legislative Research Commission with biennial reports of the progress of the Agriculture Water Quality Authority program; and
 - (i) Establish procedures for modifications to be incorporated into statewide or regional agriculture water quality plans.
- (5) The cabinet's Division of Water shall approve or disapprove any statewide and regional water quality plan within thirty (30) days of receiving the plan from the Agriculture Water Quality Authority. All provisions of a statewide or regional water quality plan not found deficient shall be approved. If the Division of Water finds any provision of the statewide or regional agriculture water quality plan deficient, the Division of Water shall give written notice to the authority of those provisions found to be deficient. Within the thirty (30) days following the notice of deficiency, the authority shall deliver to the Division of Water a written response setting forth proposed solutions to the deficiencies. Any deficiencies which remain unresolved shall be resolved in a manner agreed to jointly by the Division of Water and the authority within sixty (60) days unless the Division of Water and authority jointly agree to an extension or alternate dispute resolution. The Division of Water shall approve or disapprove all modifications to the statewide and regional plans as set forth at KRS 224.71-120(8).

➔Section 381. KRS 224.73-100 is amended to read as follows:

Any corporation authorized to do business in this state and organized for the purpose of constructing, maintaining and operating sewer lines and sewage treatment facilities may, if it is unable to contract or agree with the owner after a good faith effort to do so, condemn rights-of-way necessary for constructing, maintaining and operating its pipelines and, if necessary, pumping stations; and the necessary ingress and egress to examine, alter, repair and maintain such pipelines. The condemnation proceedings shall be conducted in the manner provided in the Eminent Domain Act of Kentucky. Provided, however, that before any corporation shall be authorized to use the provisions of this section, it shall have presented plans and specifications to the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet and received from said cabinet a permit to operate and maintain said sewage treatment facilities together with an approval of the discharge of the treated effluent from said facilities to a specific point of the waters of this Commonwealth. Provided, further, that any person wishing to object to a pipeline or plant location subject to the provisions of this section shall have the right to have his objections heard by said cabinet pursuant to the provisions of KRS 224.10-440.

➔Section 382. KRS 224.73-110 is amended to read as follows:

- (1) The Kentucky Board of Certification of Wastewater System Operators is established. The board shall recommend qualified applicants to the cabinet for certification and perform such other acts as may be necessary to carry out the purposes of this section. Members of the board shall be appointed by the Governor. The board shall consist of eight (8) members who may have professional backgrounds as follows: one (1) employee of a municipality who holds the position of either city manager, city engineer, director of public works, or the equivalent thereof; one (1) member who is a faculty member of a college, university, or professional school whose major field is related to wastewater treatment; one (1) nonvoting ex officio member representing the cabinet; and five (5) members currently employed as operators holding valid certificates where one (1) of these five (5) shall be an operator of an industrial wastewater system. Board members shall serve for a four (4) year term, except for the first board to which two (2) of the operators will be appointed for four (4) years and three (3) for two (2) years. The first college faculty member will be appointed for two (2) years and the remaining board members will be appointed for four (4) years. The cabinet's representative shall serve as executive secretary and treasurer and be responsible for maintaining records. The members of the board shall serve without compensation but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties. At least four (4) existing members of the board shall constitute a quorum.
- (2) No person shall have primary responsibility for the operation of any sewage system or portion thereof whether publicly or privately owned unless he has passed an examination prescribed by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet and board which shall determine his skill and competency for such operation and has been issued a certificate to that effect by the cabinet.
- (3) No person shall authorize or allow any person who does not hold a certificate issued pursuant to subsection (2) of this section to have primary responsibility for the operation of any sewage system or portion thereof.

- (4) The cabinet, with the advice of the board of certification, may classify all sewage systems and portions thereof in the manner provided by the rules and regulations of the cabinet with regard to size, type, physical conditions affecting such systems or portions thereof, and the skill, knowledge and experience required for the operation of the system or portion thereof and restrict the application of any certificate issued pursuant to subsection (2) of this section to the operation of a sewage system or portion thereof of a specific class.
- (5) Any person who has primary responsibility for the operation of a sewage system for a school shall be entitled to a limited certificate of competency for his particular system, provided he has demonstrated that he has the knowledge and experience required to operate properly the particular sewage system for which he is responsible. A limited certificate of competency so issued is not transferable to any other sewage system, nor is the period of operation under such a limited certificate eligible for consideration toward the experience requirements for a certificate of competency as provided in subsection (2) of this section.
- (6) All applicants for the examination and certification for the operation of any sewage system or portion thereof, whether publicly or privately owned, shall pay a reasonable schedule of fees and charges fixed by regulation. The fees required under this section shall be payable to the cabinet.
- (7) Operators shall have accumulated a minimum number of hours of appropriate board approved training set by regulation for certificate renewal. Such training shall include, but may not be limited to, correspondence courses, short courses, trade association meetings, and on-the-job training. Training hours accumulated in any given year in excess of the minimum requirement necessary for renewal may be carried forward for a period not to exceed two (2) years.
- (8) The board may waive any or all of the requirements of subsection (7) of this section for all or portions of an established class of operators.

➔Section 383. KRS 224.80-100 is amended to read as follows:

As used in this subchapter:

- (1) "Activity and use limitations" means restrictions or obligations created under KRS 224.80-100 to 224.80-210.
- (2) "Applicant" means a person applying to the cabinet for approval of an environmental covenant.
- (3) "Cabinet" means the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.
- (4) "Common interest community" means a condominium, cooperative, or other real property owned by a person as part of a parcel of real property for which there is an obligation to pay property taxes, insurance premiums, or maintenance, or to make improvements to the real property as described and established in a recorded environmental covenant.
- (5) "Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.
- (6) "Environmental response project" means a plan or work performed for the environmental remediation of real property conducted:
 - (a) Under a federal or state program governing environmental remediation of real property including programs established pursuant to KRS 224.01-400, 224.01-405, 224.46-530, and 224.01-450 to 224.01-465;
 - (b) Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of the cabinet; or
 - (c) Under a Commonwealth voluntary cleanup program authorized under KRS 224.01-510 to 224.01-532.
- (7) "Holder" means the grantee of an environmental covenant.
- (8) "Indexing" means the practice or method kept by a county clerk's office to record legal property transactions.
- (9) "Interest" means all or part of a legal equitable claim to a right in real property which shall include both possessory and nonpossessory interests.
- (10) "Owner" means a person that owns a fee simple interest or any other interest in real property that is subject to an environmental covenant.
- (11) "Person" shall have the meaning specified in KRS 224.01-010(17).

- (12) "Public notice" means the publication of required information in a daily or weekly newspaper of major circulation located in the county or counties where the property subject to the proposed environmental covenant is located. If there is no daily or weekly newspaper of major circulation in the county or counties where the property is located, public notice shall mean publication of required information in a daily or weekly newspaper of major circulation in a county adjacent to the county or counties where the property is located.
- (13) "Subordination agreement" means an agreement affecting priority of interests in a real property that is subject to an environmental covenant.
- (14) "Servitude" means a right, burden, or restriction on the use of real property that passes from the current owner or tenant to any owners or tenants in succession.

➔Section 384. KRS 224.99-030 is amended to read as follows:

Any applicant or certificate holder who fails to provide the information required in KRS 224.01-310 or falsifies such information shall be liable for a civil penalty of not to exceed the sum of one thousand dollars (\$1,000). The penalty shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the ~~cabinet~~^{cabinet's} ~~Office of Legal Services~~, or upon the secretary's request, by the Attorney General.

➔Section 385. KRS 224A.011 is amended to read as follows:

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

- (1) "Administrative fee" means a fee assessed and collected by the authority from borrowers under assistance agreements, to be used for operational expenses of the authority.
- (2) "Applicable interest rate" means the rate of interest which shall be used as part of the repayment criteria for an assistance agreement between a governmental agency and the authority, and shall be determined by the authority pertinent to the source of funds from which the assistance agreement is funded.
- (3) "Assistance agreement" means the agreement to be made and entered into by and between a governmental agency and the authority, as authorized by this chapter, providing for a lease, loan, services, or grant to the governmental agency or for the purchase of obligations issued by the governmental agency, and for the repayment thereof to the authority by the governmental agency.
- (4) "Authority" means the Kentucky Infrastructure Authority, which is created by this chapter.
- (5) "Authority revenues" means the totality of all:
 - (a) Service charges;
 - (b) Utility tax receipts, to the extent not otherwise committed and budgeted by the authority during any fiscal period of the authority;
 - (c) Any gifts, grants, or loans received, to the extent not otherwise required to be applied;
 - (d) Any and all appropriations made to the authority by the General Assembly of the Commonwealth of Kentucky, to the extent not otherwise required to be applied;
 - (e) All moneys received in repayment of and for interest on any loans made by the authority to a governmental agency, except as provided in KRS 224A.111, 224A.1115, and 224A.112, or as principal of and interest on any obligations issued by a governmental agency and purchased by the authority, or as receipts under any assistance agreement;
 - (f) The proceeds of bonds or long-term debt obligations of governmental agencies pledged to the payment of bond anticipation notes issued by the authority on behalf of the said governmental agency to provide interim construction financing; and
 - (g) Payments under agreements with any agencies of the state and federal government.
- (6) "Borrower or borrowing entity" means any agency of the state or its political subdivisions, any city, or any special district created under the laws of the state acting individually or jointly under interagency or interlocal cooperative agreements to enter into assistance agreements with the authority.
- (7) "Community flood damage abatement project" means any structural or nonstructural study, plan, design, construction, development, improvement, or other activity to provide for flood control.

- (8) "Construction" means and includes, but is not limited to:
- (a) Preliminary planning to determine the economic and engineering feasibility of infrastructure projects, the engineering, architectural, legal, fiscal, and economic investigations, and studies necessary thereto, and surveys, designs, plans, working drawings, specifications, procedures, and other actions necessary to the construction of infrastructure or solid waste projects;
 - (b) The erection, building, acquisition, alteration, remodeling, improvement, or extension of infrastructure or solid waste projects; and
 - (c) The inspection and supervision of the construction of infrastructure or solid waste projects and all costs incidental to the acquisition and financing of same. This term shall also relate to and mean any other physical devices or appurtenances in connection with, or reasonably attendant to, infrastructure or solid waste projects.
- (9) "Dams" means any artificial barrier, including appurtenant works, which does or can impound or divert water, and which either:
- (a) Is or will be twenty-five (25) feet or more in height from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet; or
 - (b) Has or will have an impounding capacity at maximum water storage elevation of fifty (50) acre feet or more.
- (10) "Distribution facilities" means all or any part of any facilities, devices, and systems used and useful in obtaining, pumping, storing, treating, and distributing water for agricultural, industrial, commercial, recreational, public, and domestic use.
- (11) "***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet" means the Kentucky ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, or its successor, said term being meant to relate specifically to the state agency which is designated as the water pollution agency for the Commonwealth of Kentucky, for purposes of the federal act.
- (12) "Federal act" means the Federal Clean Water Act (33 U.S.C. secs. 1251 et seq.) as said federal act may be amended from time to time in the future, or any other enactment of the United States Congress providing funds that may assist in carrying out the purposes of the authority.
- (13) "Federally assisted wastewater revolving fund" means that fund which will receive federal and state funds or the proceeds from the sale of revenue bonds of the authority for the purpose of providing loans to finance construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.
- (14) "Governmental agency" means any incorporated city or municipal corporation, or other agency, or unit of government within or a department or a cabinet of the Commonwealth of Kentucky, now having or hereafter granted, the authority and power to finance, acquire, construct, or operate infrastructure or solid waste projects. This definition shall specifically apply but not by way of limitation to incorporated cities; counties, including any counties containing a metropolitan sewer district; sanitation districts; water districts; water associations if these associations are permitted to issue interest-bearing obligations which interest would be excludable from gross income under Section 103 of the Internal Revenue Code of 1986 as amended; sewer construction districts; metropolitan sewer districts; sanitation taxing districts; and any other agencies, commissions, districts, or authorities (either acting alone, or in combination with one another in accordance with any regional or area compact, or intergovernmental cooperative agreements), now or hereafter established in accordance with the laws of the Commonwealth of Kentucky having and possessing the described powers described in this subsection.
- (15) "Industrial waste" means any liquid, gaseous, or solid waste substances resulting from any process of industry, manufacture, trade, or business, or from the mining or taking, development, processing, or recovery of any natural resources, including heat and radioactivity, together with any sewage as is present therein, which pollutes the waters of the state, and specifically, but not by way of limitation, means heat or thermal differentials created in the waters of the state by any industrial processing, generating, or manufacturing processes.

- (16) "Infrastructure project" means any construction or acquisition of treatment works, distribution facilities, or water resources projects instituted by a governmental agency or an investor-owned water utility which is approved by the authority and, if required, by the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, Public Service Commission, or other agency; solid waste projects; dams; storm water control and treatment systems; gas or electric utility; broadband deployment project; or any other public utility or public service project which the authority finds would assist in carrying out the purposes set out in KRS 224A.300.
- (17) "Infrastructure revolving fund" means that fund which will receive state funds, the proceeds from the sale of revenue bonds of the authority or other moneys earmarked for that fund for the purpose of providing loans or grants to finance construction or acquisition of infrastructure projects as defined in this section.
- (18) "Loan or grant" means moneys to be made available to governmental agencies by the authority for the purpose of defraying all or any part of the total costs incidental to construction or acquisition of any infrastructure project.
- (19) "Market interest rate" means the interest rate determined by the authority under existing market conditions at the time the authority shall provide financial assistance to a governmental agency.
- (20) "Obligation of a governmental agency" means a revenue bond, bond anticipation note, revenue anticipation note, lease, or other obligation issued by a governmental agency under KRS 58.010 et seq. or other applicable statutes.
- (21) "Person" means any individual, firm, partnership, association, corporation, or governmental agency.
- (22) "Pollution" means the placing of any noxious or deleterious substances ("pollutants"), including sewage and industrial wastes, in any waters of the state or affecting the properties of any waters of the state in a manner which renders the waters harmful or inimical to the public health or to animal or aquatic life, or to the use, present or future, of these waters for domestic water supply, industrial or agricultural purposes, or recreational purposes.
- (23) "Prioritization schedules" means the list of wastewater treatment works, distribution facilities and water resources projects which the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet has evaluated and determined to be of priority for receiving financial assistance from the federally assisted wastewater revolving fund and the federally assisted drinking water revolving fund, or the list of infrastructure projects which the authority has evaluated and determined to be of priority for receiving financial aid from the infrastructure revolving fund. The evaluation by the authority of infrastructure projects for water systems shall be undertaken with input from the appropriate area development district. The evaluation by the authority of infrastructure for broadband deployment projects shall be undertaken with consideration given to input from area development districts, telecommunications businesses, information services, technology industries, governmental entities, and Kentucky-based nonprofit organizations, including ConnectKentucky.
- (24) "Solid waste project" means construction, renovation, or acquisition of a solid waste facility which shall be instituted and owned by a governmental agency.
- (25) "Recovered material" means those materials which have known current use, reuse, or recycling potential, which can be feasibly used, reused, or recycled, and which have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing but does not include materials diverted or removed for purposes of energy recovery or combustion except refuse-derived fuel (RDF), which shall be credited as a recovered material in an amount equal to that percentage of the municipal solid waste received on a daily basis at the processing facility and processed into RDF; but not to exceed fifteen percent (15%) of the total amount of the municipal solid waste received at the processing facility on a daily basis.
- (26) "Recovered material processing facility" means a facility engaged solely in the storage, processing, and resale or reuse of recovered material but does not mean a solid waste facility if solid waste generated by a recovered material processing facility is managed in accordance with KRS Chapter 224 and administrative regulations adopted by the cabinet.
- (27) "Revenue bonds" means special obligation bonds issued by the authority as provided by the provisions of this chapter, which are not direct or general obligations of the state, and which are payable only from a pledge of,

and lien upon, authority revenues as provided in the resolution authorizing the issuance of the bonds, and shall include revenue bond anticipation notes.

- (28) "Service charge" means any monthly, quarterly, semiannual, or annual charge to be imposed by a governmental agency, or by the authority, for any infrastructure project financed by the authority, which service charge arises by reason of the existence of, and requirements of, any assistance agreement.
- (29) "Sewage" means any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.
- (30) "Solid waste" means "solid waste" as defined by KRS 224.01-010(31)(a).
- (31) "Solid waste facility" means any facility for collection, handling, storage, transportation, transfer, processing, treatment, or disposal of solid waste, whether the facility is associated with facilities generating the waste or otherwise, but does not include a container located on property where the waste is generated and which is used solely for the purpose of collection and temporary storage of that solid waste prior to off-site disposal, or a recovered material processing facility.
- (32) "Solid waste revolving fund" means that fund which shall receive state funds, the proceeds from the sale of revenue bonds of the authority, or other moneys earmarked for the purpose of providing loans or grants to finance solid waste projects defined in this section.
- (33) "State" means the Commonwealth of Kentucky.
- (34) "System" means the system owned and operated by a governmental agency with respect to solid waste projects, treatment works, or infrastructure projects financed as provided by the assistance agreement between the governmental agency and the authority.
- (35) "Treatment works" or "wastewater treatment works" means all or any part of any facilities, devices, and systems used and useful in the storage, treatment, recycling, and reclamation of wastewater or the abatement of pollution, including facilities for the treatment, neutralization, disposal of, stabilization, collecting, segregating, or holding of wastewater, including without limiting the generality of the foregoing, intercepting sewers, outfall sewers, pumping power stations, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof, and any wastewater treatment works, including site acquisition of the land that will be an integral part of the wastewater treatment process, or is used for ultimate disposal of residues resulting from wastewater treatment, together with any other facilities which are deemed to be treatment works in accordance with the federal act.
- (36) "Variable rate revenue bonds" means revenue bonds the rate of interest on which fluctuates either automatically by reference to a predetermined formula or index or in accordance with the standards set forth in KRS 224A.120.
- (37) "Wastewater" means any water or liquid substance containing sewage, industrial waste, or other pollutants or contaminants derived from the prior use of these waters.
- (38) "Water resources" means all waters of the state occurring on the surface, in natural or artificial channels, lakes, reservoirs, or impoundments, and in subsurface aquifers, which are available, or which may be made available to agricultural, industrial, commercial, recreational, public, and domestic users.
- (39) "Water resources project" means any structural or nonstructural study, plan, design, construction, development, improvement, or any other activity including programs for management, intended to conserve and develop the water resources of the state and shall include all aspects of water supply, flood damage abatement, navigation, water-related recreation, and land conservation facilities and measures.
- (40) "Waters of the state" means all streams, lakes, watercourses, waterways, ponds, marshes, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, which are situated wholly or partly within, or border upon, this state, or are within its jurisdiction, except those private waters which do not combine or effect a junction with natural, surface, or underground waters.
- (41) "Utility tax" means the tax which may be imposed by the authority on every purchase of water or sewer service in the Commonwealth of Kentucky.
- (42) "Broadband deployment project" means the construction, provision, development, operation, maintenance, leasing, or improvement of broadband infrastructure, broadband services, or technologies that constitute a part

of, or are related to, broadband infrastructure or broadband services, to provide for broadband service in unserved areas of the Commonwealth.

- (43) "Unserved area" means any place where broadband service is not available.

➔Section 386. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. The affairs of the authority shall be managed and carried out by a board consisting of eleven (11) members. The secretaries of the Economic Development, Finance and Administration, and **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinets; the executive director of the Public Service Commission; and the commissioner of the Governor's Office for Local Development shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates. The Governor shall additionally appoint six (6) at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky Municipal Utilities Association. As the terms of the at-large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the powers are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.
- (2) The members of the authority shall receive no compensation for their services in their official capacity but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as authority members.
- (3) Six (6) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4)
 - (a) The authority shall, for administrative purposes, be attached to the Governor's Office for Local Development, which shall provide any office space required by the authority.
 - (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

➔Section 387. KRS 224A.111 is amended to read as follows:

- (1) The federally-assisted wastewater revolving fund shall be established in the State Treasury and shall be administered by the authority under an agreement with the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet to assure compliance with the federal act.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to securing the payment of the principal of, interest on, and premium, if any, of revenue bonds issued by the authority under subsection (5) of this section which are to be secured solely by loan payments made by governmental agencies that have been deposited in the fund, making transfers to the federally-assisted water supply revolving fund, and providing financial assistance to government agencies for the construction of publicly owned treatment works as defined in Section 212 of the federal act and for the implementation of a management program established under Section 319 of the federal act and for the development and implementation of a conservation and management plan under Section 320 of the federal act.

- (3) The authority may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants for the revolving fund in accordance with payment schedules established with the administrator.
- (4) All payments from the administrator pursuant to subsection (3) of this section shall be deposited in the dedicated revolving fund.
- (5) The authority may issue its revenue bonds or seek appropriations for deposit into the revolving fund, including the amounts required to match the capitalization grants from the administrator. An amount not exceeding the amount permitted by the federal act may be used for the reasonable costs of administering the fund, for reviewing and regulating project construction and for other reasonable costs of complying with the federal act.
- (6) The financial assistance which may be provided to governmental agencies by the revolving fund shall be limited to:
 - (a) Making loans, on the condition that the loans are made at or below market interest rates, including interest free loans; that annual principal and interest payments will commence no later than when project construction is completed and all loans will be fully amortized not later than twenty (20) years after project construction is completed; that the recipient of a loan will establish a dedicated source of revenue for repayment of loans; and that the fund will be credited with all payments of principal and interest on all loans;
 - (b) Guaranteeing, or purchasing insurance for obligations of the fund where the action would improve credit market access or reduce interest rates;
 - (c) Providing moneys with which to carry out the requirements of assistance agreements; and
 - (d) Providing a source of revenue or security for the payment of principal and interest on bonds or notes issued by the authority or agencies of the state if the proceeds of the sale of the bonds will be deposited in the fund.
- (7) The revolving fund shall be established, maintained and credited with repayments and the fund balance shall be available in perpetuity solely for its stated purposes.
- (8) The authority shall obligate all payments from the administrator of the United States Environmental Protection Agency as well as the required state match, within one (1) year after the receipt of the payments.
- (9) Financial assistance may be provided from the fund only for those infrastructure projects which the Finance and Administration Cabinet has approved from the prioritization schedule prepared by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.
- (10) The authority may make and condition loans from the fund as required by state or federal law.
- (11) The authority shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period.
- (12) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet may make or prepare any necessary or required plan or report.
- (13) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or the loan recipient shall make available to the administrator of the United States Environmental Protection Agency records which the administrator reasonably requires to review in order to determine compliance with any applicable provision of law.
- (14) The authority may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance.
- (15) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.
- (16) If a loan is made from the federally-assisted wastewater revolving fund which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly-owned treatment works, the state shall ensure that if the recipient of the loan receives a grant under section 201(g) of the federal act for construction of such treatment works and an allowance under section 201(1)(l) of the federal

act for nonfederal funds expended for the planning and preparation, the recipient shall promptly repay the loan to the extent of the allowance.

- (17) Financial assistance may be provided from the federally assisted wastewater revolving fund only with respect to a project which is consistent with plans, if any, developed under Sections 205(j), 208, 303(e), 319, and 320 of the federal act, as amended.
- (18) The authority shall require as a condition of making a loan or providing other assistance, as described in KRS 224A.100(6), from the fund that the recipient of the assistance shall maintain project accounts in accordance with generally-accepted governmental accounting standards.
- (19) Assistance may be provided from the fund, other than under subsection (6)(a) of this section, to a governmental agency with respect to the nonfederal share of the costs of a treatment works project for which the governmental agency is receiving assistance from the administrator of the United States Environmental Protection Agency under any other authority only if the assistance, as determined by the Finance and Administration Cabinet, is necessary to allow the project to proceed.

➔Section 388. KRS 224A.1115 is amended to read as follows:

- (1) The federally-assisted water supply revolving fund shall be established in the State Treasury and shall be administered by the authority under an agreement with the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet to assure compliance with the federal act.
- (2) The fund shall be a dedicated fund and all moneys in the fund shall be dedicated solely to securing the payment of the principal of, interest on, and premium, if any, of revenue bonds issued by the authority under subsection (5) of this section which are to be secured solely by loan payments made by governmental agencies that have been deposited in the fund, making transfers to the federally-assisted water supply revolving fund, and providing financial assistance to government agencies for the construction of publicly-owned water supply projects.
- (3) The authority may enter into grant agreements with the administrator of the United States Environmental Protection Agency and accept capitalization grants for the revolving fund in accordance with payment schedules established with the administrator of the United States Environmental Protection Agency.
- (4) All payments from the administrator of the United States Environmental Protection Agency pursuant to subsection (3) of this section shall be deposited in the dedicated revolving fund.
- (5) The authority may issue its revenue bonds or seek appropriations for deposit into the revolving fund, including the amounts required to match the capitalization grants from the administrator of the United States Environmental Protection Agency. An amount not exceeding the amount permitted by the federal act may be used for the reasonable costs of administering the fund, for reviewing and regulating project construction and for other reasonable costs of complying with the federal act.
- (6) The authority shall make any loan from the revolving fund subject to those conditions established by state or federal law.
- (7) The revolving fund shall be established, maintained, and credited with repayments and the fund balance shall be available in perpetuity solely for its stated purposes.
- (8) Financial assistance may be provided from the fund only for those infrastructure projects which the Finance and Administration Cabinet has approved from the prioritization schedule prepared by the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.
- (9) The authority shall establish fiscal controls and accounting procedures sufficient to assure proper accounting during appropriate accounting periods for payments and disbursements received and made by the revolving fund and for fund balances at the beginning and end of the accounting period.
- (10) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet may make or prepare any necessary or required plan or report.
- (11) The authority or the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet or the loan recipient shall make available to the administrator of the United States Environmental Protection Agency records which the administrator reasonably requires to review in order to determine compliance with any applicable provision of law.

- (12) The authority may enter into any necessary or required agreement and give or make any necessary or required assurance or certification with any person to receive payments or grants or to make or provide any financial assistance.
- (13) The authority may enter into any necessary or required agreement with federal or state agencies or persons to carry out the provisions of this section.
- (14) If the loan is made from the federally-assisted water supply revolving fund which will finance the cost of facility planning and the preparation of plans, specifications, and estimates for construction of publicly-owned water supply projects, the state shall ensure that if the recipient of the loan receives a grant under the federal act for construction of those water supply projects and an allowance under the federal act for nonfederal funds expended for the planning and preparation, the recipient shall promptly repay the loan to the extent of the allowance.
- (15) Financial assistance may be provided from the federally-assisted water supply revolving fund only with respect to a project which is consistent with plans, if any, developed under the federal act, as amended.
- (16) The authority shall require as a condition of making a loan or providing other assistance, as described in KRS 224A.100(6), from the fund that the recipient of the assistance shall maintain project accounts in accordance with generally-accepted governmental accounting standards.
- (17) Assistance may be provided from the fund to a governmental agency with respect to the nonfederal share of the costs of a water supply system project for which the governmental agency is receiving assistance from the administrator of the United States Environmental Protection Agency under any other authority only if the assistance is necessary to allow the project to proceed, as determined by the Finance and Administration Cabinet.

➔Section 389. KRS 227.200 is amended to read as follows:

As used in KRS 227.200 to 227.400, unless the context otherwise requires:

- (1) "~~**Commissioner**~~~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of housing, buildings and construction;
- (2) "~~**Department**~~~~[Office]~~" means the **Department**~~[Office]~~ of Housing, Buildings and Construction;
- (3) "Fire loss" means loss of or damage to property, loss of life or personal injury, by fire, lightning, or explosion;
- (4) "Owner" means any person who owns, occupies, or has charge of any property;
- (5) "Property" means property of all types, both real and personal, movable and immovable;
- (6) "Rule" or "regulation" means a general order of the **commissioner**~~[executive director]~~, designed for the prevention of fire loss, which affects or may affect property rights of a designated class of owners or for the prevention of fire loss by certain indicated hazards;
- (7) "Order" or "special order" means an order of the state fire marshal, designed for the prevention of fire loss, that affects or may affect the property rights of a particular owner or designated property.

➔Section 390. KRS 227.205 is amended to read as follows:

The ~~**Department**~~~~[Office]~~ of Housing, Buildings and Construction (hereinafter referred to as the ~~**department**~~~~[office]~~ of housing) is hereby created within the ~~{Cabinet for Environmental and }Public Protection~~ **Cabinet**~~[, Department of Public Protection]~~. The ~~**department**~~~~[office]~~ shall be headed by **a commissioner**~~[an executive director]~~ appointed by the ~~{secretary of the Environmental and Public Protection Cabinet with the approval of the }Governor~~ in accordance with KRS ~~12.040~~~~[12.050]~~, and who shall report to the secretary of the ~~{Cabinet for Environmental and }Public Protection~~ **Cabinet**. The office of the **commissioner**~~[executive director]~~ shall also include a deputy **commissioner**~~[director]~~ and an executive assistant to the **commissioner**~~[executive director]~~, who shall be the policy making assistants to the **commissioner**~~[executive director]~~ and shall be appointed pursuant to KRS 12.050. The ~~**department**~~~~[office]~~ shall consist of the Division of Fire Prevention, the Division of Building Codes Enforcement, ~~{the Division of Administrative Services, }the Division of Plumbing, and the Division of Heating, Ventilation, and Air Conditioning (HVAC).~~

➔Section 391. KRS 227.210 is amended to read as follows:

Any power, duty or function, whether ministerial, discretionary or whatever character, vested in or imposed upon the state fire marshal, by any provision of KRS 227.200 to 227.410, 227.550 to 227.660, and 227.990 to 227.992 may be

exercised, discharged, and performed by any deputy or assistant of the state fire ~~marshal~~~~[marshal's office]~~ acting in the *state* fire marshal's name and by his delegated authority.

➔Section 392. KRS 227.220 is amended to read as follows:

- (1) The state fire marshal shall enforce or aid in the enforcement of all laws, administrative regulations, and ordinances of the state and its political subdivisions relating to fire loss as defined in KRS 227.200:
 - (a) The prevention or reduction of loss by fire or by other hazard or risk insured by property or casualty insurance companies doing business in this state, except as to disability insurance and workers' compensation, and shall enforce any other regulations or methods adopted for the prevention of loss from such hazards or risks in order to promote the safety of persons or property;
 - (b) The manufacture, transportation, storage, sale, or use of combustibles, explosives, and hazardous materials or equipment;
 - (c) The design, construction, and maintenance of property which has a direct bearing on safety to life and property;
 - (d) The construction, installation, maintenance, or equipment of fire alarm systems, fire protection and extinguishing equipment, and fire escapes and other means of access to or exit from property; and
 - (e) Arson and related offenses.
- (2) The chief state building official shall enforce and administer all applicable provisions of the Kentucky Building Code, including all the provisions designed for the prevention of fire loss, and shall have all the powers and duties awarded by KRS Chapter 198B and the Kentucky Building Code.
- (3) The state fire marshal is authorized to:
 - (a) Investigate the cause, origin, and circumstances of fires and explosions for the purpose of detecting and suppressing arson and related offenses, or for the purpose of minimizing or preventing fire loss;
 - (b) Supervise and make periodic inspections of all property within the state, and assist cities having fire departments in making like periodic inspections of all property in cities, except occupied private dwellings;
 - (c) Issue and enforce reasonable emergency orders and orders in accordance with KRS 227.330 for the prevention of fire loss, and for the adoption, approval, and installation of safety measures, remodeling, and equipment as will minimize fire loss;
 - (d) Provide technical and engineering advice and assistance to state and local governmental agencies in relation to fire prevention or fire protection;
 - (e) Direct and assist owners of educational institutions, places of public assembly, institutional buildings, public buildings, factories, business buildings, or other places where persons congregate, in the instruction of fire prevention, and the holding of fire drills;
 - (f) Conduct fire prevention and educational campaigns;
 - (g) Conduct examinations into the cause, origin, or circumstances of fire losses;
 - (h) Hold administrative hearings in accordance with the KRS Chapter 13B, as may be required by law or deemed by the state fire marshal necessary or desirable as to any matter within the scope of this chapter. All administrative hearings shall be public, unless the state fire marshal, or an authorized designee, determines that a private hearing would be in the public interest, in which case, and only with the consent of all parties to the hearing, the hearing shall be private;
 - (i) Direct research in the field of fire protection and accept gifts and grants for these purposes; and
 - (j) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- (4) ***The state fire marshal shall head the Division of Fire Prevention in the department.***

➔Section 393. KRS 227.230 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall appoint a state fire marshal, who shall appoint such deputy fire marshals, assistants, and employees as are necessary to exercise, discharge, or perform any power, duty or function vested in, imposed upon, or delegated to the state fire marshal by law or regulation. The state fire marshal, under the general direction of the ***commissioner***~~[executive director]~~, shall enforce and administer the provisions of this chapter and any other duties assigned by law or regulation. The chief of each fire department and the sheriff of each county shall be deemed deputies when ordered by the state fire marshal to act as such for their respective jurisdictions. Other deputy fire marshals may be appointed from the members of the fire department as the state fire marshal deems necessary.

➔Section 394. KRS 227.300 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall promulgate reasonable rules and regulations based on good engineering practice and principles as embodied in recognized standards of fire prevention and protection, providing for a reasonable degree of safety for human life against the exigencies of fire and panic, and insuring as far as is practicable against fire loss. Such rules and regulations shall be known as the standards of safety. After promulgation of the Uniform State Building Code, no part of the standards of safety shall establish, in whole or in part, any building code other than the Uniform State Building Code, but the ***commissioner***~~[executive director]~~ may supplement the Uniform State Building Code with fire safety regulations designed to operate in conjunction with the code.
- (2) In making such rules and regulations the ***commissioner***~~[executive director]~~ shall establish minimum fire prevention and protection requirements, including but not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of the following: structural requirements for the various types of construction; building restrictions within congested districts; exit facilities from structures; fire alarm systems and fire extinguishing systems; fire emergency drills; maximum occupancy loads and other requirements for buildings of public assembly; flue and chimney construction; heating devices; boilers and pressure vessels; electrical wiring and equipment; air conditioning, ventilating and other duct systems; refrigeration systems; flammable liquids, oil and gas wells; garages, repair, and service shops; application of flammable finishes, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; dry cleaning and dyeing plants; flammable motion picture film; combustible fibers; airports and airport buildings; hazardous chemicals; rubbish; open flame devices; parking of vehicles; dust explosions; lightning protection; and other special fire hazards.
- (3) For the purpose of integrating the need for safety from hazards of fire with the other safety needs of infants or preschool children under institutional care, the ***commissioner***~~[executive director]~~ shall allow persons who own, manage, or are employed by institutions which provide care or education for infants or preschool children to participate in drafting the standards of safety as they apply to such institutions. Such participation shall be by representation of professional associations relating to infant and preschool care, and by representation from other individuals licensed to provide infant and preschool care, on a committee chaired by the state fire marshal or his or her designate. Such participation shall occur prior to the publication of proposed regulations in the administrative register pursuant to KRS 13A.050 but shall not limit any individual's right to use those procedures set forth in KRS Chapter 13A concerning comment on or protest of proposed regulations. All professional associations relating to infant and preschool care shall be notified by the ***commissioner***~~[executive director]~~ when the drafting of standards of safety relating to such institutions is commenced and all such professional associations shall be regularly notified of the time and place of any meetings conducted by authorized employees of the ***department***~~[office]~~ for the purpose of drafting such standards.
- (4) The ***commissioner***~~[executive director]~~ shall publish guidelines relating to the standards of safety as they apply to day care and preschool child care centers and nurseries which shall indicate the items inspectors from the ***Division of Fire Protection***~~[office of the state fire marshal]~~ will be looking for when they conduct inspections pursuant to the standards of safety. Such guidelines shall be made available to persons who own, operate, or manage such centers or nurseries and shall be designed to enable said persons to anticipate and comply with the requirements of the standards of safety.
- (5) The ***commissioner***~~[executive director]~~ shall issue supplemental regulations addressing the temporary change of use in buildings as authorized by KRS Chapter 198B. These regulations shall establish specific standards for such use and shall be designed to operate in conjunction with the Kentucky Building Code.
- (6) Any standards of safety or other regulations promulgated under this section shall be subject to the requirements of KRS 198B.030(9) and (10) and 198B.040(11).

➔Section 395. KRS 227.310 is amended to read as follows:

The ~~*commissioner*~~~~[executive director]~~ shall conduct a hearing prior to the issuance of rules and regulations promulgated pursuant to KRS 227.300. At such hearing interested parties shall be given an opportunity to be heard in person or by counsel. The ~~*commissioner*~~~~[executive director]~~ shall cause a notice of such hearing to be published pursuant to KRS Chapter 424. No defect or inaccuracy in the notice or in its publication shall invalidate any such rules or regulations.

➔ Section 396. KRS 227.320 is amended to read as follows:

The authorities of any county, city, or other political subdivision shall adopt and enforce the standards of safety promulgated by the ~~*commissioner*~~~~[executive director]~~, and may enter upon private property to enforce required fire lane open space in parking lots containing space for ten (10) or more vehicles. Whenever the ~~*commissioner*~~~~[executive director]~~, by rules and regulations prescribes a standard of safety from fire loss, such rules and regulations shall establish a minimum requirement concerning the matters covered thereby and shall be so construed in relation to any local rules and regulations.

➔ Section 397. KRS 227.330 is amended to read as follows:

- (1) Whenever the state fire marshal or any deputy state fire marshal finds that any property is not safe as to fire loss, under the terms and conditions of this chapter and under the administrative regulations promulgated thereunder, or that the practices or methods of construction or operation, or processes or materials employed or used in connection therewith do not afford adequate protection from fire loss, under this chapter or under applicable administrative regulations, he shall order that additions, improvements, repairs, or changes be made and equipment be provided or action be taken that will reasonably render the property safe.
- (2) Orders and notices of the state fire marshal shall be effective only when in writing signed by him or by his authority.
- (3) Every order of the fire marshal shall state its effective date and shall concisely state:
 - (a) The grounds or alleged violations on which based;
 - (b) The provisions of this chapter or the administrative regulations pursuant to which action is so taken or proposed to be taken;
 - (c) The date by which the alleged violation shall be corrected or eliminated and the correction recommended therefor; and
 - (d) All other matters required by law.
- (4) Except as provided by KRS 227.340, an order or notice may be given by delivery to the person to be ordered or notified or his agent or by mailing it, postage prepaid, addressed to him at his principal place of business or residence as last of record in the ~~*department*~~~~[fire marshal's office]~~.
- (5) Before any order issued under subsection (1) of this section is enforceable, notice and opportunity for a hearing shall be provided the owner or his agent in accordance with KRS Chapter 13B.
- (6) Whenever the state fire marshal or any deputy state fire marshal designated by him for that purpose finds that a violation or violations of the provisions of this chapter or any administrative regulations promulgated thereunder render any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, a fire inspector or other state fire marshal employee may be authorized in writing by the state fire marshal to issue an emergency order pursuant to KRS 13B.125 that directs the property to be closed to the public or vacated by its occupants until the violation is corrected.
- (7) Notwithstanding the above upon receipt of notice of an emergency order issued under subsection (6) of this section, an owner or agent may seek a temporary restraining order prohibiting its enforcement in the Circuit Court within whose jurisdiction the property is located. The court shall review the emergency order and may prohibit its enforcement.
- (8) Appeals from any order issued or action taken under this section may be taken in the manner prescribed by KRS 227.335.
- (9) An order prepared by the *state* fire marshal's designee and approved in writing by the *state* fire marshal shall be considered the *state* fire marshal's order.

➔Section 398. KRS 227.331 is amended to read as follows:

- (1) Any person who willfully violates any administrative regulation, emergency order, or final order of the state fire marshal shall be subject to suspension or revocation of certificate of authority, occupancy, or other license or permit, or administrative fine not exceeding one thousand dollars (\$1,000) in lieu of suspension or revocation, for violation of the provision to which the administrative regulation or order relates, after notice and hearing in accordance with KRS Chapter 13B.
- (2) It shall be the duty of the state fire marshal, or upon the **commissioner's**~~executive director's~~ request, of the Attorney General, to bring an action to enforce any proper order made or action taken by the **state** fire marshal or on his or her authority, or for the recovery of the penalties provided in subsection (1) of this section, and to bring an action for a restraining order or for a temporary or permanent injunction, as the state fire marshal deems necessary for the prevention or correction of a condition constituting or threatening to constitute a violation of this chapter or administrative regulations promulgated thereunder. In any action for a restraining order or for a temporary or permanent injunction, allegations in a verified complaint or affidavit by the state fire marshal deputy or employee that the respondent is in violation of specified fire prevention and protection laws or administrative regulations and the violation or violations present such hazard to human life or limb that the public safety imperatively requires emergency action shall be sufficient under Rule 65 of the Kentucky Rules of Civil Procedure to show that the applicant's rights are being or will be violated and that he or she will suffer immediate and irreparable injury, loss, or damage before notice can be served and a hearing had thereon or pending a final judgment in the action.
- (3) All actions for enforcement, recovery of administrative fines, and injunctive relief for violations of this chapter shall be brought in the name of the Commonwealth of Kentucky by the state fire marshal, or upon the **commissioner's**~~executive director's~~ request by the Attorney General, in the Circuit Court within which the property involved is located.
- (4) If the **state** fire marshal has reason to believe that any person has violated any provision of this chapter, for which criminal penalties are provided and in his or her opinion prosecution would be in order, he or she shall give the information relative thereto to the appropriate county attorney, Commonwealth's attorney, or to the Attorney General. The county attorney, Commonwealth's attorney, or Attorney General shall promptly institute any action or proceedings against the person as in his or her opinion the information may require or justify.

➔Section 399. KRS 227.332 is amended to read as follows:

- (1) The **state** fire marshal shall give written notice of a hearing as required by KRS Chapter 13B. In addition to all parties to the hearing, the **state** fire marshal shall give this notice to all persons whose pecuniary interests, to the **state** fire marshal's knowledge or belief, are to be directly and immediately affected by the hearing.
- (2) If any hearing is to be held for consideration of administrative regulations of the **commissioner**~~executive director~~, or of other matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the **commissioner**~~executive director~~ may give notice of the hearing by publication pursuant to KRS Chapter 424; but the **commissioner**~~executive director~~ shall mail the notice to all persons who had requested the same in writing in advance and have paid to the **commissioner**~~executive director~~ the reasonable amount fixed by him or her to cover the cost thereof.
- (3) All notices, other than notices provided for in subsection (2) of this section, shall be given as provided in KRS Chapter 13B.

➔Section 400. KRS 227.336 is amended to read as follows:

- (1) Whenever the state fire marshal or any deputy state fire marshal appointed or employed by him or her makes any finding set forth in subsection (1) of KRS 227.330, or finds any property in violation of any provision of KRS 227.200 to 227.410 or any regulations adopted thereunder, in lieu of the order required in KRS 227.330(1), he or she shall notify the owner or his or her agent in writing of such specific finding and violation and instruct him or her to correct the violation within a period of time not to exceed sixty (60) days. Should the owner fail to make the required corrections within the specified time, the state fire marshal may proceed to take any other action authorized in this chapter.
- (2) If the state fire marshal or a deputy state fire marshal is required to make additional inspections, beyond the initial inspection and one (1) follow-up inspection, to determine if the required corrections referred to in subsection (1) of this section have been made, the state fire marshal or the deputy state fire marshal shall assess

a fee against the property owner to recover the cost of each additional inspection according to the following schedule:

Third inspection fee.....\$100.00

Fourth inspection fee.....\$200.00

Fifth and subsequent inspection fee.....\$500.00

- (3) Any fee collected under the provisions of this section by the state fire marshal shall be payable to the State Treasury and credited to the ***Division of Fire Prevention***~~[Office of the State Fire Marshal]~~ for the operation of the general inspection program. Any fee collected under the provisions of this section by a deputy state fire marshal shall be payable to the fire department conducting the inspection.
- (4) If during a follow-up inspection or any subsequent inspection for the same violation the state fire marshal or a deputy state fire marshal finds an additional violation not found during the initial inspection, such additional violation shall be treated as an initial violation which the property owner shall have the opportunity to correct under subsection (1) of this section prior to the assessment of a fee under subsection (2) of this section.

➔Section 401. KRS 227.390 is amended to read as follows:

If any owner fails to comply with an order issued pursuant to KRS 227.380 or with an order as modified on appeal to the ***commissioner***~~[executive director]~~, the officer may cause the property to be repaired, or removed if repair is not feasible, and all fire hazard conditions remedied, at the expense of the owner. Such expense may be enforced against any property of such owners and the officer and those employed to do the work or who furnish materials or equipment therefor shall have a lien for such expense on the real estate or property involved.

➔Section 402. KRS 227.410 is amended to read as follows:

- (1) As used in this section:
 - (a) "Gas-fired heating device" means a gas burning appliance of either a gravity or mechanical circulation type, designed for the heating of air or of water in an enclosed structure;
 - (b) "Gas-fired room heating device of the unventable type" means a self-contained, free standing, air heating, gas-fired appliance, designed as a space heater for an enclosed structure; and
 - (c) "Enclosed structure" includes a room used for public assembly, educational, instructional, mercantile, office, or residential purposes (including manufactured homes, mobile homes, travel trailers, and houseboats).
- (2) No person, firm, or corporation shall sell at retail or wholesale, or offer or expose for sale at retail or wholesale any gas-fired room heating device of the unventable type, or other type which has not been approved as provided in KRS 234.175, except unvented heaters that are built and sold solely for the curing of tobacco, which if sold or used by any person for any other purpose shall subject him or her to the penalty set forth in KRS 227.991.
- (3) No person, firm, or corporation shall install in any room or enclosed structure any gas-fired room heating device of the unventable type or other type which has not been approved as provided in KRS 234.175.
- (4) No person, firm, or corporation may install any gas-fired heating device of the ventable type for use in any room or enclosed structure unless said device is vented in accordance with the provisions of the standards of safety of the ***Department***~~[Office]~~ of Housing, Buildings and Construction.
- (5) No person, firm, or corporation who may own a gas-fired heating device of the unventable type or a gas-fired heating device of the ventable type, which has not been approved as provided in KRS 234.175, or which does not conform to the provisions of the standards of safety of the ***department***~~[office]~~ (all of which heating devices are referred to as "proscribed heaters" in this subsection and subsection (6) of this section), or who may occupy an enclosed structure in which such a proscribed heater is installed, shall continue to use or operate said proscribed heater after receipt of a written order described in subsection (6) of this section, and before the conditions contained in said order are met.
- (6) Cities of the first or second class may under ordinance duly enacted appoint inspectors or officers who have power to issue written orders directing owners of heaters or occupants of structures in which heaters are installed, to discontinue the use or operation of a proscribed heater and to specify conditions which must be

met before said proscribed heater may again be used or operated. Said order may be issued if said authorized person has actual knowledge of the existence of a proscribed heater, and, in the opinion of said authorized person, the continued use or operation of said proscribed heater would constitute a danger to life or health; provided however, no person, agency, firm, or corporation (other than the owner, user, seller, or installer of a proscribed heater) shall be liable for civil damages for his or her or its failure to recognize a proscribed heater, for failure to issue the order described in this subsection, for complying with said order, for assisting with the compliance therewith, or for allowing the continued use or operation of a proscribed heater prior to receipt of said order.

- (7) This section shall not apply to liquefied petroleum gas heaters subject to the jurisdiction of the ~~department~~~~office~~ under KRS Chapter 234, except those liquefied petroleum gas heaters sold or installed for residential usage.

➔Section 403. KRS 227.450 is amended to read as follows:

As used in KRS 227.450 to 227.500 unless the context otherwise requires:

- (1) "Electrical contractor" means any licensed individual, partnership, or corporation that is licensed to engage in, offers to engage in, or advertises or holds itself out to be qualified to engage in designing, planning, superintending, contracting of, or assuming responsibility for the installation, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power, and employs electrical workers to engage in this practice. If the electrical contractor is not a master electrician, the electrical contractor shall employ at least one (1) full-time master electrician;
- (2) "Electrician" means any person licensed by the ~~department~~~~office~~ who is employed by an electrical contractor and is engaged in the construction, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power;
- (3) "Electrical" pertains to the installation, alteration, or repair of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith;
- (4) "Electrical inspector" means any person certified by the ~~commissioner~~~~executive director~~ of housing, buildings and construction pursuant to KRS 227.489 who, for compensation, inspects the construction and installation of electrical conductors, fittings, devices, and fixtures for light, heat, or power service equipment to ascertain the compliance with the National Electrical Code incorporated in the Uniform State Building Code promulgated pursuant to KRS 198B.050 or the standards of safety of the Commonwealth of Kentucky; and
- (5) "~~Department~~~~Office~~" means the ~~Department~~~~Office~~ of Housing, Buildings and Construction.

➔Section 404. KRS 227.480 is amended to read as follows:

- (1) A city, county, urban-county, charter county, or consolidated local government shall, according to the Uniform State Building Code as it pertains to the plan review and inspection responsibilities of local governments, require any person to obtain permits before commencing construction, alteration, or repairs of any electrical wiring. The city, county, urban-county, charter county, or consolidated local government shall require all inspections that are deemed necessary by the ~~department~~~~office~~ for the safety of life and property. The ~~department~~~~office~~ shall promulgate administrative regulations to describe the circumstances where inspections are required.
- (2) A city, county, urban-county, charter county, or consolidated local government or the state shall not issue a permit unless the applicant submits proof of being licensed as an electrical contractor under KRS Chapter 227A or of acting on behalf of a licensed electrical contractor. However, the provisions of this subsection shall not apply to a homeowner or farmer who does construction, alteration, or repairs of any electrical wiring on his or her own premises or any other person exempt from licensing under KRS 227A.030. This subsection shall not apply to electrical work performed by the Commonwealth of Kentucky, a city, county, urban-county, charter county, or consolidated local government, or any subdivision thereof.
- (3) A city, county, urban-county, charter county, or consolidated local government shall appoint and may fix the compensation of city, county, urban-county, charter county, or consolidated local government electrical inspectors, and may by ordinance fix reasonable fees and establish other requirements for the conduct of electrical inspections within its boundaries. All electrical inspectors must be certified under KRS 227.489.
- (4) Reasonable standards for the construction, alteration, and repair of any electrical wiring shall be those adopted in the Uniform State Building Code, as promulgated by the Board of Housing, Buildings and Construction, and

shall have as a minimum standard the requirements of the National Electric Code. These standards shall be used by the electrical inspector in making his inspections.

➔Section 405. KRS 227.487 is amended to read as follows:

Except where other rules are adopted by a city or county, the following reporting and fee requirements shall apply to electrical inspections of residential buildings and single-family dwellings:

- (1) The inspector shall complete a report for each inspection. One (1) copy of the report shall be given to the owner of the electrical installation or his representative at the time the inspection fees are paid. A second copy of the report shall be sent to the **Department**~~Office~~ of Housing, Buildings and Construction no later than one (1) week after the inspection is completed. The report shall include, but is not limited to, the following:
 - (a) The address of the dwelling inspected;
 - (b) The number of rooms, number of receptacles and number of switch boxes inspected;
 - (c) Number of code violations, if any;
 - (d) A description of each code violation, and recommended change to correct the violation;
 - (e) The date and time of day the inspection commenced;
 - (f) The time, in hours and minutes, required for the inspection;
 - (g) The number of miles and hours and minutes of travel time incurred by the inspector for that inspection, if mileage and travel charges are added to the inspection fee;
 - (h) The amount charged for the inspection, separated into an amount for mileage, if any, and the amount for travel time, if any, and the amount charged for the actual inspection.
- (2) The maximum inspection fee shall be an amount equal to the prevailing wage for a master electrician in the region in which the inspection is made, multiplied by the time required to conduct the inspection. This rate shall not be applied to travel time to and from the inspection.
- (3) An inspector may charge, in addition to the inspection fee, an amount for necessary travel to and from the inspection site. The mileage rate charged shall not exceed the amount per mile allowed to state employees, and the inspector shall charge no more than ten dollars (\$10) per hour for travel time. If two (2) or more inspections are made during one (1) trip, then the cost of travel shall be divided between the inspections made. In no case shall an inspector charge more than once for the same trip, or charge for mileage or time not actually expended.
- (4) Each inspector shall furnish bond of five thousand dollars (\$5,000) with surety satisfactory to the **Department**~~Office~~ of Housing, Buildings and Construction.
- (5) The **Department**~~Office~~ of Housing, Buildings and Construction shall design reporting forms which meet the requirements of subsection (1) of this section, and provide these forms to electrical inspectors. The **department**~~office~~ shall adopt regulations to administer the requirements of this section.
- (6) Nothing in this section is intended to limit the right of cities or counties to set fees or adopt rules for electrical inspections which are different from those specified in subsections (1), (2), (3) or (4) of this section.

➔Section 406. KRS 227.489 is amended to read as follows:

The **commissioner**~~executive director~~ of housing, buildings and construction shall require electrical inspectors to be certified. Examinations shall be based on the National Electrical Code incorporated in the Uniform State Building Code and the standards of safety prescribed by the **department**~~office~~. Electrical inspectors who have been engaged in the inspection of electrical light and power wiring installations, based on the requirements of the National Electrical Code, for a period of three (3) years, may be certified on the basis of knowledge of this subject and experience. No certificate shall be denied, suspended, or revoked unless the applicant or certificate holder is afforded the opportunity for a hearing in accordance with KRS Chapter 13B.

➔Section 407. KRS 227.491 is amended to read as follows:

- (1) An electrical inspector who certifies an electrical installation shall furnish and attach an approval sticker, bearing his or her signature and certification number in a conspicuous place on the main service entrance

equipment. He or she shall also provide the owner of the electrical installation or his or her authorized agent with a certificate of approval if the same is requested. A complete record of each inspection shall be kept by the inspector and these records shall be made available to the **Department**~~[Office]~~ of Housing, Buildings and Construction upon its request.

- (2) No electrical inspector shall:
 - (a) Attempt to supplant, overrule, or otherwise invalidate the judgment of another electrical inspector whose services for a particular building, structure, or other project have been solicited by an owner, contractor, municipality, or other person without first obtaining express written consent from the designated inspector's office supervising the original inspector;
 - (b) Certify unlicensed or unlawful electrical installations;
 - (c) Certify or inspect an electrical installation in a manufactured home or mobile home where the certified installer seal is not present pursuant to KRS 227.570; or
 - (d) Certify or inspect an electrical installation in a previously owned manufactured home or a previously owned mobile home when a Class B1 seal is not present as required by KRS 227.605.
- (3) Failure of an electrical inspector to observe subsection (2) of this section shall subject that inspector to review by the **commissioner**~~[executive director]~~ of housing, buildings and construction with possible suspension of certification for a period not to exceed one (1) year from the date of the **commissioner's**~~[executive director's]~~ ruling.

➔Section 408. KRS 227.492 is amended to read as follows:

It shall be the duty of the **commissioner**~~[executive director]~~ of housing, buildings and construction to investigate alleged misconduct of any electrical inspector certified under KRS 227.489 when, in the opinion of the **commissioner**~~[executive director]~~, there is sufficient evidence to suggest that such misconduct exists. Any party may seek redress from the **commissioner**~~[executive director]~~ when alleged misconduct of an electrical inspector is deemed to have worked an undue hardship on the party.

➔Section 409. KRS 227.495 is amended to read as follows:

- (1) Electrical inspectors shall have the authority to take immediate action to prevent further electrical work at any inspection site where, in the judgment of the electrical inspector, imminent danger to life or property exists. Actions the electrical inspector may take to address this danger are the following:
 - (a) Stop-work order regarding any electrical work at the inspection site; or
 - (b) Recommendations of fines or other penalties as described in KRS 227.500.
- (2) The findings of the electrical inspector under subsection (1) of this section shall be presumed to be correct until the city, county, urban-county, charter county, or consolidated local government, the **department**~~[office]~~, or the party affected by the findings demonstrates that it is more likely than not that the electrical inspector was incorrect in his or her findings.
- (3) The actions of an electrical inspector under this section are subject to misconduct investigation by the **commissioner**~~[executive director]~~ under KRS 227.492, and the inspector is subject to any appropriate criminal or civil penalty due to misconduct or violation of any provision of KRS 227.200 to 227.400 or 227.450 to 227.500.

➔Section 410. KRS 227.530 is amended to read as follows:

- (1) There is hereby created an Electrical Advisory Committee which shall be attached to the **Department**~~[Office]~~ of Housing, Buildings and Construction for administrative purposes. The committee shall be constituted as follows:
 - (a) Two (2) members chosen from public utility companies;
 - (b) Two (2) members who are electricians;
 - (c) Two (2) members who are certified electrical inspectors, one (1) of whom shall be employed by a governmental entity and the other who shall be an independent contractor engaged in the business of inspecting electrical installations;
 - (d) Two (2) members who are licensed professional electrical engineers;

- (e) Two (2) members who are engaged in the business of electrical contracting; and
 - (f) One (1) member who is engaged in the business of electrical contracting and who employs no more than five (5) full-time employees when appointed.
- (2) Committee members shall be appointed by the Governor for four (4) year terms. No committee member shall be appointed for more than one (1) successive term.
 - (3) The committee shall meet at least quarterly or upon request of the *department*~~office~~ for the purpose of considering matters relating to electrical installations and electrical inspections. The committee shall have the opportunity to review and comment on relevant administrative regulations that are subject to the requirements of KRS 198B.030(9) and (10) and 198B.040(11) and shall make recommendations to and otherwise advise the *department*~~office~~ on these matters.
 - (4) All committee members shall be compensated for expenses incurred in the conduct of Commonwealth business.

➔Section 411. KRS 227.550 is amended to read as follows:

As used in this section to KRS 227.660, 227.990, and 227.992, unless the context requires a different definition:

- (1) "Board" means the Manufactured Home Certification and Licensure Board.
- (2) "Seal" means the United States Department of Housing and Urban Development seal for manufactured homes.
- (3) "Class B1 Seal" and "Class B2 Seal" mean seals issued pursuant to subsection (1) of KRS 227.600.
- (4) "Retailer" means any person, firm, or corporation, who sells or offers for sale two (2) or more manufactured homes, mobile homes, or recreational vehicles in any consecutive twelve (12) month period. The term "retailer" shall not include:
 - (a) A manufacturer, as defined in this section;
 - (b) Any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to the disposition of its own repossessed manufactured housing; or
 - (c) A licensed real estate agent who acts as a negotiator between an owner and a prospective purchaser and does not acquire ownership or possession of manufactured homes for resale purposes.
- (5) "Established place of business" means a fixed and permanent place of business in this state, including an office building and hard surface lot of suitable character and adequate facilities and qualified personnel, for the purpose of performing the functional business and duties of a retailer, which shall include the books, records, files, and equipment necessary to properly conduct such business, or a building having sufficient space therein in which the functional duties of a retailer may be performed. The place of business shall not consist of a residence, tent, temporary stand, or open lot. It shall display a suitable sign identifying the retailer and his business.
- (6) "Federal act" means the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. secs. 5401 et seq., as amended, and rules and regulations issued thereunder.
- (7) "Manufactured home" means a single-family residential dwelling constructed in accordance with the federal act, manufactured after June 15, 1976, and designed to be used as a single-family residential dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems contained therein. The manufactured home may also be used as a place of business, profession, or trade by the owner, the lessee, or the assigns of the owner or lessee and may comprise an integral unit or condominium structure. Buildings the construction of which is not preempted by the federal act are subject to building code requirements of KRS Chapter 198B.
- (8) "Factory-built housing" means manufactured homes, mobile homes, or mobile office units.
- (9) "Manufacturer" means any person who manufactures manufactured homes and sells to Kentucky retailers.
- (10) "Mobile home" means a factory-built structure manufactured prior to June 15, 1976, which was not required to be constructed in accordance with the federal act.

- (11) "~~Department[Office]~~" means the *Department of Housing, Buildings, and Construction in the Public Protection Cabinet*~~[office of the state fire marshal]~~.
- (12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle not requiring a special permit for movement on Kentucky highways. The basic entities are: travel trailer, camping trailer, truck camper, motor home, and park vehicle.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units, or fixtures) and bath and toilet rooms.
 - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.
 - (c) Truck campers: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pickup truck.
 - (d) Park vehicle: A vehicle which:
 - 1. Is built on a single chassis mounted on wheels;
 - 2. Is primarily designed as temporary living quarters for seasonal or destination camping and which may be connected to utilities necessary for operation of installed fixtures and appliances;
 - 3. Has a gross trailer area not exceeding four hundred (400) square feet in the set-up mode;
 - 4. Has a gross trailer area not less than two hundred forty (240) square feet and is certified by the manufacturer as complying with ANSI A119.5, Park Vehicles.
 - (e) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (13) "Secretary" means the Secretary of the Federal Department of Housing and Urban Development.
- (14) "ANSI" means the American National Standards Institute.
- ➔Section 412. KRS 227.555 is amended to read as follows:
- (1) Every manufactured or mobile home as defined in KRS 227.550 shall have:
 - (a) At least one (1) working smoke detector located inside the home near the bedroom areas on each floor level; and
 - (b) At least two (2) operable means of egress, if the home was originally equipped with at least two (2) means.
 - (2) The ~~Department[Office]~~ of Housing, Buildings and Construction, through the promulgation of administrative regulations in accordance with KRS Chapter 13A, shall design and cause to be placed:
 - (a) At each vehicle entrance to a manufactured home park or community as defined in KRS 219.320, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section; and
 - (b) In each county clerk's office, a notice stating the requirements set out in subsection (1) of this section, the penalty for noncompliance set out in subsection (5) of this section, and any other information it deems necessary to effect the purposes of this section.
 - (3) No public servant with the authority to issue a citation shall enter a manufactured or mobile home solely for the purpose of determining whether or not the manufactured or mobile home is in compliance with this section.

- (4) No ordinance contrary to subsections (1) and (3) of this section may be enacted by any unit of local government, and the provisions of subsections (1) and (3) shall supersede any local ordinance to the contrary. The provisions of this subsection shall not apply to any city which has adopted or may in the future adopt the Uniform Residential Landlord and Tenant Act under KRS Chapter 383.
- (5) The owners of manufactured homes and mobile homes located within a manufactured home park or community which do not comply with subsection (1) of this section shall be responsible for the correction of any violation.
- (6) Any person who violates subsection (1) of this section shall be guilty of a violation.

➔Section 413. KRS 227.560 is amended to read as follows:

- (1) There is hereby created the Manufactured Home Certification and Licensure Board which shall issue certificates of acceptability to qualifying manufacturers and licenses to retailers and shall certify installers.
- (2) The board shall consist of the state fire marshal, the secretary of the Transportation Cabinet, the commissioner of the Department for Public Health, or their designees, and seven (7) citizens of the Commonwealth appointed by the Governor, which shall include three (3) manufactured or mobile home retailers, one (1) certified manufactured or mobile home installer, and three (3) members who shall have no interest in the industry to be regulated.
- (3) The state fire marshal, the secretary of the Transportation Cabinet, and the commissioner of the Department for Public Health shall be permanent members of the board, by virtue of their respective offices. The appointed members of the board shall hold office for terms of four (4) years with their terms expiring on September 1 of even-numbered years. Each member shall hold office until his or her successor is appointed and has qualified.
- (4) In the initial appointments to the board, the Governor shall designate three (3) members to serve for two (2) years and three (3) to serve for four (4) years. In the initial appointment of the certified manufactured or mobile home installer to the board, the Governor shall designate the member to serve for a term expiring September 1, 2004.
- (5) All members appointed from the manufactured housing industry shall be required to remain *licensed and certified*~~[licensees of the office]~~ during their term and are subject to removal for chronic absenteeism.
- (6) If a vacancy occurs in the office of one (1) of the members of the board, the position shall be filled by a person appointed by the Governor, and the person so appointed shall serve only to the end of the unexpired term.
- (7) The chairman of the board shall be elected by the board. In the event of the chairman's absence or disability, the members of the board shall elect a temporary chairman by a majority vote of those present at a meeting.
- (8) Each appointed member shall be entitled to fifty dollars (\$50) for each day he is in attendance at meetings or hearings or on authorized business of the board, including time spent in traveling to and from the place of the meeting, hearing, or other authorized business. Each member of the board shall also be entitled to reimbursement for travel and other necessary expenses incurred in performing official duties.
- (9) The chairman, or in his absence a temporary chairman selected by the members of the board present at the meeting, shall preside at all meetings of the board. The board shall have regular meetings at times specified by a majority vote of the board. The chairman may call special meetings at any time. He shall call a special meeting on written request by two (2) or more members of the board. A majority of the board shall constitute a quorum to transact business.
- (10) All staff assistance deemed necessary by the board to carry out the functions and duties assigned to it in KRS 227.550 to 227.660 shall be provided by the ~~department~~~~[office]~~ and shall function under the supervision of the ~~administrative~~ head of the ~~department~~~~[office]~~.
- (11) The provisions of KRS 198B.030(9) and (10) and 198B.040(11) shall not apply to the board.

➔Section 414. KRS 227.570 is amended to read as follows:

- (1) The ~~department~~~~[office]~~ shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in manufactured homes and mobile homes and for previously owned recreational vehicles as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board.

- (2) The ~~department~~~~{office}~~ shall enforce such standards and requirements for the body and frame design, construction, and installation of manufactured homes and mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board. If any part of 1976 Ky. Acts ch. 136 conflicts with Title 6 of the Federal Housing and Community Development Act of 1974, the federal act shall take precedence.
- (3) All installations of manufactured homes and mobile homes shall be performed by an installer certified under the provisions of KRS 227.560 in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installations.
- (4) A certified installer shall apply for a certified installer seal prior to installing a manufactured home or a mobile home. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A. The administrative regulations shall provide for the fees, purchase and application of the seal, report procedures, and attachment of the certified installer seal.

➔Section 415. KRS 227.580 is amended to read as follows:

- (1) It is unlawful for any manufacturer to manufacture, import, or sell manufactured homes within this state unless such manufacturer has been issued a certificate of acceptability for such manufactured homes from the **board or its designee**~~{office}~~. This provision shall not, however, apply to manufactured homes manufactured in this state and designated for delivery to and sale in another state.
- (2) The ~~department~~~~{office}~~ shall require that the manufacturer establish and submit to the ~~department~~~~{office}~~ for approval systems for quality control for recreational vehicles prior to the issuance of a certificate of acceptability. Certificates of acceptability shall be numbered and a record shall be kept by the ~~department~~~~{office}~~, by number, of the certificates issued to manufacturers.
- (3) No manufacturer to which a certificate of acceptability has been issued shall modify in any way its manufacturing specifications without prior written approval of the ~~department~~~~{office}~~.

➔Section 416. KRS 227.590 is amended to read as follows:

- (1) The board shall make and the ~~department~~~~{office}~~ shall enforce rules and regulations reasonably required to effectuate the provisions of KRS 227.550 to 227.660 and to carry out the ~~department's~~~~{state fire marshal's office's}~~ responsibilities as a state administrative agency for the enforcement and administration of the federal act.
- (2) At least thirty (30) days before the adoption or promulgation of any change in or addition to the rules and regulations authorized in subsection (5) of this section the ~~department~~~~{office}~~ shall mail to all manufacturers possessing valid certificates of acceptability and retailers possessing valid licenses a notice including a copy of the proposed changes and additions and the time and place that the board will consider any objections to the proposed changes and additions. After giving the notice required by this section, the board shall afford interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity to present the same orally in any manner.
- (3) Every rule or regulation or modification, amendment, or repeal of a rule or regulation adopted by the board shall state the date it shall take effect.
- (4) Notwithstanding the provisions of KRS 227.550 to 227.660, the board shall have the authority to promulgate rules and regulations exempting manufacturers and retailers from the provisions of KRS 227.550 to 227.660 when manufactured homes or mobile homes are brought into this state for exhibition only.
- (5) All rules, regulations, codes, fees, and charges adopted by the board pursuant to KRS 227.550 to 227.660 shall be prepared and filed in accordance with KRS Chapter 13A.
- (6) The board shall have the authority to promulgate rules and regulations to issue temporary licenses, not to exceed thirty (30) days, to out-of-state retailers for the purpose of participating in manufactured home shows in the Commonwealth of Kentucky.

➔Section 417. KRS 227.600 is amended to read as follows:

- (1) Any retailer who has acquired a previously owned manufactured home, mobile home, or recreational vehicle without a seal shall apply to the ~~department~~~~{office}~~ for the appropriate seal by submitting an affidavit that the unit has been brought up to or meets reasonable standards established by the board for previously owned

manufactured homes, mobile homes, or recreational vehicles. Those manufactured homes or mobile homes taken in trade must be reinspected and certified. A numbered Class B1 Seal shall be affixed by the retailer to the unit prior to sale. A seal will not be required if such retailer submits an affidavit that the unit will not be resold for use as such by the public. A retailer shall not transport or install a manufactured or mobile home which is to be used for residential purposes which does not have a Class B1 Seal.

- (2) The owner of any manufactured home or mobile home which is not covered by the federal act and which was purchased in another state and not bearing a seal of approval shall purchase a seal from the ~~department~~~~office~~. Application to purchase a seal of approval shall be made to the ~~department~~~~office or other person or agency authorized by the state fire marshal~~.
- (3) The ~~department~~~~office~~ shall make available suitable forms for application for seals of approval for previously owned manufactured homes or mobile homes which are not covered by the federal act and for previously owned recreational vehicles.
- (4) The clerk of the county in which a manufactured home, mobile home, or previously owned recreational vehicle is sought to be registered after June 1, 1976, which was purchased out of Kentucky, shall require production of proof of purchase of a seal of approval as provided in subsection (2) of this section before registering or issuing a license for any manufactured home, mobile home, or previously owned recreational vehicle.

➔Section 418. KRS 227.605 is amended to read as follows:

- (1) No person shall transport into the Commonwealth of Kentucky any previously owned manufactured or mobile home for the purpose of resale or use as a dwelling in the Commonwealth of Kentucky unless the previously owned manufactured or mobile home has a B1 Seal attached to it prior to resale or use as a dwelling. The application and certification procedures for the attachment of the B1 Seal prior to the resale or occupancy of the manufactured or mobile home shall be set out by the ~~board~~~~office~~ through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. Nothing in this section shall require a person who owns a manufactured or mobile home in another state and who transports that manufactured or mobile home into the Commonwealth of Kentucky to use as that person's dwelling to obtain a Class B seal.
- (2) Except for manufactured or mobile homes installed within the Commonwealth of Kentucky before July 13, 2004, no person shall sell, lease, rent, or furnish for use as a dwelling in the Commonwealth of Kentucky any previously owned manufactured or mobile home that does not bear a B1 Seal and which is not installed in compliance with the manufacturer's instructions, if available, or ANSI 225.1, Manufactured Home Installations.

➔Section 419. KRS 227.610 is amended to read as follows:

The ~~board or its designee~~~~office~~ shall ~~after approval by the board,~~ license retailers under the provisions of KRS 227.550 to 227.660. The ~~office may make the~~ issuance of a license **shall be** contingent upon the applicant's chief managing officer passing a test administered by the ~~department~~~~office~~. Before issuing a license, the ~~department~~~~office~~ shall require proof of liability insurance which shall name the ~~department~~~~office~~ in the certificate of insurance, and the license shall be null and void if there is a lapse of coverage in insurance.

➔Section 420. KRS 227.620 is amended to read as follows:

- (1) No retailer shall engage in business as such in this state without a license therefor as provided in KRS 227.550 to 227.660.
- (2) Application for license shall be made to the board **or its designee** at such time, in such form and contain such information as the board shall require and shall be accompanied by the required fee. The board may require in such application, or otherwise, such information as it deems commensurate with the safeguarding of the public interest in the locality in which said applicant proposes to engage in business, all of which may be considered by the board in determining the fitness of said applicant to engage in business as set forth in KRS 227.550 to 227.660.
- (3) All licenses shall be granted or refused within thirty (30) days after application. The initial license for a retailer shall expire on the last day of the licensee's birth month in the following year. The board may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses

shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license.

- (4) The license fee for such calendar year or part thereof shall be established by the board, subject to the following maximums:
 - (a) For manufacturers a "certificate of acceptability" shall be subject to a maximum of five hundred dollars (\$500).
 - (b) For retailers the maximum license fee shall be two hundred fifty dollars (\$250) for each established place of business.
 - (c) The fee for a "Class B Seal" for recreational vehicles shall be twenty-five dollars (\$25) per seal and the application form and seal shall be made available from the ~~department~~~~office~~.
 - (d) The fee for a "Class B1 Seal" and "Class B2 Seal" for manufactured and mobile homes shall be established by the board subject to a maximum of twenty-five dollars (\$25) per seal.
 - (e) The ~~department~~~~office~~ may establish a monitoring inspection fee in an amount established by the secretary. This monitoring inspection fee shall be an amount paid by each manufactured home manufacturer in this state for each manufactured home produced by the manufacturer in this state. The monitoring inspection fee shall be paid by the manufacturer to the secretary or the secretary's agent, who shall distribute the fees collected from all manufactured home manufacturers among the states approved and conditionally approved by the secretary based on the number of new manufactured homes whose first location after leaving the manufacturing plant is on the premises of a distributor, retailer, or purchaser in that state, and the extent of participation of the state in the joint team monitoring program established under the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended.
- (5) All revenues raised through the provisions of subsections (4)(a), (b), and (c), and funds paid to the state by the secretary under the provisions of subsection (4)(d) of this section shall be deposited in a trust and agency fund and shall be used solely for the purpose of carrying out the provisions of KRS 227.550 to 227.660 and other departmental responsibilities. No amount of such trust and agency fund shall lapse at the end of any fiscal year.
- (6) The licenses of retailers shall specify the location of the established place of business and must be conspicuously displayed there. In case such location be changed, the retailer shall notify the ~~department~~~~office~~ of any change of location, and the ~~department~~~~office~~ shall endorse the change of location on the license without charge if it be within the same municipality. A change of location to another municipality or to a county which is not adjacent to the county where the business is located shall require a new license.
- (7) Every retailer licensed in accordance with the provisions of this section shall make reports to the ~~department~~~~office~~ at such intervals and showing such information as the ~~department~~~~office~~ may require.
- (8) Each manufacturer, distributor of manufactured homes or mobile homes, and retailer of manufactured or mobile homes shall establish and maintain such records, make such reports, and provide such information as the ~~department~~~~office~~ or the secretary may reasonably require to be able to determine whether such manufacturer, distributor, or retailer has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act and shall, upon request of a person duly designated by the ~~department~~~~office~~ or secretary, permit such person to inspect appropriate books, papers, records, and documents relevant to determining whether such manufacturer, distributor, or retailer has acted or is acting in compliance with KRS 227.550 to 227.660 or the federal act.

➔Section 421. KRS 227.625 is amended to read as follows:

- (1) Before any license will be issued or renewed, the applicant shall file or have on file with the ~~department~~~~office~~ a liability insurance policy issued by an insurance carrier authorized to transact insurance business within the Commonwealth of Kentucky. The policy of insurance must be issued in the name of the applicant licensee.
- (2) The board shall by regulation establish the minimum amount of liability insurance required herein.
- (3) No insurance carrier issuing any policy filed with the ~~department~~~~office~~ shall be relieved from liability under the policy until after the expiration of fifteen (15) days' notice to the ~~department~~~~office~~ of an intention to cancel the policy, provided, however, that a prior cancellation may be allowed in cases where one (1) policy is

substituted for another policy when the substituted policy is in force and effect prior to the expiration of fifteen (15) days' notice to the ~~department[office]~~ of an intention to cancel the policy which is being substituted.

- (4) Upon cancellation of any policy of insurance required by this section, all operating rights granted by the license for which the said policy was filed, shall immediately cease and the ~~department[office]~~ shall have the authority to immediately require the cessation of all operations conducted under the authority of the said license and to require the surrender of all licenses, certificates, and seals previously issued hereunder.

➔Section 422. KRS 227.640 is amended to read as follows:

- (1) The board *or its designee* may deny the application for a license, certification, or certificate of acceptability within thirty (30) days after receipt thereof by written notice to the applicant, stating the grounds for such denial.
- (2) No license, certification, or certificate of acceptability shall be suspended or revoked by the board unless the licensee or certificate holder is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.
- (3) Any manufacturer, certified installer, or licensed retailer who violates or fails to comply with KRS 227.550 to 227.660 or any administrative regulations promulgated thereunder shall be notified in writing setting forth facts describing the alleged violation and instructed to correct the violation, if it is correctable, within twenty (20) days. Should the manufacturer, certified installer, or retailer fail to make the necessary corrections within the specified time or if the violation is not correctable, the board may, after notice and hearing in accordance with KRS Chapter 13B, suspend or revoke any certificate of acceptability, certification, or license if it finds that:
 - (a) The manufacturer, certified installer, or retailer has failed to pay the fees authorized by KRS 227.550 to 227.660; or that
 - (b) The manufacturer, certified installer, or retailer, either knowingly or without the exercise of due care to prevent the same, has violated any provision of KRS 227.550 to 227.660 or any administrative regulation or order lawfully made pursuant to and within the authority of KRS 227.550 to 227.660; or that
 - (c) The manufacturer has shipped or imported into this state a manufactured home or mobile home to any person other than to a duly licensed retailer.

The ~~board[office]~~ shall set out, through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A, and shall provide for a dispute resolution process which may be used prior to a formal hearing under KRS Chapter 13B. The dispute resolution process shall be nonbinding on the licensee, certified installer, or manufacturer and shall be conducted after application for a KRS Chapter 13B hearing, but prior to the convening of the KRS Chapter 13B hearing.

- (4) Any person aggrieved by any final order of the ~~department[state fire marshal]~~ may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 423. KRS 227.650 is amended to read as follows:

- (1) The ~~department[office]~~ is empowered to inspect all mobile homes which are not covered by the federal act and previously owned recreational vehicles for which it has issued a seal of approval.
- (2) The ~~board[office]~~ may establish and require such training programs in the concept, techniques, and inspection of manufactured homes, mobile homes, and previously owned recreational vehicles for the personnel of local governments, as the ~~board[office]~~ considers necessary.
- (3) The staff of the ~~department[office]~~, upon showing proper credentials and in the discharge of their duties pursuant to KRS 227.550 to 227.660 or the federal act, is authorized with the consent of the manufacturer or by proper warrant to enter and inspect all factories, warehouses, or establishments in this state in which manufactured homes are manufactured or stored.

➔Section 424. KRS 227.660 is amended to read as follows:

The ~~department[office]~~, subject to the provisions of Chapter 18A and Chapter 64 of the Kentucky Revised Statutes, may set qualifications, employ, and fix the compensation of such state inspectors as the ~~department[office]~~ deems necessary to carry out the functions of KRS 227.550 to 227.650. To carry out the provisions of KRS 227.550 to

227.650, the ~~department~~~~{office}~~ may authorize the state inspectors to travel within or without the state for the purposes of inspecting the manufacturing facilities for manufactured homes or for any other purpose in connection with KRS 227.550 to 227.650.

➔Section 425. KRS 227.710 is amended to read as follows:

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any fireworks, except as follows:

- (1) In cities the chief of the fire department, or mayor, or similar official where there is no fire department, and in counties outside of cities the county judge/executive, may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. Every display shall be handled by a competent operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, shall not be hazardous to property or endanger any person. Permits shall be filed with the ~~the Office of~~ state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.
- (2) The sale, at wholesale, of any fireworks for supervised displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco and Firearms, if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.
- (3) The sale, at wholesale, of any kind of fireworks by any resident manufacturer, wholesaler, dealer, or jobber, provided the fireworks are intended for shipment directly out of state in accordance with regulations of the United States Department of Transportation.
- (4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.
- (5) The use of fuses and railway torpedoes by railroads.
- (6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.
- (7) The use of any pyrotechnic device by military organizations.
- (8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.
- (9) The sale of common fireworks as permitted pursuant to KRS 227.715.

➔Section 426. KRS 227.715 is amended to read as follows:

Except as provided in KRS 227.710, the common fireworks described in KRS 227.702(1) may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

- (1) Any person or business intending to sell common fireworks shall register annually with the state fire ~~marshal~~~~{marshal's office}~~, ~~who~~~~{which}~~ may assess a fee of no more than fifty dollars (\$50) for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business;
- (2) The annual registration required by subsection (1) of this section shall be received by the state fire ~~marshal~~~~{marshal's office}~~ at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended;
- (3) Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site;
- (4) Each site at which fireworks are offered for sale shall have a working fire extinguisher at the site, in compliance with NFPA Pamphlet 10;

- (5) No common fireworks item shall be offered for sale if it has as part of its device any wings, fins, or other mechanism designed to cause the device to fly, or if it carries a cautionary label which includes in its description any of the following terms: "explosive," "emits flaming pellets," "flaming balls," "firecracker," "report," or "rocket;"
- (6) No person or business shall give, offer for sale, or sell any common fireworks listed in KRS 227.702 to any person under sixteen (16) years of age;
- (7) The state fire marshal may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this chapter. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the *state* fire marshal may take that action, as provided in KRS 227.330(6).

➔Section 427. KRS 227.800 is amended to read as follows:

As used in KRS 227.800 to 227.810, unless the context otherwise requires:

- (1) "~~Department{Office}~~" means the *Department{Office}* of Housing, Buildings and Construction;
- (2) "Fountain" means all devices that artificially produce or contain a jet or stream of water;
- (3) "Ground-fault circuit-interrupter" means a device intended for the protection of the general public that functions to deenergize a circuit or a portion thereof within an established period of time when a current to ground exceeds a predetermined value that is less than that required to operate the overcurrent protective device of the supply circuit;
- (4) "Pool" means all swimming, wading, therapeutic, decorative, ornamental, display, and reflection pools; hot tubs; spas; and hydromassage bathtubs, whether permanently installed or storable; and
- (5) "Public place" means any building, structure, or location that is accessible to the general public for business, civic, educational, political, religious, recreational, social, or travel purposes.

➔Section 428. KRS 227.810 is amended to read as follows:

- (1) A ground-fault circuit-interrupter shall be installed on all existing and new fountains and pools that are located in a public place within the Commonwealth, in accordance with standards set forth in the National Electrical Code adopted by administrative regulations of the *department{office}*.
- (2) A state or local government agency shall not promulgate an administrative regulation or ordinance to exempt any fountain or pool located in a public place from the required installation of a ground-fault circuit-interrupter, regardless of the age of construction of the fountain or pool.

➔Section 429. KRS 227A.010 is amended to read as follows:

As used in KRS 227A.010 to 227A.140, unless the context otherwise requires:

- (1) "Authorized local licensing program" means any city, county, urban-county, charter county, or consolidated local government electrician and electrical contractor licensing program established by local ordinance for the purpose of licensing electrical workers. "Authorized local licensing program" shall include a licensing program established through a cooperative agreement between two (2) or more counties;
- (2) "Committee" means the Electrical Advisory Committee as described in KRS 227.530;
- (3) "~~Department{Office}~~" means the *Department{Office}* of Housing, Buildings and Construction;
- (4) "Electrical" pertains to the installation, alteration, or repair of wires and conduits for the purpose of transmitting electricity, and the installation of fixtures and equipment in connection therewith;
- (5) "Electrical contractor" means any licensed individual, partnership, or corporation that is licensed to engage in, offers to engage in, or advertises or holds itself out to be qualified to engage in designing, planning, superintending, contracting of, or assuming responsibility for the installation, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power, and employs electrical workers to engage in this practice. If the electrical contractor is not a master electrician, the electrical contractor shall employ at least one (1) full-time master electrician; however, no master electrician shall act in this capacity for more than one (1) electrical contractor;

- (6) "Electrician" means any person licensed by the ~~department~~~~{office}~~ who is employed by an electrical contractor and is engaged in the construction, alteration, or repair of any electrical wiring used for the purpose of furnishing heat, light, or power;
- (7) "Maintenance worker or maintenance engineer" means a person who is a regular, bona fide employee or agent of a property owner, property lessor, property management company, or firm that is not in the electrical business but has jurisdiction over the property where the routine maintenance of electrical systems is being performed;
- (8) "Master electrician" means any individual licensed to assume responsible charge, supervision, or direction of an electrician engaged in the construction, installation, alteration, or repair of electrical wiring used to furnish heat, light, or power; and
- (9) "Routine maintenance of electrical systems" means the routine and periodic servicing of electrical systems, including cleaning, inspecting, and making adjustments to ensure the proper operation and the removal or replacement of component parts. "Routine maintenance of electrical systems" does not include the installation of complete electrical systems.

➔Section 430. KRS 227A.020 is amended to read as follows:

- (1) A person who is not licensed as an electrical contractor shall not represent himself or herself to the public as an electrical contractor or use any terms, titles, or abbreviations which express or imply that the person is a licensed electrical contractor.
- (2) A person who is not licensed as a master electrician shall not represent himself or herself to the public as a master electrician or use any terms, titles, or abbreviations which express or imply that the person is a licensed master electrician.
- (3) A person who is not licensed as an electrician shall not represent himself or herself to the public as an electrician or use any terms, titles, or abbreviations which express or imply that the person is a licensed electrician.
- (4) A person who is not licensed as an electrical contractor, electrician, or master electrician shall not engage in any activities or perform any of the duties usually performed by an electrical contractor, electrician, or master electrician unless the unlicensed person is under the direct supervision of a licensed electrician or master electrician who is present on the site where the work is being performed.
- (5) An authorized local licensing program in existence on June 24, 2003, may contract with the ~~department~~~~{office}~~ to become an agent of the ~~department~~~~{office}~~ for purposes of the issuance and renewal of licenses issued pursuant to KRS 227A.010 to 227A.140. The ~~department~~~~{office}~~ may also contract with local governments that want to become authorized licensing programs.
- (6) KRS 227A.010 to 227A.140 shall supersede all ordinances or regulations regulating electricians, master electricians, and electrical contractors of any city, county, urban-county, charter county, or consolidated local government. This provision shall not affect city, county, urban-county, charter county, or consolidated local government regulations relating to zoning requirements or occupational payroll taxes pertaining to electricians, master electricians, and electrical contractors.

➔Section 431. KRS 227A.040 is amended to read as follows:

- (1) The ~~department~~~~{office}~~, with assistance from the Electrical Advisory Committee, shall administer and enforce the provisions of KRS 227A.010 to 227A.140 and shall evaluate the qualifications of applicants for licensure.
- (2) The ~~department~~~~{office}~~ may issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 227A.010 to 227A.140 or the administrative regulations promulgated under KRS 227A.010 to 227A.140 and KRS Chapter 13A.
- (3) The ~~department~~~~{office}~~ shall conduct hearings under KRS Chapter 13B and keep records and minutes necessary to carry out the functions of KRS 227A.010 to 227A.140.
- (4) The ~~department~~~~{office}~~, with assistance from the Electrical Advisory Committee, shall evaluate the qualifications of applicants and issue licenses to qualified candidates.
- (5) The ~~department~~~~{office}~~ shall renew licenses.
- (6) The ~~department~~~~{office}~~ may:

- (a) Refuse to issue or renew a license;
 - (b) Suspend or revoke a license;
 - (c) Impose supervisory or probationary conditions upon a licensee;
 - (d) Impose administrative disciplinary fines;
 - (e) Issue written reprimands or admonishments; and
 - (f) Take any combination of the actions permitted in this subsection.
- (7) The ~~department~~~~{office}~~ may seek injunctive relief in the Circuit Court of Franklin County, in the county in which the violation occurred, or in the county where the business of the accused is located to stop any unlawful practice in KRS 227A.010 to 227A.140 and administrative regulations promulgated thereunder. The ~~department~~~~{office}~~ may also seek injunctive relief for unlicensed persons who inappropriately use the title "electrical contractor," "electrician," or "master electrician."
- (8) The ~~department~~~~{office}~~, with comments and advice from the Electrical Advisory Committee if required by KRS 198B.030(9) and (10), may promulgate administrative regulations to create a code of ethics and procedures governing the licensure of electrical contractors, electricians, and master electricians.
- (9) The ~~department~~~~{office}~~ may enter into reciprocal agreements with other states having licensure, certification, or registration qualifications and requirements substantially equal to those of this state.

➔Section 432. KRS 227A.050 is amended to read as follows:

- (1) All fees and other moneys received by the ~~department~~~~{office}~~ under the provisions of KRS 227A.010 to 227A.140 shall be deposited in the State Treasury to the credit of a revolving fund for use by the ~~department~~~~{office}~~ in administering the provisions of KRS 227A.010 to 227A.140.
- (2) No part of this revolving fund shall revert to the general funds of the Commonwealth.
- (3) An authorized local licensing program under KRS 227A.010 to 227A.140 shall negotiate with the ~~department~~~~{office}~~ the amount of the fees to be retained by the authorized local licensing program.
- (4) Funds for the initial administration of KRS 227A.010 to 227A.140, following June 24, 2003, and to the extent fee income is insufficient to meet actual costs as determined by the chief budget officer for the ~~department~~~~{office}~~, shall be borrowed from surplus trust and agency accounts of the ~~department~~~~{office}~~ and repaid without interest over no more than the succeeding two (2) fiscal years.

➔Section 433. KRS 227A.060 is amended to read as follows:

- (1) The ~~department~~~~{office}~~ shall issue a license as an "electrical contractor" to an applicant who meets the following requirements:
 - (a) Has paid to the ~~department~~~~{office}~~ the application fee not to exceed two hundred dollars (\$200) and the appropriate examination fee, which shall not exceed the actual cost of examination;
 - (b) Has achieved a passing score, as set by the ~~department~~~~{office}~~, on all portions of the examination required by the ~~department~~~~{office}~~. The ~~department~~~~{office}~~ shall promulgate administrative regulations to specify who shall take the examination if the applicant is a business entity; and
 - (c) Has submitted proof that he or she has complied with workers' compensation and unemployment insurance laws and administrative regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (2) The ~~department~~~~{office}~~ shall issue a license as a "master electrician" to an applicant who meets the following requirements:
 - (a) Has paid to the ~~department~~~~{office}~~ the application fee not to exceed one hundred dollars (\$100) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1. a. Six (6) years of verifiable experience in the electrical trade; and

- b. A training course in electrical work, acceptable to the **department{office}**, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2.
 - a. Five (5) years of verifiable experience in the electrical trade; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and
 - (c) Has achieved a passing score, as set by the **department{office}**, on all portions of the examination required by the **department{office}**.
- (3) The **department{office}** shall issue a license as an "electrician" to an applicant who meets the following requirements:
- (a) Has paid to the **department{office}** the application fee not to exceed fifty dollars (\$50) and the appropriate examination fee not to exceed the actual cost of the examination;
 - (b) Has completed:
 - 1.
 - a. Four (4) years of verifiable experience in the electrical trade; and
 - b. A training course in electrical work, acceptable to the **department{office}**, or an additional two (2) years of verifiable experience in the electrical trade; or
 - 2.
 - a. Three (3) years of verifiable experience in the electrical trade; and
 - b. An associate's degree or diploma program in electrical technology at a college within the Kentucky Community and Technical College System after 1998; and
 - (c) Has achieved a passing score, as set by the **department{office}**, on all portions of the examination required by the **department{office}**.

➔Section 434. KRS 227A.070 is amended to read as follows:

Upon application to the **department{office}** and payment of all applicable fees, the **department{office}** shall license by endorsement an applicant who is registered, licensed, or certified in another state if the requirements for registration, licensing, or certification in the issuing state are substantially equal to the requirements for licensing in the Commonwealth of Kentucky and the applicant is in good standing in the issuing state. The **department{office}** shall license an applicant by endorsement only if the issuing state extends similar reciprocity to Kentucky citizens licensed under KRS 227A.010 to 227A.140.

➔Section 435. KRS 227A.090 is amended to read as follows:

- (1) The **department{office}**, with advice from the Electrical Advisory Committee, shall select and approve an examination to be used in determining the competency of persons to be licensed under KRS 227A.010 to 227A.140. Examinations selected and approved for each level of licensing shall be nationally recognized examinations which have been determined through proper validation techniques to measure successfully an individual's competency to perform the licensed practice.
- (2) The **department{office}** shall offer the examinations on a regularly scheduled basis in localities determined by the committee. The **department{office}** shall offer the examinations through any authorized local licensing program.
- (3) The **department{office}** may contract with an outside entity or testing service for the administration of examinations required for licensure.

➔Section 436. KRS 227A.100 is amended to read as follows:

- (1) Each licensee licensed under the provisions of KRS 227A.010 to 227A.140 shall annually, on or before the last day of the licensee's birth month, pay to the **department{office}** a renewal fee as established in administrative regulations promulgated by the **department{office}**.
- (2) A sixty (60) day grace period shall be allowed after the anniversary date of the license during which time a licensee may continue to practice and may renew his or her license upon payment of the renewal fee plus a late renewal fee as promulgated by administrative regulation of the **department{office}**.

- (3) A license not renewed before the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner. Upon termination, the licensee is no longer eligible to practice in the Commonwealth.
- (4) After the sixty (60) day grace period, a former licensee with a terminated license may have the license reinstated upon payment of the renewal fee plus a reinstatement fee as promulgated by administrative regulation of the ~~department~~~~office~~. An applicant for reinstatement after termination of the license shall not be required to submit to any examination as a condition for reinstatement, if the reinstatement application is made within three (3) years from the date of termination.
- (5) A suspended license is subject to expiration and termination and shall be renewed as provided in this section. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended or is otherwise removed by the ~~department~~~~office~~ and the right to practice is restored by the ~~department~~~~office~~.
- (6) A revoked license is subject to expiration or termination but may not be renewed. If it is reinstated, the former licensee shall pay the reinstatement fee as promulgated by administrative regulations under subsection (4) of this section and the renewal fee as promulgated by administrative regulations under subsection (1) of this section.
- (7) The ~~department~~~~office~~ shall require an applicant for renewal or reinstatement of a license to show evidence of completing at least six (6) hours of continuing education provided by the National Electrical Contractors Association, the Associated Builders and Contractors, the International Brotherhood of Electrical Workers, the Associated General Contractors, the International Association of Electrical Inspectors, the Independent Electrical Contractors Association, the Kentucky ~~Department~~~~Office~~ of Housing, Buildings and Construction, or other provider of instruction approved by the ~~department~~~~office~~. The ~~department~~~~office~~ shall promulgate administrative regulations establishing the content of the programs and the qualifications of the providers.
- (8) The ~~department~~~~office~~ shall require, where applicable, that an applicant for renewal or reinstatement of a license submit proof that the applicant has complied with workers' compensation and unemployment insurance laws and regulations and has obtained a general liability insurance policy of not less than five hundred thousand dollars (\$500,000).
- (9) The ~~department~~~~office~~ may, through the promulgation of administrative regulations:
 - (a) Establish an inactive license for licensees who are not actively engaging in the electrical business but wish to maintain their license;
 - (b) Reduce license and renewal fees for inactive licensees; and
 - (c) Waive the requirements established in subsection (8) of this section for inactive licensees.

➔Section 437. KRS 227A.110 is amended to read as follows:

- (1) The ~~department~~~~office~~ may, following a hearing pursuant to KRS Chapter 13B, impose sanctions specified in KRS 227A.040 upon proof that the licensee has:
 - (a) Misrepresented or concealed a material fact in obtaining a license, or in the reinstatement thereof;
 - (b) Been incompetent or negligent in the practice of performing electrical work;
 - (c) Failed to comply with an order issued by the ~~department~~~~office~~ or an assurance of voluntary compliance; or
 - (d) Violated any provisions of KRS 227A.010 to 227A.140 and administrative regulations promulgated thereunder.
- (2) One (1) year from the date of a revocation, any former licensee whose license has been revoked may petition the ~~department~~~~office~~ for reinstatement. The ~~department~~~~office~~ shall investigate the petition and may reinstate the license upon a finding that the applicant has complied with any terms prescribed by the ~~department~~~~office~~ and is again able to competently engage in the practice of performing electrical work.
- (3) At any time during the investigative or hearing processes, the ~~department~~~~office~~ may enter into an agreed order or accept an assurance of voluntary compliance with the license holder which effectively deals with the complaint.

- (4) The ~~department~~~~office~~ may reconsider, modify, or reverse its probations, suspensions, or other disciplinary actions.

➔Section 438. KRS 227A.120 is amended to read as follows:

Any party aggrieved by a disciplinary action of the ~~department~~~~office~~ may bring an action in the Circuit Court of Franklin County under the provisions of KRS Chapter 13B.

➔Section 439. KRS 227A.140 is amended to read as follows:

- (1) A master electrician who ceases to be associated with the electrical contractor and is the representative by which the licensed electrical contractor qualifies shall immediately report his or her disassociation to the ~~department~~~~office~~ or the authorized local licensing program. The master electrician shall be responsible for all work done under his or her license until the ~~department~~~~office~~ or the authorized local licensing program is notified by the master electrician that he or she is no longer associated with the electrical contractor.
- (2) If the holder of any electrical license ceases to be a part of the business relying upon the holder's license for its right to remain in business, the business shall employ a licensed person prior to the continuance of any business activity or within thirty (30) days, whichever comes first.

➔Section 440. KRS 227A.150 is amended to read as follows:

Nothing in KRS 227A.010 to 227A.140 shall apply to low-voltage, power-limited installations for control or coordination of interconnected devices separated from a power source by a Class 2 or Class 3 transformer installed by a low-voltage installer certificate holder. The ~~department~~~~office~~ shall set the standards for experience and testing for issuance of a low-voltage installer certificate by administrative regulation and may charge a fee to be set by the ~~department~~~~office~~ by administrative regulation but not to exceed the actual cost of issuance of the certificate.

➔Section 441. KRS 229.151 is amended to read as follows:

- (1) The Kentucky Boxing and Wrestling Authority is hereby created and established as an agency of state government charged with the responsibility for regulatory oversight and the establishment of sound policies and procedures governing the conduct of boxing, wrestling, and other full contact competitive bouts within the Commonwealth of Kentucky. The authority shall be attached to the ~~{Environmental and }Public Protection Cabinet~~~~{Department of Public Protection,}~~ for administrative purposes.
- (2) The authority shall consist of five (5) members appointed by the Governor.
 - (a) One (1) member shall be the secretary of the ~~{Environmental and }Public Protection Cabinet~~, or the secretary's designee, who shall serve as an ex officio voting member;
 - (b) One (1) member shall be a medical doctor; and
 - (c) Three (3) members shall be appointed from the state at large, one (1) of whom shall have no financial interest in the business or industry regulated.

One (1) member shall be appointed to serve as the authority's chairperson. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chair. A majority of the members of the authority shall constitute a quorum for the transaction of business.

- (3) The appointed members of the authority shall serve for a term of three (3) years at the pleasure of the Governor, with initial terms staggered. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term.
- (4) Members of the authority shall receive one hundred dollars (\$100) per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business.

➔Section 442. KRS 229.155 is amended to read as follows:

- (1) To carry out the functions relating to the authority's duties and responsibilities and to afford the full experience and resources of the ~~{Environmental and }Public Protection Cabinet~~, after revenue of five hundred thousand dollars (\$500,000) is generated in two (2) consecutive fiscal years by the authority, the Governor may appoint an executive director who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director under the provisions of KRS 64.640. The ~~secretary~~~~commissioner~~ of the ~~{Department of }Public Protection~~ **Cabinet** shall act as executive director until the fiscal requirement is met.

- (2) The executive director shall employ sufficient regulatory staff for the authority that shall be responsible for the day-to-day operations of the authority, including but not limited to the following:
 - (a) Complying with regulations;
 - (b) Issuing licenses and permits;
 - (c) Establishing appropriate organizational structures;
 - (d) Carrying out policy and program directives of the authority; and
 - (e) Performing all other duties and responsibilities as assigned.
- (3) With approval of the authority, the executive director and regulatory staff may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the authority.

➔Section 443. KRS 230.210 is amended to read as follows:

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

- (1) "Association" means any person licensed by the Kentucky Horse Racing **Commission**~~[Authority]~~ under KRS 230.300 and engaged in the conduct of a recognized horse race meeting;
- (2) "**Racing Commission**~~[Authority]~~" means the Kentucky Horse Racing Authority;
- (3) "Thoroughbred race or thoroughbred racing" means a form of horse racing in which each horse participating in the race is a thoroughbred, (i.e., meeting the requirements of and registered with The Jockey Club of New York) and is mounted by a jockey;
- (4) "Harness race" or "harness racing" means trotting and pacing races of the standardbred horses;
- (5) "Appaloosa race or Appaloosa racing" means that form of horse racing in which each horse participating in the race is registered with the Appaloosa Horse Club of Moscow, Idaho, and is mounted by a jockey;
- (6) "Horse race meeting" means horse racing run at an association licensed and regulated by the Kentucky Horse Racing **Commission**~~[Authority]~~, and may include thoroughbred, harness, and quarter horse racing;
- (7) "Quarter horse" means a horse that is registered with the American Quarter Horse Association of Amarillo, Texas;
- (8) "Arabian" means a horse that is registered with the Arabian Horse Registry of Denver, Colorado;
- (9) "Track" means any association duly licensed by the Kentucky Horse Racing **Commission**~~[Authority]~~ to conduct horse racing. "Track" shall include any facility or real property that is owned, leased, or purchased by a track within the same geographic area within a sixty (60) mile radius of a track but not contiguous to track premises, upon **racing commission**~~[authority]~~ approval, and provided the noncontiguous property is not within a sixty (60) mile radius of another licensed track premise where live racing is conducted and not within a forty (40) mile radius of a simulcast facility, unless any affected track or simulcast facility agrees in writing to permit a noncontiguous facility within the protected geographic area;
- (10) "Simulcast facility" means any facility approved pursuant to the provisions of KRS 230.380 to simulcast racing and conduct pari-mutuel wagering;
- (11) "Simulcasting" means the telecast of live audio and visual signals of horse races for the purpose of pari-mutuel wagering;
- (12) "Intertrack wagering" means pari-mutuel wagering on simulcast horse races from a host track by patrons at a receiving track;
- (13) "Interstate wagering" means pari-mutuel wagering on simulcast horse races from a track located in another state or foreign country by patrons at a receiving track or simulcast facility;
- (14) "Host track" means the track conducting racing and offering its racing for intertrack wagering, or, in the case of interstate wagering, means the Kentucky track conducting racing and offering simulcasts of races conducted in other states or foreign countries;

- (15) "Receiving track" means a track where simulcasts are displayed for wagering purposes. A track that submits an application for intertrack wagering shall meet all the regulatory criteria for granting an association license of the same breed as the host track, and shall have a heated and air-conditioned facility that meets all state and local life safety code requirements and seats a number of patrons at least equal to the average daily attendance for intertrack wagering on the requested breed in the county in which the track is located during the immediately preceding calendar year;
- (16) "Telephone account wagering" means a form of pari-mutuel wagering where an individual may deposit money in an account at a track and may place a wager by direct telephone call or by communication through other electronic media owned by the holder of the account to the track;
- (17) "Principal" means any of the following individuals associated with a partnership, trust, association, limited liability company, or corporation that is licensed to conduct a horse race meeting or an applicant for a license to conduct a horse race meeting:
 - (a) The chairman and all members of the board of directors of a corporation;
 - (b) All partners of a partnership and all participating members of a limited liability company;
 - (c) All trustees and trust beneficiaries of an association;
 - (d) The president or chief executive officer and all other officers, managers, and employees who have policy-making or fiduciary responsibility within the organization;
 - (e) All stockholders or other individuals who own, hold, or control, either directly or indirectly, five percent (5%) or more of stock or financial interest in the collective organization; and
 - (f) Any other employee, agent, guardian, personal representative, or lender or holder of indebtedness who has the power to exercise a significant influence over the applicant's or licensee's operation;
- (18) "Kentucky Quarter Horse Purse Program" means a purse program established to receive funds from the **racing commission**~~[authority]~~ for purse programs established in KRS 230.3771(4) to supplement purses for quarter horse races. The purse program shall be administered by the Kentucky Quarter Horse Racing Association;
- (19) "Advance deposit account wagering" means a form of pari-mutuel wagering in which an individual may establish an account with a person or entity licensed by the **racing commission**~~[authority]~~, and may place a pari-mutuel wager through that account that is permitted by law;
- (20) "Advance deposit account wagering licensee" means a person or entity licensed by the **racing commission**~~[authority]~~ to conduct advance deposit account wagering and accept deposits and wagers, issue a receipt or other confirmation to the account holder evidencing such deposits and wagers, and transfer credits and debits to and from accounts; and
- (21) "Secondary pari-mutuel organization" or "SPMO" means an advance deposit account wagering licensee, a hub as defined in KRS 230.775, or any entity other than a licensed association or simulcast facility that offers and accepts pari-mutuel wagers. "SPMO" includes any off-track wagering system or advance deposit account wagering system, regardless of whether the off-track or advance deposit account wagering system is affiliated with a licensed association.

➔Section 444. KRS 230.215 is amended to read as follows:

- (1) It is the policy of the Commonwealth of Kentucky, in furtherance of its responsibility to foster and to encourage legitimate occupations and industries in the Commonwealth and to promote and to conserve the public health, safety, and welfare, and it is hereby declared the intent of the Commonwealth to foster and to encourage the horse breeding industry within the Commonwealth and to encourage the improvement of the breeds of horses. Further, it is the policy and intent of the Commonwealth to foster and to encourage the business of legitimate horse racing with pari-mutuel wagering thereon in the Commonwealth on the highest possible plane. Further, it hereby is declared the policy and intent of the Commonwealth that all racing not licensed under this chapter is a public nuisance and may be enjoined as such. Further, it is hereby declared the policy and intent of the Commonwealth that the conduct of horse racing, or the participation in any way in horse racing, or the entrance to or presence where horse racing is conducted, is a privilege and not a personal right; and that this privilege may be granted or denied by the **racing commission**~~[authority]~~ or its duly approved representatives acting in its behalf.

- (2) It is hereby declared the purpose and intent of this chapter in the interest of the public health, safety, and welfare, to vest in the ***racing commission***~~[authority]~~ forceful control of horse racing in the Commonwealth with plenary power to promulgate administrative regulations prescribing conditions under which all legitimate horse racing and wagering thereon is conducted in the Commonwealth so as to encourage the improvement of the breeds of horses in the Commonwealth, to regulate and maintain horse racing at horse race meetings in the Commonwealth of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled horse racing practices, and to regulate and maintain horse racing at race meetings in the Commonwealth so as to dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in the Commonwealth. In addition to the general powers and duties vested in the ***racing commission***~~[authority]~~ by this chapter, it is the intent hereby to vest in the ***racing commission***~~[authority]~~ the power to eject or exclude from association grounds or any part thereof any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the ***racing commission***~~[authority]~~, reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing.

➔Section 445. KRS 230.218 is amended to read as follows:

- (1) There is established, under the jurisdiction of the Kentucky Horse Racing ***Commission***~~[Authority]~~, the backside improvement fund. This revolving fund shall consist of money allocated to the fund under the provisions of KRS 230.3615, together with any other money which may be contributed to or allocated to the fund from all other sources. Money to the credit of the backside improvement fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year. The Kentucky Horse Racing ***Commission***~~[Authority]~~ may invest any and all funds received by the fund and interest earned by the investment of said funds in types of investments appropriate to the investment needs of the fund after having considered the financial return on authorized investment alternatives, the financial safety of investment alternatives and the impact of any authorized investments on the state's economy. The ***racing commission***~~[authority]~~ shall review the status of the fund investments quarterly and report its findings to the Finance and Administration Cabinet and the Legislative Research Commission.
- (2) The purpose of the fund shall be to improve the backside of thoroughbred racing associations averaging one million two hundred thousand dollars (\$1,200,000) or less pari-mutuel handle per racing day on live racing. The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall use the backside improvement fund to promote, enhance, and improve the conditions of the backside of eligible racing associations. Conditions considered shall include but not be limited to the living and working quarters of backside employees.
- (3) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section.

➔Section 446. KRS 230.225 is amended to read as follows:

- (1) The Kentucky Horse Racing ***Commission***~~[Authority]~~ is created as an independent agency of state government to regulate the conduct of horse racing and pari-mutuel wagering on horse racing, and related activities within the Commonwealth of Kentucky. The ***racing commission***~~[authority]~~ shall be attached to the ~~[Environmental and]~~Public Protection Cabinet for administrative purposes.
- (2) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall consist of ***fifteen (15)***~~[thirteen (13)]~~ members appointed by the Governor, with the secretaries of the ~~[Environmental and]~~Public Protection Cabinet, Tourism, Arts and Heritage Cabinet, and Economic Development Cabinet serving as ex officio, nonvoting members. Two (2) members shall have no financial interest in the business or industry regulated. The members of the ***racing commission***~~[authority]~~ shall be appointed to serve for a term of three (3) years~~[except, of the members initially appointed, four (4) shall serve for a term of three (3) years, five (5) shall serve for a term of two (2) years, and four (4) shall serve for a term of one (1) year]~~. Any member appointed to fill a vacancy occurring other than by expiration of a term shall be appointed for the remainder of the unexpired term. In making appointments, the Governor may consider members broadly representative of the thoroughbred industry and members broadly representative of the standardbred, quarter horse, Appaloosa, or Arabian industries. The Governor may also consider recommendations from the Kentucky Thoroughbred Owners and Breeders, Inc., the Kentucky Division of the Horsemen's Benevolent and Protective Association, the Kentucky Harness Horsemen's Association, and other interested organizations.

- (3) Members of the ***racing commission***~~[authority]~~ shall receive ***one hundred dollars (\$100)***~~[fifty dollars (\$50)]~~ per day for each meeting attended and shall be reimbursed for all expenses paid or incurred in the discharge of official business. The Governor shall appoint one (1) member of the ***racing commission***~~[authority]~~ to serve as its chairperson who shall serve at the pleasure of the Governor. The Governor shall further designate a second member to serve as vice chair with authority to act in the absence of the chairperson. Before entering upon the discharge of their duties, all members of the Kentucky Horse Racing ***Commission***~~[Authority]~~ shall take the constitutional oath of office.
- (4) The ***racing commission***~~[authority]~~ shall establish and maintain a general office for the transaction of its business and may in its discretion establish a branch office or offices. The ***racing commission***~~[authority]~~ may hold meetings at any of its offices or at any other place when the convenience of the ***racing commission***~~[authority]~~ requires. All meetings of the ***racing commission***~~[authority]~~ shall be open and public, and all persons shall be permitted to attend meetings. A majority of the ***voting members of the racing commission***~~[authority]~~ shall constitute a quorum for the transaction of its business or exercise of any of its powers.
- ~~(5) The duly promulgated administrative regulations of the Kentucky Horse Racing Authority, in effect as of January 6, 2004, shall remain in effect as the initial regulations of the Kentucky Horse Racing Authority until revoked or modified by the authority.~~
- ~~(6) All licenses approved by, and dates awarded by, the Kentucky Horse Racing Authority shall remain in effect through December 31, 2004.~~
- ~~(7)~~ Except as otherwise provided, the ***racing commission***~~[authority]~~ shall be responsible for the following:
 - (a) Developing ***and implementing programs designed to ensure the safety and well-being of horses, jockeys, and drivers***~~[programs and procedures for oversight and regulation of horse racing matters, including but not limited to race day medications];~~
 - (b) ***Developing programs and procedures that will aggressively fulfill its oversight and regulatory role on such matters as medical practices and integrity issues***~~[Recommending tax incentives and other options to promote the strength and growth of the thoroughbred industry and to preserve the economic viability of Kentucky's horse farms];~~
 - (c) ***Recommending tax incentives and implementing incentive programs to ensure the strength and growth of the equine industry***~~[Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of increasing the horse industry's impact on the state's economy];~~
 - (d) ***Designing and implementing programs that strengthen the ties between Kentucky's horse industry and the state's universities, with the goal of significantly increasing the economic impact of the horse industry on Kentucky's economy, improving research for the purpose of promoting the enhanced health and welfare of the horse, and other related industry issues***~~[Developing and supporting programs which ensure that Kentucky remains a national leader in equine research];~~ and
 - (e) Developing ***and supporting programs which ensure that Kentucky remains in the forefront of equine research***~~[implementing programs that promote Kentucky's horse and tourism industry].~~

➔ Section 447. KRS 230.230 is amended to read as follows:

- (1) The Governor shall appoint an executive director who shall serve at the pleasure of the Governor. The Governor shall set the qualifications and salary for the position of executive director pursuant to KRS 64.640. The executive director shall possess the powers and perform the duties imposed upon him by the Governor, and other duties as the ***racing commission***~~[authority]~~ may direct or prescribe. The executive director shall:
 - (a) Be responsible for the day-to-day operations of the ***racing commission***~~[authority]~~;
 - (b) Set up appropriate organizational structures and personnel policies for approval by the ***racing commission***~~[authority]~~;
 - (c) Appoint all staff;
 - (d) Prepare annual reports of the ***racing commission's***~~[authority's]~~ program of work;
 - (e) Carry out policy and program directives of the ***racing commission***~~[authority]~~;

- (f) Prepare and submit to the ***racing commission***~~[authority]~~ for its approval the proposed biennial budget of the ***racing commission***~~[authority]~~; and
- (g) Perform all other duties and responsibilities assigned by law.

The executive director shall cause to be kept a full record of all proceedings before the ***racing commission***~~[authority]~~ and shall preserve at its general office all books, maps, records, documents, licenses, and other papers of the ***racing commission***~~[authority]~~. All records of the ***racing commission***~~[authority]~~ shall be open to inspection by the public during regular office hours. With approval of the ***racing commission***~~[authority]~~, the executive director may enter into agreements with any state agency or political subdivision of the state, any postsecondary education institution, or any other person or entity to enlist assistance to implement the duties and responsibilities of the ***racing commission***~~[authority]~~.

- (2) The executive director of the ***racing commission***~~[authority]~~ may employ, dismiss, or take other personnel action concerning an assistant executive director, stenographers, clerks, and other personnel as he or she may deem necessary to efficiently operate the ***racing commission's***~~[authority's]~~ general office or any branch thereof. The executive director of the ***racing commission***~~[authority]~~ shall fix the compensation of all employees. Any member of the ***racing commission***~~[authority]~~ or any employee referred to in this section shall be reimbursed for expenses paid or incurred in the discharge of official business when approved by the executive director of the ***racing commission***~~[authority]~~. The compensation of the employees referred to in this section, except for the executive director, together with reimbursement of expenses incurred by employees, a member of the ***racing commission***~~[authority]~~, or the executive director, shall be paid from ***racing commission***~~[authority]~~ funds.

➔Section 448. KRS 230.240 is amended to read as follows:

- (1) In addition to the employees referred to in KRS 230.230, the executive director of the ***racing commission***~~[authority]~~ may employ, dismiss, or take other personnel action and determine the reasonable compensation of stewards, supervisors of mutuels, veterinarians, inspectors, accountants, security officers, and other employees deemed by the executive director to be essential at or in connection with any horse race meeting and in the best interest of racing. Three (3) thoroughbred stewards shall be employed at each thoroughbred race meeting. Two (2) stewards shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) thoroughbred steward shall be employed and compensated by the racing association hosting the race meeting. Three (3) standardbred judges shall be employed at each standardbred race meeting. Two (2) standardbred judges shall be employed and compensated by the Commonwealth, subject to reimbursement by the racing associations pursuant to subsection (3) of this section. One (1) standardbred judge shall be employed and compensated by the racing association hosting the race meeting. The security officers shall be peace officers and conservators of the peace on ***racing commission***~~[authority]~~ property and at all race tracks and grounds in the Commonwealth and shall possess all the common law and statutory powers and privileges now available or hereafter made available to sheriffs, constables, and police officers for the purpose of enforcing all laws relating directly or indirectly to the conduct of horse racing and pari-mutuel wagering thereon, or the enforcement of laws relating to the protection of persons or property on premises licensed by the ***racing commission***~~[authority]~~. The ***racing commission***~~[authority]~~, for the purpose of maintaining integrity and honesty in racing, shall prescribe by administrative regulation the powers and duties of the persons employed under this section and qualifications necessary to competently perform their duties. In addition, the ***racing commission***~~[authority]~~ shall be responsible for seeing that racing officials employed under the provisions of this section have adequate training to perform their duties in a competent manner.
- (2) The ***racing commission***~~[authority]~~ shall promulgate administrative regulations for effectively preventing the use of improper devices, and restricting or prohibiting the use and administration of drugs or stimulants or other improper acts to horses prior to the horse participating in a race. The ***racing commission***~~[authority]~~ may acquire, operate, and maintain, or contract for the maintenance and operation of, a testing laboratory and related facilities, for the purpose of saliva, urine, or other tests, and to purchase supplies and equipment for and in connection with the laboratory or testing processes. The expense of the laboratory or other testing processes, whether furnished by contract or otherwise, together with all supplies and equipment used in connection therewith, shall be paid by the various associations licensed under this chapter in the manner and in proportions as the ***racing commission***~~[authority]~~ shall by administrative regulation provide.

- (3) The compensation of the employees referred to in this section shall be paid by the licensee conducting the horse race meeting in connection with which the employees are utilized or employed. The salary of the executive director to the **racing commission**[authority] shall be prorated among and paid by the various associations licensed under this chapter in the manner as the **racing commission**[authority] shall, by administrative regulation, provide. Except for the thoroughbred steward and the standardbred judge authorized in subsection (1) of this section, the employees referred to in this section shall be deemed employees of the **racing commission**[authority], and are paid by the licensee or association for convenience only.
- (4) Each person, as a condition precedent to the privilege of receiving a license under this chapter to conduct a horse race meeting, shall be deemed to have agreed to pay expenses and compensation as provided in this section and as may be actually and reasonably incurred.

➔Section 449. KRS 230.250 is amended to read as follows:

When requested by the **racing commission**[authority], the Attorney General of Kentucky, or an assistant Attorney General as he or she may designate, shall, without additional compensation, advise the **racing commission**[authority] and represent it in all legal proceedings.

➔Section 450. KRS 230.260 is amended to read as follows:

The **racing commission**[authority], in the interest of breeding or the improvement of breeds of horses, shall have all powers necessary and proper to carry out fully and effectually the provisions of this chapter including, but without limitation, the following:

- (1) The **racing commission**[authority] is vested with jurisdiction and supervision over all horse race meetings in this Commonwealth and over all associations and all persons on association grounds and may eject or exclude therefrom or any part thereof, any person, licensed or unlicensed, whose conduct or reputation is such that his presence on association grounds may, in the opinion of the **racing commission**[authority], reflect on the honesty and integrity of horse racing or interfere with the orderly conduct of horse racing or racing at horse race meetings; provided, however, no persons shall be excluded or ejected from association grounds solely on the ground of race, color, creed, national origin, ancestry, or sex;
- (2) The **racing commission**[authority] is vested with jurisdiction over any SPMO that offers and accepts pari-mutuel wagers on races conducted at any racing association within the Commonwealth. An SPMO under the jurisdiction of the **racing commission**[authority] shall be licensed by the **racing commission**[authority], and the **racing commission**[authority] may impose a license fee on an SPMO not to exceed ten thousand dollars (\$10,000) annually. The **racing commission**[authority] shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of SPMOs, and a fee schedule for applications for licensure;
- (3) The **racing commission**[authority] is vested with jurisdiction over any totalisator company that provides totalisator services to a racing association located in the Commonwealth. A totalisator company under the jurisdiction of the **racing commission**[authority] shall be licensed by the **racing commission**[authority], regardless of whether a totalisator company is located in the Commonwealth or operates from a location or locations outside of the Commonwealth, and the **racing commission**[authority] may impose a license fee on a totalisator company. The **racing commission**[authority] shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, establish conditions and procedures for the licensing of totalisator companies, and a fee schedule for applications for licensure;
- (4) The **racing commission**[authority] is vested with jurisdiction over any manufacturer, wholesaler, distributor, or vendor of any equine drug, medication, therapeutic substance, or metabolic derivative which is purchased by or delivered to a licensee or other person participating in Kentucky horse racing by means of the Internet, mail delivery, in-person delivery, or other means;
- (5) The **racing commission**[authority] is vested with jurisdiction over any horse training center or facility in the Commonwealth that records official timed workouts for publication;
- (6) The **racing commission**[authority] may require an applicant for a license under subsections (2) and (3) of this section to submit to a background check of the applicant, or of any individual or organization associated with the applicant. An applicant shall be required to reimburse the **racing commission**[authority] for the cost of any background check conducted;

- (7) The ***racing commission***~~[authority]~~, its representatives and employees, may visit, investigate and have free access to the office, track, facilities, or other places of business of any licensee, or any person owning a horse or performing services regulated by this chapter on a horse registered to participate in a breeders incentive fund under the jurisdiction of the ***racing commission***~~[authority]~~;
- (8) The ***racing commission***~~[authority]~~ shall have full authority to prescribe necessary and reasonable administrative regulations and conditions under which horse racing at a horse race meeting shall be conducted in this state and to fix and regulate the minimum amount of purses, stakes, or awards to be offered for the conduct of any horse race meeting;
- (9) Applications for licenses shall be made in the form, in the manner, and contain information as the ***racing commission***~~[authority]~~ may, by administrative regulation, require. Fees for all licenses issued under KRS 230.310 shall be prescribed by and paid to the ***racing commission***~~[authority]~~;
- (10) The ***racing commission***~~[authority]~~ shall establish by administrative regulation minimum fees for jockeys to be effective in the absence of a contract between an employing owner or trainer and a jockey. The minimum fees shall be no less than those of July 1, 1985;
- (11) The ***racing commission***~~[authority]~~ may refuse to issue or renew a license, revoke or suspend a license, impose probationary conditions on a license, issue a written reprimand or admonishment, impose fines or penalties, deny purse money, require the forfeiture of purse money, or any combination thereof with regard to a licensee or other person participating in Kentucky horse racing for violation of any federal or state statute, regulation, or steward's or ***racing commission's***~~[authority's]~~ directive, ruling, or order to preserve the integrity of Kentucky horse racing or to protect the racing public. The ***racing commission***~~[authority]~~ shall, by administrative regulation, establish the criteria for taking the actions described in this subsection;
- (12) The ***racing commission***~~[authority]~~ may issue subpoenas for the attendance of witnesses before it and for the production of documents, records, papers, books, supplies, devices, equipment, and all other instrumentalities related to pari-mutuel horse racing within the Commonwealth. The ***racing commission***~~[authority]~~ may administer oaths to witnesses and require witnesses to testify under oath whenever, in the judgment of the ***racing commission***~~[authority]~~, it is necessary to do so for the effectual discharge of its duties;
- (13) The ***racing commission***~~[authority]~~ shall have authority to compel any racing association licensed under this chapter to file with the ***racing commission***~~[authority]~~ at the end of its fiscal year, a balance sheet, showing assets and liabilities, and an earnings statement, together with a list of its stockholders or other persons holding a beneficial interest in the association; and
- (14) The ***racing commission***~~[authority]~~ shall promulgate administrative regulations establishing safety standards for jockeys, which shall include the use of rib protection equipment. Rib protection equipment shall not be included in a jockey's weight.

➔Section 451. KRS 230.265 is amended to read as follows:

- (1) (a) There is hereby created a panel, to be known as the Kentucky Equine Drug Research Council, to advise the ***racing commission***~~[authority]~~ on the conduct of equine drug research and testing commissioned by the Kentucky Horse Racing ***Commission***~~[Authority]~~.
- (b) The council shall consist of nine (9) members appointed by the Governor. It is recommended that the Governor appoint one (1) person from each of the following groups, organizations, or professions:
 - 1. A veterinarian, selected from a list of three (3) submitted by the Kentucky Association of Equine Veterinarians;
 - 2. A horseman, selected from a list of three (3) submitted by the Kentucky division of the Horsemen's Benevolent and Protective Association;
 - 3. A pharmacologist, selected from a list of three (3) submitted by the University of Kentucky;
 - 4. A thoroughbred breeder, selected from a list of three (3) submitted by the Kentucky Thoroughbred Owners and Breeders, Inc.;
 - 5. A legislator, selected from a list of three (3) submitted by the Legislative Research Commission;
 - 6. A representative of a licensed racing association, chosen by the Governor;

7. A member of the harness racing industry, selected from a list of three (3) submitted by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~;
 8. A member selected from a list of three (3) submitted by the Kentucky Harness Horsemen's Association; and
 9. A member of the Kentucky Horse Racing **Commission**~~[Authority]~~, selected from a list of three (3) submitted by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~, to serve as chairman.
- (c) The council shall meet at the call of the chairman, a majority of the council, or at the request of the **racing commission**~~[authority]~~. Members shall serve at the pleasure of their respective sponsoring organizations and shall receive no compensation for serving.
- (2) The Kentucky Equine Drug Research Council shall:
- (a) Review equine drug research and testing research being conducted at the University of Kentucky, or with state funds;
 - (b) Review and report to the **racing commission**~~[authority]~~ on drug research and testing research being conducted elsewhere;
 - (c) Advise the **racing commission**~~[authority]~~ and make recommendations for establishing an effective drug regulatory policy for Kentucky racing; and
 - (d) Report to the General Assembly any needed changes regarding the regulation of drugs in horse racing in the Commonwealth of Kentucky.
- (3) The funds received by the **racing commission**~~[authority]~~ pursuant to KRS 138.510 shall be used in Kentucky for financing drug research, testing research, equine medical research, and equine health research issues, or any regulatory or administrative activity of the **racing commission**~~[authority]~~ that is related to the research and issues described in this subsection. Any expenditure under this subsection shall relate to the racing industry in Kentucky. The money received under this subsection shall be in addition to any funds appropriated to the **racing commission**~~[authority]~~ for these purposes in the executive budget.

➔Section 452. KRS 230.270 is amended to read as follows:

The **racing commission**~~[authority]~~ shall biennially make a full report to the General Assembly of its proceedings for the two-year period ending December 31 preceding the meeting of the General Assembly and may embody in the report such suggestions and recommendations as it deems desirable.

➔Section 453. KRS 230.280 is amended to read as follows:

- (1) No person shall hold or conduct any horse race meeting for any stake, purse, or reward within the Commonwealth of Kentucky without securing the required license from the **racing commission**~~[authority]~~.
- (2) The **racing commission**~~[authority]~~ shall investigate the qualifications of each applicant for a license to conduct a horse race meeting or the renewal of a license to conduct a horse race meeting. The **racing commission**~~[authority]~~ may issue or renew a license unless the **racing commission**~~[authority]~~ determines that:
 - (a) The track location, traffic flow, facilities for the public, and facilities for racing participants and horses do not meet state code or are otherwise inadequate to protect the public health and safety;
 - (b) The racing dates and times requested conflict with another race meeting of the same breed of horse;
 - (c) The financing or proposed financing of the entire operation is not adequate for the operation or is from an unsuitable source;
 - (d) The applicant or licensee has failed to disclose or has misstated information or otherwise attempted to mislead the **racing commission**~~[authority]~~ with respect to any material fact contained in the application for the issuance or renewal of the license;
 - (e) The applicant has knowingly failed to comply with the provision of this chapter or any administrative regulations promulgated thereunder;
 - (f) Any of the principals of the applicant or licensee is determined to be unsuitable because he or she has:

1. Been convicted of any crime of moral turpitude, embezzlement, or larceny, or any violation of any law pertaining to illegal gaming or gambling, or any crime that is inimical to the declared policy of the Commonwealth of Kentucky with regard to horse racing and pari-mutuel wagering thereon;
 2. Been convicted in any jurisdiction within ten (10) years preceding initial licensing or license renewal of any crime that is or would be a felony or class A misdemeanor in the Commonwealth of Kentucky;
 3. Been identified in the published reports of any federal or state legislative or executive body as being a member or associate of organized crime, or of being of notorious or unsavory reputation;
 4. Been placed and remains in the custody of any federal, state, or local law enforcement authority;
 5. Had a racing or gaming license revoked in another jurisdiction on grounds that would have been grounds for revoking the license in Kentucky; or
 6. Engaged in any other activities that would pose a threat to the public interest or to the effective regulation of horse racing and wagering in Kentucky, or enhance the dangers of unsuitable, unfair, or illegal practices, methods, and activities in the conduct of racing and wagering or in the operation of the business and financial arrangements incidental thereto; or
- (g) The applicant or licensee has had a racing or gaming license denied or revoked in another jurisdiction on grounds that would be grounds for license denial or revocation in Kentucky.

➔Section 454. KRS 230.290 is amended to read as follows:

All licenses granted under this chapter:

- (1) Shall be in writing;
- (2) Shall be subject to all administrative regulations and conditions as may from time to time be prescribed by the ***racing commission***~~[authority]~~;
- (3) Shall contain conditions as may be considered necessary or desirable by the ***racing commission***~~[authority]~~ for purposes of this chapter; and
- (4) No license shall extend beyond the end of the calendar year for which it was issued, unless the license expires on the last date of the birth month of the licensee, in which case it may expire on that date. The ***racing commission***~~[authority]~~ may renew any license and any renewal shall not be construed to be a waiver or condonement of any violation which occurred prior to renewal and shall not prevent subsequent proceedings against the licensee therefor.

➔Section 455. KRS 230.300 is amended to read as follows:

- (1) Any person desiring to conduct horse racing at a horse race meeting within the Commonwealth of Kentucky or to engage in simulcasting and intertrack wagering as a receiving track during any calendar year shall first apply to the ***racing commission***~~[authority]~~ for a license to do so. The application shall be filed at the ***racing commission's***~~[authority's]~~ general office on or before October 1 of the preceding year with respect to applications to conduct live horse race meetings, and with respect to intertrack wagering dates, and on forms prescribed by the ***racing commission***~~[authority]~~. The application shall include the following information:
 - (a) The full name and address of the person making application;
 - (b) The location of the place, track, or enclosure where the applicant proposes to conduct horse racing meetings;
 - (c) The dates on which the applicant intends to conduct horse racing, which shall be successive days unless authorized by the ***racing commission***~~[authority]~~;
 - (d) The proposed hours of each racing day and the number of races to be conducted;
 - (e) The names and addresses of all principals associated with the applicant or licensee;

- (f) The type of organizational structure under which the applicant operates, i.e., partnership, trust, association, limited liability company, or corporation, and the address of the principal place of business of the organization;
 - (g) Any criminal activities in any jurisdiction for which any individual listed under paragraphs (a) and (e) has been arrested or indicted and the disposition of the charges, and any current or on-going criminal investigation of which any of these individuals is the subject; and
 - (h) Any other information that the ***racing commission***~~[authority]~~ by administrative regulation deems relevant and necessary to determine the fitness of the applicant to receive a license, including fingerprints of any individual listed under paragraphs (a) and (e), if necessary for proper identification of the individual or a determination of suitability to be associated with a licensed racing association.
- (2) An application for license shall be accompanied by the following documents:
- (a) For a new license applicant, a financial statement prepared and attested to by a certified public accountant in accordance with generally accepted accounting principles, showing the following:
 - 1. The net worth of the applicant;
 - 2. Any debts or financial obligations owed by the applicant and the persons to whom owed; and
 - 3. The proposed or current financing structure for the operation and the sources of financing.
 - (b) For a license renewal applicant, an audited financial statement for the prior year;
 - (c) A copy of the applicant's federal and state tax return for the previous year. Tax returns submitted in accordance with this provision shall be treated as confidential;
 - (d) A statement from the Department of Revenue that there are no delinquent taxes or other financial obligations owed by the applicant to the state or any of its agencies or departments;
 - (e) A statement from the county treasurer of the county in which the applicant conducts or proposes to conduct horse racing meetings that there are no delinquent real or personal property taxes owed by the applicant.
- (3) The completed application shall be signed by the applicant or the chief executive officer if the applicant is an organization, sworn under oath that the information is true, accurate, and complete, and the application shall be notarized.
- (4) If there is any change in any information submitted in the application process, the applicant or licensee shall notify the ***racing commission***~~[authority]~~ within thirty (30) days of the change.
- (5) The ***racing commission***~~[authority]~~ shall as soon as practicable, but in no event later than November 1 in any calendar year, award dates for racing in the Commonwealth during the next year. In awarding dates, the ***racing commission***~~[authority]~~ shall consider and seek to preserve each track's usual and customary dates, as these dates are requested. If dates other than the usual and customary dates are requested, the applicant shall include a statement in its application setting forth the reasons the requested dates are sought. Dates for the conduct of intertrack wagering shall be awarded as provided in KRS 230.377. In the event scheduled racing is canceled by reason of flood, fire, inclement weather, or other natural disaster or emergency, the ***racing commission***~~[authority]~~ may award after November 1 additional racing dates to make up for those dates canceled.
- (6) The ***racing commission***~~[authority]~~ may issue a license to conduct a horse race meeting to any association making the aforesaid application if the applicant meets the requirements established in KRS 138.530 and other applicable provisions of this chapter, and if the ***racing commission***~~[authority]~~ finds that the proposed conduct of racing by the association would be in the best interest of the public health, safety, and welfare of the immediate community as well as to the Commonwealth.
- (7) As a condition precedent to the issuance of a license, the ***racing commission***~~[authority]~~ may require a surety bond or other surety conditioned upon the payment of all taxes due the Commonwealth, together with the payment of operating expenses including purses and awards to owners of horses participating in races.
- (8) The ***racing commission***~~[authority]~~ may impose a fee and shall establish, by administrative regulation promulgated in accordance with KRS Chapter 13A, a fee schedule for association license applications.

- (9) The ***racing commission***~~[authority]~~ may require an applicant for an association license to submit to a background check of the applicant, or of any principal, individual, or organization associated with the applicant. The ***racing commission***~~[authority]~~ shall not require a background check for any individual who is a principal as defined in KRS 230.210 but owns stock or financial interest in the applicant of less than ten percent (10%). An applicant shall be required to reimburse the ***racing commission***~~[authority]~~ for the cost of any background check conducted.
- (10) Every license issued under this chapter shall specify among other things the name of the person to whom issued, the address and location of the track where the horse race meeting to which it relates is to be held or conducted, and the days and hours of the day when the meeting will be permitted; provided, however, that no track that is granted overlapping dates for the conduct of a live race meeting with another horse racing track within a fifty (50) mile radius shall be permitted to have a post time after 5:30 p.m., prevailing time for overlapping days between July 1 and September 15, unless agreed to in writing by the tracks affected.
- (11) A license issued under this section is neither transferable nor assignable and shall not permit the conduct of a horse race meeting at any track not specified therein. However, if the track specified becomes unsuitable for racing because of flood, fire, or other catastrophe, the ***racing commission***~~[authority]~~ may, upon application, authorize the meeting, or any remaining portion thereof, to be conducted at any other suitable track available for that purpose, provided that the owner of the track willingly consents to the use thereof.
- (12) Horse racing dates may be awarded and licenses issued authorizing horse racing on any day of the year. Horse racing shall be held or conducted only between sunrise and midnight.
- (13) The ***racing commission***~~[authority]~~ may at any time require the removal of any official or employee of any association in those instances where it has reason to believe that the official or employee has been guilty of any dishonest practice in connection with horse racing or has failed to comply with any condition of his license or has violated any law or any administrative regulation of this ***racing commission***~~[authority]~~.
- (14) Every horse race not licensed under this section is hereby declared to be a public nuisance and the ***racing commission***~~[authority]~~ may obtain an injunction against the same in the Circuit Court of the county where the unlicensed race is proposed to take place.

➔Section 456. KRS 230.310 is amended to read as follows:

- (1) Every person not required to be licensed under KRS 230.300 who desires to participate in horse racing in the Commonwealth as a horse owner, trainer, jockey, apprentice jockey, agent, stable employee, racing official, association employee, or employee of a person or concern contracting with the association to provide a service or commodity and which requires their presence on association grounds during a race meeting, or veterinarian, farrier, horse dentist, or supplier of food, tack, medication, or horse feed, or in any other capacity as the ***racing commission***~~[authority]~~ shall from time to time establish by administrative regulation, shall first apply to the ***racing commission***~~[authority]~~ for a license to participate in the activity on association grounds during a race meeting. No person required to be licensed by this section may participate in any activity required to be licensed on association grounds during a race meeting without a valid license therefor. An applicant for a license shall submit to the ***racing commission***~~[authority]~~ fingerprints as may be required and other information necessary and reasonable for processing a license application. The ***racing commission***~~[authority]~~ is authorized to exchange fingerprint data with the Department of Kentucky State Police and the Federal Bureau of Investigation in order to conduct a criminal history background check of an applicant. The ***racing commission***~~[authority]~~ may issue a license if it finds that the financial responsibility, age, experience, reputation, competence, and general fitness of the applicant to perform the activity permitted by a license are consistent with the best interest of racing and the maintenance of the honesty, integrity, and high quality thereof.
- (2) A license may be issued for the calendar year for which an applicant applies or, if authorized by administrative regulation, a license may be issued that expires on the last day of the birth month of the licensee. A license may be renewed by the ***racing commission***~~[authority]~~. The license shall be valid at all horse race meetings in the Commonwealth during the period for which it is issued unless suspended or revoked under the administrative regulations promulgated by the ***racing commission***~~[authority]~~ under this chapter. With respect to horse owners and trainers, the ***racing commission***~~[authority]~~ may promulgate administrative regulations to facilitate and promote uniform, reciprocal licensing with other states.

➔Section 457. KRS 230.320 is amended to read as follows:

- (1) Every license granted under this chapter is subject to denial, revocation, or suspension, and every licensee or other person participating in Kentucky horse racing may be assessed an administrative fine and required to forfeit or return a purse, by the ***racing commission***~~[authority]~~ in any case where it has reason to believe that any provision of this chapter, administrative regulation, or condition of the ***racing commission***~~[authority]~~ affecting it has not been complied with or has been broken or violated. The ***racing commission***~~[authority]~~ may deny, revoke, or suspend a license for failure by the licensee or other person participating in Kentucky horse racing to pay an administrative fine imposed upon the licensee by the stewards or the ***racing commission***~~[authority]~~. The ***racing commission***~~[authority]~~, in the interest of honesty and integrity of horse racing, may promulgate administrative regulations under which any license may be denied, suspended, or revoked, and under which any licensee or other person participating in Kentucky horse racing may be assessed an administrative fine or required to forfeit or return a purse.
- (2)
 - (a) Following a hearing by the stewards, a person who has been disciplined by a ruling of the stewards may apply to the ***racing commission***~~[authority]~~ for a stay of the ruling, pending action on an appeal by the ***racing commission***~~[authority]~~.
 - (b) An application for a stay shall be received by the executive director or his designee within ten (10) calendar days of the issuance of the stewards' ruling.
 - (c) An application for a stay shall be in writing and include the following:
 1. The name, address, telephone number, and signature of the person requesting the stay;
 2. A statement of the justification for the stay; and
 3. The period of time for which the stay is requested.
 - (d) On a finding of good cause, the executive director or his designee may grant the stay. The executive director or his designee shall issue a written decision granting or denying the request for stay within five (5) calendar days from the time the application for stay is received by the executive director or his designee. If the executive director or his designee fails to timely issue a written decision, then the stay is deemed granted. The executive director or his designee may rescind a stay granted under this subsection for good cause.
 - (e) A person who is denied a stay by the executive director or his designee, or has a previously granted stay rescinded under paragraph (d) of this subsection, may petition the ***racing commission***~~[authority]~~ to overrule the executive director's or designee's denial or rescission of the stay. The petition shall be filed in writing with the chairperson of the ***racing commission***~~[authority]~~ and received by the chairperson within ten (10) calendar days of the mailing of the executive director's or designee's denial of the stay. The petition shall state the name, address, phone number, and signature of the petitioner; a statement of justification of the stay; and the time period for which the stay is requested. The chairperson shall convene a special meeting of the ***racing commission***~~[authority]~~ within ten (10) calendar days of receipt of the petition, and the ***racing commission***~~[authority]~~ shall issue a written final order granting or denying the petition within two (2) calendar days of the special meeting. If the ***racing commission***~~[authority]~~ fails to timely issue a final order on the petition, then the stay is granted. The ***racing commission***~~[authority]~~ may rescind a stay granted under this subsection for good cause.
 - (f) A person who is denied or has a previously granted stay rescinded by the ***racing commission***~~[authority]~~ may file an appeal of the final written order of the ***racing commission***~~[authority]~~ in the Circuit Court of the county in which the cause of action arose.
 - (g) The fact that a stay is granted is not a presumption that the ruling by the stewards is invalid.
- (3) If any license is denied, suspended, or revoked, or if any licensee or other person participating in Kentucky horse racing is assessed an administrative fine or required to forfeit or return a purse, after a hearing by the stewards or by the ***racing commission***~~[authority]~~ acting on a complaint or by its own volition, the ***racing commission***~~[authority]~~ shall grant the applicant, licensee, or other person the right to appeal the decision, and upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (4) The ***racing commission***~~[authority]~~ may at any time order that any case pending before the stewards be immediately transferred to the ***racing commission***~~[authority]~~ for an administrative hearing conducted in accordance with KRS Chapter 13B.

- (5) (a) In an administrative appeal to the ***racing commission***~~[authority]~~ by a licensee or other person participating in Kentucky horse racing, the ***racing commission***~~[authority]~~ may determine in its final order that the appeal is frivolous. If the ***racing commission***~~[authority]~~ finds that an appeal is frivolous:
1. This fact shall be considered an aggravating circumstance and may be considered in assessing any penalty against the licensee; and
 2. The licensee or other person who raised the appeal may be required to reimburse the ***racing commission***~~[authority]~~ for the cost of the investigation of the underlying circumstances of the case and the cost of the adjudication of the appeal. Costs may include but are not limited to fees paid to a hearing officer or court reporter, attorneys fees, and laboratory expenses.
- (b) The ***racing commission***~~[authority]~~ shall by administrative regulation prescribe the conditions or factors by which an appeal may be determined to be frivolous.
- (6) Any administrative action authorized in this chapter shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.

➔Section 458. KRS 230.330 is amended to read as follows:

Any licensee or any applicant aggrieved by any final order of the ***racing commission***~~[authority]~~ may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 459. KRS 230.350 is amended to read as follows:

- (1) Any person licensed by this ***racing commission***~~[authority]~~ under KRS 230.300 may be issued a license by the Alcoholic Beverage Control Board and may hold a distilled spirits and wine special temporary license and malt beverage special temporary license as provided in KRS 243.260 and 243.290. The licenses, and each of them, when issued shall be valid and effective only upon premises licensed by this ***racing commission***~~[authority]~~ and upon the dates and hours for which racing or intertrack wagering has been authorized by this ***racing commission***~~[authority]~~. A temporary license may be issued for the period the racing or intertrack wagering has been authorized, even if the period exceeds the thirty (30) days as provided in KRS 243.260 and 243.290.
- (2) Other provisions of the Kentucky Revised Statutes notwithstanding, in a county containing a city of the third or fourth class, a limited sale precinct election may be held in any precinct containing a licensed racing association. The election shall be conducted in the same manner as provided for in KRS 242.1292. Upon approval of the proposition, a license shall be issued in accordance with subsection (1) of this section. Nothing in this section shall be construed as authorizing the issuance of any alcoholic beverage licenses other than for the premises of a licensed racing association pursuant to KRS 243.260 and 243.290.

➔Section 460. KRS 230.361 is amended to read as follows:

- (1) The ***racing commission***~~[authority]~~ shall promulgate administrative regulations governing and regulating mutuel wagering on horse races under what is known as the pari-mutuel system of wagering. The wagering shall be conducted only by a person licensed under this chapter to conduct a race meeting and only upon the licensed premises. The pari-mutuel system of wagering shall be operated only by a totalizator or other mechanical equipment approved by the ***racing commission***~~[authority]~~. The ***racing commission***~~[authority]~~ shall not require any particular make of equipment.
- (2) The operation of a pari-mutuel system for betting where authorized by law shall not constitute grounds for the revocation or suspension of any license issued and held under KRS 230.350.
- (3) All reported but unclaimed pari-mutuel winning tickets held in this state by any person or association operating a pari-mutuel or similar system of betting at horse race meetings shall be presumed abandoned if not claimed by the person entitled to them within one (1) year from the time the ticket became payable.
- (4) The ***racing commission***~~[authority]~~ may issue a license to conduct pari-mutuel wagering on steeple chases or other racing over jumps; if all proceeds from the wagering, after expenses are deducted, is used for charitable purposes. If the dates requested for such a license have been granted to a track within a forty (40) mile radius of the race site, the ***racing commission***~~[authority]~~ shall not issue a license until it has received written approval from the affected track. Pari-mutuel wagering licensed and approved under this subsection shall be limited to four (4) days per year. All racing and wagering authorized by this subsection shall be conducted in accordance with applicable administrative regulations promulgated by the ***racing commission***~~[authority]~~.

➔Section 461. KRS 230.3615 is amended to read as follows:

- (1) The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~ and conducts the thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system, in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime, shall not be more than sixteen percent (16%) at the discretion of those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on-track pari-mutuel handle per day of live racing conducted by the association. The commission at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association, at the discretion of such track, shall not be more than seventeen and one-half percent (17.5%) in races where the patron is required to select one (1) horse, and the breaks, which breaks shall be made and calculated to the dime.
- (2) The commission at those tracks averaging over one million two hundred thousand dollars (\$1,200,000) in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a race track under the jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~ and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed nineteen percent (19%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime. The commission, at those tracks averaging one million two hundred thousand dollars (\$1,200,000) or less in on track pari-mutuel handle per day of live racing conducted by the association, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the association which operates a race track under the jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~ and conducts thoroughbred racing at which betting is conducted through a pari-mutuel or other similar system shall not exceed twenty-two percent (22%) of the gross handle in races where the patron is required to select two (2) or more horses, and the breaks, which breaks shall be made and calculated to the dime.
- (3) The minimum wager to be accepted by any licensed association shall be ten cents (\$0.10). The minimum pay-off on a one dollar (\$1) wager shall be one dollar and ten cents (\$1.10); but, in the event of a minus pool, the minimum pay-off for a one dollar (\$1) wager shall be one dollar and five cents (\$1.05).
- (4) Each association conducting thoroughbred racing and averaging one million two hundred thousand dollars (\$1,200,000) or less in on-track pari-mutuel handle per day of live racing conducted by the association shall pay to the **racing commission**~~[authority]~~ all moneys allocated to the backside improvement fund in an amount equal to one-half of one percent (0.5%) of its on-track pari-mutuel wagers.

➔Section 462. KRS 230.362 is amended to read as follows:

Any person holding unclaimed pari-mutuel winning tickets presumed abandoned under the provisions of KRS 230.361 shall file annually, on or before September 1 of each year, with the office of the **racing commission**~~[authority]~~ a list of and the amounts represented by unclaimed pari-mutuel tickets held by such person as of July 1, and other information as the **racing commission**~~[authority]~~ may require for the administration of KRS 230.361 to 230.373. The report shall be made in duplicate; the original shall be retained by the **racing commission**~~[authority]~~ and the copy shall be mailed to the sheriff of the county where the unclaimed pari-mutuel tickets are held. It shall be the duty of the sheriff to post for not less than twenty (20) consecutive days a copy of the report on the courthouse door or the courthouse bulletin board, and to publish the copy in the manner set forth by KRS Chapter 424. The cost of the publication shall be paid by the **racing commission**~~[authority]~~. The sheriff shall immediately certify in writing to the **racing commission**~~[authority]~~ the dates when the list was posted and published. The list shall be posted and published as required on or before October 1 of the year when it is made, and such posting and publishing shall be constructive notice to all holders of pari-mutuel tickets which have remained unclaimed for a period of one (1) year from the time the ticket became payable.

➔Section 463. KRS 230.363 is amended to read as follows:

Any person who has made a report of unclaimed pari-mutuel tickets to the **racing commission**~~[authority]~~ as required by KRS 230.362 shall, between November 1 and November 15 of each year, turn over to the **racing commission**~~[authority]~~ the sum represented by the unclaimed pari-mutuel tickets so reported; but if the person making the report or the owner of the unclaimed pari-mutuel ticket certifies to the **racing commission**~~[authority]~~ by sworn statement that any or all of the statutory conditions necessary to create a presumption of abandonment no longer exists or never did exist, or shall certify existence of any fact or circumstance in which there is substantial evidence to rebut

such presumption, then, the person reporting the unclaimed pari-mutuel tickets or holding the sum represented by the unclaimed pari-mutuel tickets as reported shall not be required to turn over said sum to the **racing commission**~~[authority]~~ except upon order of court. If the holder of any unclaimed pari-mutuel ticket files an action in court claiming the sum which has been reported under the provisions of KRS 230.362, the person reporting or holding the sum represented by said unclaimed pari-mutuel ticket shall be under no duty while any such action is pending to turn over said sum to the **racing commission**~~[authority]~~, but shall have the duty of notifying the **racing commission**~~[authority]~~ of the pendency of such action.

➔Section 464. KRS 230.364 is amended to read as follows:

Any person holding an unclaimed pari-mutuel ticket or any person holding the sum represented by an unclaimed pari-mutuel ticket, or any claimant thereto shall have the right to a judicial determination of his rights under KRS 230.361 to 230.373 and nothing therein shall be construed otherwise; and the **racing commission**~~[authority]~~ may institute an action to recover the sum represented by the unclaimed pari-mutuel tickets which are presumed abandoned whether said sum has been reported or not and may include in one (1) petition the sum represented by all the unclaimed pari-mutuel tickets as defined herein within the jurisdiction of the court in which the action is brought.

➔Section 465. KRS 230.365 is amended to read as follows:

Any person who pays the sum represented by the unclaimed pari-mutuel tickets to the **racing commission**~~[authority]~~ under KRS 230.363 is relieved of all liability for the value of said unclaimed pari-mutuel tickets for any claim made in respect of said unclaimed pari-mutuel tickets.

➔Section 466. KRS 230.366 is amended to read as follows:

Any person claiming an interest in any unclaimed pari-mutuel ticket which has been paid or surrendered to the **racing commission**~~[authority]~~ in accordance with KRS 230.361 to 230.373 may file his claim to it at any time after it was paid to the **racing commission**~~[authority]~~.

➔Section 467. KRS 230.367 is amended to read as follows:

The **racing commission**~~[authority]~~ shall consider any claim or defense permitted to be filed before the **racing commission**~~[authority]~~ and hear the evidence concerning it. If the claimant establishes his claim, the **racing commission**~~[authority]~~ shall, when the time for appeal or other legal procedure has expired, authorize payment to him of a sum equal to the amount of his claim paid to the **racing commission**~~[authority]~~ in accordance with KRS 230.361 to 230.373. The decision shall be in writing and shall state the substance of the evidence heard by the **racing commission**~~[authority]~~, if a transcript is not kept. The decision shall be a matter of public record.

➔Section 468. KRS 230.368 is amended to read as follows:

Any person dissatisfied with the decision of the **racing commission**~~[authority]~~ under KRS 230.367 may appeal to the Franklin Circuit Court in accordance with the provisions of KRS 243.560 to 243.590.

➔Section 469. KRS 230.369 is amended to read as follows:

The **racing commission**~~[authority]~~, through its employees, may examine all records of any person where there is reason to believe that there has been or is a failure to report unclaimed pari-mutuel tickets.

➔Section 470. KRS 230.370 is amended to read as follows:

The **racing commission**~~[authority]~~ may promulgate any reasonable and necessary administrative regulation for the enforcement of the provisions of this chapter and the conduct of hearings held before it.

➔Section 471. KRS 230.371 is amended to read as follows:

The **racing commission**~~[authority]~~ may require the production of reports or the surrender of sums represented by unclaimed pari-mutuel tickets as provided in KRS 230.361 to 230.373 by civil equity action, including, but not limited to, an action in the nature of a bill of discovery, in which case the defendant shall pay a penalty equal to ten percent (10%) of all amounts that he is ultimately required to surrender. The **racing commission**~~[authority]~~ shall follow the procedures provided by the Rules of Civil Procedure.

➔Section 472. KRS 230.372 is amended to read as follows:

Any payments made to any persons claiming an interest in an unclaimed pari-mutuel ticket, and any necessary expense including, but not limited to, administrative costs, advertising costs, court costs and attorney's fees, required

to be paid by the ***rac*ing *com*mission~~[authority]~~** in administering or enforcing the provisions of KRS 230.361 to 230.373 shall be deducted from sums received by the ***rac*ing *com*mission~~[authority]~~** prior to payment to the Kentucky Racing Health and Welfare Fund.

➔Section 473. KRS 230.374 is amended to read as follows:

All sums reported and paid to the ***rac*ing *com*mission~~[authority]~~** under the provisions of KRS 230.361 to 230.373, with the exception of funds paid under KRS 230.398, shall be paid by the ***rac*ing *com*mission~~[authority]~~** to the Kentucky Racing Health and Welfare Fund, Inc., a nonprofit charitable corporation, organized for the benefit, aid, assistance, and relief of thoroughbred owners, trainers, jockeys, valets, exercise riders, grooms, stable attendants, pari-mutuel clerks, and other thoroughbred racing personnel employed in connection with racing, and their spouses and children, who can demonstrate their need for financial assistance connected with death, illness, or off-the-job injury and are not otherwise covered by union health and welfare plans, workers' compensation, Social Security, public welfare, or any type of health, medical, death, or accident insurance. These sums shall be paid on or before December 31 in each year, however, no payments shall be made by the ***rac*ing *com*mission~~[authority]~~** to the Kentucky Racing Health and Welfare Fund, Inc., unless the ***rac*ing *com*mission~~[authority]~~** and the Auditor of Public Accounts are satisfied that the fund is in all respects being operated for the charitable and benevolent purposes as set forth in this section and that no part of the funds paid to the fund by the ***rac*ing *com*mission~~[authority]~~** or any net earnings of the fund inure to the benefit of any private individual, director, officer, or member of the fund or any of the persons who turned over sums to the ***rac*ing *com*mission~~[authority]~~** representing unclaimed pari-mutuel tickets.

➔Section 474. KRS 230.375 is amended to read as follows:

- (1) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., may create and fund the Kentucky Race Track Retirement Plan. The board shall use no more than twenty-five percent (25%) of the annual sum paid by the ***rac*ing *com*mission~~[authority]~~** under KRS 230.361 to 230.373 to fund the plan.
- (2) The plan shall be provided for the benefit of thoroughbred trainers, assistant trainers, exercise riders, grooms, stable attendants, and other stable employees who can demonstrate that they are not otherwise eligible to participate in any other private or public, nonself-funded retirement or pension plan.
- (3) The Kentucky Race Track Retirement Plan shall be administered by the board of directors of the Kentucky Racing Health and Welfare Fund, Inc., for the charitable and benevolent purposes set forth in KRS 230.374, and no part of the sums administered by the fund for the plan or any net earnings of the plan shall inure to the benefit of any private individual, director, officer, or member of the fund, or any of the persons who paid sums to the ***rac*ing *com*mission~~[authority]~~** under the provisions of KRS 230.361 to 230.373.
- (4) The board of directors of the Kentucky Racing Health and Welfare Fund, Inc., shall be the trustee of the plan's funds and shall have full power to invest and reinvest funds. Investments shall be diversified to balance the risks associated with various investment options to maintain the long-term solvency of the plan. The board shall have full power to hold, purchase, sell, assign, transfer, or dispose of any of the investments in which any of the plan's funds have been invested, as well as of the proceeds of investments belonging to the plan. The board members or any investment manager shall discharge their duties with respect to the assets of the plan solely in the interest of the plan's members and:
 - (a) For the exclusive purposes of providing benefits to plan members and their beneficiaries and defraying reasonable expenses of administering the plan;
 - (b) With the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims; and
 - (c) In accordance with any other laws or instruments governing the administration of the plan's funds.

➔Section 475. KRS 230.3751 is amended to read as follows:

The Governor of this Commonwealth is authorized and directed to execute a compact on behalf of the Commonwealth with any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States, legally joining therein in the form substantially as follows:

ARTICLE I

PURPOSES

SECTION 1. Purposes.

The purposes of this compact are to:

1. Establish uniform requirements among the party states for the licensing of participants in live racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to this compact meet a uniform minimum standard of honesty and integrity.
2. Facilitate the growth of the pari-mutuel racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live racing with pari-mutuel wagering.
3. Authorize the Kentucky Horse Racing ~~Commission~~~~Authority~~ to participate in this compact.
4. Provide for participation in this compact by officials of the party states, and permit those officials, through the compact committee established by this compact, to enter into contracts with governmental agencies and nongovernmental persons to carry out the purposes of this compact.
5. Establish the compact committee created by this compact as an interstate governmental entity duly authorized to request and receive criminal history record information from the Federal Bureau of Investigation and other state and local law enforcement agencies.

ARTICLE II

DEFINITIONS

SECTION 2. Definitions.

"Compact committee" means the organization of officials from the party states that is authorized and empowered by this compact to carry out the purposes of this compact.

"Official" means the appointed, elected, designated or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

"Participants in live racing" means participants in live racing with pari-mutuel wagering in the party states.

"Party state" means each state that has enacted this compact.

"State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and each territory or possession of the United States.

ARTICLE III

ENTRY INTO FORCE, ELIGIBLE PARTIES AND WITHDRAWAL

SECTION 3. Entry into force.

This compact shall come into force when enacted by any four (4) states. Thereafter, this compact shall become effective as to any other state upon both (i) that state's enactment of this compact and (ii) the affirmative vote of a majority of the officials on the compact committee as provided in Section 8.

SECTION 4. States eligible to join compact.

Any state that has adopted or authorized live racing with pari-mutuel wagering shall be eligible to become party to this compact.

SECTION 5. Withdrawal from compact and impact thereof on force and effect of compact.

Any party state may withdraw from this compact by enacting a statute repealing this compact, but no such withdrawal shall become effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If as a result of withdrawals participation in this compact decreases to less than three (3) party states, this compact no longer shall be in force and effect unless and until there are at least three (3) or more party states again participating in this compact.

ARTICLE IV

COMPACT COMMITTEE

SECTION 6. Compact committee established.

There is hereby created an interstate governmental entity to be known as the "compact committee," which shall be comprised of one (1) official from the racing commission or its equivalent in each party state who shall be appointed, serve and be subject to removal in accordance with the laws of the party state he represents. Pursuant to the laws of his party state, each official shall have the assistance of his state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his responsibilities as the representative from his state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his state shall designate another of its members as an alternate who shall serve in his place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

SECTION 7. Powers and duties of compact committee.

In order to carry out the purposes of this compact, the compact committee is hereby granted the power and duty to:

1. Determine which categories of participants in live horse racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, and which categories of equivalent participants in dog racing and other forms of live racing with pari-mutuel wagering authorized in two (2) or more of the party states, should be licensed by the committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. Provided, however, that with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements.
2. Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the Federal Bureau of Investigation and relevant state and local law enforcement agencies, and, where appropriate, from the Royal Canadian Mounted Police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the committee as provided in paragraph 1 above. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the purposes of this compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official on or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and, pursuant to Public Law 92-544 or Public Law 100-413, shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the Attorney General of the United States, for submission to the Federal Bureau of Investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the Federal Bureau of Investigation or other receiving law enforcement agency.
3. Issue licenses to, and renew the licenses of, participants in live racing listed in paragraph 1 of this section who are found by the committee to have met the licensure and renewal requirements established by the committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant shall have the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established pursuant to paragraph 1 of this section.
4. Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to effectuate the purposes of this compact.
5. Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of this compact, prescribe their powers, duties and qualifications, hire

persons to fill those offices, employments and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits and other conditions of employment of its officers, employees and other positions.

6. Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation or other entity.
7. Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the purposes of this compact.
8. Charge a fee to each applicant for an initial license or renewal of a license.
9. Receive other funds through gifts, grants and appropriations.

SECTION 8. Voting requirements.

- A. Each official shall be entitled to one (1) vote on the compact committee.
- B. All action taken by the compact committee with regard to the addition of party states as provided in Section 3, the licensure of participants in live racing, and the receipt and disbursement of funds shall require a majority vote of the total number of officials (or their alternates) on the committee. All other action by the compact committee shall require a majority vote of those officials (or their alternates) present and voting.
- C. No action of the compact committee may be taken unless a quorum is present. A majority of the officials (or their alternates) on the compact committee shall constitute a quorum.

SECTION 9. Administration and management.

- A. The compact committee shall elect annually from among its members a chairman, a vice chairman, and a secretary/treasurer.
- B. The compact committee shall adopt bylaws for the conduct of its business by a two-thirds (2/3) vote of the total number of officials (or their alternates) on the committee at that time and shall have the power by the same vote to amend and rescind these bylaws. The committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the Secretary of State or equivalent agency of each of the party states.
- C. The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and his support staff.
- D. Employees of the compact committee shall be considered governmental employees.

SECTION 10. Immunity from liability for performance of official responsibilities and duties.

No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his responsibilities and duties under this compact.

ARTICLE V

RIGHTS AND RESPONSIBILITIES OF EACH PARTY STATE

SECTION 11. Rights and responsibilities of each party state.

- A. By enacting this compact, each party state:
 1. Agrees (i) to accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing pursuant to the committee's licensure requirements, and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his alternate.
 2. Agrees not to treat a notification to an applicant by the compact committee under paragraph 3 of Section 7 that the compact committee will not be able to process his application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee.

3. Reserves the right (i) to charge a fee for the use of a compact committee license in that state, (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked, (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee, and (iv) to establish its own licensure standards for the licensure of nonracing employees at pari-mutuel racetracks and employees to separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.
- B. No party state shall be held liable for the debts or other financial obligations incurred by the compact committee.

ARTICLE VI

CONSTRUCTION AND SEVERABILITY

SECTION 12. Construction and severability.

This compact shall be liberally construed so as to effectuate its purposes. The provisions of this compact shall be severable, and, if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of this compact to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If all or some portion of this compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

➔Section 476. KRS 230.377 is amended to read as follows:

- (1) Other provisions of the Kentucky Revised Statutes notwithstanding, a track may apply to the **racing commission**~~[authority]~~ for simulcasting and intertrack wagering dates. Applications shall be submitted in accordance with KRS 230.300. The **racing commission**~~[authority]~~ shall not approve the establishment or relocation of a receiving track within a radius of seventy-five (75) miles of a race track duly licensed as of July 15, 1992, without the prior written consent of the licensed track within whose seventy-five (75) mile radius the new receiving track would be located.
- (2) On or before November 1 of each year, the **racing commission**~~[authority]~~ shall meet and award intertrack wagering dates to all tracks for the entire succeeding calendar year. In a geographic area containing more than one (1) track within a fifty (50) mile radius of another track, intertrack wagering, except for quarter horse racing, shall be limited to simulcasting and wagering on racing of the same breed of horse as the receiving track was licensed to race on or before July 15, 1998.
- (3) The **racing commission**~~[authority]~~ shall approve no more than nine (9) tracks for participation in horse racing, intertrack wagering, and simulcasting. Any approval by the **racing commission**~~[authority]~~ of a change in location of these tracks shall be subject to the local-approval process contained in KRS 230.380.
- (4) A track may by administrative regulation be required to simulcast its races to one (1) or more receiving tracks approved for simulcasting and intertrack wagering, as a prerequisite for the issuance of a license pursuant to KRS 230.300, provided that:
 - (a) Each track shall be permitted to exempt one (1) day of racing from simulcasting to both receiving tracks and simulcast facilities, at its discretion;
 - (b) Tracks in a county containing a city of the first class or a consolidated local government and tracks in an urban-county government shall not be required to simulcast to each other or to any other facility in those counties. This provision shall not be construed as requiring tracks within the same county to simulcast to each other; and
 - (c) In the absence of a contract between a host track and a receiving track, the commission shall be split as provided for in KRS 230.378(3).
- (5) A track may receive simulcasts and conduct interstate wagering thereon subject to the following limitations which shall be in addition to the limitations set forth in KRS 230.3771:

- (a) A track licensed to conduct thoroughbred racing may receive simulcasts and conduct interstate wagering on all thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., without further consents or approvals.
 - (b) A track licensed to conduct harness racing may receive simulcasts and conduct interstate wagering on all harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000) without further consents or approvals.
 - (c) A track licensed to conduct quarter horse racing may receive simulcasts and conduct interstate wagering on all quarter horse races designated as graded stakes races by the graded stakes committee of the American Quarter Horse Association, without further consents or approvals.
 - (d) A track which applies to the ***racing commission***~~[authority]~~ to receive an interstate race of a different breed than the breed for which it is licensed by the ***racing commission***~~[authority]~~ shall receive any simulcast of an interstate race through the intertrack wagering system upon approval by the ***racing commission***~~[authority]~~. Notwithstanding the foregoing, a track licensed to conduct horse racing may receive simulcasts and conduct interstate wagering on quarter horse races, subject to the limitations of KRS 230.3771.
 - (e) A track may receive simulcasts of special event races conducted in other states or foreign countries which are determined by the ***racing commission***~~[authority]~~ to be of sufficient national or international significance or interest to warrant interstate wagering and if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., the Kentucky Division of the Horseman's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association for harness racing, and any track conducting live horse races of the same breed at the same time as the simulcast race.
 - (f) A track may also receive simulcasts and conduct interstate wagering on thoroughbred horse races other than those described in paragraphs (a) and (e) of this subsection if the simulcast of these races has been approved by the Kentucky Thoroughbred Owners and Breeders Association, Inc., and the Kentucky Horsemen's Benevolent and Protective Association, for thoroughbred races, and the Kentucky Harness Horsemen's Association, or its successor, for harness racing.
 - (g) The consent required by paragraph (f) of this subsection or by subsections (1)(g) and (2)(g) of KRS 230.3771 shall not be withheld:
 - 1. For any reason not specifically related to financial harm to live horse racing; or
 - 2. As a condition to the granting of any contractual or other concession not specifically related to the effects of interstate simulcasting on live horse racing in this Commonwealth, taken as a whole.
 - (h) A host track located in this state may receive simulcasting of not more than two (2) full cards of racing from another state, if both tracks race horses of the same breed and if:
 - 1. The race date was previously granted by the Kentucky Horse Racing ***Commission***~~[Authority]~~ to conduct live racing at the track located in this state;
 - 2. Live racing was canceled due to weather conditions; and
 - 3. The consent required by paragraph (e) of this subsection is obtained.
 - (i) The in-state track receiving the simulcast specified in paragraph (h) of this subsection shall offer that simulcast to all participating tracks and simulcast facilities in the intertrack wagering system.
 - (j) All interstate simulcasting shall be conducted in accordance with applicable federal laws.
- (6) The ***racing commission***~~[authority]~~ may promulgate necessary and reasonable administrative regulations for the purpose of administering the conduct of intertrack or interstate wagering and regulating the conditions under which wagering shall be held and conducted. Administrative regulations shall provide for the prevention of practices detrimental to the public interest and to impose penalties for violations. All administrative regulations shall be in conformity with the provisions of KRS Chapter 13A, KRS 138.510, and this chapter.

➔Section 477. KRS 230.3771 is amended to read as follows:

- (1) A thoroughbred track licensed to conduct thoroughbred racing may receive interstate simulcasts of thoroughbred horse races and quarter horse races, and conduct interstate wagering thereon, subject to the following limitations:
- (a) A thoroughbred receiving track may receive interstate simulcasts of thoroughbred races and conduct interstate wagering thereon at any time of day and during any live thoroughbred horse race meet conducted in the Commonwealth of Kentucky so long as the thoroughbred receiving track conducting interstate wagering remits to the thoroughbred host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A thoroughbred host track which receives interstate simulcasts and conducts interstate wagering thereon during the period of time from the first awarded day of its live meet through the last awarded day of its live meet shall offer the simulcasts to all thoroughbred receiving tracks, all harness tracks not subject to the provisions of KRS 230.377(2), and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a receiving track shall conduct intertrack wagering on all live races of all thoroughbred host tracks on any day on which it receives an interstate simulcast for the purpose of conducting interstate wagering.
 - (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
 - (e) If more than one (1) thoroughbred track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast of thoroughbred races unless all thoroughbred tracks conducting live racing at the same time of day agree upon all interstate simulcasts to be received and the division of the thoroughbred host track's commission. If more than one (1) thoroughbred track conducts live racing at different times on the same day, the thoroughbred host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and concludes ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
 - (f) Each thoroughbred track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the **racing commission**~~[authority]~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
 - (g) Notwithstanding paragraph (f) of this subsection, any thoroughbred track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Horsemen's Benevolent and Protective Association and the Kentucky Thoroughbred Owners and Breeders Association, Inc.
 - (h) A separate accounting on all interstate simulcasting shall be submitted to the **racing commission**~~[authority]~~. The accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
 - (i) If the only simulcast or simulcasts a track participating as a host track makes available for interstate wagering through this state's intertrack wagering system on any race day are thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a thoroughbred host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
 - (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;

2. Twenty-five percent (25%) to the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 4. Twenty-five percent (25%) to the purse program of the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, then an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
- (k) A simulcast facility's commission on interstate wagering on thoroughbred racing, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (2) A harness track licensed to conduct harness racing may receive interstate simulcasts of harness horse races and conduct interstate wagering thereon subject to the following limitations:
- (a) A harness receiving track may receive interstate simulcasts of harness races and quarter horse races, and conduct interstate wagering thereon at any time of day and during the course of any live harness horse race meet conducted in the Commonwealth of Kentucky so long as the harness receiving track conducting interstate wagering remits to the harness host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A harness host track which receives an interstate simulcast and conducts interstate wagering thereon during its live race meet shall offer the simulcasts to all thoroughbred receiving tracks not subject to the provisions of KRS 230.377(2), all harness tracks, and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a harness receiving track or a simulcast facility shall conduct intertrack wagering on all live races of a harness host track on any day it receives an interstate simulcast from a harness host track.
 - (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
 - (e) If more than one (1) harness track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast on harness races unless all harness tracks conducting live racing at that time of day agree upon the interstate simulcast to be received and the division of the harness host track's commission. If more than one (1) harness track conducts live racing at different times on the same day, the harness host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and conclude ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
 - (f) Each harness track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the **racing commission**~~authority~~ for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
 - (g) Notwithstanding paragraph (f) of this subsection, any harness track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Harness Horsemen's Association, or its successor.

- (h) A separate accounting on all interstate simulcasting shall be submitted to the ***racing commission***~~[authority]~~. This accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
- (i) If the only simulcast or simulcasts a track participating as a harness host track makes available for interstate wagering through this state's intertrack wagering system on any race day are harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000), then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a harness host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
- (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 2. Twenty-five percent (25%) to the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 4. Twenty-five percent (25%) to the purse program of the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
- (k) A simulcast facility's commission on interstate wagering on harness races, after deduction of applicable taxes and any amount required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (3) A harness track may only receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon as provided in subsection (1)(b) of this section. A thoroughbred track may only receive interstate simulcasts of harness horse races and conduct interstate wagering thereon as provided in subsection (2)(b) of this section. A simulcast facility may only receive interstate simulcasts of thoroughbred and harness horse races and conduct interstate wagering thereon as provided in subsections (1)(b) and (2)(b) of this section.
- (4)
 - (a) A thoroughbred track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraph (b) of this subsection.
 - (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 2. Twenty-five percent (25%) to the host track; and
 3. Fifty percent (50%) to the quarter horse purse program within this state, to be allocated by the American Quarter Horse Association or its successor to supplement purses for quarter horse races in this state.
- (5)
 - (a) A harness track licensed to conduct horse racing may receive interstate simulcasts of quarter horse races and conduct interstate wagering thereon, subject to the limitations stated in paragraphs (b) and (c) of this subsection.
 - (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 1. Twenty-five percent (25%) to the purse program of the receiving track;

2. Twenty-five percent (25%) to the purse program of the host track;
 3. Twenty-five percent (25%) to the receiving track; and
 4. Twenty-five percent (25%) to the host track.
- (c) When a quarter horse race is run at a Kentucky race track, the commission to the Kentucky Quarter Horse Purse Program shall be twenty-two percent (22%) from the host track's purse share.
- (6) Other provisions of the Kentucky Revised Statutes notwithstanding, any track in a geographic area that contains more than one (1) track within a fifty (50) mile radius of any other track may only receive interstate simulcasts on racing of the same breed of horse as the track was licensed to race on or before July 15, 1998, except any track may receive interstate simulcasts on quarter horse races.

➔Section 478. KRS 230.3773 is amended to read as follows:

- (1) As used in this section, "interstate common wagering pool" means a pari-mutuel pool established in one (1) horse racing jurisdiction that is combined with comparable pari-mutuel pools from at least one (1) horse racing jurisdiction for the purpose of establishing payoff prices in the various jurisdictions.
- (2) Interstate wagers at a receiving track may form an interstate common wagering pool with wagers at a track in another jurisdiction, and the receiving track may adopt the commission and breakage rates of the track at which the race is being run. The ***racine commission***~~authority~~ may also approve types of wagering, distribution of winnings, and rules of racing for interstate common wagering pools that are different from those that normally apply in Kentucky.
- (3) Wagers placed on any races run at track in Kentucky may be combined with wagers placed at tracks in other jurisdictions to form an interstate common wagering pool located either within or outside Kentucky.
- (4) A track's participation in an interstate common wagering pool does not cause that track to be considered to be doing business in any jurisdiction other than the jurisdiction where the track is physically located. Excise taxes and commission rates may not be imposed on any interstate common wagering pool other than on amounts actually wagered in Kentucky. The combination of pari-mutuel pools as provided in this section constitutes the communication of wagering information for purposes of calculating odds and payoffs only and does not constitute the transfer of wagers in interstate commerce.

➔Section 479. KRS 230.378 is amended to read as follows:

- (1) A receiving track may accept wagers only at the track where it is licensed to conduct its race meeting or conduct intertrack wagering. A receiving track may accept wagers through a telephone account wagering system. Wagers at a receiving track, simulcast facility, or on telephone account wagering shall form a common pool with wagers at a host track. This common pool requirement shall not apply to wagers made in connection with interstate simulcasting pursuant to KRS 230.3771; however, common pools shall be encouraged.
- (2) Except as provided in KRS 230.3771(2), the commission of a receiving track, simulcast facility, or on telephone account wagering shall be the same as the commission of the host track as determined in KRS 230.3615 or 230.750.
- (3) In the absence of a valid contract with a horsemen's organization, the commission of a receiving track, after deduction of applicable taxes and other applicable deductions, shall be split as follows: twenty-two percent (22%) to the host track, twenty-two percent (22%) to the purse program at the host track, twenty-two percent (22%) to the receiving track and twenty-two percent (22%) to the purse program at the receiving track. Twelve percent (12%) of the commission shall be allocated evenly between the host track and the receiving track to cover the cost of simulcasting, unless otherwise agreed to by contract.
- (4) The deduction for the backside improvement fund, as provided for in KRS 230.3615(4) shall not apply to the commission or pari-mutuel tax of a receiving track or telephone account wagering.
- (5) A receiving track shall be exempt from the admissions tax levied in KRS 138.480 and from any license fee imposed by statute or regulation by the ***racine commission***~~authority~~.

➔Section 480. KRS 230.379 is amended to read as follows:

- (1) A track may engage in telephone account wagering, if all moneys used to place telephone account wagers are on deposit in an amount sufficient to cover the wagers at the track where the account is opened. All moneys

wagered by telephone account wagering shall be subject to the applicable pari-mutuel tax levied in KRS 138.510 and shall form a common pool with other pari-mutuel pools at the track for each posted race. The ***racing commission***~~[authority]~~ shall have authority to promulgate necessary and reasonable administrative regulations to regulate the conduct of telephone account wagering, including regulations for the deposit of funds by credit or debit cards or other means of electronic funds transfer.

- (2) A track shall accept and tabulate a telephone account wager only from the holder of a telephone wagering account. No person shall directly or indirectly act as an intermediary, transmitter, or agent in the placing of wagers for a holder of a telephone wagering account. No person shall in any manner place a wager through telephone account wagering, on behalf of a holder of a telephone wagering account. Only the holder of a telephone wagering account shall place a telephone wager. Any person violating this subsection shall be guilty of a Class A misdemeanor.
- (3) Telephone account wagering conducted in accordance with the provisions of this section shall not be considered a violation of KRS 528.110.

➔Section 481. KRS 230.380 is amended to read as follows:

- (1) Any track licensed by the ***racing commission***~~[authority]~~ to conduct horse racing and desiring to establish a simulcast facility shall apply for and may receive approval from the ***racing commission***~~[authority]~~ for each simulcast facility. Prior to considering an application for approval of a simulcast facility, the ***racing commission***~~[authority]~~ shall notify by regular mail, each state senator, state representative, county judge/executive, and mayor in the jurisdiction in which the proposed simulcast facility is located, at least ten (10) days in advance of the ***racing commission***~~[authority]~~ meeting at which the application is to be considered or voted upon. Consideration of an application shall be based on criteria contained in administrative regulations promulgated under KRS 230.300. Approval, if granted, shall be granted for a term of one (1) calendar year.
- (2) A track or tracks may proceed with the establishment of a simulcast facility unless, within sixty (60) days of the date on which the ***racing commission***~~[authority]~~ approved the facility, the governing body of the local government jurisdiction in which the facility is to be located votes, by simple majority of those voting, to disapprove the establishment of the simulcast facility. For the purposes of this section, "governing body" means, in an incorporated area, the board of aldermen, city council or board of commissioners; in a county, the fiscal court; in an urban-county government, the urban-county council, or in a charter county, the legislative body created in accordance with KRS 67.825 to 67.875.
- (3) The ***racing commission***~~[authority]~~ shall not approve the establishment of any simulcast facility within a radius of fifty (50) miles of a licensed track. The ***racing commission***~~[authority]~~ may approve the establishment of one (1) simulcast facility within a radius of greater than fifty (50) miles but less than seventy-five (75) miles of a licensed track, but the facility shall not be approved to operate without the prior written consent of the licensed track within whose seventy-five (75) mile radius the facility is located.
- (4) The ***racing commission***~~[authority]~~ may promulgate administrative regulations as it deems appropriate to protect the integrity of pari-mutuel wagering at any simulcast facility.
- (5) Licensed tracks conducting horse racing may enter into joint agreements to establish or operate one (1) or more simulcast facilities, on terms and conditions as the participating tracks may determine. Any agreements respecting these arrangements shall be filed with the ***racing commission***~~[authority]~~, and applications for simulcast facilities shall be filed by and licenses may be issued to, these licensed tracks by the ***racing commission***~~[authority]~~.
- (6) A simulcast facility may be established and operated on property that is owned or leased and which is not used solely for the operation of a simulcast facility; provided however, that a simulcast facility may not be established on the premises of a lottery vendor.
- (7) A simulcast facility shall not be subject to and shall not pay any excise tax imposed pursuant to KRS 138.510, any license tax imposed under KRS 137.170, or any admission tax imposed under KRS 138.480.
- (8) One percent (1%) of all moneys wagered at a simulcast facility shall be dedicated for local economic development and shall be allocated as follows:
 - (a) If a simulcast facility is located in an incorporated area, seventy-five percent (75%) shall be allocated to the governing body of the city in which the facility is located, and twenty-five percent (25%) to the governing body of the county in which the facility is located.

- (b) If a simulcast facility is located in an unincorporated area, all moneys shall be allocated to the governing body of the county or charter county in which the facility is located.
- (9) (a) After the deduction of moneys under subsection (8), simulcast facility shall deduct a commission allowed under KRS 230.3615 with respect to all wagers made at the simulcast facility. The commission, less moneys allocated in subsection (8) of this section, shall be split as follows:
 - 1. Thirty percent (30%) shall be allocated to the host track;
 - 2. Forty-six and one-half percent (46.5%) to the purse program at the host track;
 - 3. Thirteen and one-half percent (13.5%) to be retained by the track or tracks owning the simulcast facility for the purpose of application to expenses incurred in connection therewith;
 - 4. Six percent (6%) to be allocated to the Kentucky Thoroughbred Owners and Breeders, Inc., to be expended as follows:
 - a. Up to three percent (3%) for capital improvements and promotion of off-track betting; and
 - b. The remainder for marketing and promoting the Kentucky thoroughbred industry; and
 - 5. Four percent (4%) to be allocated to the **racing commission**~~[authority]~~ to be used for purses at county fairs in Kentucky licensed and approved by the **racing commission**~~[authority]~~, and for the standardbred sires stakes program established under KRS 230.770.
- (b) The commission of a simulcast facility derived from interstate wagering shall be reduced by any amounts required to be paid by contract to the host track or track conducting the live race before it is divided as set forth in this section. No simulcast facility may receive any interstate simulcast except with the approval of the live Kentucky host track.
- (c) The Kentucky Thoroughbred Owners and Breeders, Inc., shall annually report to the **racing commission**~~[authority]~~ on all money expended in accordance with subsection (9)(a)4. of this section. The report shall be in the form required, and provide all information required by the **racing commission**~~[authority]~~.
- (10) Subsections (1) and (2) of this section shall also apply to the establishment by a track of a noncontiguous facility in a county in which pari-mutuel racing and wagering is not being conducted. Subsection (8) of this section shall also apply to a noncontiguous race track facility referenced in this subsection, unless there is a written agreement to the contrary between the track establishing the facility and the governing body of the local government jurisdiction in which the facility is to be established.

➔Section 482. KRS 230.398 is amended to read as follows:

All sums reported and paid to the **racing commission**~~[authority]~~ under the provisions of KRS 230.361 to 230.373 by any licensee conducting a harness race meeting shall be used by it for purses at harness racing events at county fairs within the Commonwealth of Kentucky that have been licensed and approved by it. The **racing commission**~~[authority]~~ shall have the authority to promulgate administrative regulations as may be necessary for the conduct of these races.

➔Section 483. KRS 230.400 is amended to read as follows:

- (1) There is hereby created a trust and revolving fund for the Kentucky Horse Racing **Commission**~~[Authority]~~, designated as the Kentucky thoroughbred development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with other money contributed to or allocated to the fund from all other sources. Money to the credit of the Kentucky thoroughbred development fund shall be distributed by the Treasurer for the purposes of this section upon authorization of the Kentucky Horse Racing **Commission**~~[Authority]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money from the Kentucky thoroughbred development fund shall be allocated to each licensed association in an amount equal to the amount the association contributed to the fund. Money to the credit of the Kentucky thoroughbred development fund at the end of each fiscal year shall not lapse, but shall be carried forward in such fund to the succeeding fiscal year.
- (2) There is hereby established, under the general jurisdiction of the Kentucky Horse Racing **Commission**~~[Authority]~~, a Kentucky Thoroughbred Development Fund Advisory Committee. The advisory

committee shall consist of five (5) members, all of whom shall be residents of Kentucky, to be appointed by the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~ by July 1 of each year. The committee shall consist of two (2) thoroughbred breeders recommended by the Kentucky Thoroughbred Owners and Breeders, Inc.; one (1) thoroughbred owner recommended by the Kentucky division of the Horsemen's Benevolent and Protective Association; one (1) officer or director of a licensed association conducting thoroughbred racing in Kentucky, recommended by action of all of the licensed associations conducting thoroughbred racing in Kentucky; and one (1) member of the Kentucky Horse Racing **Commission**~~[Authority]~~. If any member other than the **racing commission**~~[authority]~~ member has not been recommended for appointment by July 1 of each year, the chairman of the Kentucky Horse Racing **Commission**~~[Authority]~~ shall make an appointment for the organization or organizations failing to recommend a member of the committee. The members of the advisory committee shall serve without compensation, but shall be entitled to reimbursement for all expenses incurred in the discharge of official business. The advisory committee shall select from its membership annually a chairman and a vice chairman.

- (3) (a) The Kentucky Thoroughbred Development Fund Committee shall advise and assist the Kentucky Horse Racing **Commission**~~[Authority]~~ in the development of the supplemental purse program provided herein for Kentucky bred thoroughbreds, shall make recommendations to the **racing commission**~~[authority]~~ from time to time with respect to the establishment of guidelines, administrative regulations for the provision of supplemental purses, the amount thereof, the races for which the purses are to be provided and the conditions thereof, manner and method of payment of supplemental purses, registry of thoroughbred stallions standing within the Commonwealth of Kentucky, registry of Kentucky bred thoroughbreds for purposes of this section, nature and type of forms and reports to be employed and required in connection with the establishment, provision for, award and payment of supplemental purses, and with respect to all other matters necessary in connection with the carrying out of the intent and purposes of this section.
- (b) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall employ qualified personnel as may be required to assist the **racing commission**~~[authority]~~ and the advisory committee in carrying out the provisions of this section. These persons shall serve at the pleasure of the **racing commission**~~[authority]~~ and compensation for these personnel shall be fixed by the **racing commission**~~[authority]~~. The compensation of these personnel and the necessary expenses incurred by the **racing commission**~~[authority]~~ or by the committee in carrying out the provisions of this section shall be paid out of the Kentucky thoroughbred development fund.
- (4) The Kentucky Horse Racing **Commission**~~[Authority]~~, with the advice and assistance of the Kentucky Thoroughbred Development Fund Advisory Committee, shall use the Kentucky thoroughbred development fund to promote, enhance, improve, and encourage the further and continued development of the thoroughbred breeding industry in Kentucky by providing, out of the Kentucky thoroughbred development fund, supplemental purses for designated stakes, handicap, allowance, and nonclaiming maiden races contested at licensed thoroughbred race meetings in Kentucky, the awarding and payment of which supplemental purses shall be conditioned upon the winning or placing in designated races by Kentucky bred thoroughbred horses. Any supplemental purse provided for a designated race shall be apportioned among the winning and placing horses in the same proportion as the stake or purse provided for the race by the racing association. Winning or placing as used in this section shall include those horses finishing first, second, third, and fourth in the races. That portion of the supplemental purse provided for any designated race for a winning or placing finish shall be awarded and paid to the owner of the horse so finishing only if the horse is a Kentucky bred thoroughbred duly registered with the official registrar. Any portion of the supplemental purse which is not awarded and paid over shall be returned to the Kentucky thoroughbred development fund.
- (5) (a) For purposes of this section, the term Kentucky thoroughbred stallion shall mean and include only a thoroughbred stallion standing the entire breeding season in Kentucky and registered as a Kentucky thoroughbred stallion with the official registrar of the Kentucky thoroughbred development fund.
- (b) Except for thoroughbred horses foaled prior to January 1, 1980, the term Kentucky bred thoroughbreds for purposes of this section, shall mean and include only thoroughbred horses sired by Kentucky thoroughbred stallions foaled in Kentucky and registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.
- (c) Any thoroughbred horse foaled prior to January 1, 1980, may qualify as a Kentucky bred thoroughbred for purposes of this section if the horse was foaled in Kentucky and if the sire of the thoroughbred was standing at stud within Kentucky at the time of conception of such thoroughbred, provided the

thoroughbred is duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund.

- (d) In order for an owner of a Kentucky sired thoroughbred to be eligible to demand, claim, and receive a portion of a supplemental purse provided by the Kentucky thoroughbred development fund, the thoroughbred horse winning or placing in a designated race for which a supplemental purse has been provided by the Kentucky thoroughbred development fund must have been duly registered as a Kentucky bred thoroughbred with the official registrar of the Kentucky thoroughbred development fund prior to entry in the race.
- (6) (a) Kentucky Thoroughbred Owners and Breeders, Inc., is hereby recognized and designated as the sole official registrar of the Kentucky thoroughbred development fund for the purposes of registering Kentucky thoroughbred stallions and Kentucky bred thoroughbreds in accord with the terms of this section and any administrative regulations promulgated by the Kentucky Horse Racing **Commission**~~[Authority]~~. When a Kentucky bred thoroughbred is registered with the official registrar, the registrar shall be authorized to stamp the Jockey Club certificate issued for the thoroughbred with the seal of the registrar, certifying that the thoroughbred is a duly qualified and registered Kentucky bred thoroughbred for purposes of this section. The registrar may establish and charge, with the approval of the **racine commission**~~[authority]~~, reasonable registration fees for its services in the registration of Kentucky thoroughbred stallions and in the registration of Kentucky bred thoroughbreds. Registration records of the registrar shall be public records and open to public inspection at all normal business hours and times.
- (b) Any interested party aggrieved by the failure or refusal of the official registrar to register a stallion or thoroughbred as a Kentucky stallion or as a Kentucky bred thoroughbred shall have the right to file with the **racine commission**~~[authority]~~, within thirty (30) days of such failure or refusal of the registrar, petition seeking registration of the thoroughbred. The **racine commission**~~[authority]~~ shall promptly hear the matter de novo and issue its order directing the official registrar to register or not to register as it may be determined by the **racine commission**~~[authority]~~.
- (7) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall promulgate administrative regulations as may be necessary to carry out the provisions and purposes of this section, including the promulgation of administrative regulations and forms as may be appropriate for the proper registration of Kentucky stallions and Kentucky bred thoroughbreds with the official registrar, and shall administer the Kentucky bred thoroughbred program created hereby in a manner best designed to promote and aid in the further development of the thoroughbred breeding industry in Kentucky, to upgrade the quality of thoroughbred racing in Kentucky, and to improve the quality of thoroughbred horses bred in Kentucky.

➔Section 484. KRS 230.750 is amended to read as follows:

The commission, including the tax levied in KRS 138.510, deducted from the gross amount wagered by the person, corporation, or association which operates a harness horse track under the jurisdiction of the **racine commission**~~[authority]~~ at which betting is conducted through a pari-mutuel or other similar system shall not exceed eighteen percent (18%) of the gross amount handled on straight wagering pools and twenty-five percent (25%) of the gross amount handled on multiple wagering pools, plus the breaks, which shall be made and calculated to the dime. Multiple wagering pools shall include daily double, perfecta, double perfecta, quinella, double quinella, trifecta, and other types of exotic betting. An amount equal to three percent (3%) of the total amount wagered and included in the commission of a harness host track shall be allocated by the harness host track in the following manner. Two percent (2%) shall be allocated to the host for capital improvements, promotions, including advertising, or purses, as the host track shall elect. Three-quarters of one percent (3/4 of 1%) shall be allocated to overnight purses. One-quarter of one percent (1/4 of 1%) shall be allocated to the Kentucky standardbred, quarterhorse, Appaloosa, and Arabian development fund. This allocation shall be made after deduction from the commission of the pari-mutuel tax but prior to any other deduction, allocation or division of the commission.

➔Section 485. KRS 230.752 is amended to read as follows:

All harness racetracks licensed by the **racine commission**~~[authority]~~ shall not be required to pay the excise tax imposed under KRS 138.510(2), and the amount that would have been paid under those subsections shall be retained by the track to promote and maintain its facilities and its live meet.

➔Section 486. KRS 230.760 is amended to read as follows:

No licensee conducting a race or meet hereunder, no member of the ***rac***~~ing commission~~^[authority], judge, or assistant official appointed to act as such pursuant to this chapter, shall be liable for damages to any person, association, or corporation for any cause whatsoever arising out of or from the performance by the licensee, member of the ***rac***~~ing commission~~^[authority], judge, or assistant official of his duties and the exercise of his discretion with respect thereto, so long as he acted in good faith, without malice or improper motive.

➔ Section 487. KRS 230.770 is amended to read as follows:

- (1) There is hereby created a trust and revolving fund for the Kentucky Horse Racing ***Commission***~~[Authority]~~, designated as the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with any other money contributed to or allocated to the fund from all other sources. For the purposes of this section, "development fund" or "fund" means the Kentucky standardbred, quarter horse, Appaloosa, and Arabian development fund. Money to the credit of the development fund shall be distributed by the Treasurer for the purposes provided in this section, upon authorization of the Kentucky Horse Racing ***Commission***~~[Authority]~~ and upon approval of the secretary of the Finance and Administration Cabinet. Money to the credit of the fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year.
- (2) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall use the development fund to promote races, and to provide purses for races, for horses sired by stallions standing within the Commonwealth of Kentucky or as provided in subsection (2)(b) of this section. For purposes of this section, the term "stallions standing within the Commonwealth of Kentucky" shall include only stallions registered with the Kentucky Horse Racing ***Commission***~~[Authority]~~.
 - (a) The ***rac***~~ing commission~~^[authority] shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed standardbred race tracks within Kentucky on an equitable basis, for the purpose of conducting separate races for two (2) and three (3) year old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within the Commonwealth of Kentucky at the time of conception. Notwithstanding other provisions hereof, a filly or colt foaled prior to January 1, 1978, shall be eligible to participate in races, a part of the purse for which is provided by money of the development fund, if the sire of the filly or colt was standing at stud within the Commonwealth of Kentucky at the time of conception.
 - (b) The ***rac***~~ing commission~~^[authority] shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed racetracks within Kentucky conducting quarter horse, Appaloosa, or Arabian racing, on an equitable basis as determined by the ***rac***~~ing commission~~^[authority].
- (3) Money distributed from the development fund to licensed standardbred race tracks within the Commonwealth shall be used exclusively to promote races and provide purses for races conditioned to admit only standardbred colts and fillies sired by standardbred stallions standing within the Commonwealth of Kentucky.
- (4) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall fix the amount of money to be paid from the development fund to be added to the purse provided for each race by the licensed operator of the race track; shall fix the dates and conditions of races to be held by licensed race tracks; and shall promulgate administrative regulations necessary to carry out the provisions of this section. Money from the fund shall be allocated to each breed of horse represented in the fund in an amount equal to the amount the breed has contributed to the fund.
- (5) The Kentucky Horse Racing ***Commission***~~[Authority]~~ may promulgate administrative regulations necessary to determine the eligibility of horses for entry in races for which a portion of the purse is provided by money of the development fund, including administrative regulations for the registration of stallions standing within Kentucky and progeny thereof, including registration of progeny of the stallions foaled prior to June 19, 1976. Registration of stallions standing within Kentucky may occur any time during the breeding season and shall occur no later than July 1 of each year.
- (6) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall appoint qualified personnel necessary to supervise registration of, or determination of eligibility of, horses entitled to entry in races, a portion of the purse of which is provided by the development fund, to assist the ***rac***~~ing commission~~^[authority] in determining the conditions, class, and quality of the fund supported race program to be established hereunder so as to carry out the purposes of this section. These persons shall serve at the pleasure of the ***rac***~~ing commission~~^[authority] and compensation shall be fixed by the ***rac***~~ing commission~~^[authority]. The compensation of personnel and

necessary expenses shall be paid out of the development fund. The ***rac***ing ***comm***ission[authority] shall promulgate administrative regulations to carry out the provisions of this section, and shall administer the Kentucky sire stakes program created hereby in a manner best designed to promote and aid in the development of the horse industry in Kentucky; to upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky.

➔Section 488. KRS 230.775 is amended to read as follows:

As used in KRS 230.775 to 230.785, unless the context requires otherwise:

- (1) "Hub" means an international wagering hub, a business which, through a qualified subscriber-based service, conducts pari-mutuel wagering on the horse races that it simulcasts and other races that it carries in its wagering menu;
- (2) "Qualified subscriber-based service" means any information service or system, including but not limited to a closed-loop system, that uses:
 - (a) A device or combination of devices authorized and operated exclusively for placing, receiving, or otherwise making pari-mutuel wagers on horse races by a customer subscriber base through accounts established with the operator of the hub;
 - (b) An effective customer verification and age verification system; and
 - (c) Appropriate data security standards to prevent unauthorized access by nonsubscribers or minors;
- (3) "Foreign jurisdiction" means states other than Kentucky, a territory of the United States, a foreign country, or any political subdivision thereof;
- (4) "***Rac***ing ***comm***ission[Authority]" means the Kentucky Horse Racing ***Comm***ission[Authority] or its successor[authority]; and
- (5) "Call center" means that portion of a qualified subscriber-based service that is physically located in the Commonwealth, where wagers are placed, received, or otherwise made by a customer subscriber base through accounts established with the operator of the hub.

➔Section 489. KRS 230.779 is amended to read as follows:

- (1) Notwithstanding KRS 230.361(1), a licensee may operate the hub either independently or in association with one (1) or more racetracks licensed by the ***rac***ing ***comm***ission[authority] to run live races and conduct pari-mutuel wagering in Kentucky. Hub operations may be physically located on property other than that operated by a racetrack and may accept wagers at that location and shall comply with the Interstate Horseracing Act, 15 U.S.C. secs. 3001 to 3007.
- (2) As a part of the application for licensure as a hub, an applicant shall submit a detailed plan of operations in a format and containing any information as required by the ***rac***ing ***comm***ission[authority]. The application shall be accompanied by an application fee to cover incremental costs to the ***rac***ing ***comm***ission[authority], in an amount the ***rac***ing ***comm***ission[authority] determines to be appropriate. At a minimum, the operating plan shall address the following:
 - (a) The manner in which the proposed wagering system will operate, including its proposed operating schedule;
 - (b) The requirements for a qualified subscriber-based service set out in KRS 230.775; and
 - (c) The requirements for accounts established and operated for persons whose principal residence is outside of the Commonwealth of Kentucky.
- (3) The ***rac***ing ***comm***ission[authority] may require changes in a proposed plan of operations as a condition of licensure. Subsequent material changes in the system's operation shall not occur unless approved by the ***rac***ing ***comm***ission[authority].
- (4) The ***rac***ing ***comm***ission[authority] may conduct investigations or inspections or request additional information from any applicant as it deems appropriate in determining whether to approve the license application.

- (5) An applicant licensed under this section may enter into any agreements that are necessary to promote, advertise, and further the sport of horse racing, or for the effective operation of hub operations, including, without limitation, interstate account wagering, television production, and telecommunications services.
- (6) The ***racing commission***~~[authority]~~ shall promulgate administrative regulations to effectuate the provisions of KRS 230.775 to 230.785. The administrative regulations shall include but not be limited to criteria for licensing, the application process, the format for the plan of operations, requisite fees, procedures for notifying the ***racing commission***~~[authority]~~ of substantive changes, contents of agreements entered into under subsection (5) of this section, procedures for accounting for wagers made, and other matters reasonably necessary to implement KRS 230.775 to 230.785.
- (7) The ***racing commission***~~[authority]~~ may require the hub to make the following payments to the ***racing commission***~~[authority]~~:
 - (a) A license fee not to exceed two hundred dollars (\$200) per operating day; and
 - (b) A fee of not more than one percent (1%) of the hub's total gross wagering receipts.
- (8) A hub's records and financial information shall not be subject to the provisions of KRS 61.870 to 61.884.
- (9) The Auditor of Public Accounts may review and audit all records and financial information of the hub, including all account information. The Auditor shall prepare a report of the review and audit which shall not contain any proprietary information regarding the hub. A copy of the report shall be sent to the Legislative Research Commission for referral to the appropriate committee.

➔Section 490. KRS 230.785 is amended to read as follows:

The ***racing commission***~~[authority]~~ or its staff shall, upon request, be given access, for review and audit, to all records and financial information of the hub operator, including all account information. The ***racing commission***~~[authority]~~ may require that the hub operator annually submit to the ***racing commission***~~[authority]~~ audited financial statements.

➔Section 491. KRS 230.800 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky thoroughbred breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing ***Commission***~~[Authority]~~. For all tax periods beginning on or after June 1, 2005, eighty percent (80%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated, or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2)
 - (a) The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall use moneys deposited in the Kentucky thoroughbred breeders incentive fund to administer the fund and provide rewards for breeders of horses bred and foaled in Kentucky.
 - (b) ~~By January 1, 2006,~~ The Kentucky Horse Racing ***Commission***~~[Authority]~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.
 - (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
 - (d) As soon as practicable after the close of each calendar year, ~~beginning with the calendar year ending December 31, 2005,~~ the ***racing commission***~~[authority]~~ shall disburse to breeders of horses moneys in the Kentucky thoroughbred breeders incentive fund pursuant to the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 492. KRS 230.802 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky standardbred breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing ***Commission***~~[Authority]~~. For tax periods beginning on or after June 1, 2005, thirteen percent (13%) of all

receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated, or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.

- (2) (a) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall use moneys deposited in the Kentucky standardbred breeders incentive fund to administer the fund and provide rewards for breeders or owners of Kentucky-bred standardbred horses.
- (b) ~~[By January 1, 2006,]~~ The Kentucky Horse Racing **Commission**~~[Authority]~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.
- (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
- (d) As soon as practicable after the close of each calendar year, ~~[beginning with the calendar year ending December 31, 2005,]~~ the **racine commission**~~[authority]~~ shall disburse moneys in the Kentucky standardbred breeders incentive fund to be used to promote, enhance, improve, and encourage the further and continued development of the standardbred breeding industry in Kentucky, under the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 493. KRS 230.804 is amended to read as follows:

- (1) There is hereby created in the State Treasury a trust and revolving fund designated as the "Kentucky horse breeders incentive fund." The fund shall be administered by the Kentucky Horse Racing **Commission**~~[Authority]~~. For tax periods beginning on or after June 1, 2005, seven percent (7%) of all receipts collected under KRS 139.531(1)(a) from the sales and use tax on the fees paid for breeding a stallion to a mare in Kentucky shall be deposited in the fund together with any other money contributed, appropriated or allocated to the fund from all other sources. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. The fund may also receive additional state appropriations, gifts, grants, and federal funds. All interest earned on money in the fund shall be credited to the fund.
- (2) (a) The Kentucky Horse Racing **Commission**~~[Authority]~~ shall use moneys deposited in the Kentucky horse breeders incentive fund to administer the fund and provide rewards for breeders or owners of horses bred and foaled in Kentucky.
- (b) ~~[By January 1, 2006,]~~ The Kentucky Horse Racing **Commission**~~[Authority]~~ shall promulgate administrative regulations establishing the conditions and criteria for the distribution of moneys from the fund.
- (c) The Department of Revenue may promulgate administrative regulations establishing the procedures necessary to determine the correct allocation of sales tax receipts described in subsection (1) of this section.
- (d) As soon as practicable after the close of each calendar year, ~~[beginning with the calendar year ending December 31, 2005,]~~ the **racine commission**~~[authority]~~ shall disburse to breeders of horses moneys in the Kentucky horse breeders incentive fund to be used to promote, enhance, improve, and encourage the further and continued development of the horse industry in Kentucky, under the administrative regulations promulgated pursuant to paragraph (b) of this subsection.

➔Section 494. KRS 230.990 is amended to read as follows:

- (1) Any person who violates KRS 230.070 or KRS 230.080(3) shall be guilty of a Class D felony.
- (2) Any person who violates KRS 230.090 shall be guilty of a Class A misdemeanor.

- (3) Any person who violates KRS 230.680 shall be guilty of a Class A misdemeanor.
- (4) Any person who refuses to make any report or to turn over sums as required by KRS 230.361 to 230.373 shall be guilty of a Class A misdemeanor.
- (5) Any person failing to appear before the ***racine commission***~~[authority]~~ at the time and place specified in the summons issued pursuant to KRS 230.260(12), or refusing to testify, shall be guilty of a Class B misdemeanor. False swearing on the part of any witness shall be deemed perjury and punished as such.
- (6)
 - (a) A person is guilty of tampering with or interfering with a horse race when, with the intent to influence the outcome of a horse race, he uses any device, material, or substance not approved by the Kentucky Horse Racing ***Commission***~~[Authority]~~ on or in any participant involved in or eligible to compete in a horse race to be viewed by the public.
 - (b) Any person who, while outside the Commonwealth and with intent to influence the outcome of a horse race contested within the Commonwealth, tampers with or interferes with any equine participant involved in or eligible to compete in a horse race in the Commonwealth is guilty of tampering with or interfering with a horse race.
 - (c) Tampering with or interfering with a horse race is a Class C felony.

➔Section 495. KRS 234.100 is amended to read as follows:

- (1) As used in KRS 234.100 to 234.160 and 234.990 the term "liquefied petroleum gas" means and includes any material which is composed predominantly of any of the following hydrocarbons, or mixtures of them, whether in the liquid or in the gaseous states: propane, propylene, butane (normal butane or isobutane), and butylene.
- (2) "***Commissioner***~~[Executive director]~~" means ***commissioner***~~[executive director]~~ of housing, buildings and construction.

➔Section 496. KRS 234.120 is amended to read as follows:

- (1) Subject to the exceptions provided in subsection (2), no person shall engage in any of the businesses set out in this subsection without first having provided proof to the ***commissioner***~~[executive director]~~ of ability to respond in damages for personal injury and property damages in the amount prescribed, and having obtained from the ***commissioner***~~[executive director]~~ the required license or licenses and paid the prescribed fee therefor:
 - (a) Selling or delivering to the ultimate consumer or user of liquefied petroleum gas; selling liquefied petroleum gas regulating equipment; repairing, installing, or connecting of containers, liquefied petroleum gas appliances, or liquefied petroleum gas utilization equipment; or filling of D.O.T. liquefied petroleum gas containers for ultimate consumer or wholesale dealer. In-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain a liquefied petroleum gas storage facility with an eighteen thousand (18,000) gallon minimum capacity within the boundaries of Kentucky. Out-of-state liquefied petroleum gas dealers, except those holding a valid license on July 15, 1994, shall maintain an eighteen thousand (18,000) gallon minimum capacity liquefied petroleum gas storage facility within fifty (50) miles of the Kentucky border. Until January 1, 2002, the fee for this license shall be one hundred dollars (\$100). Beginning on January 1, 2002, the fee for this license shall be two hundred dollars (\$200), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be one million dollars (\$1,000,000).
 - (b) Selling or delivering liquefied petroleum gas in prefilled or filled-on-site containers of one hundred (100) pound liquefied petroleum gas capacity or less; selling of liquefied petroleum gas regulating equipment; assembly, repairing, installing, or connecting of liquefied petroleum gas containers, liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
 - (c) Selling or filling of D.O.T. liquefied petroleum gas containers of forty-five (45) pounds or less capacity, or selling liquefied petroleum gas at a specific site for use as a motor vehicle fuel. Until January 1, 2002, the fee for this license shall be fifty dollars (\$50). Beginning on January 1, 2002, the fee for this

license shall be one hundred dollars (\$100), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).

- (d) Storing, for resale, liquefied petroleum gas in D.O.T. containers of forty-five (45) pounds or less capacity, or selling D.O.T. containers, storage cabinets, racks, docks, for storage of forty-five (45) pound capacity or less. Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be one hundred thousand dollars (\$100,000).
- (e) Assembling, repairing, installing, or connecting of liquefied petroleum gas containers, or regulating equipment, or liquefied petroleum gas appliances, or any liquefied petroleum gas utilization equipment. Until January 1, 2001, the fee for this license shall be twenty-five dollars (\$25). Beginning on January 1, 2001, the fee for this license shall be fifty dollars (\$50), and the license shall be issued for a period of two (2) years. The minimum liability insurance for this license shall be five hundred thousand dollars (\$500,000).
- (2) Any person engaged in any business for which a license is required under the provisions of subsection (1) and who engages in the business at more than one (1) office or place of business in this state shall obtain a separate license for each such office or place of business and shall pay therefor the required license fee; except that for the purposes of issuance of licenses under subsection (1) all facilities for the storage only of liquefied petroleum gas for resale within a radius of twenty (20) miles of an office or place of business shall be considered a part of the office or place of business and shall not require separate licensure.
- (3) The **commissioner**~~{executive director}~~ shall further have the authority to promulgate and enforce reasonable administrative regulations requiring proof of ability to respond in damages for personal injury and property damages in the minimum amounts required under the provisions of subsection (1), prior to the issuance of a license. The **commissioner**~~{executive director}~~ shall also have authority to suspend or revoke any license issued under this section for willful or gross negligence or for violation of any applicable administrative regulations promulgated under KRS 227.300, but any licensee whose license is suspended or revoked shall be afforded the opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B.

➔Section 497. KRS 234.130 is amended to read as follows:

The initial license required under KRS 234.120 shall be issued by the **department**~~{office}~~ and shall expire on the last day of the licensee's birth month in the next even-numbered year. The **department**~~{office}~~ may reduce the license fee on a pro rata basis for initial licenses issued for less than twenty-four (24) months. Renewed licenses shall expire on the last day of the licensee's birth month of each numbered year after the issuance of the renewed license. Renewal fees shall be the same as the initial license fee.

➔Section 498. KRS 234.140 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~, after a public hearing thereon, shall make, promulgate, and enforce regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing liquefied petroleum gases, and specifying the odorization of said gases and the degree thereof. Said regulations shall be such as are reasonably necessary for the protection of the health, welfare and safety of the public and persons using such materials, and shall be in substantial conformity with the generally accepted standards of safety concerning the same subject matter. Regulations concerning the construction of buildings relating to liquefied petroleum gases shall conform to the uniform state building code after said code is promulgated.
- (2) The **commissioner**~~{executive director}~~ shall promulgate any additional rules and regulations which he or she deems necessary to provide for the safe storage, handling, transportation and use of liquefied petroleum gas.

➔Section 499. KRS 234.160 is amended to read as follows:

All moneys collected under the provisions of KRS 234.100 to 234.160 shall be paid into the State Treasury and credited to a trust and agency fund to be used by the **Department**~~{Office}~~ of Housing, Buildings and Construction solely for the administration and enforcement of KRS 234.100 to 234.160 and 234.990.

➔Section 500. KRS 234.171 is amended to read as follows:

The ~~commissioner~~~~executive director~~ of housing, buildings and construction may appoint an advisory board composed of persons actively engaged in the liquefied petroleum gas industry in the State of Kentucky. The board shall give the ~~commissioner~~~~executive director~~ the benefit of its technical knowledge to aid him or her in supervising and regulating the liquefied petroleum gas industry.

➔Section 501. KRS 234.175 is amended to read as follows:

- (1) Domestic and commercial gas-consuming equipment and appliances shall not be installed unless their correctness as to design, construction, and performance is certified by:
 - (a) A nationally recognized testing agency adequately equipped and competent to perform such services evidenced by the attachment of its seal or label to such gas appliances. This agency shall be one which maintains a program of national inspection of production models of gas appliances, at least once each year on the manufacturer's premises;
 - (b) By the American Gas Association Laboratories, as evidenced by the attachment of its listing symbol or approval seal to gas appliances and a certificate or letter certifying approval under the above-mentioned requirements, or listing by Underwriters' Laboratories, Inc., shall be considered as constituting compliance with the provisions of this section, providing, that the manufacturer has approval and certification of same from the ~~Department~~~~Office~~ of Housing, Buildings and Construction.
- (2) Equipment not subject to A.G.A. or laboratory inspection must have approval of the ~~Department~~~~Office~~ of Housing, Buildings and Construction.
- (3) A person shall not install gas-consuming appliances, equipment, or other components of a gas delivery system unless the installation is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the ~~Department~~~~Office~~ of Housing, Buildings and Construction.
- (4) A person shall not alter, modify, maintain, or repair gas-consuming appliances, equipment, or other components of a gas delivery system unless the alteration, modification, maintenance, or repair is made in accordance with the instructions of the manufacturer of the appliance, equipment, or component and in compliance with the applicable administrative regulations promulgated by the ~~Department~~~~Office~~ of Housing, Buildings and Construction.
- (5) A person licensed under this chapter or an agent or employee of the person shall not be liable for civil damages for injury to persons or property that result from the installation, alteration, modification, maintenance, or repair of a gas-consuming appliance, equipment, or component by a person other than the licensee or the licensee's agent or employee.
- (6)
 - (a) Except as provided in paragraph (b) of this subsection, a person licensed under this chapter or the licensee's agent or employee who provides gas to an end user shall not be liable for civil damages for injury to persons or property that result from the installation, alteration, modification, maintenance, or repair of the gas-consuming appliance, equipment, or component if the installation, alteration, modification, maintenance, or repair is done without the actual knowledge and consent of the licensee or the licensee's agent or employee.
 - (b) A person licensed under this chapter or his or her agent or employee shall not be exempt from liability for civil damages under paragraph (a) of this subsection if the person or his or her agent or employee is negligent or acts intentionally, and the negligence or intentional act causes or partially causes injury or damage.

➔Section 502. KRS 234.180 is amended to read as follows:

- (1) For plants storing liquefied petroleum gases, and used for the dispensing of liquefied petroleum gases in liquid state into container or containers, for resale, plans shall be submitted, in duplicate, to the ~~Department~~~~Office~~ of Housing, Buildings and Construction, and shall be approved by the ~~department~~~~office~~ before construction is started. Plans so submitted shall show the following information as a minimum:
 - (a) The name and address of the owner, and the name and purpose of the plant proposed;
 - (b) Location of the proposed plant in relation to the nearest city, highways, railroads, and built up areas;
 - (c) A plot plan showing dimensions of the area proposed to be used for the plant, distances to the nearest property lines and the location and construction of any buildings which might affect the distances

required under regulations adopted by the ***commissioner***~~[executive director]~~ of housing, buildings, and construction;

- (d) Construction drawings showing the arrangement and construction of all tanks, tank supports, piping, accessories, buildings, and appurtenant items of construction. These drawings shall be in sufficient detail to allow a contractor who is familiar with tank and pipe installation but not necessarily familiar with liquefied petroleum gas installations to use such drawings to satisfactorily complete the installation without further instructions;
 - (e) A copy of the original boiler inspector's report of inspection of the tank or tanks to be used or a reference to manufacturer's name and serial number of the tank so that the report may be obtained direct;
 - (f) The date of completion of the plans, the dates of any subsequent revisions and the signature of the person assuming responsibility for the correctness of the plans.
- (2) For plants, installed for industrial or commercial usage, having a nominal water capacity of 150 gallons or over and serving an aggregate BTU usage of 150,000 BTUs or over and/or used for dispensing liquefied petroleum gas into other containers, not for resale, a report of installation, giving location and equipment installed, must be made to the ***Department***~~[Office]~~ of Housing, Buildings and Construction, not later than ten (10) days after installation.

➔Section 503. KRS 234.272 is amended to read as follows:

As used in KRS 234.270 to 234.302, unless the context otherwise requires:

- (1) "***Commissioner***"~~[Executive Director]~~ means the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Housing, Buildings and Construction;
- (2) "Council" means the Kentucky Propane Education and Research Council created in accordance with KRS 234.290;
- (3) "***Department***"~~[Office]~~ means the state ***Department***~~[Office]~~ of Housing, Buildings and Construction;
- (4) "Education" means any action to provide information regarding propane, propane equipment, mechanical and technical practices relating to the use of propane, and propane uses to consumers and members of the propane industry;
- (5) "Industry" means those persons involved in the production, transportation, and sale of propane and in the manufacture and distribution of propane utilization equipment;
- (6) "Industry trade association" means an organization representing the propane industry which is exempt from tax, under Section 501(c)(3) or (c)(6) of the Internal Revenue Code;
- (7) "Odorized propane" means propane to which an odorant has been added;
- (8) "Person" means any individual, corporation, partnership, association, cooperative, or other business entity;
- (9) "Producer" means the owner of propane at the time it is recovered at a gas processing plant or refinery, without regard to the state in which actual production occurs;
- (10) "Propane" means a hydrocarbon whose chemical composition is predominately C₃H₈, whether recovered from natural gas or crude oil, and includes liquefied petroleum gases and mixtures thereof;
- (11) "Public member" means a member of the council representing significant users of propane, public safety officials, state regulatory officials, or other groups knowledgeable about propane;
- (12) "Research" means any type of study, investigation, or other activity designed to advance the image, desirability, usage, marketability, efficiency, or safety of propane and to further the development of this information;
- (13) "Retail marketer" means a person engaged primarily in the sale of odorized propane to the final user of the product or to retail propane dispensers;
- (14) "Retail propane dispenser" means a person who sells odorized propane to the final user of the product but is not engaged primarily in the business of these sales; and

- (15) "Supplier" means a person, other than a producer, who is the owner of propane in the Commonwealth at the time of odorization or who is the owner of odorized propane at the time it is imported into the Commonwealth.

➔Section 504. KRS 234.274 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of KRS 234.270 to 234.302.

➔Section 505. KRS 234.280 is amended to read as follows:

- (1) Any existing industry trade organization which is fairly representative of the propane industry in Kentucky, such as the Kentucky Propane Gas Association, may at any time after July 15, 1998, make application to the **commissioner**~~[executive director]~~ on forms prescribed by the **department**~~[office]~~ for certification and approval for the purpose of conducting a referendum among producers, suppliers, and retail marketers upon the question of levying an assessment under the provisions of KRS 234.270 to 234.302 and collecting and utilizing the assessment for the purpose stated in the referendum. The application forms shall include, but not be limited to, the following:
- (a) Applicant's name;
 - (b) Applicant's address;
 - (c) Date;
 - (d) Program to be undertaken;
 - (e) Brief statement of how the program is to be implemented;
 - (f) Referendum to be conducted on a statewide basis;
 - (g) Proposed effective date of the program; and
 - (h) Signature of the applicant.
- (2) Upon receipt of the application, the **commissioner**~~[executive director]~~ shall publish the application through the medium of the public press in the state within ten (10) days of receipt.

➔Section 506. KRS 234.282 is amended to read as follows:

Upon being certified by the **commissioner**~~[executive director]~~, the association in KRS 234.280(1) shall be fully authorized and empowered to hold a referendum among producers, suppliers, and retail marketers on the question of whether the industry shall levy upon itself an assessment for the purpose stated in KRS 234.270 to 234.302.

➔Section 507. KRS 234.286 is amended to read as follows:

- (1) The manner, conduct, and management of any referendum held under the provisions of KRS 234.270 to 234.302 shall be under the supervision and direction of the **commissioner**~~[executive director]~~. Any and all expenses in connection with the initial referendum shall be borne by the association conducting the referendum. Any and all expenses in connection with subsequent referenda shall be borne by the council.
- (2) With respect to any referendum conducted under the provisions of KRS 234.270 to 234.302, the association or council responsible for the referendum shall select an independent auditing firm, subject to the approval of the **commissioner**~~[executive director]~~, to conduct the referendum.
- (3) All persons voting in the referendum shall certify to the independent auditing firm the volume of propane represented by their vote. The information provided under this subsection shall be considered proprietary and shall remain confidential.
- (4) The association or council responsible for the referendum shall develop a mechanism for notifying those persons eligible to vote in the referendum. Notice of the referendum, at a minimum, shall be given to all retail marketers in Kentucky holding a "Class A" license from the **department**~~[office]~~ and notice shall be published in existing industry publications with significant circulation within the Commonwealth.

➔Section 508. KRS 234.288 is amended to read as follows:

- (1) The results of the referendum, as certified by the independent auditing firm, shall be submitted to the **commissioner**~~[executive director]~~ within thirty (30) days of certification.

- (2) For the purpose of the referendum, producers and suppliers shall be considered a single class. Upon approval of those persons representing two-thirds (2/3) of the total volume of odorized propane voted in the retail marketer class and approval of those persons representing two-thirds (2/3) of the total volume of propane voted in the producer and supplier class, the **commissioner**~~[executive director]~~ shall issue an order authorizing the assessment.
- (3) The initial assessment proposed shall be no greater than one-tenth of one cent (\$0.001) per gallon of odorized propane. Thereafter, the annual assessment shall be set by the council in an amount adequate to cover the cost of plans and programs developed by the council. In no event shall the annual assessment levied under the provisions of the referendum exceed one-half of one cent (\$0.005) per gallon of odorized propane unless approved by the majority of those voting in both the retail marketer class and the producer and supplier class in a separate referendum. The increase in the annual assessment as provided for in this subsection is limited to one-tenth of one cent (\$0.001) per year.

➔Section 509. KRS 234.290 is amended to read as follows:

- (1) There is hereby established the Kentucky Propane Education and Research Council composed of eleven (11) members appointed by the **commissioner**~~[executive director]~~. Five (5) members shall represent retail marketers, five (5) members shall represent producers and suppliers, and one (1) member shall be the public member as defined in KRS 234.272.
- (2) Council members representing retail marketers, producers, and suppliers shall be appointed based on the nomination of an industry trade association certified according to KRS 234.280. No member representing these categories may be appointed unless recommended by a certified industry trade association. Members in these categories shall be full-time employees or owners of businesses in the industry.
- (3) No employee of a certified industry trade association shall serve as a member of the council and no member of the council may serve concurrently as an officer or member of the board of directors of a certified industry trade association. A director of a certified association may serve as an ex officio nonvoting member of the council.
- (4) No more than one (1) representative from any company or its affiliate may serve on the council at any time.
- (5) In nominating members to the council, a certified association shall consider broad-based representation including:
 - (a) Gas processors and oil refiners among producers;
 - (b) Interstate and intrastate operators among retail marketers;
 - (c) Large and small companies among producers, suppliers, and retail marketers; and
 - (d) Diverse geographic regions of the state.
- (6) Council members shall serve three (3) year terms except that for initial appointments, four (4) members shall be appointed to one (1) year terms, four (4) members to two (2) year terms, and three (3) members to three (3) year terms. Within ninety (90) days after July 15, 1998, certified industry trade organizations shall submit nominations to the **commissioner**~~[executive director]~~. No member shall serve more than two (2) consecutive terms.
- (7) Council members shall receive no compensation for their services. Only the public member may be reimbursed for reasonable and necessary expenses directly related to attendance at council meetings.

➔Section 510. KRS 234.292 is amended to read as follows:

- (1) The council shall establish the annual assessment subject to the limitations of KRS 234.288(3) to be paid by the owner of odorized propane at the time of odorization or at the time of import of odorized propane into the state. The assessment shall be made based on the volume of odorized propane sold for final use within the Commonwealth.
- (2) The assessment shall be listed as a separate line item on the bill and labeled "Kentucky Propane Education and Research Assessment." Assessments collected from purchasers of propane are payable to the council on a monthly basis and are due by the twenty-fifth day of the month following the month of collection.

- (3) The council may establish an alternative means of collecting the assessment if another method is found to be more efficient or effective. The council may establish a late payment charge and rate of interest to be imposed on any person who fails to remit to the council any amount due by the date listed in subsection (2) of this section.
- (4) The council shall elect its own chair and may elect other officers as necessary. The council shall determine its business structure and adopt rules and bylaws for the conduct of its business. The council shall establish procedures for the solicitation of industry comments and recommendations on plans and programs financed by the assessments.
- (5) The council shall keep minutes, books, and records that clearly reflect all of the acts and transactions of the council. The minutes, books, and records shall be made available to the members of the council, the **commissioner**~~executive director~~, and persons paying the assessment.
- (6) The council shall, at the beginning of each fiscal year, prepare and submit to the **commissioner**~~executive director~~ a budget. The **commissioner**~~executive director~~ shall review and comment on the proposed budget.
- (7) The books of the council shall be audited by a certified public accountant at least once each fiscal year. Copies of the audit shall be provided to the members of the council and the **commissioner**~~executive director~~.
- (8) The council may contract with an industry association certified under KRS 234.280 for administrative and other services subject to the limitation in KRS 234.294(2).

➔Section 511. KRS 234.298 is amended to read as follows:

- (1) Upon petition to the **commissioner**~~executive director~~ by producers, suppliers, and retail marketers representing thirty-five percent (35%) of the volume of propane in each class, the council shall conduct a referendum to determine if the industry favors termination of the council and the assessment. Termination shall not take effect unless it is approved by persons representing a majority of the total volume of odorized propane voted in the retail marketer class and by persons representing a majority of the total volume of propane voted in the producer and supplier class.
- (2) The council shall conduct a referendum five (5) years after the date of the first referendum and each subsequent five (5) year period to determine if the assessment should be continued or terminated.
- (3) If the council expresses in writing its desire to the **commissioner**~~executive director~~ to discontinue the assessment program and terminate the program, the **commissioner**~~executive director~~, after reviewing the request and conducting whatever proceedings are deemed appropriate and necessary in connection with the request, may terminate the program effective at the end of the calendar year in which the action is taken.

➔Section 512. KRS 234.321 is amended to read as follows:

- (1) The tax imposed by KRS 234.320 shall not be collected when the liquefied petroleum gas sold by the dealer is used to propel motor vehicles on the public highways, either within or without this state, when the motor vehicles using the liquefied petroleum gas are equipped with carburetion systems approved by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet.
- (2) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall establish emission standards for carburetion systems.

➔Section 513. KRS 235.010 is amended to read as follows:

As used in this chapter, unless the context clearly requires a different meaning:

- (1) "Vessel" means every description of watercraft, other than a seaplane on the water;
- (2) "Motorboat" means any vessel propelled by machinery, whether or not such machinery is the principal source of propulsion, except for the following:
 - (a) Boats or vessels propelled totally by a direct current battery-powered motor when used on private waters;
 - (b) Boats propelled by human power employing the use of hand or foot operation; and
 - (c) Federally regulated commercial vessels;
- (3) "Owner" means a person, other than a lienholder, having the property in or title to a motorboat. The term includes a person entitled to the use or possession of a motorboat subject to an interest in another person,

reserved or created by agreement and securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security;

- (4) "Personal watercraft" means a vessel which uses an internal combustion engine to power a jet pump for its primary source of propulsion and is designed to be operated by a person sitting, standing, or kneeling on the vessel rather than to be operated by a person sitting or standing inside the vessel;
- (5) "Safe boating certificate" means a document attesting the successful completion of instruction, approved by the department or given by the United States Coast Guard or Coast Guard Auxiliary or the United States Power Squadron, to prepare an individual to safely operate a motorboat or personal watercraft on the waters of the Commonwealth;
- (6) "Waters of this state" means any waters within the territorial limits of this state;
- (7) "Person" means an individual, partnership, firm, corporation, association, or other entity;
- (8) "Operate" means to navigate or otherwise use a motorboat or a vessel;
- (9) "Cabinet" means the Tourism, Arts and Heritage Cabinet;
- (10) "Department" means the Department of Fish and Wildlife Resources;
- (11) "License" and "certificate of number" as used herein are synonymous;
- (12) "Clerk" means county clerk;
- (13) "Division of Law Enforcement" means the Division of Law Enforcement, Department of Fish and Wildlife Resources within the Tourism, Arts and Heritage Cabinet;
- (14) "Title" means the certificate of title;
- (15) "Commissioner" means the commissioner of the Department of Fish and Wildlife Resources;
- (16) "Federally regulated commercial vessel" means any vessel holding a United States certificate of documentation with a coastwise trade endorsement;
- (17) "Marina" means a dock or basin providing moorings for motorboats and offering supply, repair, or other services for remuneration; and
- (18) "Marine sanitation device" means equipment that is identified by the United States Coast Guard as meeting the standards of the United States Environmental Protection Agency or that is approved by the **Energy and Environment** ~~(Environmental and Public Protection)~~ Cabinet, to eliminate the discharge of untreated sewage from vessels into the waters of the Commonwealth and is a device that receives, treats, retains, or discharges sewage.

➔Section 514. KRS 236.010 is amended to read as follows:

As used in this chapter:

- (1) "Boiler" or "boilers" means and includes a closed vessel in which water or other liquid is heated, steam or vapor is generated, steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use externally to itself, by the direct application of energy from the combustion of fuels, or from electricity, solar or nuclear energy. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves:
 - (a) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than fifteen (15) pounds per square inch gauge;
 - (b) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding one hundred sixty (160) pounds per square inch gauge or temperatures exceeding two hundred fifty (250) degrees Fahrenheit; and
 - (c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding fifteen (15) pounds per square inch gauge or a hot water boiler operating at pressures not exceeding one hundred sixty (160) pounds per square inch gauge or temperatures not exceeding two hundred fifty (250) degrees Fahrenheit.

- (2) "Pressure vessel" means a vessel in which the pressure is obtained from an external source or by the application of heat other than those vessels defined in subsection (1) of this section.
- (3) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of housing, buildings and construction.
- (4) "~~Department~~~~[Office]~~" means the *Department*~~[Office]~~ of Housing, Buildings and Construction.
- (5) "ASME" means American Society of Mechanical Engineers.
- (6) "Board" means Board of Boiler and Pressure Vessel Rules.
- (7) "Certificate inspection" means an inspection, the report of which is used by the chief boiler inspector to determine whether or not a certificate, as provided by subsection (1) of KRS 236.120, may be issued.
- (8) "Rule" or "regulation" means a general regulation adopted by the *commissioner*~~[executive director]~~ upon advisement of the board and filed and approved in accordance with KRS Chapter 13A designed to insure the safety of boilers and pressure vessels that affects or may affect property rights of a designated class of owners, or designed for the prevention of loss or damage to property, loss of life, or personal injury from boiler or pressure vessel explosion or from certain indicated hazards related thereto.
- (9) "Order" or "summary order" means an order of the state fire marshal, the chief boiler inspector, or a boiler inspector, made in accordance with this chapter or KRS Chapter 227 and designed for the prevention of loss or damage to property, loss of life, or personal injury from boiler or pressure vessel malfunction or explosion, that affects or may affect the property rights of a particular owner of designated property.
- (10) "Division" means the Division of *Plumbing*~~[Fire Prevention]~~ in the ~~department~~~~[office, headed by the state fire marshal]~~.
- (11) "Qualified welder" means a welder or welding machine operator who has passed the tests required by Section IX of the ASME code.
- (12) "Person" or "firm" means any individual, firm, partnership, or corporation.

➔Section 515. KRS 236.020 is amended to read as follows:

- (1) In the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction, Division of *Plumbing*~~[Fire Prevention]~~, there shall be a Board of Boiler and Pressure Vessel Rules, which shall hereafter be referred to as the board, consisting of seven (7) members including the chief boiler inspector who shall serve as chairman. The other members shall be appointed to the board by the Governor; one (1) for a term of one (1) year, one (1) for a term of two (2) years, two (2) for a term of three (3) years, and two (2) for a term of four (4) years, or until their successors are appointed and qualified. At the expiration of their respective terms of office they, or their successors identifiable with the same interest respectively as provided in this section, shall be appointed for terms of four (4) years each. The Governor may at any time remove any member of the board. Upon the death or incapacity of any member the Governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these six (6) appointed members, one (1) shall be a practical steam operating engineer of high pressure boilers, or any other representative of owners and users of high pressure boilers or pressure vessels within the state; one (1) shall be a representative of the boiler manufacturers or pressure vessel manufacturers within the state; one (1) shall be a representative of a boiler insurance company licensed to do business within the state; one (1) shall be a representative of the boilermakers within the state selected from a list of five (5) names submitted by the Kentucky State Building and Construction Trades Council; one (1) shall be a representative of pipe erecting concerns doing business within the state; and one (1) shall be a metallurgist, welder, or a person representing the welding industry. The board shall meet at least four (4) times each year at the Capitol or other place designated by the board. No approval, decision, or ruling of the board shall be effective unless supported by the vote of at least five (5) members thereof.
- (2) The members of the board shall serve without salary and shall receive their actual necessary expenses, incurred while in the performance of their duties as members of the board, to be paid in the same manner as in the case of other state officers.
- (3) The division shall provide such administrative support and assistance as may be necessary for the board to carry out its duties and responsibilities under this chapter.

➔Section 516. KRS 236.030 is amended to read as follows:

After reasonable notice and opportunity to be heard in accordance with KRS Chapter 13A, the ~~commissioner~~~~executive director~~ of housing, buildings and construction, upon advisement and subject to comment by the board under the requirements of KRS 198B.030(9) and (10) and 198B.040(11), shall, by administrative regulation, fix reasonable standards for the safe construction, installation, inspection, and repair of boilers, pressure vessels, and associated pressure piping in this state. Such administrative regulations shall be enforced by the ~~Department~~~~Office~~ of Housing, Buildings and Construction, Division of ~~Plumbing~~~~Fire Prevention~~.

➔Section 517. KRS 236.040 is amended to read as follows:

- (1) No boiler or pressure vessel which does not conform to the rules and regulations formulated by the ~~commissioner~~~~executive director~~ governing new construction and installation shall be installed and operated in this state from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective.
- (2) All new connecting piping subjected to pressure emanating from a power boiler or pressure vessel shall be considered part of the boiler or pressure vessel installation, subject to the same boiler or pressure vessel code requirements, and shall be designed in accordance with the rules of ASME power piping code ANSI 31.1 or its subsequent revisions and ASME boiler and pressure vessel code Sections I, and VIII (division 1) and their subsequent revisions. Inspection of such piping shall be performed by an inspector qualified under KRS 236.070 or KRS 236.080.
- (3) All new connecting piping subjected to pressure emanating from a heating boiler shall be considered part of the heating boiler installation, subject to the same boiler code requirements and shall be designed in accordance with the rules of the ASME heating boiler code, Section 4 and its subsequent revisions and this chapter. Inspection of such piping shall be performed by a boiler and pressure vessel inspector.

➔Section 518. KRS 236.050 is amended to read as follows:

- (1) The maximum allowable working pressure of a boiler or pressure vessel carrying the ASME code symbol shall be determined by the applicable sections of the code under which it was constructed and stamped.
- (2) The maximum allowable working pressure of a boiler or pressure vessel which does not carry the ASME code symbol shall be computed in accordance with the ASME "Suggested Rules Governing Existing Installations", Section I appendix, Section IV appendix, and Section VIII appendix and the regulations adopted in accordance with KRS 236.030.
- (3) This chapter shall not be construed as in any way preventing the use or sale of a boiler referred to in this section, provided it has been made to conform to the rules and regulations of the ~~commissioner~~~~executive director~~ governing existing installations; and provided, further, it has not been found upon inspection to be in an unsafe condition.

➔Section 519. KRS 236.060 is amended to read as follows:

- (1) KRS 236.005 to 236.150 shall not apply to boilers or pressure vessels or related piping under federal control.
- (2) KRS 236.005 to 236.150 shall not apply to the following boilers or related piping:
 - (a) Boilers or pressure vessels located on farms and used solely for agricultural purposes;
 - (b) Boilers or pressure vessels located at any oil refineries;
 - (c) Boilers or pressure vessels located at any utility operating under a certificate issued pursuant to KRS 278.020, if the boilers or pressure vessels are inspected by a special boiler inspector under the provisions of KRS 236.110, except that the inspection interval provided for in KRS 236.110 shall be extended to eighteen (18) months;
 - (d) Steam or vapor boilers used for heating purposes carrying a pressure of not more than fifteen (15) pounds per square inch gauge, and which are located in private residences;
 - (e) Hot water heating boilers carrying a pressure of not more than thirty (30) pounds per square inch gauge which are located in private residences or hot water supply boilers which are located in private residences;

- (f) Any unfired pressure vessels used as containers for liquefied petroleum gases and subject to the jurisdiction of the ~~Department~~~~Office~~ of Housing, Buildings and Construction under KRS Chapter 234;
- (g) Pressure vessels used for transportation of compressed gases if constructed and operated in compliance with specifications and regulations of another state or federal authority;
- (h) Pressure vessels containing air located on vehicles operating under the regulations of another state or federal authority;
- (i) Pressure vessels operating at a maximum pressure of fifteen (15) PSI or less;
- (j) Single wall pressure vessels having an inside diameter of six (6) inches;
- (k) Pressure vessels with a nominal water containing capacity of one hundred twenty (120) gallons or less, to be used for domestic supply purposes, for containing water under pressure, including those containing air, the compression of which serves only as a cushion;
- (l) Pressure vessels containing water heated by steam or other indirect means when none of the following are exceeded:
 - 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
 - 2. Water temperature of two hundred ten (210) degrees Fahrenheit;
 - 3. Water storage capacity of one hundred twenty (120) gallons;
- (m) Coil type hot water boilers without a steam space and where no steam is generated within the confines of the unit but where water flashes into steam when released to atmospheric pressure by the operation of a manually operated nozzle, unless one (1) of the following is exceeded:
 - 1. Three quarter (3/4) inch inside diameter tubing or pipe size with no drum or header attached;
 - 2. Six (6) gallon water containing capacity;
 - 3. Three hundred fifty (350) degrees Fahrenheit water temperature;
- (n) Water heaters which are directly fired with oil, gas, or electricity, when none of the following limitations are exceeded:
 - 1. Heat input of two hundred thousand (200,000) BTU/Hr.;
 - 2. A water temperature of two hundred ten (210) degrees Fahrenheit;
 - 3. A water containing capacity of one hundred twenty (120) gallons;
- (o) Pressure vessels which may be classified as:
 - 1. Pressure containers which are integral parts of components of rotating or reciprocating mechanical devices such as pumps, compressors, turbines, generators, engines, and hydraulic or pneumatic cylinders where the primary design considerations or stresses are derived from the functional requirements of the device; or
 - 2. Structures whose primary function is the transport of fluids from one location to another within a system of which it is an integral part, that is, piping system.
- (3) The fees required by KRS 236.120(1) and 236.130 shall not apply to standard and miniature antique and hobby boiler-operated tractors and equipment used solely for exhibition, if the boiler uses a fifty (50) pounds per square inch or less gauge.

➔Section 520. KRS 236.070 is amended to read as follows:

The ~~department~~~~office~~ shall employ boiler and pressure vessel inspectors who shall have had at the time of appointment not less than five (5) years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and pressure vessels as a mechanical engineer, practical steam operating engineer, boilermaker, pressure vessel inspector or boiler inspector, and who shall have passed the examination provided for in KRS 236.090.

➔Section 521. KRS 236.080 is amended to read as follows:

- (1) In addition to the boiler inspectors authorized by KRS 236.070, the ~~department~~~~office~~ shall, upon the request of any company authorized to insure against loss from explosion of boilers and pressure vessels in this state, issue to any boiler inspectors of said company commissions as special boiler inspectors, provided that each such special boiler inspector before receiving such commission, shall satisfactorily pass the examination provided for in KRS 236.090, or, in lieu of such examination, shall hold a commission or certificate of competency as an inspector of boilers and pressure vessels for a state that has a standard of examination substantially equal to that of this Commonwealth or a commission as an inspector of boilers and pressure vessels issued by the National Board of Boiler and Pressure Vessel Inspectors.
- (2) Such special boiler inspectors shall receive no salary from, nor shall any of their expenses be paid by, the state and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of an insurance company duly authorized as aforesaid and upon his or her maintenance of the standards imposed by this chapter.
- (3) Such special inspectors shall inspect all boilers and pressure vessels insured by their respective companies, and, when so inspected and reported as required, the owners and users of such insured boilers and pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in KRS 236.120 and 236.130.
- (4) Each company employing such special boiler inspectors shall within thirty (30) days following each certificate inspection made by such inspectors, file a report of such inspection with the division upon appropriate forms prescribed by the division. Other than the certificate inspection report, no reporting of other inspections shall be required except when such inspections disclose that the boiler is in a dangerous condition.
- (5) Boiler and pressure vessel inspectors, whether employees of the ~~department~~~~office~~ or special inspectors, shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed or is being installed, for the purpose of ascertaining whether such boiler or pressure vessel is constructed and installed or is being installed in accordance with the law, and any orders, rules, or regulations in existence at that time.

➔Section 522. KRS 236.090 is amended to read as follows:

Examination for a certificate of competency or a national board commission for boiler inspectors or special boiler inspectors shall be in writing and shall be given and monitored by the boiler inspection section *of the division*. Examinations are given on the first Wednesday and Thursday of the months of March, June, September and December of each year. The record of an applicant's examination shall be accessible to said applicant and his employer.

➔Section 523. KRS 236.100 is amended to read as follows:

- (1) Any boiler inspector's or special inspector's appointment or commission may be suspended or revoked by the ~~department~~~~office~~, after due investigation and hearing thereon, for the incompetence or untrustworthiness of the holder thereof, or for willful falsification of any matter or statement contained in his or her application or in a report of any inspection made by him or her. Written notice of and an opportunity for a hearing on any suspension or revocation under this subsection shall be given by the ~~department~~~~office~~ to the inspector, and in the case of a special boiler inspector, also to his or her employer in accordance with the provisions of KRS Chapter 13B.
- (2) A person whose appointment or commission has been suspended shall be entitled to apply to the ~~commissioner~~~~executive director~~, after ninety (90) days from the date of the suspension, for reinstatement of the appointment or commission.
- (3) Any willful falsification of an application or inspection report shall constitute a misdemeanor and shall subject the inspector or special inspector to the penalties provided in KRS 236.990.

➔Section 524. KRS 236.110 is amended to read as follows:

- (1) Each boiler or pressure vessel used or proposed to be used within this state, except boilers or pressure vessels exempt under KRS 236.060, shall be thoroughly inspected as to their construction, installation, and condition as follows:

- (a) Power boilers shall receive a certificate inspection annually which shall be an internal inspection where construction permits; otherwise it shall be as complete an inspection as possible. Such boilers shall also be externally inspected while under pressure if possible.
 - (b) Low pressure steam or vapor heating boilers, hot water heating boilers, and hot water supply boilers shall receive a certificate inspection biennially; said inspection shall include internal inspection where construction permits. External inspections are required where construction does not permit internal inspection.
 - (c) Pressure vessels shall be inspected at time of installation to ascertain that they are in conformance with KRS 236.040. Subsequent reinspections, if any, shall be set by regulation of the ~~department~~~~office~~.
 - (d) A grace period of two (2) months beyond the periods specified in paragraphs (a), (b), and (c) of this subsection may elapse between inspections.
 - (e) The ~~department~~~~office~~ may at its discretion permit longer periods between inspections.
 - (f) All new boiler or pressure vessel installations to be used within this state, excepting boilers or pressure vessels exempted under KRS 236.060, shall be inspected during the installation period to ascertain that all pressure piping conforms to the requirements of KRS 236.040. An inspection certificate may not be issued on any new installation until these requirements are fulfilled.
 - (g) It shall be the responsibility of the installing contractor to request the above inspection by notifying the boiler inspection section of the ~~division~~~~state fire marshal's office~~ that the installation is ready for such inspection. This must be accomplished prior to covering of any welded or mechanical joints on pressure piping or valves by insulation, paint, or structural materials. The contractor shall provide ready access for the inspector to all parts of the piping system.
 - (h) Inspection of pressure piping applies only to new boiler or pressure vessel installations, or reinstallations, or installation of secondhand boilers (as defined under "Boiler Rules and Regulations"). No annual or biennial reinspection is required once the system has been approved.
 - (i) "Existing installations," as applied to inspection of piping systems is defined as any boiler and piping system completed and approved for operation prior to July 1, 1970. Such existing installations will not be subject to the foregoing piping inspection unless adjudged patently unsafe for operation by a boiler inspector holding a commission issued by the National Board of Boiler and Pressure Vessel Inspectors. If an existing installation is so adjudged the owner will be granted full rights of appeal as set forth under KRS 236.150.
 - (j) At such time as an existing installation undergoes extensive overhaul or more than fifty (50) linear feet of pressure piping requires renewal or is added to the existing system, the entire system of piping carrying pressure emanating from the boilers shall be subject to inspection and will be brought up to standards required by KRS 236.040.
 - (k) The installing contractor of a piping system carrying pressure emanating from a boiler or pressure vessel subject to inspection under provisions of KRS 236.050 to 236.150, shall pay to the ~~department~~~~office~~, upon completion of inspection, fees in accordance with a schedule set up by the board and approved by the ~~commissioner~~~~executive director~~.
 - (l) Operation of a pressure piping system in conjunction with a boiler or pressure vessel, either of which has not been inspected and approved as set forth above, shall be subject to fines and penalties as set forth in KRS 236.990.
- (2) The inspections required in this section shall be made by a boiler and pressure vessel inspector or by a special boiler inspector except that all new installations shall be inspected by a boiler inspector employed by the ~~department~~~~office~~.
 - (3) If at any time a hydrostatic, pneumatic, or any other nondestructive test shall be deemed necessary for ascertaining acceptability, the same shall be made by the contractor or owner-user, whoever is responsible for the condition, and be witnessed by a boiler inspector or special boiler inspector.
 - (4) All boilers to be installed in this state after July 1, 1970, and all pressure vessels installed in this state after July 15, 1980, shall be inspected during construction as required by the applicable rules and regulations of the ~~department~~~~office~~ by a boiler and pressure vessel inspector authorized to inspect boilers and pressure vessels

in this state, or, if constructed outside of the state, by an inspector holding a commission from the national board as an inspector of boilers and pressure vessels.

- (5) No person shall willfully falsify any statement designed to secure the issuance, renewal or reinstatement of a certificate of inspection. Violation of this subsection shall subject such a person to the penalties stated in KRS 236.990.

➔Section 525. KRS 236.120 is amended to read as follows:

- (1) If, upon inspection, a boiler or pressure vessel is found to comply with the administrative regulations of the ~~department~~~~office~~, the owner, user, or insurance company of it shall pay to the ~~department~~~~office~~ the sum of fifteen dollars (\$15). When the inspection is made by a special inspector, the inspector shall attach the certificate fee to his or her report. The chief boiler inspector, or his or her duly authorized representative, shall issue to the owner or user a certificate of inspection for the boiler or pressure vessel bearing the date of inspection and specifying the maximum pressure under which the boiler may be operated. An inspection certificate shall be valid for not more than fourteen (14) months from its date in the case of power boilers, and twenty-six (26) months in the case of low pressure steam or vapor heating boilers, hot water heating boilers, or hot water supply boilers. Certificates shall be posted under glass in the room containing the boiler inspected or, in the case of a portable boiler, shall be kept in a tool box accompanying the boiler.
- (2) No certificate of inspection issued for an insured boiler, inspected by a special inspector, shall be valid after the insurance on the boiler for which it was issued terminates. Boilers shall be insured by a company duly authorized by this state to carry the insurance.
- (3) The ~~commissioner~~~~executive director~~ or his or her authorized representative may at any time suspend a certificate of inspection if, in his or her opinion, the boiler or pressure vessel for which it was issued cannot be operated without menace to the public safety, or if the boiler or pressure vessel is found not in compliance with this chapter or the administrative regulations of the ~~department~~~~office~~. A special boiler inspector shall have corresponding powers with respect to suspending certificates of inspection for boilers insured by the company employing him or her. The suspension of a certificate of inspection shall continue in effect until the boiler or pressure vessel conforms to this chapter and administrative regulations of the board, and until the inspection certificate is reinstated.
- (4) A suspended certificate of inspection shall be reissued on the recommendation of the boiler inspector or special boiler inspector who first caused the suspension or at the discretion of the chief boiler inspector.

➔Section 526. KRS 236.130 is amended to read as follows:

- (1) The owner or user of a boiler or pressure vessel required by this chapter to be inspected shall pay to the ~~department~~~~office~~, upon completion of inspection, reasonable fees not to exceed the cost of inspection as established by the ~~commissioner~~~~executive director~~ upon advice of the board pursuant to KRS Chapter 13A.
- (2) All other inspections, including shop inspections and inspection of secondhand or used boilers made by the boiler inspector shall be charged for at the rate set by regulation promulgated by the ~~commissioner~~~~executive director~~ upon advice of the board pursuant to KRS Chapter 13A.
- (3) All fees received by the ~~department~~~~office~~ shall be held in a trust and agency fund from which the expenses of administering this chapter and other ~~department~~~~office~~ responsibilities may be paid and no portion of said fund shall lapse into the general fund at the end of each fiscal year.

➔Section 527. KRS 236.150 is amended to read as follows:

- (1) Any person aggrieved by an order or act of a boiler and pressure vessel inspector, under this chapter, may, within fifteen (15) days of notice thereof, appeal from the order or act to the ~~commissioner~~~~executive director~~ who shall schedule and conduct an administrative hearing in accordance with KRS Chapter 13B.
- (2) Any person aggrieved by a final order of the ~~commissioner~~~~executive director~~ may file a petition in the Franklin Circuit Court for judicial review in accordance with KRS Chapter 13B.

➔Section 528. KRS 236.210 is amended to read as follows:

- (1) No person shall engage in the business of installing, erecting, or repairing boilers unless he or she first obtains a license from the ~~commissioner~~~~executive director~~ on recommendation of the board.

- (2) Each person, firm or corporation must pass an examination prepared by the board and administered by the **department**~~{office}~~.
- (3) A license shall be issued by the **commissioner**~~{executive director}~~ or the chief boiler inspector upon recommendation of the board and payment of a reasonable fee not to exceed the cost of examination and other expenses involved as established by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (4) The license shall be renewable annually, not later than the first of the month following the expiration date, upon payment of a reasonable fee not to exceed the costs involved in such renewal as established by the **commissioner**~~{executive director}~~ upon advice of the board pursuant to KRS Chapter 13A.
- (5) All individuals in the employ of a licensee shall not be required to be licensed.

➔Section 529. KRS 236.240 is amended to read as follows:

- (1) No person shall install, erect or make major repairs affecting the strength of a boiler or pressure vessel without first securing a permit from the **department**~~{office}~~. Permits shall be issued only to persons licensed under KRS 236.210 to 236.260.
- (2) No work shall be performed except by or under the supervision of such licensed person. The permit fees shall be set by the board.
- (3) The permit fees will include one (1) interim inspection and one (1) final inspection for issuance of boiler certificate of inspection.
- (4) Special inspections and more than two (2) inspections requested by the licensee for each permit will be charged fees in accordance with KRS 236.130.

➔Section 530. KRS 236.250 is amended to read as follows:

- (1) No person shall make major repairs affecting the strength or safety of boilers or pressure vessels without first securing a permit from the **department**~~{office}~~ unless repairs have been authorized by a boiler inspector or special boiler inspector pending issuance of the permit or unless such repairs are emergency repairs authorized by the **department**~~{office}~~, a special boiler inspector or a boiler inspector pending issuance of the permit. No permit will be required for emergency items not affecting the strength of the boiler or pressure vessel, when performed by qualified persons regularly employed by firms utilizing properly qualified procedures. Permits shall only be issued to persons licensed under the provisions of this chapter. A permit fee shall be paid directly to the **department**~~{office}~~, and shall accompany the repair application.
- (2) Payment of permit to repair fees will not be required from firms utilizing properly qualified welding procedures and regularly employing qualified welders, certified by and registered with the **department**~~{office}~~, to weld on boilers owned and operated by such firms.

➔Section 531. KRS 236.260 is amended to read as follows:

The **commissioner**~~{executive director}~~, the chief boiler inspector or any deputy inspector shall have free access, during reasonable hours, to any premises in the state where a boiler or pressure vessel is being constructed, installed or repaired for the purpose of ascertaining whether the work being performed is in accordance with the provisions of KRS Chapter 236 or any orders or regulations made thereunder.

➔Section 532. KRS 236.990 is amended to read as follows:

- (1) It shall be unlawful for any person, firm, partnership, or corporation to operate in this state a boiler or pressure vessel without a valid certificate of inspection. The operation of a boiler or pressure vessel without a valid certificate, or at a pressure exceeding that specified in an inspection certificate, shall constitute a Class B misdemeanor on the part of the owner, user, or operator. Each day of unlawful operation shall constitute a separate offense.
- (2) Any person who violates the provisions of KRS 236.040(1); 236.080(4); 236.110(1), (4) and (5); 236.210(1); 236.220(1); 236.240(1) and (2); 236.250(1); or any proper order or administrative regulation made or promulgated thereunder; or who hinders or obstructs an authorized inspector in the performance of his or her duties under this chapter, shall be subject to the penalties in subsection (1) above.
- (3) Any person who willfully violates any provision of this chapter, or any administrative regulation, emergency order, or order of the state fire marshal, or an authorized deputy state fire marshal, or the chief boiler inspector,

or of any authorized boiler or pressure vessel inspector, promulgated or made pursuant to this chapter, shall be subject to suspension or revocation of any appointment, commission, certification, registration, license, or permit made or issued by the ~~department~~~~{office}~~ and held by that person, in accordance with the procedures specified in KRS 236.220, or in lieu of a suspension or revocation, shall be subject to an administrative fine of not less than ten dollars (\$10) and not exceeding five hundred dollars (\$500) after notice and hearing by the board in accordance with KRS 236.220. Each day these violations exist shall, in the discretion of the board, be considered as a separate violation.

- (4) As an aid to enforcement of the provisions of this chapter, or of any administrative regulation or order relating thereto, the state fire marshal or his or her authorized deputy or employee may take any administrative action or bring any legal action in the manner authorized in KRS Chapter 227 that is designed to prevent or correct any condition constituting or threatening to constitute a violation of any provision of this chapter.

➔Section 533. KRS 238.505 is amended to read as follows:

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

- (1) "~~Department~~~~{Office}~~" means the ~~Department~~~~{Office}~~ of Charitable Gaming within the ~~{Environmental and~~
~~Public Protection Cabinet}~~;
- (2) "Charitable gaming" means bingo, charity game tickets, raffles, and charity fundraising events conducted for fundraising purposes by charitable organizations licensed and regulated under the provisions of this chapter. "Charitable gaming" shall not include slot machines, electronic video gaming devices, wagering on live sporting events, or simulcast broadcasts of horse races;
- (3) "Charitable organization" means a nonprofit entity organized for charitable, religious, educational, literary, civic, fraternal, or patriotic purposes;
- (4) "Bingo" means a specific game of chance in which participants use cards or paper sheets, or card-minding device representations thereof, divided into horizontal and vertical spaces, each of which is designated by a letter and a number, and prizes are awarded on the basis of the letters and numbers on the card conforming to a predetermined and preannounced configuration of letters and numbers selected at random;
- (5) "Charity game ticket" means a game of chance using a folded or banded paper ticket, or a paper card with perforated break-open tabs, the face of which is covered or otherwise hidden from view to conceal a number, letter, symbol, or set of numbers, letters, or symbols, some of which have been designated in advance as prize winners and shall include charity game tickets that utilize a seal card. "Charity game ticket" shall include pulltabs;
- (6) "Seal card" means a board or placard used in conjunction with charity game tickets, that contains a seal or seals which, when removed or opened, reveal predesignated winning numbers, letters, or symbols;
- (7) "Raffle" means a game of chance in which a participant is required to purchase a ticket for a chance to win a prize, with the winner to be determined by a random drawing;
- (8) "Charity fundraising event" means an activity of limited duration at which games of chance approved by the ~~department~~~~{office}~~ are conducted, including bingo, raffles, charity game tickets, special limited charitable games, and wagering on prerecorded horse races, KRS Chapter 230 notwithstanding. Examples of such activities include events that attract patrons for community, social, and entertainment purposes apart from charitable gaming, such as fairs, festivals, carnivals, licensed charitable gaming organization conventions, and bazaars;
- (9) "Manufacturer" means a person who assembles from raw materials or subparts any charitable gaming equipment or supplies used in the conduct of charitable gaming, including a person who converts, modifies, and adds to or removes parts from, charitable gaming equipment and supplies. The term shall not include:
 - (a) Any person who services or repairs charitable gaming supplies and equipment, so long as that person replaces or repairs an incidental, malfunctioning, or nonfunctioning part with a similar or identical part; and
 - (b) Any distributor who cuts, collates, and packages for distribution any gaming supplies and equipment purchased in bulk;

- (10) "Distributor" means a person who sells, markets, leases, or otherwise furnishes to a charitable organization charitable gaming equipment or supplies, or both, used in the conduct of charitable gaming. "Distributor" shall not include:
- (a) A resident printer who prints raffle tickets at the request of a licensed charitable organization; and
 - (b) A licensed charitable organization that affects a one-time donation of charitable gaming supplies or equipment to another licensed charitable organization if the donation is first approved by the ~~department~~~~office~~.
- (11) "Charitable gaming facility" means a person, including a licensed charitable organization, that owns or is a lessee of premises which are leased or otherwise made available to two (2) or more licensed charitable organizations during a one (1) year period for the conduct of charitable gaming;
- (12) "Gross receipts" means all moneys collected or received from the conduct of charitable gaming;
- (13) "Adjusted gross receipts" means gross receipts less all cash prizes and the amount paid for merchandise prizes purchased;
- (14) "Net receipts" means adjusted gross receipts less all expenses, charges, fees, and deductions authorized under this chapter;
- (15) "Charitable gaming supplies and equipment" means any material, device, apparatus, or paraphernalia customarily used in the conduct of charitable gaming, including bingo cards and paper, charity game tickets, and other apparatus or paraphernalia used in conducting games of chance at charity fundraising events subject to regulation under this chapter. The term shall not include any material, device, apparatus, or paraphernalia incidental to the game, such as pencils, daubers, playing cards, or other supplies that may be purchased from normal sources of supply;
- (16) "Door prize" means a prize awarded to a person based solely upon the person's attendance at an event or the purchase of a ticket to attend an event;
- (17) "Special limited charitable game" means roulette; blackjack; poker; keno; money wheel; baccarat; pusher-type games; any dice game where the player competes against the house; and any other game of chance as identified, defined, and approved by administrative regulation of the ~~department~~~~office~~;
- (18) "Special limited charity fundraising event" means any type of charity fundraising event, commonly known as and operated as a "casino night," "Las Vegas night," or "Monte Carlo night," at which the predominant number or types of games offered for play are special limited charitable games;
- (19) "Session or bingo session" means a single gathering at which a bingo game or series of successive bingo games are played, excluding bingo played at a charity fundraising event;
- (20) "Immediate family" means:
- (a) Spouse and parents-in-law;
 - (b) Parents and grandparents;
 - (c) Children and their spouses; and
 - (d) Siblings and their spouses;
- (21) "Affiliate" means any corporation, partnership, association, or other business or professional entity or any natural person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a licensed manufacturer, distributor, or charitable gaming facility;
- (22) "Secretary" means the secretary of the ~~Environmental and~~ Public Protection Cabinet;
- (23) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Charitable Gaming within the ~~Department of~~ Public Protection **Cabinet**;
- (24) "Chairperson" means the chief executive officer and any officer, member, or employee of a licensed charitable organization who will be involved in the management and supervision of charitable gaming as designated in the organization's charitable gaming license application under KRS 238.535(9)(g);
- (25) "Year" means calendar year except as used in KRS 238.545(4), 238.547(1), and 238.555(7), when "year" means the licensee's license year; and

- (26) "Card-minding device" means any mechanical, electronic, electromechanical, or computerized device that is interfaced with or connected to equipment used to conduct a game of bingo and that allows a player to store, display, and mark a bingo card face. A card-minding device shall not be designed and manufactured to resemble any electronic gaming device that utilizes a video display monitor, such as a video lottery terminal, video slot machine, video poker machine, or any similar video gaming device.

➔Section 534. KRS 238.510 is amended to read as follows:

- (1) The ~~*Department*~~~~{Office}~~ of Charitable Gaming is created as *a department*~~{an office}~~ within the ~~{Department of}~~Public Protection ~~{within the Environmental and Public Protection}~~ Cabinet. The ~~*department*~~~~{office}~~ shall license and regulate the conduct of charitable gaming and license and regulate charitable organizations that desire to engage in charitable gaming, charitable gaming facilities, manufacturers, and distributors in the Commonwealth of Kentucky in accordance with the provisions of this chapter.
- (2) The ~~*department*~~~~{office}~~ shall be headed by *a commissioner*~~{an executive director}~~ who shall be appointed by the ~~{secretary with the approval of the}~~ Governor. The ~~*commissioner*~~~~{executive director}~~ shall employ staff as may be necessary to administer and enforce the provisions of this chapter.
- (3) All ~~*department*~~~~{office}~~ staff shall be classified and employed in accordance with applicable personnel requirements of the Personnel Cabinet in accordance with KRS Chapter 18A.
- (4) No employee of the ~~*department*~~~~{office}~~ during his or her term of employment shall be an officer in a charitable organization that is licensed to conduct charitable gaming or be involved in the conduct of charitable gaming as a member of a licensed charitable organization. No employee of the ~~*department*~~~~{office}~~ during his or her term of employment shall be licensed as a manufacturer, distributor, or charitable gaming facility, or have a financial interest in any business that is licensed as a manufacturer, distributor, or charitable gaming facility.
- (5) The ~~*commissioner*~~~~{executive director}~~ shall appoint charitable gaming investigators who shall have the powers of peace officers throughout the Commonwealth; however, those powers shall be limited to:
 - (a) Enforcement of the provisions of KRS Chapter 238, relating to charitable gaming;
 - (b) Violations of KRS Chapter 528, relating to:
 1. Unlicensed and illegal charitable gaming;
 2. Gambling offenses committed on licensed charitable gaming premises; and
 3. Gambling offenses committed in conjunction with charitable gaming;
 - (c) Violations of KRS Chapter 514, relating to theft, embezzlement, or other illegal diversions of charitable gaming proceeds;
 - (d) Violations of KRS Chapters 516 and 517, relating to forgery and fraud in the conduct of charitable gaming;
 - (e) Violations relating to the damage or destruction of real or personal property owned or leased by a charitable gaming licensee; and
 - (f) Violation of any criminal felony offense committed:
 1. On licensed charitable gaming premises; and
 2. In the presence of a charitable gaming investigator.
- (6) Charitable gaming investigators shall satisfy the certification standards established by the Department of Criminal Justice Training pursuant to KRS Chapter 15. The ~~*commissioner*~~~~{executive director}~~ may possess peace officer powers granted under subsection (5) of this section, if he or she is duly qualified. Charitable gaming investigators shall not qualify for hazardous duty coverage under the Kentucky Employees Retirement System.
- (7) Charitable gaming investigators so appointed shall not possess peace officer powers other than those provided in subsection (5) of this section.

➔Section 535. KRS 238.515 is amended to read as follows:

The ~~department~~~~office~~ shall license and regulate the conduct of charitable gaming in the Commonwealth of Kentucky. In discharging this responsibility, the ~~department~~~~office~~ shall have the following powers and duties:

- (1) Licensing charitable organizations, charitable gaming facilities, manufacturers, and distributors that desire to engage in charitable gaming;
- (2) Establishing and enforcing reasonable standards for the conduct of charitable gaming and the operation of charitable gaming facilities;
- (3) Prescribing reasonable fees for licenses;
- (4) Establishing standards of accounting, recordkeeping, and reporting to insure charitable gaming receipts are properly accounted for;
- (5) Establishing a process for reviewing complaints and allegations of wrongdoing, and for investigating complaints with merit. In furtherance of this duty, the ~~department~~~~office~~ shall have the authority to issue administrative subpoenas and summonses. The ~~department~~~~office~~ shall also establish toll-free telephone service for receiving complaints and inquiries;
- (6) Taking appropriate disciplinary action and making referrals for criminal prosecution of persons who do not operate in compliance with this chapter;
- (7) Collecting and depositing all fees and fines in the charitable gaming regulatory account and administering the account;
- (8) Employing necessary staff, securing adequate office space, and executing other administrative and logistical matters as may be necessary to assure proper functioning of the ~~department~~~~office~~; and
- (9) Promulgating administrative regulations, in accordance with KRS Chapter 13A, which are necessary to carry out the purposes and intent of this chapter. Any administrative regulation proposed by the ~~department~~~~office~~ that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs shall be subject to the requirements of KRS 238.522. In promulgating administrative regulations under this subsection, the ~~department~~~~office~~ shall submit any proposed regulations to the advisory commission established under KRS 238.520, and shall not promulgate the administrative regulations without giving the advisory commission the opportunity to produce written comments in accordance with KRS 238.522. If the advisory commission chooses to produce written comments, the comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.

➔Section 536. KRS 238.520 is amended to read as follows:

- (1) The Charitable Gaming Advisory Commission is created to be composed of nine (9) members consisting of:
 - (a) The secretary of the ~~Environmental and~~ Public Protection Cabinet or his designee;
 - (b) The Attorney General or his designee;
 - (c) One (1) representative from the Kentucky Commonwealth's Attorneys Association;
 - (d) One (1) representative from the Kentucky Charitable Gaming Association;
 - (e) One (1) certified public accountant;
 - (f) One (1) member selected from the public at large;
 - (g) One (1) representative selected from the Joint Executive Council of Veterans Organizations of Kentucky;
 - (h) One (1) representative from Catholic organizations; and
 - (i) One (1) representative from Kentucky's volunteer firefighter organizations.

The certified public accountant, the one (1) at-large member, and the representatives from the Kentucky Commonwealth's Attorneys Association and the Kentucky Charitable Gaming Association shall be appointed by the Governor. The representative from each of the two (2) associations, the one (1) representative from the Joint Executive Council of Veterans Organizations of Kentucky, the one (1) representative from the Catholic organizations, and the one (1) representative from the volunteer firefighter organizations shall be selected from a list of at least three (3) names submitted to the Governor by the respective association.

- (2) Initial appointments to the commission shall be for staggered terms as follows: one (1) member for a term of one (1) year; two (2) members for a term of two (2) years; two (2) members for a term of three (3) years; and two (2) members for a term of four (4) years. Thereafter, each member shall be appointed for a term of four (4) years. No member from the public at large shall be appointed in the same year. Vacancies shall be filled in the same manner as the original appointment for the unexpired portion of the term. No member of the commission may serve more than two (2) full terms.
- (3) The Charitable Gaming Advisory Commission shall provide ongoing advice and input to the ~~department~~~~{office}~~ and to the General Assembly but shall not become directly involved in the licensing and regulation of charitable gaming by the ~~department~~~~{office}~~.
- (4) The commission shall meet quarterly, upon the request of the chair or four (4) of its members or as otherwise directed by the ~~department~~~~{office}~~. Five (5) members shall constitute a quorum for conducting business. The commission shall annually elect a chairman from its membership, and no person elected chairman shall serve more than two (2) consecutive terms of one (1) year each. Members shall receive no compensation for serving on the commission, but shall be reimbursed for travel expenses for attending meetings and performing other official functions, consistent with state reimbursement policy for state employees.

➔Section 537. KRS 238.522 is amended to read as follows:

- (1) (a) If the ~~department~~~~{office}~~ has proposed a new or amended administrative regulation that changes the manner in which a charitable organization conducts charitable gaming or is likely to cause a charitable organization to incur new or additional costs, the ~~department~~~~{office}~~ shall not promulgate the proposed administrative regulation without first receiving comments from the Charitable Gaming Advisory Commission established in KRS 238.520, subject to the restrictions of paragraph (b) of this subsection.
 - (b) 1. If the proposed administrative regulation qualifies under paragraph (a) of this subsection, the ~~department~~~~{office}~~ shall distribute the proposed administrative regulation to the advisory commission.
 2. The advisory commission shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the advisory commission shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
 3. The time limits in this paragraph shall begin from the day the ~~department~~~~{office}~~ submits the regulatory change and sets a date for a proposed hearing for the comments of the advisory commission. If the advisory commission is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
 4. If an advisory commission is not scheduled to meet, the ~~department~~~~{office}~~ shall arrange for the advisory commission to meet at a time that will provide the advisory commission an adequate opportunity to review and comment on the regulation within the time limit. If the advisory commission fails to comment within the time limit, the ~~department~~~~{office}~~ may proceed with the administrative changes at its discretion.
- (c) To the extent that any other statute relating to the ~~department's~~~~{office's}~~ authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (d) If the advisory commission chooses to produce written comments, these comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A, and may include majority or minority comments or both.
- (2) Any power or limitation relating to administrative regulations promulgated by the ~~department~~~~{office}~~ that are subject to subsection (1) of this section shall also apply to administrative regulations promulgated by the ~~commissioner~~~~{executive director}~~ of the ~~department~~~~{office}~~.

➔Section 538. KRS 238.525 is amended to read as follows:

- (1) Licenses shall be issued by the ~~department~~~~{office}~~ on an annual or biennial basis, except as otherwise permitted in KRS 238.530 and 238.545. A license term may be determined by the ~~department~~~~{office}~~ in any

manner it deems appropriate to facilitate efficient licensing. The ~~department~~~~office~~ shall charge a renewal fee not to exceed the maximum amounts established in KRS 238.530, 238.535, and 238.555.

- (2) The ~~department~~~~office~~ may issue a temporary license to an applicant who has met the requirements for a license. A temporary license shall be valid from the date of issuance until the regular license is issued or for a period of sixty (60) days, whichever is shorter. A temporary license shall not be renewed, except for good cause and shall not exceed a total of nine (9) months in length.
- (3) An applicant for any license to be issued under KRS 238.530 and 238.555 shall be subjected to a state and national criminal history background check by the ~~department~~~~office~~, with the assistance of the Department of Kentucky State Police and the Federal Bureau of Investigation. An applicant for any license to be issued under KRS 238.535 shall be subjected to a state criminal history background check and may, if deemed reasonably necessary, be subjected to a national criminal history background check by the ~~department~~~~office~~ with the assistance of the Department of Kentucky State Police and the Federal Bureau of Investigation. The criminal history background check shall apply to the chief executive officer and the chief financial officer or director of an applicant; any employee or member of an applicant who has been designated as chairperson of the charitable gaming activity; the applicant itself; and any individual with a ten percent (10%) or more financial interest in the applicant. The ~~department~~~~office~~ shall require the fingerprinting of all applicants for licensure under KRS 238.530 and 238.555 and may require, if deemed reasonably necessary, the fingerprints of all applicants for licensure under KRS 238.535, who are natural persons in connection with the national criminal history background check to assure the identity of the applicant or applicants. The ~~department~~~~office~~ may charge a reasonable fee not to exceed the actual cost of fingerprinting and records searching.
- (4) No applicant shall be licensed and no license holder shall be able to maintain a license if an individual associated with the applicant or license holder in a capacity listed in subsection (3) of this section or the applicant or license holder itself has been convicted of a felony, gambling offense, criminal fraud, forgery, theft, falsifying business records, violation of KRS 238.995(7), or any two (2) misdemeanor crimes in federal court or the courts of any state, the District of Columbia, or any territory, consistent with the provisions of KRS Chapter 335B within ten (10) years preceding the application for licensure.
- (5) No applicant shall be licensed unless all applicants required to be fingerprinted under the provision of subsection (3) of this section have been fingerprinted. The Department of Kentucky State Police may submit fingerprints of any applicant to the Federal Bureau of Investigation for the national criminal history background check. The ~~department~~~~office~~ may by administrative regulation impose additional qualifications to meet the requirements of Pub. L. 92-544.
- (6) If a change occurs in any information submitted during the license application process, the applicant or licensee shall notify the ~~department~~~~office~~ in writing within thirty (30) days of the date the change occurred.

➔Section 539. KRS 238.530 is amended to read as follows:

- (1) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies or equipment unless the person is licensed by the ~~department~~~~office~~ as a distributor. The ~~department~~~~office~~ shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (2) No person shall sell, offer to sell, rent, lease, or otherwise furnish charitable gaming supplies and equipment unless the person is licensed by the ~~department~~~~office~~ as a manufacturer. The ~~department~~~~office~~ shall charge a license fee not to exceed one thousand dollars (\$1,000).
- (3) No person who is licensed as a charitable organization, and no owner, officer, employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be eligible for licensure as a distributor or manufacturer. No affiliate of an owner, officer, or employee, or member of the immediate family of an owner, officer, or employee of a licensed charitable gaming facility shall be licensed as a distributor or manufacturer. No person who is a licensed wholesaler or distributor of alcoholic beverages shall be licensed as a distributor or manufacturer. No person who is licensed as a distributor shall be licensed as a manufacturer, and no person licensed as a manufacturer shall be licensed as a distributor.
- (4) An applicant for a license as a manufacturer or distributor shall apply for license on forms provided by the ~~department~~~~office~~ and shall submit as part of the application process the following:
 - (a) The full name, address, date of birth, and Social Security number of the applicant;
 - (b) If the applicant is a corporation or other business entity, the names, addresses, dates of birth, and Social Security numbers of all officers and management personnel;

- (c) The name, address, date of birth, and Social Security number of any individual who has ten percent (10%) or more financial interest in the applicant organization;
 - (d) Federal employer tax number;
 - (e) A sworn statement by the applicant or the appropriate officer that all information provided is true and correct and that the applicant agrees to comply with the applicable provisions of this chapter and all applicable administrative regulations promulgated thereunder;
 - (f) The name, address, and telephone number of a registered agent within the Commonwealth of Kentucky, if the applicant is not a resident; and
 - (g) Any other information the *department*~~{office}~~ deems appropriate.
- (5) Each licensed manufacturer and distributor shall maintain a complete set of records as may be required by the *department*~~{office}~~ to document all activities related to the sale, rental, lease, or furnishing of charitable gaming supplies and equipment in the Commonwealth of Kentucky. These records shall be available for inspection by the *department*~~{office}~~ at reasonable times, and all records shall be maintained for a minimum of three (3) years. The *department*~~{office}~~ may require a licensed manufacturer and distributor to report on its activity, with the content and frequency of these reports to be prescribed by administrative regulation promulgated by the *department*~~{office}~~.
- (6) A distributor who does not receive payment in accordance with the terms of its sales or lease agreement from a licensed charitable organization within thirty (30) days of the delivery of charitable gaming supplies and equipment shall notify the *department*~~{office}~~ of the delinquency in writing in a form and manner prescribed by the *department*~~{office}~~. A manufacturer who does not receive payment in full from a distributor within sixty (60) days of the delivery of charitable gaming supplies and equipment shall notify the *department*~~{office}~~ of the delinquency in writing in a form and manner prescribed by the *department*~~{office}~~.
- (7) A licensed manufacturer shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor in the Commonwealth of Kentucky.
- (8) A licensed distributor shall not sell charitable gaming supplies and equipment to any person not licensed as a distributor or a charitable organization in the Commonwealth of Kentucky, unless the organization is exempted from licensure under the provisions of this chapter.
- (9) A licensed distributor shall not purchase charitable gaming supplies and equipment from any person not licensed as a manufacturer or distributor in the Commonwealth of Kentucky.
- (10) No officer, owner, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates and no member of the immediate family of an owner, officer, employee, or contractee of a licensed distributor or licensed manufacturer or their affiliates, shall, with respect to a licensed charitable organization:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
 - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
 - (h) Provide training or consulting on the conduct of charitable gaming, except in connection with the use of its own equipment or supplies;
 - (i) Store its charitable gaming equipment or supplies in or on the premises of a licensed charitable gaming facility; or
 - (j) Donate or give any prize to be awarded in the conduct of charitable gaming.

➔Section 540. KRS 238.535 is amended to read as follows:

- (1) Any charitable organization conducting charitable gaming in the Commonwealth of Kentucky shall be licensed by the ~~department~~~~office~~. A charitable organization qualifying under subsection (8) of this section but not exceeding the limitations provided in this subsection shall be exempt from the licensure requirements when conducting the following charitable gaming activities:

- (a) Bingo in which the gross receipts do not exceed a total of twenty-five thousand dollars (\$25,000) per year;
- (b) A raffle or raffles for which the gross receipts do not exceed twenty-five thousand dollars (\$25,000) per year; and
- (c) A charity fundraising event or events that do not involve special limited charitable games and the gross gaming receipts for which do not exceed twenty-five thousand dollars (\$25,000) per year.

However, at no time shall a charitable organization's total limitations under this subsection exceed twenty-five thousand dollars (\$25,000).

- (2) Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall notify the ~~department~~~~office~~ in writing, on a simple form issued by the ~~department~~~~office~~, of its intent to engage in exempt charitable gaming and the address at which the gaming is to occur. Any charitable organization exempt from the process of applying for a license under subsection (1) of this section, shall comply with all other provisions of this chapter relating to the conduct of charitable gaming, except:

- (a) Payment of the fee imposed under the provisions of KRS 238.570; and
- (b) The quarterly reporting requirements imposed under the provisions of KRS 238.550(7), unless the exempt charitable organization obtains a retroactive license pursuant to subsection (5) of this section.

Before the last day of each year, a charitable organization exempt from licensure under the provisions of subsection (1) of this section shall file with the ~~department~~~~office~~ a financial report detailing the type of gaming activity in which it engaged during that year, the total gross receipts derived from gaming, the amount of charitable gaming expenses paid, the amount of net receipts derived, and the disposition of those net receipts. This report shall be filed on a form issued by the ~~department~~~~office~~. Upon receipt of the yearly financial report, the ~~department~~~~office~~ shall notify the charitable organization submitting it that its exemption is renewed for the next year. If the ~~department~~~~office~~ determines that information appearing on the financial report renders the charitable organization ineligible to possess an exemption, the ~~department~~~~office~~ shall revoke the exemption. The organization may request an appeal of this revocation pursuant to KRS 238.565. If an exemption is revoked because an organization has exceeded the limit imposed in subsection (1) of this section, the organization shall apply for a retroactive license in accordance with subsection (3) of this section.

- (3) If an organization exceeds the limit imposed by any subsection of this section it shall:
- (a) Report the amount to the ~~department~~~~office~~; and
 - (b) Apply for a retroactive charitable gaming license.
- (4) Upon receipt of a report and application for a retroactive charitable gaming license, the ~~department~~~~office~~ shall investigate to determine if the organization is otherwise qualified to hold the license.
- (5) If the ~~department~~~~office~~ determines that the applicant is qualified, it shall issue a charitable gaming license retroactive to the date on which the exemption limit was exceeded. The retroactive charitable gaming license shall be issued in the same manner as regular charitable gaming licenses.
- (6) If the ~~department~~~~office~~ determines that the applicant is not qualified it shall deny the license and take enforcement action, if appropriate.
- (7) Once a retroactive or regular gaming license is issued to an organization, that organization shall not be eligible for exempt status in the future and shall maintain a charitable gaming license if it intends to continue charitable gaming activities, unless the charitable organization has not exceeded the exemption limitations of subsection (1) of this section for a period of two (2) years prior to its exemption request.
- (8) In order to qualify for licensure, a charitable organization shall:
- (a) 1. Possess a tax exempt status under 26 U.S.C. secs. 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), or 501(c)(19), or be covered under a group ruling issued by the Internal Revenue Service under authority of those sections; or

2. Be organized within the Commonwealth of Kentucky as a common school as defined in KRS 158.030, as an institution of higher education as defined in KRS 164A.305, or as a state college or university as provided for in KRS 164.290;
- (b) Have been established and continuously operating within the Commonwealth of Kentucky for charitable purposes, other than the conduct of charitable gaming, for a period of three (3) years prior to application for licensure. For purposes of this paragraph, an applicant shall demonstrate establishment and continuous operation in Kentucky by its conduct of charitable activities from an office physically located within Kentucky both during the three (3) years immediately preceding its application for licensure and at all times during which it possesses a charitable gaming license. However, a charitable organization that operates for charitable purposes in more than ten (10) states and whose principal place of business is physically located in a state other than Kentucky may satisfy the requirements of this paragraph if it can document that it has:
 1. Been actively engaged in charitable activities and has made reasonable progress, as defined in paragraph (c) of this subsection, in the conduct of charitable activities or the expenditure of funds within Kentucky for a period of three (3) years prior to application for licensure; and
 2. Operated for charitable purposes from an office or place of business in the Kentucky county where it proposes to conduct charitable gaming for at least one (1) year prior to application for licensure, in accordance with paragraph (d) of this subsection;
 - (c) Have been actively engaged in charitable activities during the three (3) years immediately prior to application for licensure and be able to demonstrate, to the satisfaction of the ~~department~~**office**, reasonable progress in accomplishing its charitable purposes during this period. As used in this paragraph, "reasonable progress in accomplishing its charitable purposes" means the regular and uninterrupted conduct of activities within the Commonwealth or the expenditure of funds within the Commonwealth to accomplish relief of poverty, advancement of education, protection of health, relief from disease, relief from suffering or distress, protection of the environment, conservation of wildlife, advancement of civic, governmental, or municipal purposes, or advancement of those purposes delineated in KRS 238.505(3). In order to demonstrate reasonable progress in accomplishing its charitable purposes when applying to renew an existing license, a licensed charitable organization shall additionally provide to the ~~department~~**office** a detailed accounting regarding its expenditure of charitable gaming net receipts for the purposes described in this paragraph; and
 - (d) Have maintained an office or place of business, other than for the conduct of charitable gaming, for one (1) year in the county in which charitable gaming is to be conducted. The office or place of business shall be a separate and distinct address and location from that of any other licensee of the ~~Department~~**Office** of Charitable Gaming; except that up to three (3) licensed charitable organizations may have the same address if they legitimately share office space. For the conduct of a raffle, the county in which charitable gaming is to be conducted shall be the county in which the raffle drawing is to be conducted. However, a charitable organization that has established and maintained an office or place of business in the county for a period of at least one (1) year may hold a raffle drawing or a charity fundraising event, including special limited charity fundraising events, in a Kentucky county other than that in which the organization's office or place of business is located. For raffles, the organization shall notify the ~~Department~~**Office** of Charitable Gaming in writing of the organization's intent to change the drawing's location at least thirty (30) days before the drawing takes place. This written notification may be transmitted in any commercially reasonable means, authorized by the ~~department~~**office**, including facsimile and electronic mail. The notification shall set out the place and the county in which the drawing will take place. Approval by the ~~department~~**office** shall be received prior to the conduct of the raffle drawing at the new location. Any charitable organization that was registered with the county clerk to conduct charitable gaming in a county on or before March 31, 1992, shall satisfy this requirement if it maintained a place of business or operation, other than for the conduct of charitable gaming, for one (1) year prior to application in a Kentucky county adjoining the county in which they were registered. Any licensed charitable organization that qualifies to conduct charitable gaming in an adjoining county under this paragraph, shall be permitted to conduct in its county of residence a charity fundraising event.
- (9) In applying for a license, the information to be submitted shall include but not be limited to the following:

- (a) The name and address of the charitable organization;
 - (b) The date of the charitable organization's establishment in the Commonwealth of Kentucky and the date of establishment in the county in which charitable gaming is to be conducted;
 - (c) A statement of the charitable purpose or purposes for which the organization was organized. If the charitable organization is incorporated, a copy of the articles of incorporation shall satisfy this requirement;
 - (d) A statement explaining the organizational structure and management of the organization. For incorporated entities, a copy of the organizations' bylaws shall satisfy this requirement;
 - (e) A detailed accounting of the charitable activities in which the charitable organization has been engaged for the three (3) years preceding application for licensure;
 - (f) The names, addresses, dates of birth, and Social Security numbers of all officers of the organization;
 - (g) The names, addresses, dates of birth, and Social Security numbers of all employees and members of the charitable organization who will be involved in the management and supervision of charitable gaming. No fewer than two (2) employees or members of the charitable organization who are involved in the management and supervision of charitable gaming, along with the chief executive officer or the director of the applicant organization, shall be designated as chairpersons;
 - (h) The address of the location at which charitable gaming will be conducted and the name and address of the owner of the property, if it is owned by a person other than the charitable organization;
 - (i) A copy of the letter or other legal document issued by the Internal Revenue Service to grant tax-exempt status;
 - (j) A statement signed by the presiding or other responsible officer of the charitable organization attesting that the information submitted in the application is true and correct and that the organization agrees to comply with all applicable laws and administrative regulations regarding charitable gaming;
 - (k) An agreement that the charitable organization's records may be released by the Federal Internal Revenue Service to the ~~department~~~~office~~; and
 - (l) Any other information the ~~department~~~~office~~ deems appropriate.
- (10) An organization or a group of individuals that does not meet the licensing requirements of subsection (8) of this section may hold a raffle if the gross receipts do not exceed one hundred fifty dollars (\$150) and all proceeds from the raffle are distributed to a charitable organization. The organization or group of individuals may hold up to three (3) raffles each year, and shall be exempt from complying with the notification, application, and reporting requirements of subsections (2) and (9) of this section.
- (11) The ~~department~~~~office~~ may issue a license for a specified period of time, based on the type of charitable gaming involved and the desired duration of the activity.
- (12) The ~~department~~~~office~~ shall charge a fee for each license issued and renewed, not to exceed three hundred dollars (\$300). Specific fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulations and based on type of license, type of charitable gaming, actual or projected gross receipts, or other applicable factors, or combination of factors.
- (13) (a) A licensed charitable organization may place its charitable gaming license in escrow if:
- 1. The licensee notifies the ~~department~~~~office~~ in writing that it desires to place its license in escrow; and
 - 2. The license is in good standing and the ~~department~~~~office~~ has not initiated disciplinary action against the licensee.
- (b) During the escrow period, the licensee shall not engage in charitable gaming, and the escrow period shall not be included in calculating the licensee's retention rate under KRS 238.536.
- (c) A charitable organization may apply for reinstatement of its active license and the license shall be reinstated provided:
- 1. The charitable organization continues to qualify for licensure;

2. The charitable organization has not engaged in charitable gaming during the escrow period; and
3. The charitable organization pays a reinstatement fee established by the *department*~~{office}~~.

➔Section 541. KRS 238.536 is amended to read as follows:

- (1) The net receipts from charitable gaming retained by a charitable organization for the previous calendar year, provided the charitable organization was licensed at the start of the calendar year, shall be equal to or greater than forty percent (40%) of the adjusted gross receipts of the charitable organization for the same period. A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the benefits or financial gain of an individual. Any charitable organization which permits its license to expire or otherwise lapse shall still be subject to the retention requirement. The following fees and taxes shall be excluded from the calculation of the percentage retained, retroactive to calculations made for calendar year 1999:
 - (a) All fees paid to the *department*~~{office}~~ during the calendar year;
 - (b) Any sales or use taxes levied under KRS Chapter 139 on charitable gaming supplies and equipment that are paid by a licensed charitable organization during the calendar year; and
 - (c) Any federal excise taxes levied under 26 U.S.C. secs. 4401 and 4411 and paid by a licensed charitable organization during the calendar year.
- (2) The following actions shall be imposed on a licensed charitable organization that fails to retain the requisite percentage of adjusted gross receipts required in subsection (1) of this section. The calculation of percentages shall be rounded to the nearest tenth of a percent:
 - (a) If the percentage retained is between thirty-five percent (35%) and thirty-nine and nine-tenths percent (39.9%), the licensee shall be placed on probation for a period of six (6) months and shall be required to submit to the *department*~~{office}~~ an acceptable financial plan detailing corrective actions to be taken by the licensee to achieve the forty percent (40%) threshold by the end of the calendar year in which the probation is imposed;
 - (b) If the percentage retained is between thirty percent (30%) and thirty-four and nine-tenths percent (34.9%), the licensee shall be placed on probation for a period of one (1) year and shall be required to submit to the *department*~~{office}~~ a financial plan as described in paragraph (a) of this subsection. The *department*~~{office}~~ shall conduct a six (6) month review of the charitable gaming activities of a licensee placed on probation pursuant to this subsection to evaluate the licensee's compliance with its financial plan;
 - (c) If the percentage retained falls between twenty-nine and nine-tenths percent (29.9%) and twenty-five percent (25%), the licensee shall be placed on probation for a period of one (1) year, shall submit to the *department*~~{office}~~ an acceptable financial plan as described in paragraph (a) of this subsection, and shall participate in a mandatory training program designed by the *department*~~{office}~~. The *department*~~{office}~~ shall conduct a quarterly review of the licensee's activities to evaluate the licensee's compliance with its financial plan and its progress toward achievement of the forty percent (40%) threshold during the probationary period;
 - (d) If the percentage falls below twenty-five percent (25%) or if the licensee fails to attain the forty percent (40%) threshold for a second consecutive calendar year, the licensee shall have its license suspended for a period of one (1) year; and
 - (e) For purposes of paragraphs (a), (b), (c), and (d) of this subsection, periods of probation and suspension shall commence, unless appealed, from the date the *department*~~{office}~~ notifies the licensee of its failure to satisfy the retention requirement for the previous calendar year. If a probation or suspension is appealed, the action shall commence on the date final adjudication of the matter is complete.
- (3) Any licensee that has had its license suspended under the provisions of subsection (2)(d) of this section shall be required to submit to the *department*~~{office}~~ an acceptable financial plan as described in subsection (2)(a) of this section, upon applying for reinstatement of its license. As a condition of reinstatement, the licensee shall

be on probation for a period of one (1) year and shall be subject to quarterly review by the ~~department~~~~office~~ in accordance with subsection (2)(c) of this section.

- (4) Any licensee that has had its license revoked, has had its renewal application denied, or has had action initiated to revoke, suspend, or deny its license for failure to meet the forty percent (40%) retention threshold prior to July 14, 2000, may petition the ~~department~~~~office~~ for reconsideration of its action or proposed action. Upon petition for reconsideration, the ~~department~~~~office~~ shall apply the standards contained in subsection (2) of this section and shall adjust the license status of the petitioner accordingly. The ~~department~~~~office~~ shall give credit for the amount of time a license has been revoked in assessing penalties under subsection (2) of this section not to exceed the amount of time imposed under the new penalty.

➔Section 542. KRS 238.540 is amended to read as follows:

- (1) Except as provided in KRS 238.535(8)(d), charitable gaming shall be conducted by a licensed charitable organization at the location, date, and time which shall be stated on the license. The licensee shall request a change in the date, time, or location of a charitable gaming event by mail, electronic mail, or facsimile transmission, and shall submit a lease and an original signature of an officer. The ~~department~~~~office~~ shall process this request and issue or deny a license within ten (10) days.
- (2) All premises or facilities on which or in which charitable gaming is conducted shall meet all applicable federal, state, and local code requirements relating to life, safety, and health.
- (3) A license to conduct charitable gaming shall be prominently displayed on or in the premises where charitable gaming is conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the ~~department~~~~office~~, law enforcement officials, and other interested officials.
- (4) At least one (1) chairperson who is listed on the application for licensure shall be at each charitable gaming activity conducted by the charitable organization and shall be responsible for the administration and conduct of the charitable gaming activity. No person shall serve as chairperson for more than one (1) charitable organization. The chairperson shall be readily identifiable as the chairperson and shall be present on the premises continuously during the charitable gaming activity. Charitable gaming shall be conducted and administered solely by officers, members, and bona fide employees of the licensed charitable organization. Volunteer personnel, who may or may not be members of the licensed charitable organization, may be utilized if each volunteer is readily identifiable as a volunteer. No person engaged in the conduct and administration of charitable gaming shall receive any compensation for services related to the charitable gaming activities, including tipping. No net receipts derived from charitable gaming shall inure to the private benefit or financial gain of any individual. Any effort or attempt to disguise any other type of compensation or private inurement shall be considered an unauthorized diversion of funds and shall be actionable under KRS 238.995.
- (5) No licensed charitable organization shall contract with, or otherwise utilize the services of, any management company, service company, or consultant in managing or conducting any aspect of charitable gaming.
- (6) A licensed charitable organization shall not purchase or lease charitable gaming supplies and equipment from any person not licensed as a distributor in the Commonwealth of Kentucky.
- (7) A licensed charitable organization shall not accept any merchandise prizes donated by any owner, officer, employee, or contractee of a licensed manufacturer, distributor, charitable gaming facility, or any of their affiliates, or any member of their immediate families.
- (8) Any advertisement of charitable gaming, regardless of the medium used, shall contain the name of the charitable organization conducting the charitable gaming and its license number. An advertisement for a bingo session or sessions shall not advertise a bingo prize in excess of the limitation of five thousand dollars (\$5,000) per twenty-four (24) hour period set forth in KRS 238.545(1).

➔Section 543. KRS 238.545 is amended to read as follows:

- (1) A licensed charitable organization shall be limited by the following:
 - (a) In the conduct of bingo, to one (1) session per day, two (2) sessions per week, for a period not to exceed five (5) consecutive hours in any day and not to exceed ten (10) total hours per week. No licensed charitable organization shall conduct bingo at more than one (1) location during the same twenty-four (24) hour period. No licensed charitable organization shall award prizes for bingo that exceed five thousand dollars (\$5,000) in fair market value per twenty-four (24) hour period, including the value of door prizes. No person under the age of eighteen (18) shall be permitted to purchase bingo supplies or

play bingo. A charitable organization may permit persons under age eighteen (18) to play bingo for noncash prizes if they are accompanied by a parent or legal guardian and only if the value of any noncash prize awarded does not exceed ten dollars (\$10);

- (b) A licensed charitable organization may provide card-minding devices for use by players of bingo games. If a licensed charitable organization offers card-minding devices for use by players, the devices shall be capable of being used in conjunction with bingo cards or paper sheets at all times. The ~~department~~~~office~~ shall have broad authority to define and regulate the use of card-minding devices and shall promulgate an administrative regulation concerning use and control of them;
 - (c) Charity game tickets shall be sold only at the address of the location designated on the license to conduct charitable gaming;
 - (d) Charity game tickets may be sold, with prior approval of the ~~department~~~~office~~:
 - 1. At any authorized special charity fundraising event conducted by a licensed charitable organization at any off-site location; or
 - 2. By a licensed charitable organization possessing a special limited charitable gaming license at any off-site location; and
 - (e) An automated charity game ticket dispenser may be utilized by a licensed charitable organization, with the prior approval of the ~~department~~~~office~~, only at the address of the location designated on the license to conduct charitable gaming, and only during bingo sessions. The ~~department~~~~office~~ shall promulgate administrative regulations regulating the use and control of approved automated charity game ticket dispensers.
- (2) No prize for an individual charity game ticket shall exceed five hundred ninety-nine dollars (\$599) in value, not including the value of cumulative or carryover prizes awarded in seal card games. Cumulative or carryover prizes in seal card games shall not exceed two thousand four hundred dollars (\$2,400). Information concerning rules of the particular game and prizes that are to be awarded in excess of fifty dollars (\$50) in each separate package or series of packages with the same serial number and all rules governing the handling of cumulative or carryover prizes in seal card games shall be posted prominently in an area where charity game tickets are sold. A legible poster that lists prizes to be awarded, and on which prizes actually awarded are posted at the completion of the sale of each separate package shall satisfy this requirement. Any unclaimed money or prize shall return to the charitable organization. No charity game ticket shall be sold in the Commonwealth of Kentucky that does not conform to the standards for opacity, randomization, minimum information, winner protection, color, and cutting established by the ~~department~~~~office~~. No person under the age of eighteen (18) shall be permitted to purchase, or open in any manner, a charity game ticket.
- (3) Tickets for a raffle shall be sold separately, and each ticket shall constitute a separate and equal chance to win. All raffle tickets shall be sold for the price stated on the ticket, and no person shall be required to purchase more than one (1) ticket or to pay for anything other than a ticket to enter a raffle. Raffle tickets shall have a unique identifier for the ticket holder. Winners shall be drawn at random at a date, time, and place announced in advance or printed on the ticket. All prizes for a raffle shall be identified in advance of the drawing and all prizes identified shall be awarded.
- (4) With respect to charity fundraising events, a licensed charitable organization shall be limited as follows:
- (a) No licensed charitable organization shall conduct a charity fundraising event or a special limited charity fundraising event unless they have a license for the respective event issued by the ~~department~~~~office~~;
 - (b) No special license shall be required for any wheel game, such as a cake wheel, that awards only noncash prizes the value of which does not exceed one hundred dollars (\$100);
 - (c) The ~~department~~~~office~~ may grant approval for a licensed charitable organization to play bingo games at a charity fundraising event. Cash prizes for bingo games played during a charity fundraising event may not exceed five thousand dollars (\$5,000) for the entire event. No person under the age of eighteen (18) shall be permitted to play bingo at a charity fundraising event unless accompanied by a parent or legal guardian;
 - (d) The ~~department~~~~office~~ may grant approval for a licensed charitable organization to play special limited charitable games at a charity fundraising event authorized under this section. The ~~department~~~~office~~

shall not grant approval for the playing of special limited charitable games under the provisions of a charity fundraising event license unless the proposed event meets the definition of a charity fundraising event held for community, social, or entertainment purposes apart from charitable gaming in accordance with KRS 238.505(8); and

- (e) Except for state, county, city fairs, and special limited charity fundraising events, a charity fundraising event license issued under this section shall not exceed seventy-two (72) consecutive hours. A licensed charitable organization shall not be eligible for more than four (4) total charity fundraising event licenses per year, including two (2) special limited charity fundraising event licenses. No person under eighteen (18) years of age shall be allowed to play or conduct any special limited charitable game. The ~~department~~~~office~~ shall have broad authority to regulate the conduct of special limited charity fundraising events in accordance with the provisions of KRS 238.547.
- (5) Presentation of false, fraudulent, or altered identification by a minor shall be an affirmative defense in any disciplinary action or prosecution that may result from a violation of age restrictions contained in this section, if the appearance and character of the minor were such that his or her age could not be reasonably ascertained by other means.

➔Section 544. KRS 238.550 is amended to read as follows:

- (1) All adjusted gross receipts from charitable gaming shall be handled only by chairpersons, officers, or employees of the licensed charitable organization.
- (2) Within two (2) business days after the completion of a charitable gaming event or session, all gross receipts and adjusted gross receipts shall be deposited into one checking account devoted exclusively to charitable gaming. This checking account shall be designated the "charitable gaming account," and the licensed charitable organization shall maintain its account at a financial institution located in the Commonwealth of Kentucky. No other funds may be deposited or transferred into the charitable gaming account.
- (3) All payments for charitable gaming expenses, payments made for prizes purchased, and any charitable donations from charitable gaming receipts shall be made from the charitable gaming account and the payments or donations shall be made only by bona fide officers of the organization by checks having preprinted consecutive numbers and made payable to specific persons or organizations. No check drawn on the charitable gaming account may be made payable to "cash," or "bearer," except that a licensed charitable organization may withdraw start-up funds for a charitable gaming event or session from the charitable gaming account by check made payable to "cash" or "bearer," if these start-up funds are redeposited into the charitable gaming account together with all adjusted gross receipts derived from the particular event or session. Checks shall be imprinted with the words "charitable gaming account" and shall contain the organization's license number on the face of each check. Payments for charitable gaming expenses, prizes purchased, and charitable donations may be made by electronic funds transfer if the payments are made to specific persons or organizations. The ~~department~~~~office~~ may by administrative regulation adopt alternative reporting requirements for charitable gaming of limited scope or duration, if these requirements are sufficient to ensure accountability for all moneys handled.
- (4) A licensed charitable organization shall expend net receipts exclusively for purposes consistent with the charitable, religious, educational, literary, civic, fraternal, or patriotic functions or objectives for which the licensed charitable organization received and maintains federal tax-exempt status, or consistent with its status as a common school, an institution of higher education, or a state college or university. No net receipts shall inure to the private benefit or financial gain of any individual.
- (5) Accurate records and books shall be maintained by each organization exempt from licensure under KRS 238.535(1) and each licensed charitable organization for a period of three (3) years. ~~Department~~~~Office~~ staff shall have access to these records at reasonable times. Licensed charitable organizations and exempt organizations shall maintain their charitable gaming records at their offices or places of business within the Commonwealth of Kentucky as identified in their license applications or applications for exempt status. An exempt organization shall submit a yearly financial report in accordance with KRS 238.535(2), and failure to file this report shall constitute grounds for revocation of the organization's exempt status.
- (6) All licensed charitable organizations that have annual gross receipts of two hundred thousand dollars (\$200,000) or less and do not have a weekly bingo session shall report to the ~~department~~~~office~~ annually at the time and on a form established in administrative regulations promulgated by the ~~department~~~~office~~.

- (7) All other licensed charitable organizations shall submit reports to the ~~department~~~~{office}~~ at least quarterly at the time and on a form established in administrative regulations promulgated by the ~~department~~~~{office}~~.
- (8) Failure by a licensed charitable organization to file reports required under this chapter shall constitute grounds for revocation of the organization's license or denial of the organization's application to renew its license in accordance with KRS 238.560(3). Reports filed by a licensed charitable organization shall include but shall not be limited to the following information:
- (a) All gross receipts received from charitable gaming for the reporting period, classified by type of gaming activity;
 - (b) The names and addresses of all persons who are winners of prizes having a fair market value of six hundred dollars (\$600) or more;
 - (c) All expenses paid and the names and addresses of all persons to whom expenses were paid;
 - (d) All net receipts retained and the names and addresses of all charitable endeavors that received money from the net receipts; and
 - (e) Any other information the ~~department~~~~{office}~~ deems appropriate.
- (9) No licensed charitable organization shall incur charitable gaming expenses, except as provided in this chapter. No licensed charitable organization shall be permitted to expend amounts in excess of prevailing market rates for the following charitable gaming expenses:
- (a) Charitable gaming supplies and equipment;
 - (b) Rent;
 - (c) Utilities;
 - (d) Insurance;
 - (e) Advertising;
 - (f) Janitorial services;
 - (g) Bookkeeping and accounting services;
 - (h) Security services;
 - (i) Membership dues for its participation in any charitable gaming trade organization; and
 - (j) Any other expenses the ~~department~~~~{office}~~ may determine by administrative regulation to be legitimate.
- (10) No licensed charitable organization shall expend receipts from charitable gaming activities nor incur expenses to form, maintain, or operate as a labor organization.
- ➔Section 545. KRS 238.555 is amended to read as follows:
- (1) No person shall operate a charitable gaming facility unless the person is licensed under the provisions of this chapter. The ~~department~~~~{office}~~ shall charge a license fee not to exceed two thousand five hundred dollars (\$2,500). Specific license fees to be charged shall be prescribed in a graduated scale promulgated by administrative regulation and based on the number of sessions which the facility holds per week or other applicable factors or combination of factors. Charitable gaming may be conducted in a charitable gaming facility only by a licensed charitable organization in accordance with the provisions of this chapter.
 - (2) In the application process, an applicant for a charitable gaming facility license shall submit the following information:
 - (a) The address of the facility;
 - (b) A description of the facility to include square footage of the gaming area, capacity levels, and available parking;
 - (c) The names, addresses, dates of birth, and Social Security numbers of all individuals employed by or contracted with the applicant to manage the facility or provide other authorized services;

- (d) The name, address, date of birth, and Social Security number of any individual who has a ten percent (10%) or greater financial interest in the facility;
 - (e) A copy of the lease agreement used by the applicant; and
 - (f) Any other information the ~~department~~~~office~~ deems appropriate.
- (3) No owner, officer, employee, or contractee of a licensed charitable gaming facility or an affiliate, or any member of the immediate family of any officer, employee, or contractee of a licensed charitable gaming facility or an affiliate shall, concerning a lessee:
- (a) Manage or otherwise be involved in the conduct of charitable gaming;
 - (b) Provide bookkeeping or other accounting services related to the conduct of charitable gaming;
 - (c) Handle any moneys generated in the conduct of charitable gaming;
 - (d) Advise a licensed charitable organization on the expenditure of net receipts;
 - (e) Provide transportation services in any manner to patrons of a charitable gaming activity;
 - (f) Provide advertisement or marketing services in any manner to a licensed charitable organization;
 - (g) Provide, coordinate, or solicit the services of personnel or volunteers in any manner;
 - (h) Influence or require a licensed charitable organization to use a certain distributor or any particular gaming supplies; or
 - (i) Donate or give any prize to be awarded in the conduct of charitable gaming.
- (4) A licensed charitable gaming facility shall execute a lease agreement with each licensed charitable organization that desires to conduct charitable gaming at the facility. The licensed charitable gaming facility shall agree in the lease to provide gaming space, utilities, insurance for the premises, parking, tables and chairs, and other nongaming equipment necessary for the conduct of charitable gaming, adequate storage space, security, and janitorial services. The costs of the goods and services provided shall be itemized in the lease. A licensed charitable organization may elect to provide for itself any of the goods and services that a charitable gaming facility is required to provide under this subsection, provided these arrangements are clearly noted in the lease agreement, and provided the total compensation to be paid the charitable gaming facility is reduced commensurate with the cost of the goods and services as itemized in the lease. The amount of rent, goods, and services charged shall be reasonable and shall be based on prevailing market values in the general locality for the goods and services to be provided. Rent shall not be based in whole or in part, on a percentage of gross receipts or net proceeds derived from the conduct of charitable gaming or by reference to the number of people in attendance. The ~~department~~~~office~~ by administrative regulation may establish standards for the determination of prevailing market values. A copy of each signed lease agreement shall be filed with the ~~department~~~~office~~. The provisions of this subsection shall apply to any lease agreement for a facility where charitable gaming is to be conducted, whether or not it is with a licensed charitable gaming facility.
- (5) The number of bingo sessions conducted at a charitable gaming facility shall be limited to the following:
- (a) No more than eighteen (18) sessions per week if the charitable gaming facility is located in a city of the first class, in a city of the second class, in an urban-county, in a consolidated local government, or charter county government, or in a county containing a city of the first class or second class;
 - (b) No more than eight (8) sessions per week if the charitable gaming facility is located in a city of the third class, fourth class, fifth class, or sixth class, or in a county that does not contain a city of the first class or second class.
- (6) A licensed charitable gaming facility shall report at least quarterly to the ~~department~~~~office~~ and shall provide any information concerning its operation that the ~~department~~~~office~~ may require.
- (7) A charity fundraising event at which special limited charitable games are played may be conducted at a licensed charitable gaming facility, but no licensed charitable gaming facility shall be permitted to hold more than one (1) such event per week or more than seven (7) per year.
- (8) A licensed charitable gaming facility shall conspicuously display a sign bearing the name and the license number of the charitable organization that is conducting charitable gaming activities in the facility.

- (9) The license to operate the charitable gaming facility shall be prominently displayed on or in the premises where charitable gaming activity is being conducted, in a conspicuous location that is readily accessible to gaming patrons as well as employees of the **department{office}**, law enforcement officials, and other interested officials.

➔ Section 546. KRS 238.560 is amended to read as follows:

- (1) The **department{office}** may investigate allegations of wrongdoing upon complaint or upon its own volition. The **department{office}** by administrative regulation shall establish procedures for receiving and investigating complaints in an expeditious manner.
- (2) In carrying out its enforcement responsibilities, the **department{office}** may:
- (a) Inspect and examine all premises in which or on which charitable gaming is conducted or charitable gaming supplies or equipment are manufactured or distributed;
 - (b) Seize and remove from premises and impound charitable gaming supplies and equipment for the purposes of examination and inspection pursuant to an appropriate court order;
 - (c) Demand access to, inspect, and audit books and records of licensees for the purpose of determining compliance with laws and administrative regulations relative to charitable gaming; and
 - (d) Conduct in-depth audits and investigations, when warranted.
- (3) (a) As used in this subsection, "willful" means that the conduct constituting the violation was committed with intent, not accidentally or inadvertently.
- (b) The **department{office}** may take appropriate administrative action against any person licensed under this chapter for any violation of the provisions of this chapter or administrative regulations promulgated thereunder subject to the conditions established by this subsection.
- (c) The **department{office}** may deny a license, suspend or revoke a license, issue a cease and desist order, place a license holder on probation, issue a letter of reprimand or letter of warning, and levy a fine. An administrative fine shall not exceed one thousand dollars (\$1,000) for each offense. The **department{office}** may deny the issuance of a license or a license renewal if the applicant or licensee has failed to pay a fine levied by the **department{office}**. The **department{office}** shall by administrative regulation classify types of offenses and the recommended administrative action. The type of action to be taken shall be based on the history of previous violations and the nature, severity, and frequency of the offense. Administrative action authorized in this section shall be in addition to any criminal penalties provided in this chapter or under other provisions of law.
- (d) 1. Notwithstanding any other provisions of this section, the **department{office}** shall review, within two (2) months of receipt, timely filed organization quarterly reports that include payment of the fee due as reflected on the organization quarterly report. If the **department{office}** discovers reporting errors that are not willful, the **department{office}** shall, prior to taking any other administrative action, issue a letter of warning to the licensee and allow the licensee thirty (30) days from the issuance of the letter to correct the identified violation. The purpose of this subparagraph is for the **department{office}** to identify correctable reporting errors in a timely manner, and to notify the licensee of the errors prior to the due date of the next organization quarterly report so that the errors are corrected and are not repeated in subsequent organization quarterly reports.
2. A review conducted under subparagraph 1. of this paragraph shall not be considered an audit or final review and acceptance of an organization quarterly report and payment. The **department{office}** shall have four (4) years from the date of filing to fully audit and review an organization quarterly report, and may pursue administrative actions against the licensee related to an organization quarterly report or the information reported on an organization quarterly report within the four (4) year period if violations or errors that are not willful are discovered. This subparagraph shall not be construed to require records that are not needed to audit or review an organization quarterly report to be kept longer than is required elsewhere in this chapter or in any related administrative regulations.

3. Notwithstanding the provisions of subparagraph 2. of this paragraph, for a violation that is determined to be willful, the ***department***~~{office}~~ may pursue the administrative actions authorized by this section at any time.
4. A letter of warning issued under this section shall:
 - a. Identify the violation;
 - b. Describe the corrective action necessary;
 - c. Identify the administrative actions that can be taken if the violation is not addressed; and
 - d. Provide that the person shall have thirty (30) days to correct the action leading to the violation.
- (4) The ***department***~~{office}~~ may reinstate a license that has been revoked at any time after two (2) years from the date of revocation. A license may be reinstated only upon a finding that the violations for which the license was revoked have been corrected.
- (5) All departments, divisions, boards, agencies, officers, and institutions of the Commonwealth of Kentucky and all subdivisions thereof, in particular local law enforcement entities, shall cooperate with the ***department***~~{office}~~ in carrying out its enforcement responsibilities.
- (6) The ***department***~~{office}~~ shall report any activity or action which would constitute a criminal offense to the appropriate authorities in the county where the activity or action occurred and to the Attorney General.

➔Section 547. KRS 238.565 is amended to read as follows:

- (1) A license holder may appeal any administrative action taken under KRS 238.560. A license holder shall be notified in writing of any action to be taken against him. The notification may be delivered in person or mailed by certified mail, return receipt requested, to the last known address of the license holder. Service of notification of administrative action, whether by hand delivery or by certified mail, shall be deemed complete if the license holder fails or refuses to accept delivery. For service by hand delivery, notification shall be deemed received upon acceptance of delivery or upon failure or refusal to accept delivery, and the person affecting service on behalf of the ***department***~~{office}~~ shall record the fact of the failure or refusal. For service by certified mail, the notification of administrative action shall be deemed received when the license holder accepts delivery or fails or refuses to accept delivery at the last known address. The notification shall specify the charges against the license holder, specify the proposed administrative sanction, and advise him of his right to appeal the decision within ten (10) days of the date of receipt of the notification.
- (2) Upon receipt of an appeal, the ***department***~~{office}~~ shall schedule the matter for an administrative hearing that shall be conducted in accordance with KRS Chapter 13B.
- (3) Any provisions of KRS Chapter 13B notwithstanding, within twenty (20) days after the conclusion of a hearing, the hearing officer shall prepare and present to the ***commissioner***~~{executive director}~~ a recommended order based on findings of fact and conclusions of law. Within thirty (30) days of receipt of the recommended order, the ***commissioner***~~{executive director}~~ shall affirm, reject, or modify, in whole or in part, the recommended order and shall issue a final order. The final order shall be the final administrative action on the matter and a copy of the final order shall be mailed to the license holder, by certified mail, return receipt requested.
- (4) Any administrative action taken under this section shall, upon appeal, be stayed until a final order is issued, with the exception of a summary suspension. The ***department***~~{office}~~ may issue an emergency order pursuant to KRS 13B.125 to summarily suspend a license upon finding that continued operation of the license holder pending a hearing would constitute a threat to the public health, safety, or welfare.
- (5) A final order of the ***commissioner***~~{executive director}~~ may be appealed to Franklin Circuit Court in accordance with KRS Chapter 13B. If the license holder against whom administrative action is proposed does not request an appeal of the action, the ***department***~~{office}~~ shall enter a final order imposing the proposed administrative action.

➔Section 548. KRS 238.570 is amended to read as follows:

- (1) A fee is imposed on charitable gaming in the amount of fifty-three hundredths of one percent (0.53%) of gross receipts derived from all charitable gaming conducted by charitable organizations required to be licensed in the Commonwealth of Kentucky. The amount of the fee shall be adjusted by October 1 of each odd-numbered year

in accordance with subsection (3) of this section. Each licensed charitable organization shall remit to the ~~department[office]~~ all moneys due as set forth in administrative regulations promulgated by the ~~department[office]~~. Failure by a licensed charitable organization to timely remit the fee required under this subsection upon notice of delinquency shall constitute grounds for disciplinary action in accordance with KRS 238.560.

- (2) The charitable gaming regulatory account is hereby created as a revolving account within the agency revenue fund and under the control of the ~~Environmental and~~ Public Protection Cabinet. All revenues generated from the fee levied in subsection (1) of this section from license fees and from administrative fines imposed by the ~~department[office]~~ shall be deposited in this account. Fund amounts attributable to the fee levied in subsection (1) of this section that are not expended at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.
- (3) (a) No later than July 31 of each odd-numbered year, the ~~Environmental and~~ Public Protection Cabinet shall determine:
 1. The amount of gross receipts during the prior biennium against which the fee collected under subsection (1) of this section was assessed; and
 2. The final budgeted amount as determined by the enacted budget for the upcoming biennium for the administration and enforcement of the provisions of this chapter. If a budget is not enacted, the amount shall be the corresponding amount in the last enacted budget.
- (b) On October 1 of each odd-numbered year, the fee assessed under subsection (1) of this section shall be proportionally adjusted by the ~~Environmental and~~ Public Protection Cabinet. The new rate shall be calculated by multiplying one hundred ten percent (110%) by the amount determined in paragraph (a)2. of this subsection, and subtracting from that amount one-half (1/2) of any remaining balance in the account. The total shall then be divided by the amount determined in paragraph (a)1. of this subsection. The result shall be expressed as a percentage and shall be rounded to the nearest thousandth of a percent (0.000%).

➔Section 549. KRS 241.010 is amended to read as follows:

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

- (1) "Alcohol" means ethyl alcohol, hydrated oxide of ethyl or spirit of wine, from whatever source or by whatever process it is produced;
- (2) "Alcoholic beverage" means every liquid or solid, whether patented or not, containing alcohol in an amount in excess of more than one percent (1%) of alcohol by volume, which is fit for beverage purposes. It includes every spurious or imitation liquor sold as, or under any name commonly used for, alcoholic beverages, whether containing any alcohol or not. It does not include the following products:
 - (a) Medicinal preparations manufactured in accordance with formulas prescribed by the United States Pharmacopoeia, National Formulary, or the American Institute of Homeopathy;
 - (b) Patented, patent, and proprietary medicines;
 - (c) Toilet, medicinal, and antiseptic preparations and solutions;
 - (d) Flavoring extracts and syrups;
 - (e) Denatured alcohol or denatured rum;
 - (f) Vinegar and preserved sweet cider;
 - (g) Wine for sacramental purposes;
 - (h) Alcohol unfit for beverage purposes that is to be sold for legitimate external use; and
 - (i) Malt beverages, containing not more than three and two-tenths percent (3.2%) of alcohol by weight, in territory that has voted to allow the sale thereof;
- (3) (a) "Alcohol vaporizing device" or "AWOL device" means any device, machine, or process that mixes liquor, spirits, or any other alcohol product with pure oxygen or by any other means produces a vaporized alcoholic product used for human consumption;

- (b) "Alcohol vaporizing device" or "AWOL device" does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended by the manufacturer to dispense a prescribed or over-the-counter medication or a device installed and used by a licensee under this chapter to demonstrate the aroma of an alcoholic beverage;
- (4) "Board" means the State Alcoholic Beverage Control Board created by KRS 241.030;
- (5) "Bottle" means any container which is used for holding alcoholic beverages for the use and sale of alcoholic beverages at retail;
- (6) "Brewer" means any person who manufactures malt beverages or owns, occupies, carries on, works, or conducts any brewery, either by himself or by his agent;
- (7) "Brewery" means any place or premises where malt beverages are manufactured for sale, and includes all offices, granaries, mash rooms, cooling rooms, vaults, yards, and storerooms connected with the premises; or where any part of the process of the manufacture of malt beverages is carried on; or where any apparatus connected with manufacture is kept or used; or where any of the products of brewing or fermentation are stored or kept;
- (8) "Building containing licensed premises" means the licensed premises themselves and includes the land, tract of land, or parking lot in which the premises are contained, and any part of any building connected by direct access or by an entrance which is under the ownership or control of the licensee by lease holdings or ownership;
- (9) "Caterer" means a corporation, partnership, or individual that operates the business of a food service professional by preparing food in a licensed and inspected commissary, transporting the food and alcoholic beverages to the caterer's designated and inspected banquet hall or to a location selected by the customer, and serving the food and alcoholic beverages to the customer's guests;
- (10) "Charitable organization" means a nonprofit entity recognized as exempt from federal taxation under section 501(c) of the Internal Revenue Code (26 U.S.C. sec. 501(c)) or any organization having been established and continuously operating within the Commonwealth of Kentucky for charitable purposes for three (3) years and which expends at least sixty percent (60%) of its gross revenue exclusively for religious, educational, literary, civic, fraternal, or patriotic purposes;
- (11) "Cider" means any fermented fruit-based beverage containing more than one-tenth of one percent (0.1%) alcohol by volume and includes hard cider and perry cider;
- (12) "City administrator" means city alcoholic beverage control administrator;
- (13) "Commissioner" means the commissioner of the *Department of Alcoholic Beverage Control* ~~— Kentucky Department of Revenue~~;
- (14) "Convention center" means any facility which, in its usual and customary business, provides seating for a minimum of one thousand (1,000) people and offers convention facilities and related services for seminars, training and educational purposes, trade association meetings, conventions, or civic and community events or for plays, theatrical productions, or cultural exhibitions;
- (15) "Convicted" and "conviction" means a finding of guilt resulting from a plea of guilty, the decision of a court, or the finding of a jury, irrespective of a pronouncement of judgment or the suspension of the judgment;
- (16) "County administrator" means county alcoholic beverage control administrator;
- (17) *"Department" means the Department of Alcoholic Beverage Control;*
- (18) "Distilled spirits" or "spirits" means any product capable of being consumed by a human being which contains alcohol in excess of the amount permitted by KRS Chapter 242 obtained by distilling, mixed with water or other substances in solution, except wine, hard cider, and malt beverages;
- ~~(19)~~ ~~(18)~~ "Distiller" means any person who is engaged in the business of manufacturing distilled spirits at any distillery in the state and is registered in the Office of the Collector of Internal Revenue for the United States at Louisville, Kentucky;
- ~~(20)~~ ~~(19)~~ "Distillery" means any place or premises where distilled spirits are manufactured for sale, and which are registered in the office of any collector of internal revenue for the United States. It includes any United States government bonded warehouse;

- (21)~~(20)~~ "Distributor" means any person who distributes malt beverages for the purpose of being sold at retail;
- (22)~~(21)~~ "Dry territory" means a county, city, district, or precinct in which a majority of voters have voted in favor of prohibition;
- (23)~~(22)~~ "Election" means:
- (a) An election held for the purpose of taking the sense of the people as to the application or discontinuance of alcoholic beverage sales under KRS Chapter 242; or
 - (b) Any other election not pertaining to alcohol;
- ~~(23) "Executive director" means the executive director of the Office of Alcoholic Beverage Control;~~
- (24) "Field representative" means any employee or agent of the ~~department~~~~office~~ who is regularly employed and whose primary function is to travel from place to place for the purpose of visiting taxpayers, and any employee or agent of the ~~department~~~~office~~ who is assigned, temporarily or permanently, by the ~~commissioner~~~~executive director~~ to duty outside the main office of the ~~department~~~~office~~ at Frankfort, in connection with the administration of alcoholic beverage statutes;
- (25) "License" means any license issued pursuant to KRS 243.020 to 243.670;
- (26) "Licensee" means any person to whom a license has been issued, pursuant to KRS 243.020 to 243.670;
- (27) "Limited restaurant" means:
- (a) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of one hundred (100) persons for dining, and which is located in a territory where prohibition is no longer in effect under KRS 242.185(6); or
 - (b) A facility where the usual and customary business is the serving of meals to consumers, which has a bona fide kitchen facility, which receives at least seventy percent (70%) of its gross income from the sale of food, which maintains a minimum seating capacity of fifty (50) persons for dining, which has no open bar, which requires that alcoholic beverages be sold in conjunction with the sale of a meal, and which is located in a territory where prohibition is no longer in effect under KRS 242.1244;
- (28) "Malt beverage" means any fermented undistilled alcoholic beverage of any name or description, manufactured from malt wholly or in part, or from any substitute for malt, and having an alcoholic content greater than that permitted under subsection (2)(i) of this section;
- (29) "Manufacture" means distill, rectify, brew, bottle, and operate a winery;
- (30) "Manufacturer" means a vintner, distiller, rectifier, or brewer, and any other person engaged in the production or bottling of alcoholic beverages;
- (31) "Minor" means any person who is not twenty-one (21) years of age or older;
- (32) ~~["Office" means the Office of Alcoholic Beverage Control;~~
- ~~(33)~~ "Premises" means the land and building in and upon which any business regulated by alcoholic beverage statutes is operated or carried on. "Premises" shall not include as a single unit two (2) or more separate businesses of one (1) owner on the same lot or tract of land, in the same or in different buildings if physical and permanent separation of the premises is maintained, excluding employee access by keyed entry and emergency exits equipped with crash bars, and each has a separate public entrance accessible directly from the sidewalk or parking lot. Any licensee holding an alcoholic beverage license on July 15, 1998 shall not, by reason of this subsection, be ineligible to continue to hold his or her license or obtain a renewal, of the license;
- (33)~~(34)~~ "Prohibition" means the application of KRS 242.190 to 242.430 to a territory;
- (34)~~(35)~~ "Qualified historic site" means a contributing property with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021 within a commercial district listed in the National Register of Historic Places, or a site that is listed as a National Historic Landmark with dining facilities for at least fifty (50) persons and lodging on the premises as authorized by KRS 219.021. Notwithstanding the provisions of this subsection, a distillery which is listed as a National Historic Landmark

and which has a souvenir retail liquor license under KRS 243.0305, shall be deemed a "qualified historic site" under this section;

- (35)~~((36))~~ "Rectifier" means any person who rectifies, purifies, or refines distilled spirits or wine by any process other than as provided for on distillery premises, and every person who, without rectifying, purifying, or refining distilled spirits by mixing alcoholic beverages with any materials, manufactures any imitations of or compounds liquors for sale under the name of whiskey, brandy, gin, rum, wine, spirits, cordials, bitters, or any other name;
- (36)~~((37))~~ "Repackaging" means the placing of alcoholic beverages in any retail container irrespective of the material from which the container is made;
- (37)~~((38))~~ "Restaurant" means a facility where the usual and customary business is the serving of meals to consumers, that has a bona fide kitchen facility, and that receives at least fifty percent (50%) of its gross receipts from the sale of food;
- (38)~~((39))~~ "Retail container" means any bottle, can, barrel, or other container which, without a separable intermediate container, holds alcoholic beverages and is suitable and destined for sale to a retail outlet, whether it is suitable for delivery to the consumer or not;
- (39)~~((40))~~ "Retail outlet" means retailer, hotel, motel, restaurant, railroad dining car, club, and any facility where alcoholic beverages are sold directly to the consumers;
- (40)~~((41))~~ "Retail sale" means any sale where delivery is made in Kentucky to any consumers;
- (41)~~((42))~~ "Retailer" means any person who sells at retail any alcoholic beverage for the sale of which a license is required;
- (42)~~((43))~~ "Sale" means any transfer, exchange, or barter for consideration, and includes all sales made by any person, whether principal, proprietor, agent, servant, or employee, of any alcoholic beverage;
- (43)~~((44))~~ "Service bar" means a bar, counter, shelving, or similar structure used for storing or stocking supplies of alcoholic beverages that is a workstation where employees prepare alcoholic beverage drinks to be delivered to customers away from the service bar. A service bar shall be located in an area where the general public, guests, or patrons are prohibited;
- (44)~~((45))~~ "Sell" includes solicit or receive an order for, keep or expose for sale, keep with intent to sell, and the delivery of any alcoholic beverage;
- (45)~~((46))~~ "Small farm winery" means a winery producing wines, in an amount not to exceed fifty thousand (50,000) gallons in a calendar year;
- (46)~~((47))~~ "Souvenir package" means a special package of Kentucky straight bourbon whiskey available for retail sale at a licensed Kentucky distillery where the whiskey was produced or bottled that is available from a licensed retailer;
- (47)~~((48))~~ "State director" means the director of the Division of Distilled Spirits or the director of the Division of Malt Beverages, or both, as the context requires;
- (48)~~((49))~~ "Supplemental bar" means a bar, counter, shelving, or similar structure used for serving and selling distilled spirits or wine by the drink for consumption on the licensed premises to guests and patrons from additional locations other than the main bar. A supplemental bar shall be continuously constructed and accessible to patrons for distilled spirits or wine sales or service without physical separation by walls, doors, or similar structures;
- (49)~~((50))~~ "Vehicle" means any device or animal used to carry, convey, transport, or otherwise move alcoholic beverages or any products, equipment, or appurtenances used to manufacture, bottle, or sell these beverages;
- (50)~~((51))~~ "Vintner" means any person who owns, occupies, carries on, works, conducts, or operates any winery, either by himself or by his agent, except persons who manufacture wine for sacramental purposes exclusively;
- (51)~~((52))~~ "Warehouse" means any place in which alcoholic beverages are housed or stored;
- (52)~~((53))~~ "Wholesale sale" means a sale to any person for the purpose of resale;
- (53)~~((54))~~ "Wholesaler" means any person who distributes alcoholic beverages for the purpose of being sold at retail, but it shall not include a subsidiary of a manufacturer or cooperative of a retail outlet;

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

(55)(56) "Winery" means any place or premises in which wine is manufactured from any fruit, or brandies are distilled as a by-product of wine or other fruit, or cordials are compounded.

➔Section 550. KRS 241.015 is amended to read as follows:

There is created *a Department*~~[an Office]~~ of Alcoholic Beverage Control, which shall constitute a statutory administrative *department*~~[office]~~ of the state government within the meaning of KRS Chapter 12. The *department*~~[office]~~ consists of the *commissioner*~~[executive director]~~ of alcoholic beverage control and the Alcoholic Beverage Control Board. The *commissioner*~~[executive director]~~ shall head the *department*~~[office]~~, shall be its executive officer, and shall have charge of the administration of the *department*~~[office]~~ and perform all functions of the *department*~~[office]~~ not specifically assigned to the board. The ~~[secretary of the Environmental and Public Protection Cabinet, with the approval of the]~~ Governor, shall appoint as *commissioner*~~[executive director]~~ a person with administrative experience in the field of alcoholic beverage control. The *commissioner*~~[executive director]~~ shall be appointed for a term of four (4) years.

➔Section 551. KRS 241.020 is amended to read as follows:

- (1) The *department*~~[office]~~ shall administer statutes relating to, and regulate traffic in, alcoholic beverages, except that the collection of taxes shall be administered by the Department of Revenue.
- (2) A Division of Distilled Spirits, under the supervision of the board, shall administer the laws in relation to traffic in distilled spirits and wine.
- (3) A Division of Malt Beverages, under the supervision of the board, shall administer the laws in relation to traffic in malt beverages.

➔Section 552. KRS 241.030 is amended to read as follows:

The Alcoholic Beverage Control Board shall consist of the *commissioner*~~[executive director]~~ of alcoholic beverage control and two (2) persons appointed by the secretary of the ~~[Environmental and]~~ Public Protection Cabinet with the approval of the Governor, who shall be persons with administrative experience in the field of alcoholic beverage control and who shall serve for terms of four (4) years each. One (1) of such persons shall serve as director of the Division of Distilled Spirits, and the other shall serve as director of the Division of Malt Beverages. The *commissioner*~~[executive director]~~ shall be chairman of the board.

➔Section 553. KRS 241.060 is amended to read as follows:

The board shall have the following functions, powers, and duties:

- (1) To promulgate reasonable administrative regulations governing procedures relative to the applications for and revocations of licenses, the supervision and control of the use, manufacture, sale, transportation, storage, advertising, and trafficking of alcoholic beverages, and all other matters over which the board has jurisdiction. Administrative regulations need not be uniform in their application but may vary in accordance with reasonable classifications;
- (2) To limit in its sound discretion the number of licenses of each kind or class to be issued in this state or any political subdivision, and restrict the locations of licensed premises. To this end, the board may make reasonable division and subdivision of the state or any political subdivision into districts. Administrative regulations relating to the granting, refusal, and revocation of licenses may be different within the several divisions or subdivisions;
- (3) To hold hearings in accordance with the provisions of KRS Chapter 13B. The *department*~~[office]~~ may pay witnesses the per diem and mileage provided in KRS 421.015;
- (4) To conduct hearings and appeals under KRS 241.150, 241.200, 243.470, and 243.520 and render final orders upon the subjects of the hearings and appeals;

- (5) To destroy evidence in the ~~department's office's~~ possession after all administrative and judicial proceedings are conducted;
- (6) To suspend, revoke, or cancel for cause, after a hearing in accordance with KRS Chapter 13B, any license issued under KRS 243.020 to 243.670;
- (7) To prohibit the issuance of a license for the premises until the expiration of two (2) years from the time the offense was committed if a violation of KRS Chapter 241, KRS 243.020 to 243.670, or KRS Chapter 244 has taken place on the premises which the owner knew of or should have known of, or was committed or permitted in or on the premises owned by the licensee; and
- (8) To suspend a license for any cause for which the board is authorized to exercise its discretion as to revoking a license.

➔Section 554. KRS 241.100 is amended to read as follows:

- (1) No member of the board or member of his ~~or her~~ immediate family or employee of the ~~department office~~ shall have any interest in any premises or business where alcoholic beverages are manufactured, stored or sold. Nor shall he ~~or she~~ receive any commission or profit from any person applying for or receiving any license or permit.
- (2) No person shall be disqualified under this section solely by reason of his ~~or her~~ membership in a club.
- (3) If a member of the board is disqualified or fails to give bond and take the oath of office, the Governor shall fill the vacancy by appointment for the period during which that member of the board remains disqualified or fails to qualify.

➔Section 555. KRS 241.140 is amended to read as follows:

The functions of each county administrator shall be the same, with respect to local licenses and regulations, as the functions of the board with respect to state licenses and regulations, except that no regulation adopted by a county administrator may be less stringent than statutes relative to alcoholic beverage control or than the regulations of the board. If any city appoints its own administrator under KRS 241.170, the county administrator in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of that city, unless the ~~department office~~ determines that the city does not have an adequate police force of its own or under KRS 70.540, 70.150, 70.160, and 70.170.

➔Section 556. KRS 241.170 is amended to read as follows:

- (1) The city administrator in each city of the first class or the administrator in a consolidated local government, and such investigators and clerks as are deemed necessary for the proper conduct of his office, shall be appointed by the mayor. The city administrator in each city of the first class or the administrator in a county containing a consolidated local government, and his investigators, shall have full police powers of peace officers, and their jurisdiction shall be coextensive with boundaries of the city of the first class or the boundaries of the county in a county containing a consolidated local government. They may inspect any premises where alcoholic beverages are manufactured, sold, stored, or otherwise trafficked in, without first obtaining a search warrant. If any city of the second, third, or fourth class in a county containing a consolidated local government appoints its own administrator under KRS 241.160, the administrator of a consolidated local government in that county shall have jurisdiction over only that portion of the county which lies outside the corporate limits of such a city, unless the ~~department office~~ determines that the city does not have an adequate police force of its own or pursuant to KRS 70.150, 70.160, 70.170, and 70.540.
- (2) The city administrator in each city of the second, third, or fourth class shall be appointed by the city manager if there is one. If there is no city manager, the city administrator shall be appointed by the mayor.
- (3) No person shall be an administrator, an investigator, or an employee of the city or a consolidated local government under the supervision of the administrator, who would be disqualified to be a member of the board under KRS 241.100.

➔Section 557. KRS 241.990 is amended to read as follows:

Any person who after an opportunity to be heard is found by the ~~commissioner executive director~~ to have violated any of the provisions of KRS 241.100, or acted as county administrator in violation of subsection (1) of KRS 241.120, or acted as city administrator or a city employee in violation of subsection (3) of KRS 241.170, or acted as

an urban-county administrator in violation of KRS 241.230, shall automatically vacate his office or position, and upon conviction by a court, he shall be guilty of a Class D felony.

➔Section 558. KRS 242.123 is amended to read as follows:

- (1) To promote economic development and tourism in a county containing a city that has, in whole or in part, voted to discontinue prohibition, with the exception of a territory that has discontinued prohibition in accordance with KRS 242.1292, a local option election for the limited sale of alcoholic beverages may be held in any precinct containing a nine (9) or an eighteen (18) hole golf course that meets United States Golf Association criteria as a regulation golf course, notwithstanding any other provisions of the Kentucky Revised Statutes.
- (2) A local option election for the limited sale of alcoholic beverages held under subsection (1) of this section shall be conducted in the same manner specified in KRS 242.020 to 242.120, except that the form of the proposition to be voted upon shall be "Are you in favor of the sale of alcoholic beverages by the drink at (name of golf course) in the (name of precinct)?".
- (3) Upon approval of the proposition, the **Department**~~{Office}~~ of Alcoholic Beverage Control may issue a license to the golf course for the sale of alcoholic beverages by the drink as provided in KRS 243.030 and KRS 243.040.
- (4) No alcoholic beverage license shall be issued to any applicant within the precinct except the nine (9) or the eighteen (18) hole regulation golf course named in the proposition.

➔Section 559. KRS 242.1232 is amended to read as follows:

- (1) The **Department**~~{Office}~~ of Alcoholic Beverage Control shall not issue a license to an applicant authorized to apply for a license to sell alcoholic beverages by the drink under KRS 242.123 unless the applicant and the golf course, if different from the applicant, agree to voluntarily comply with the provisions of KRS Chapter 344, whether or not the applicant and the golf course would otherwise be covered by the provisions of KRS Chapter 344.
- (2) The **department**~~{office}~~ shall revoke or suspend any license issued under KRS 242.123 if the **department**~~{office}~~ or the Kentucky Commission on Human Rights makes a finding that the applicant or the golf course, if different from the applicant, has violated a requirement specified in this section.

➔Section 560. KRS 242.1242 is amended to read as follows:

- (1) To promote economic development and tourism in any county or city in which prohibition is in effect, in whole or in part, and a qualified historic site is located, a local option election for the limited sales of alcoholic beverages by the drink may be held in the precinct of the county where the qualified historic site is located, notwithstanding any other provision of the Kentucky Revised Statutes.
- (2) A local option election for the limited sale of alcoholic beverages by the drink held under subsection (1) of this section shall be conducted in the same manner as specified in KRS 242.020; 242.030(1), (2), and (5); 242.040; and 242.060 to 242.120. The form of the proposition to be voted upon shall be "Are you in favor of the sale of alcoholic beverages by the drink at qualified historic sites in the (name of precinct)?"
- (3) Upon approval of the proposition, the **Department**~~{Office}~~ of Alcoholic Beverage Control shall issue a license to qualified historic sites that meet the criteria included in the proposition for the sale of alcoholic beverages by the drink as provided in KRS 243.030.

➔Section 561. KRS 243.025 is amended to read as follows:

- (1) All of the fees paid into the State Treasury for licenses issued under KRS 243.030 and 243.040 shall be credited to a revolving trust and agency account, as provided in KRS 45.253, for the **Department**~~{Office}~~ of Alcoholic Beverage Control.
- (2) All fees associated with the **department's**~~{agency's}~~ server training program, except for board-ordered fees, shall be collected on a cost recovery basis and shall be credited to the revolving trust and agency account established under subsection (1) of this section.
- (3) These moneys shall be used solely for the administration and enforcement of KRS Chapters 241, 242, 243, and 244. The moneys in the account shall not lapse at the close of the fiscal year.

➔Section 562. KRS 243.030 is amended to read as follows:

The following kinds of distilled spirits and wine licenses may be issued by the director of the Division of Distilled Spirits, the fees for which shall be:

- (1) Distiller's license, per annum \$2,500.00
- (2) Rectifier's license, per annum \$2,500.00
- (3) Blender's license, per annum \$2,500.00
- (4) Vintner's license, per annum \$1,000.00
- (5) Small farm winery license, per annum \$100.00
 - (a) Small farm winery off-premises retail license, per annum \$25.00
- (6) Wholesaler's license, per annum \$2,000.00
- (7) Retail package license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$800.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) In all other counties \$400.00
- (8) Retail drink license, motel drink license, restaurant drink license, or supplemental bar license, per annum:
 - (a) In counties containing cities of the first class or a consolidated local government \$1,000.00
 - (b) In counties containing cities of the second class \$700.00
 - (c) In counties containing cities of the third class \$600.00
 - (d) In counties containing cities of the fourth class \$500.00
 - (e) The fee for each of the first five (5) supplemental bar licenses shall be the same as the fee for the drink license. There shall be no charge for each supplemental license issued in excess of five (5) to the same licensee at the same premises.
- (9) Transporter's license, per annum \$100.00
- (10) Dining car license, per annum \$100.00
- (11) Special nonbeverage alcohol vendor's license, per annum \$50.00
- (12) Special industrial alcohol license, per annum \$50.00
- (13) Special nonindustrial alcohol license, per annum \$50.00
- (14) Special agent's or solicitor's license, per annum \$25.00
- (15) Special storage or warehouse license and bottling house storage license,
per annum \$500.00
- (16) Special temporary liquor license, per event \$100.00
- (17) Special private club license, per annum \$300.00

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

- (18) Special Sunday retail drink license, per annum \$500.00
- (19) Nonresident special agent or solicitor's license, per annum \$100.00
- (20) Transport permit, nonresident license, per annum \$100.00

- (21) Through transporter's license, per annum \$100.00
- (22) Freight forwarder's license, per annum \$100.00
- (23) Restaurant wine license, per annum \$500.00
- (24) Special temporary wine license, per event \$50.00
- (25) Caterer's license, per annum \$800.00
- (26) Souvenir retail liquor license, per annum \$500.00
- (27) Special temporary distilled spirits and wine
 auction license, per event \$100.00
- (28) Airport drink license, per annum \$1,000.00
- (29) Convention center or convention hotel complex
 license, per annum \$5,000.00
- (30) Extended hours supplemental license, per annum \$2,000.00
- (31) Horse race track license, per annum \$2,000.00
- (32) Automobile race track license, per annum \$2,000.00
- (33) Air or rail system license, per annum \$2,000.00
- (34) Riverboat license, per annum \$1,000.00
- (35) Bottling house license, per annum \$1,000.00
- (36) Hotel in-room license, per annum \$200.00
- (37) Bonded warehouse license, per annum \$1,000.00
- (38) Air transporter liquor license, per annum \$500.00
- (39) Sampling license, per annum \$100.00
- (40) Replacement or duplicate license \$25.00
- (41) Entertainment destination license, per annum \$7,500.00
- (42) (a) Limited restaurant license or limited golf course license, per annum
 (includes distilled spirits, wine, and malt beverages), new applicants:
 - 1. In counties containing cities of the first class or a consolidated local government \$1,200.00
 - 2. In counties containing cities of the second class \$900.00
 - 3. In counties containing cities of the third class \$800.00
 - 4. In counties containing cities of the fourth, fifth,
 or sixth classes \$700.00
- (b) Renewals for limited restaurant licenses or limited golf course licenses shall be \$50.00 less than the
 applicable licensing fee for new applicants.
- (43) Small farm winery wholesaler's license, per annum \$100.00
- (44) Qualified historic site license (includes distilled spirits, wine, and malt beverages by
 the drink), per annum \$1,000.00
- (45) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to
 KRS 243.045.

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

A nonrefundable application fee of fifty dollars (\$50) shall be charged to process each new application under this section, except for subsections (5), (9), (11), (12), (13), (14), (16), (19), (20), (21), (22), (24), (27), (39), and (40). The application fee shall be applied to the licensing fee if the license is issued; otherwise it shall be retained by the ~~department~~~~office~~.

➔Section 563. KRS 243.036 is amended to read as follows:

- (1) A special temporary distilled spirits and wine auction license may be issued to a charitable organization, upon the payment of the fee set forth in KRS 243.030 and upon satisfaction of the requirements prescribed by administrative regulation promulgated by the ~~department~~~~office~~.
- (2) A special temporary distilled spirits and wine auction license shall authorize the charitable organization to:
 - (a) Purchase, transport, receive, possess, store, sell, and deliver distilled spirits and wine to be sold at auction in the manner prescribed by administrative regulation promulgated by the ~~department~~~~office~~;
 - (b) Obtain distilled spirits and wine from distillers, rectifiers, vintners, wholesalers, distributors, retailers, or any other person, by gift or donation, for the purpose of charity auctions in the manner prescribed by administrative regulation promulgated by the ~~department~~~~office~~; and
 - (c) Receive payment for distilled spirits and wine sold at auctions in the manner prescribed by administrative regulation promulgated by the ~~department~~~~office~~.
- (3) Each distilled spirits and wine auction conducted by a charitable organization shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244 and the administrative regulations issued under those chapters and shall be authorized only on the days and only during the hours that the sale of alcoholic beverages is otherwise authorized in the county or municipality.
- (4) The location at which the distilled spirits and wine are auctioned under this section shall not constitute a public place for the purpose of KRS Chapter 222. Distilled spirits and wine auctions may be conducted on licensed or unlicensed premises. The charitable organization possessing a special temporary distilled spirits and wine auction license shall post a copy of the license at the location of the auction. During this period not more than one (1) auction shall be held.
- (5) A special temporary distilled spirits and wine auction license shall not be issued for any period longer than thirty (30) days. During this period not more than one (1) auction shall be held.
- (6) Notwithstanding any other provision of KRS Chapters 241 to 244, a distiller, rectifier, vintner, wholesaler, distributor, or retailer may donate, give away, or deliver any of its products to a charitable organization possessing a special temporary distilled spirits and wine auction license under this section.
- (7) All restrictions and prohibitions applying to a distilled spirits and wine retail package and distilled spirits and wine by the drink license, not inconsistent with this section, shall apply to a special temporary distilled spirits and wine auction license.

➔Section 564. KRS 243.040 is amended to read as follows:

The following kinds of malt beverage licenses may be issued by the director of the Division of Malt Beverages, the fees for which shall be:

- | | |
|----------------------------------------------|------------|
| (1) Brewer's license, per annum | \$2,500.00 |
| (2) Microbrewery license, per annum | \$500.00 |
| (3) Distributor's license, per annum | \$500.00 |
| (4) Malt beverage retail license, per annum: | |
| (a) New applicants | \$200.00 |
| (b) Renewals | \$150.00 |
| (5) Dining car license, per annum | \$200.00 |
| (6) Transporter's license, per annum | \$100.00 |

- (7) Special temporary license, per event \$50.00
- (8) Special off-premises retail storage license, per annum \$100.00
- (9) Distributor's storage, per annum \$250.00
- (10) Special beer transporter's license, per annum \$100.00
- (11) Brew-on-premises license, per annum \$500.00
- (12) Out-of-state brewer license, per annum \$1,500.00
- (13) Malt beverage warehouse license, per annum \$1,000.00
- (14) Replacement or duplicate license, per annum \$25.00
- (15) Limited out-of-state brewer license, per annum \$250.00
- (16) Qualified historic site, per annum \$200.00
- (17) A nonrefundable fee of fifty dollars (\$50) shall be charged to process each new transitional license pursuant to KRS 243.045.
- (18) Other special licenses as the state board finds to be necessary for the administration of KRS Chapters 241, 242, 243, and 244 and for the proper regulation and control of the trafficking in malt beverages, as provided for by administrative regulations promulgated by the state board.

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

➔Section 565. KRS 243.045 is amended to read as follows:

- (1) A transitional license may be issued by the director of the Division of Malt Beverages or the director of the Division of Distilled Spirits during the time a transfer of an ongoing business is being processed under the following conditions:
 - (a) The purchaser shall file an application for a permanent license with the appropriate local alcoholic beverage authority and with the ~~department~~~~office~~;
 - (b) The purchaser shall advertise its intention to apply for a license pursuant to KRS 243.360; and
 - (c) The purchaser shall pay all application fees for the permanent license.
- (2) If the above requirements are met, the director of the Division of Malt Beverages or the director of the Division of Distilled Spirits, as appropriate, shall have the discretion to issue a transitional license with a term of up to sixty (60) days, plus one (1) thirty (30) day extension period, to the purchaser for a processing fee set forth in KRS 243.030 to 243.040. All transitional licenses immediately expire upon the issuance to the purchaser of one (1) or more permanent licenses.
- (3) Upon completion of the sale of the business, the purchaser shall not operate the business on the seller's license.
- (4) The transitional license shall not be transferable or used for an application to move a business from one (1) location to another location.

➔Section 566. KRS 243.050 is amended to read as follows:

- (1) The ~~department~~~~office~~ may issue a railroad system license to a railroad company upon the payment of the required fee. This license tax shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages.
- (2) The ~~department~~~~office~~ may issue a commercial airlines system license to a commercial airlines system or charter flight system upon the payment of the required fee. This license fee shall be in lieu of all license and excise taxes which would otherwise be due by the holder in connection with the retailing of alcoholic beverages and the license may be renewed annually. The license shall authorize the licensee to sell distilled spirits and wine by the drink and by miniature bottle, and malt beverages, upon regularly scheduled or charter

flights of the licensee, in and out of the State of Kentucky. The license shall authorize the licensee to store alcoholic beverages for retail sale at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application.

- (3) The ~~department~~~~office~~ may issue a transporter's license to a commercial airline system, a charter flight system, or a commercial cargo system, upon the payment of the required fee. This license may be renewed annually. The license shall authorize the licensee to transport distilled spirits and wine and malt beverages, into and out of the State of Kentucky, upon regularly scheduled or charter flights of the licensee. The license shall authorize, for the purpose of transportation, the storage of alcoholic beverages at a location or locations, if operating from more than one (1) airport in Kentucky, as designated on the license application. This license shall authorize an airline to transport if both the consignor and consignee in each case are authorized by the laws of the states of their residence to sell, purchase, ship, or receive the alcoholic beverages.
- (4) The ~~department~~~~office~~ may issue a convention center or convention hotel complex license for the retail sale of distilled spirits, wine, and malt beverages for consumption on the premises to a convention center or hotel having seating capacity of one thousand (1,000) or more persons. The license shall cover all alcoholic beverage sales on the premises, except that a separate hotel in-room service license shall be required, where applicable. An extended supplement license under subsection (5) of this section may also be issued where applicable. The convention center or convention hotel complex license shall be a nonquota license and shall not be transferable to other premises. The provisions of this subsection shall not apply to convention center licenses or the renewal thereof, other than those in a city of the first class or a county containing a city of the first class or a consolidated local government, if the original license was issued prior to July 15, 1998.
- (5) Where it is determined by the ~~department~~~~office~~ to be in the best interest of promoting tourism, conventions, and the economic development of Kentucky or any part thereof, the ~~department~~~~office~~ may issue a supplemental license for the retail sale of alcoholic beverages by the drink at convention centers, at horse race tracks licensed to conduct a race meeting under KRS Chapter 230, at commercial airports through which more than five hundred thousand (500,000) passengers arrive or depart annually, at automobile race tracks having a seating capacity of at least thirty thousand (30,000) people, and at qualified historic sites. Upon application by the holder of a retail alcoholic beverage license at a convention center, convention hotel complex, horse race track, automobile race track, commercial airport, or qualified historic site meeting the requirements of this subsection as provided above, the ~~department~~~~office~~ may establish the days when the supplemental license will be valid at the specific location, including Sundays after 1 p.m. The supplemental license fee shall be established, and shall be in addition to all other licenses and fees due by the holder in connection with the retailing of alcoholic beverages. The ~~department~~~~office~~ may, by administrative regulation or special conditions of the supplemental permit, establish such restrictions on the use of the license as will insure that it will be primarily for the benefit of the convention business, the horse racing industry, passengers at large commercial airports, the automobile racing industry, and qualified historic sites.

➔Section 567. KRS 243.055 is amended to read as follows:

- (1) As used in this section, the following definitions shall apply:
 - (a) "Hotel" means any hotel, motel, inn, or other establishment which offers overnight accommodations to the public for hire;
 - (b) "In-room service" means the delivery of alcoholic beverages in unbroken packages by an employee of the hotel to a registered guest's room when the alcoholic beverages have been ordered by a guest and when the guest shall be billed for the cost of the alcoholic beverages at the time of delivery, with all sales of the alcoholic beverages being completed upon delivery; and, additionally, the provision of a cabinet or other facility located in a hotel guest's room which contains alcoholic beverages and which is provided upon written request of the guest and which is accessible by lock and key or remote control device only to the guest, with the sale of the alcoholic beverages contained therein being final at the time requested, except for a credit which may be given to the guest for any unused portion. The licensee may stock a cabinet or other facility located in a hotel guest's room pursuant to this section, with fifty (50) milliliter containers of distilled spirits.
- (2) The ~~department~~~~office~~ may issue a hotel in-room service license to any hotel which is licensed to sell distilled spirits, wine, and malt beverages upon the payment of the fee set forth in KRS 243.030. The license shall authorize the licensee to sell distilled spirits, wine, and malt beverages by in-room service. The sale of alcoholic beverages by in-room service shall be subject to all restrictions and limitations contained in KRS Chapters 241 to 244, and the administrative regulations issued under those chapters, and shall be authorized

only on the days and only during the hours as the sale of alcoholic beverages is otherwise authorized in the county or municipality. All alcoholic beverages sold pursuant to this section shall be considered by the drink sales and shall be subject to all state and local taxes imposed on alcoholic beverages and shall be purchased from a licensed wholesaler and distributor.

➔Section 568. KRS 243.090 is amended to read as follows:

- (1) All licenses issued by the ~~department~~~~office~~, except special event or temporary licenses, shall be valid for a period of no more than a year. All licenses shall expire on June 30 of each year until the licensee is notified by the ~~department~~~~office~~ that a renewal system with staggered dates has been implemented. The ~~department~~~~office~~ shall promulgate administrative regulations establishing the year-round system for renewal of licenses. The system shall be designed to distribute the workload as uniformly as possible within the offices of the local administrators and the ~~Department~~~~Office~~ of Alcoholic Beverage Control.
- (2) When any person applies for a new license authorized to be issued under KRS 243.020 to 243.670, he shall be charged, if the license is issued, the full fee for the respective license if six (6) months or more remain before the license is due to be renewed and one-half (1/2) the fee if less than six (6) months remain before the license is due to be renewed. No abatement of license fees shall be permitted to any person who held a license of the same kind for the same premises in the preceding license period and who was actually doing business under the license during the last month of the preceding license period.
- (3) The renewal by the ~~department~~~~office~~ of the certificate or permit of any alcoholic beverage license shall not be construed to waive or condone any violation that occurred prior to the renewal and shall not prevent subsequent proceedings against the licensee.

➔Section 569. KRS 243.155 is amended to read as follows:

- (1) Any in-state or out-of-state small farm winery may apply for a small farm winery license. In addition to all other licensing requirements, an applicant for a small farm winery license shall submit with its application a copy of the small farm winery's federal basic permit and proof documenting its annual wine production. An out-of-state winery shall submit additional documentation evidencing its resident state. As part of the application process, an out-of-state winery shall publish its notice of intent, as required by KRS 243.360, in the Kentucky newspaper of highest circulation. The ~~department~~~~office~~ shall promulgate administrative regulations establishing the form the documentation of proof of production shall take.
- (2) A small farm winery license shall authorize the licensee to perform the following functions without having to obtain separate licenses, except that each small farm winery off-premises retail site shall be separately licensed:
 - (a) Manufacture wines and bottle wines produced by that small farm winery;
 - (b) Bottle wines produced by another small farm winery;
 - (c) Serve on the premises or at small farm winery off-premise retail sites complimentary samples of wine produced by it in amounts not to exceed six (6) ounces per patron per day, if the small farm winery or its off-premise retail site is located in wet territory;
 - (d) Sell by the drink or by the package on premises, at small farm winery off-premise retail sites, and at fairs, festivals, and other similar types of events, wine produced on the premises of the small farm winery or produced by a licensed small farm winery, at retail to consumers if all sales sites are located in wet territory;
 - (e) Sell and transport wine produced on the premises of the small farm winery to wholesale license holders and small farm winery license holders;
 - (f) Consume on the premises wine produced by the small farm winery or a licensed small farm winery and purchased by the drink or by the package at the licensed premises, if the small farm winery is located in wet territory; and
 - (g) Ship to a customer wine produced by a small farm winery if:
 1. The wine is purchased by the customer in person at the small farm winery;
 2. The wine is shipped by licensed common carrier; and
 3. The amount of wine shipped is limited to two (2) cases per customer per visit.

- (3) If a licensed small farm winery is located in a dry territory, KRS 242.230 to 242.430 shall apply, unless a local option election is held in accordance with the provisions of this subsection. A limited sale precinct election may be held in a precinct containing a licensed small farm winery or a proposed small farm winery located in a dry territory. The election shall be held in the same manner as prescribed by KRS 242.010 to 242.040 and 242.060 to 242.120. If the precinct contains a licensed small farm winery, the proposition to be voted on shall state, "Are you in favor of the sale of wine at the (name of the licensed small farm winery or wineries)?" If the precinct contains a proposed small farm winery or wineries, the proposition voted on shall state, "Are you in favor of the sale of wine at the (name of the proposed small farm winery or wineries)?" If the proposition is approved, a licensed small farm winery within the precinct may sell wine in accordance with subsection (2) of this section.
- (4) Other provisions of this chapter and KRS Chapter 244 notwithstanding, a small farm winery license holder may also hold a restaurant wine license and a retail malt beverage license, provided the issuance of these licenses is in connection with the establishment and operation of a restaurant, hotel, inn, bed and breakfast, conference center, or any similar business enterprise the purpose of which is to promote viticulture, enology, and tourism. The retail malt beverage license issued under this subsection shall limit the licensee to the sale of malt beverages for consumption on the premises only.
- (5) This section shall not exempt the holder of a small farm winery license from the provisions of KRS Chapters 241, 242, 243, and 244, nor from the administrative regulations of the board, nor from regulation by the board at all premises licensed by the small farm winery, except as expressly stated in this section.
- (6) Nothing contained in this section shall exempt a licensed out-of-state winery from obeying the laws of its resident state.
- (7) Any person previously licensed as a small or farm winery under this chapter prior to January 1, 2007, shall hereby be authorized to conduct business as a small farm winery licensee, until such time as the term of his or her small or farm winery license expires. Upon the expiration of the term remaining on his or her small or farm winery license, a licensee who is in good standing shall be issued a small farm winery license as part of the renewal process after he or she submits to the ~~department~~~~office~~ the winery's federal basic permit and proof of its annual wine production.

➔Section 570. KRS 243.200 is amended to read as follows:

- (1) A distilled spirits and wine transporter's license shall authorize the licensee to transport distilled spirits and wine to or from the licensed premises of any licensee under KRS 243.020 to 243.670 if both the consignor and consignee in each case are authorized by the law of the states of their residence to sell, purchase, ship or receive the alcoholic beverages.
- (2) A distilled spirits and wine transporter's license shall be issued only to persons authorized by proper certificate from the Department of Vehicle Regulation to engage in the business of common carrier.
- (3) No person except a railroad company or railway express company shall transport or cause to be transported any distilled spirits or wine, unless expressly authorized to do so by law.
- (4) Distilled spirits and wine may be transported by the holder of any license authorized by KRS 243.030 from and to express or freight depots to and from the premises covered by the license of the person so transporting distilled spirits or wine.
- (5) A licensed alcoholic beverage store operator may move, within the same county, alcoholic beverages from one of the operator's licensed stores to another without a transporter's license. However, the licensed store operator shall keep and maintain, in one (1) of his or her stores in that county, adequate books and records of the transactions involved in transporting alcoholic beverages from one (1) licensed store to another in accordance with standards established in administrative regulations promulgated by the board. The records shall be available to the ~~department~~~~office~~ and the Department of Revenue upon request.
- (6) Distilled spirits and wine may be transported by the holder of any retail package or drink license issued under KRS 243.030 from the premises of a licensed wholesaler to the licensed premises of the retail licensee. Any retailer transporting alcoholic beverages under this subsection shall do so in a vehicle marked in conformity with administrative regulations of the ~~department~~~~office~~. Both the wholesaler and the retailer engaging in activity under this subsection shall be responsible for maintaining records documenting the transactions.

➔Section 571. KRS 243.290 is amended to read as follows:

A malt beverage special temporary license shall authorize the sale of malt beverages at retail for consumption on the premises of any regularly organized fair or racing association for a particular fair, race, or race meeting conducted by the association, or for special temporary occasions such as picnics, bazaars, and carnivals. The issuance or refusal of a malt beverage special temporary license and the exercise of the privilege granted by the license shall be subject to such regulations as the ~~department~~~~office~~ may in each particular case deem necessary.

➔Section 572. KRS 243.360 is amended to read as follows:

- (1) Any person, corporation, partnership, or any other entity, except an applicant for the same license for the same premises, or an applicant for an out-of-state brewer's license, supplemental bar license, extended hours supplemental license, a special agent or solicitor's license, a bonded warehouse license, a freight forwarding license, a storage warehouse license, an industrial alcohol license, a nonindustrial alcohol license, a storage warehouse license, a nonbeverage license, a vendor license, a transporter's license, a Sunday license, or a temporary drink license shall, before applying for a license under KRS 243.030 and 243.040, advertise by publication under KRS 424.130(1)(b) his or her intention to apply for a license.
- (2) The notice shall conform in all material respects to the following requirements:
 - (a) The notice shall state: the name and address of the applicant if the applicant is an individual, the name and address of each partner and the name of the business and its address if the applicant is a partnership, and the name and address of each principal officer and director and the name and business address of the corporation if the applicant is a corporation;
 - (b) The notice shall specifically state the location of the premises for which the license is sought and the type of license being requested; and
 - (c) The notice shall state the date the application will be filed and shall contain the following statement: "Any person, association, corporation, or body politic may protest the granting of the license by writing the ~~Department~~~~Office~~ of Alcoholic Beverage Control, 1003 Twilight Trail, Suite A-2, Frankfort, Kentucky 40601, within thirty (30) days of the date of legal publication."
- (3) Any protest received after the thirty (30) day period has expired shall not be considered a valid legal protest by the board.

➔Section 573. KRS 243.380 is amended to read as follows:

- (1) Applications for licenses provided for in KRS 243.030 and 243.050 shall be made to the director of the Division of Distilled Spirits. Applications for licenses provided for in KRS 243.040 shall be made to the director of the Division of Malt Beverages.
- (2) All applications shall be on forms furnished by the ~~department~~~~office~~. They shall be verified and shall set forth in detail such information concerning the applicant and the premises for which the license is sought as the board by regulation requires. Each application shall be accompanied by payment. Payment of the license fee may be by certified check, cash, a postal or express money order, or any other method of payment approved in writing by both the Finance and Administration Cabinet and the Office of the State Treasurer. Promptly upon receipt thereof the board shall pay the same into the State Treasury, giving the Department of Revenue copies of the pay-in vouchers and such other supporting data as the Department of Revenue may require for revenue control purposes.

➔Section 574. KRS 243.390 is amended to read as follows:

- (1) In addition to other information as the board may by administrative regulation require, every application for a license under KRS 243.020 to 243.670 shall contain the following information, given under oath:
 - (a) The name, age, Social Security number, address, residence, and citizenship of each applicant;
 - (b) If the applicant is a partner, the name, age, Social Security number, address, residence, and citizenship of each partner and the name and address of the partnership;
 - (c) The name, age, Social Security number, address, residence, and citizenship of each person interested in the business for which the license is sought, together with the nature of that interest, and, if the applicant is a corporation, limited partnership company, or limited liability company, the name, age, Social Security number, address, and residence of each officer, director, member, partner, and managerial employee and the citizenship of each, and the state under the laws of which the corporate applicant is

incorporated or organized. The ~~department~~~~office~~ may require the names of all the stockholders and the percentage of stock held by each;

- (d) The premises to be licensed, stating the street and number, if the premises has a street number, and otherwise such a description that will reasonably indicate the location of the premises;
 - (e) A statement that neither the applicant nor any other person referred to in this section has been convicted of; any misdemeanor directly or indirectly attributable to alcoholic beverages; any violation of KRS 218A.050, 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, or 218A.130 within the two (2) years immediately preceding the application; any felony, within five (5) years from the later of the date of parole or the date of conviction; or providing false information to the ~~department~~~~office~~ preceding the application; and that the applicant or any other person referred to in this section has not had any license that has been issued to him under any alcoholic beverage statute revoked for cause within two (2) years prior to the date of the application; and
 - (f) A statement that the applicant will in good faith abide by every state and local statute, regulation, and ordinance relating to the manufacture, sale, use of, and trafficking in alcoholic beverages.
- (2) If, after a license has been issued, there is a change in any of the facts required to be set forth in the application, a verified supplemental statement in writing giving notice of the change shall be filed with the board within ten (10) days after the change.
 - (3) In giving any notice or taking any action in reference to a license, the board may rely upon the information furnished in the application or in the supplemental statement connected with the application. This information, as against the licensee or applicant, shall be conclusively presumed to be correct. The information required to be furnished in the application or supplemental statement shall be deemed material in any prosecution for perjury.

➔Section 575. KRS 243.400 is amended to read as follows:

- (1) Every applicant for a brewer's, distiller's, rectifier's, bottling house or vintner's license shall file with his application a bond to the state in the amount of one thousand dollars (\$1,000). The bond shall be on a form approved by the board and shall have corporate surety registered by the ~~Department~~~~Office~~ of Insurance. The applicant shall be the principal obligor and the state shall be the obligee. The bond shall be conditioned upon the prompt payment by the obligor to the Department of Revenue of any and all state taxes, with penalties and interest. The applicant may file a continuing bond provided that each renewal application is accompanied by:
 - (a) An affidavit that the bond remains in force, and
 - (b) A copy of consent of surety.

An applicant for two (2) or more licenses of the same kind may file a blanket bond covering all of his operations. The amount of such a bond shall be the same as if separate bonds were furnished.

- (2) Every applicant for a wholesaler's license shall file with his application a corporate surety bond to the state in the minimum amount of two thousand dollars (\$2,000) or an amount equal to three (3) times the monthly tax liability, whichever is less, and up to a maximum amount of twenty-five thousand dollars (\$25,000). It shall be sufficient, in the opinion of the board, which shall consider the financial reputation and rating of the applicant, to insure payment to the state of the amount of any and all taxes and penalties and interest for which the wholesaler may become liable. It shall be on a form to be approved by the board and with surety on the bond approved by the board. The applicant shall be the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt payment by the wholesaler to the Department of Revenue of any and all state taxes, with penalties and interest.

➔Section 576. KRS 243.460 is amended to read as follows:

If the payment of a license fee was erroneously made or the state director refuses to issue the license the ~~department~~~~office~~ shall authorize the payment of the refundable amount, if at the expiration of thirty (30) days no appeal has been filed.

➔Section 577. KRS 243.480 is amended to read as follows:

- (1) Upon proceedings for the revocation of any license under KRS 243.520, the Alcoholic Beverage Control Board, or the local alcoholic beverage administrator, may in its or his or her discretion order a suspension of the license for any cause for which it may, but is not required to, revoke the license under the provisions of

KRS 243.490 and 243.500. However, the licensee may have the alternative, subject to the approval of the Alcoholic Beverage Control Board or the local alcoholic beverage administrator, to pay in lieu of part or all of the days of any suspension period, a sum as follows: Distillers, rectifiers, vintners, brewers, and blenders, one thousand dollars (\$1,000) per day; wholesale liquor licensees, four hundred dollars (\$400) per day; wholesale beer licensees, four hundred dollars (\$400) per day; retail licensees authorized to sell distilled spirits, wine, or beer by the package or drink, fifty dollars (\$50) per day; and all remaining licensees, fifty dollars (\$50) per day.

- (2) Payments in lieu of suspension or for board-ordered agency server training, collected on a cost recovery basis, collected by the Alcoholic Beverage Control Board shall be deposited in the State Treasury and credited to the general expenditure fund. Payments in lieu of suspension collected by local alcoholic beverage administrators shall be deposited and used as local alcoholic beverage license tax receipts are deposited and used.
- (3) In addition to or in lieu of a suspension of a license, the board may order a licensee to pay for and require attendance and completion by some or all of the licensee's alcoholic beverage servers in the *department's*~~agency's~~ server training program.
- (4) Appeals from orders of suspension and the procedure thereon shall be the same as are provided for orders of revocation in KRS Chapter 13B.

➔Section 578. KRS 243.490 is amended to read as follows:

- (1) Any license issued under KRS 243.020 to 243.670 may be revoked by the state board if the licensee shall have violated any of the provisions of KRS Chapter 241, 243, or 244, or any rule or regulation of the board or of the Department of Revenue relating to the regulation of the manufacture, sale, and transportation or taxation of alcoholic beverages or if the licensee shall have violated or shall violate any Act of Congress or any rule or regulation of any federal board, agency, or commission, or any ordinance now, heretofore, or hereafter in effect relating to the regulation of the manufacture, sale and transportation or taxation of intoxicating liquors or any rules or regulations of any local alcoholic beverage authority or any similar body heretofore in existence or authorized by the terms of KRS Chapters 241, 243, and 244 to be created, or if any clerk, agent, servant, or employee of any licensee shall violate any of the laws, regulations, or ordinances above referred to, irrespective of whether the licensee knew of or permitted the violation or whether the violation was committed in disobedience of his instructions, or any license may be revoked for any cause which the Alcoholic Beverage Control Board in the exercise of its sound discretion deems sufficient. A license may be revoked for any of the reasons for which the administrator would have been required to refuse a license if the facts had been known.
- (2) If it is determined that an applicant for a license or license renewal under the provisions of this chapter is a delinquent taxpayer as defined in KRS 131.1815, the *Department*~~Office~~ of Alcoholic Beverage Control may refuse to issue or renew the license to the applicant.

➔Section 579. KRS 243.502 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, a person shall not sell, purchase, deliver, give away, possess, use, or offer for sale or use an alcohol vaporizing device or assist another in selling or using an alcohol vaporizing device.
- (2) The provisions of subsection (1) of this section shall not apply to:
 - (a) A hospital that operates primarily for the purpose of conducting scientific research;
 - (b) A public institution that is a member of the postsecondary education system or an independent institution as defined in KRS 164.001 that is conducting bona fide research;
 - (c) A pharmaceutical or biotechnology company conducting bona fide research;
 - (d) A manufacturer or distributor that sells an alcohol vaporizing device to one (1) of the entities set out in this subsection; or
 - (e) A device used by a manufacturer in the manufacturing process.
- (3) Persons holding an alcohol vaporizing device in accordance with subsection (2)(a) to (d) of this section shall retain the alcohol vaporizing device in a secure location such that it is used only for research purposes. They shall not transfer the device to an entity or institution other than one covered by subsection (2) of this section and shall destroy the device when it is no longer of use. The *department*~~office~~ may promulgate

administrative regulations authorizing additional reports if the *department*~~{office}~~ deems the reports reasonably necessary.

➔Section 580. KRS 243.510 is amended to read as follows:

- (1) The *department*~~{office}~~ shall print and furnish to each licensee under KRS 243.020 to 243.670 a statement of the causes for which licenses may be revoked. That statement shall be prepared by the state director and delivered to the licensee with his license, or as soon after that as may be practical. The director shall take from each licensee a signed receipt stating that he has received and read the statement.
- (2) Any changes in or additions to the causes for which licenses may be revoked shall also be sent by the director to each licensee at his address as it appears in his application or the last amendment to his application, as soon as may be practical after such changes in or additions to the causes for which licenses may be revoked become effective.
- (3) Failure of the *department*~~{office}~~ to furnish the statement or to send notice of changes, or the failure of the licensee to receive or read the statement, or any error contained in the statement or notice of changes shall not be an excuse or justification for any violation of law, or prevent, remit or decrease any penalty for a violation.

➔Section 581. KRS 243.540 is amended to read as follows:

- (1) The provisions of this section shall apply to any licensee who is unable to continue in business at the licensed premises because of an act of God; a casualty; an acquisition by a federal, state, city, or other governmental agency under the power of eminent domain granted to the government or agency; a voluntary or involuntary acquisition by any private corporation through the corporation's power of eminent domain; a loss of lease because the landlord fails to renew an existing lease; court action; or other verifiable business reason.
- (2) If a license issued by the *department*~~{office}~~ has been revoked, the former licensee may, under the supervision of the state director, dispose of and transfer his or her stock to another licensee if the disposition is completed within ninety (90) days and the licensee is a distiller, rectifier, vintner, or brewer. The disposition shall be completed within thirty (30) days if the licensee is a wholesaler or distributor or within twenty (20) days if the licensee is a retailer.
- (3) A retail licensee in good standing with the *department*~~{office}~~ who voluntarily ceases to operate his or her business for any reason other than revocation by the board or a court order shall dispose of all alcoholic beverage inventory within thirty (30) days of the event. The following requirements shall apply to the disposition of the licensee's inventory:
 - (a) If the premises is still open to the public and the licensee has not yet surrendered the license, the licensee shall sell alcoholic beverages only to the public and shall not sell below costs;
 - (b) If a licensee has terminated his or her business and has surrendered his or her license to the *department*~~{office}~~, he or she shall submit a written request for approval from the state director within ten (10) days in advance of the sale to dispose of the licensee's remaining inventory. The request shall identify the retailer who is purchasing the inventory, the proposed date of the sale, and the quantity, types, and brands of alcohol to be sold; and
 - (c) If a licensee has more than one (1) licensed retail premises and closes one (1) or more retail premises and seeks to transfer his or her inventory to another licensed retail premises he or she owns, he or she shall submit a request in writing to the state director at least ten (10) days before the inventory is transferred. The request shall identify the premises to which the alcohol is being transferred, the proposed date of the transfer, and the quantity, types, and brands of alcohol to be sold.
- (4) If a retail licensee files for bankruptcy or is directed by a court to dispose of inventory to satisfy a lien or judgment, the inventory may be sold only to a retail alcoholic beverage licensee. The bankrupt licensee or the licensee subject to the court order shall notify the *department*~~{office}~~ of the sale and shall attach a copy of the court order or the judgment directing the sale and a list of the quantity, types, and brands of alcohol to be sold. Any licensee who purchases the inventory shall notify the *department*~~{office}~~ within five (5) days after the transfer of the specific inventory sold.

➔Section 582. KRS 243.630 is amended to read as follows:

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

- (a) The transfer to a new person or entity of ten percent (10%) or more ownership interest in any license issued under KRS 243.020 to 243.670; or
 - (b) The transfer in bulk, and not in the ordinary course of business, of a major part of the fixtures, materials, supplies, merchandise, or other inventory of a licensee's business.
- (2) Any license issued under KRS 243.020 to 243.670 to any person for any licensed premises shall not be transferable or assignable to any other person or to any other premises or to any other part of the building containing the licensed premises, unless a transfer or assignment is authorized by the state director in the exercise of his sound discretion under KRS 243.640 or 243.650. For the purposes of this section, each railroad dining car shall be deemed premises to be separately licensed.
 - (3) A licensee shall not acquire or otherwise dispose of any interest in a licensed premises or any license issued by the ~~department~~~~office~~, by sale of assets, stock, inventory, control or right of control, or activities on the licensed premises without prior approval of the state director. The state director shall grant approval if the person acquiring the interest meets the qualifications for a new applicant.
 - (4) Any acquisition of interest in a license without prior authorization shall be void.
 - (5) All applications for approval of a transfer shall be made in writing to the state director having jurisdiction over the license.
 - (6) Applications for approval of a transfer shall be made under oath or affirmation, shall be signed by both the transferor and the transferee, and shall contain such other information as the ~~department~~~~office~~ may prescribe.
 - (7) The appropriate state director shall grant or deny the application within sixty (60) days of the date the application is substantially complete or on a later date that is mutually acceptable to the director and the transferee, but it shall not be acted upon before the end of the public protest period outlined in KRS 243.360.
 - (8) No licensee or other person seeking to acquire an interest in an existing license shall transfer control or assume control of any licensed premises by agreement or otherwise without the written consent of the state director of malt beverages or the state director of distilled spirits or both.
 - (9) A licensee shall not transfer his or her license or any interest in the license while any proceedings against the license or the licensee for a violation of any statute or regulation which may result in the suspension or revocation of the license are pending.
 - (10) A licensee shall not transfer his or her license or any interest he or she has in the license if the licensee owes a debt on the inventory to a wholesaler responsible for the collection and payment of the tax imposed under KRS 243.884.
 - (11) A licensee shall not transfer his or her license or any interest in the license if the licensee owes the Commonwealth of Kentucky for taxes as defined in KRS 243.500(5). A transfer shall not take place until the ~~department~~~~office~~ is notified by the Kentucky Department of Revenue that the licensee's indebtedness has been paid or resolved to the satisfaction of the Department of Revenue. This section shall not prohibit a transfer of a license or an interest in a license by a trustee in bankruptcy if all other requirements of this section are met.

➔Section 583. KRS 243.730 is amended to read as follows:

- (1) (a) Wholesalers of distilled spirits and wine shall pay and report the tax levied by KRS 243.720(1) and (2) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of the distilled spirits and wine is transferred from the wholesaler to retailers or consumers in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (b) Distributors or retailers of malt beverages, who purchase malt beverages directly from a brewer, shall pay and report the tax levied by KRS 243.720(3) on or before the twentieth day of the calendar month next succeeding the month in which the brewer sells, transfers, or passes title of the malt beverage to the distributor or retailer, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth. The credit allowed brewers in this state, under the provisions of KRS 243.720(3)(b), shall flow through to the distributor or retailer who purchases malt beverages directly from the brewer. If a brewer sells, transfers, or passes title to malt beverages to any of its employees for home consumption or to any charitable or fraternal organization pursuant to the

provisions of KRS 243.150, the brewer shall be responsible for paying and reporting the tax levied by KRS 243.720(3) in accordance with the provisions of subsection (c) of this section.

- (c) Every brewer selling, transferring, or passing title to malt beverages to any person in this state other than a distributor or retailer, and every other person selling, transferring, or passing title of distilled spirits, wine, or malt beverages to distributors, retailers, or consumers shall report and pay the tax levied by KRS 243.720(1), (2), or (3) on or before the twentieth day of the calendar month next succeeding the month in which possession or title of distilled spirits, wine, or malt beverages is transferred to a distributor, retailer, or consumer in this state, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
 - (d) Every distributor, retailer, or consumer possessing, using, selling, or distributing distilled spirits, wine, or malt beverages in this state upon which the tax levied by KRS 243.720(1), (2), or (3) and KRS 243.884 has not been paid shall be jointly and severally liable for reporting and paying the tax due, in accordance with rules and regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth. Such liability shall not be extinguished until the tax has been paid to the Department of Revenue.
 - (e) Notwithstanding the provisions of paragraph (a) of this subsection, every owner of a small farm winery shall pay and report the tax levied by KRS 243.720 (1) and (2) on a quarterly basis, in accordance with administrative regulations of the Department of Revenue designed reasonably to protect the revenues of the Commonwealth.
- (2) Every wholesaler of distilled spirits or wine before using, selling, or distributing by sale or gift distilled spirits and wine shall qualify with the Department of Revenue. In order to so qualify, each wholesaler shall furnish to the Department of Revenue a certified copy of the bond required to be filed with the **Department**~~Office~~ of Alcoholic Beverage Control under the provisions of KRS 243.400(2).
 - (3) Notwithstanding the provisions of KRS 243.400(1), every brewer before selling or distributing by sale or gift malt beverages, or before importing malt beverages into the state, shall qualify with the Department of Revenue in such manner as the **Department of Revenue**~~department~~ may require.
 - (4) The **Department of Revenue**~~department~~ shall have the power to require a bond from any other person liable for Kentucky distilled spirits, wine, or malt beverage taxes provided such person is not otherwise required to post a bond under the provisions of this section. The amount of the bond for persons liable for Kentucky distilled spirits or wine taxes shall be computed as provided in KRS 243.400(2). The amount of the bond for persons liable for Kentucky malt beverage taxes shall be in the minimum amount of one thousand dollars (\$1,000) or an amount equal to three (3) times the person's average monthly Kentucky malt beverage tax liability, whichever is greater. The bond shall be on a form prescribed by the **Department of Revenue**~~department~~ and have corporate surety registered by the **Department**~~Office~~ of Insurance. The person liable for the tax shall be the principal obligor and the state the obligee. The bond shall be conditioned upon the prompt payment by the person to the Department of Revenue of all malt beverage taxes due, with penalties and interest.

➔Section 584. KRS 243.895 is amended to read as follows:

- (1) All licensed retail vendors of alcoholic beverages shall post in a prominent place easily seen by patrons a printed sign at least eleven (11) inches by fourteen (14) inches in size, with letters at least one (1) inch high, supplied by the **Department**~~Office~~ of Alcoholic Beverage Control, and with gender-neutral language supplied by the Cabinet for Health and Family Services, which shall warn that drinking alcoholic beverages prior to conception or during pregnancy can cause birth defects.
- (2) A person who violates subsection (1) of this section shall be subject to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50).

➔Section 585. KRS 244.040 is amended to read as follows:

- (1) A brewer or distributor shall not sell alcoholic beverages to any person in this state for any consideration except for cash paid at or before the time of delivery.

For purposes of this section, "cash" includes the sale of malt beverages by electronic transfers if the following conditions are met:

- (a) The use of electronic transfers shall be voluntary and shall be agreed to by the affected brewer, distributor, and retailer;
 - (b) The brewer shall not pay or credit back in any way to the distributor any share of the cost that is attributable to the electronic transfer;
 - (c) The distributor shall not pay or credit back in any way to the retailer any share of the cost that is attributable to the electronic fund transfer;
 - (d) The transfer of funds shall be initiated by the brewer or the distributor;
 - (e) The distributor may debit the retailer's bank account for the exact amount due based on the amount of alcoholic beverages delivered;
 - (f) Electronic fund transfers that are rejected or denied at the time of sale for any reason shall be treated in the same manner as checks drawn on insufficient funds; and
 - (g) Each participating retail licensee and each distributor maintain accurate records of all electronic fund transfers in accordance with ~~department~~~~office~~ statutes and administrative regulations.
- (2) A brewer or distributor shall not furnish or deliver any returnable bottled malt beverage without collecting a minimum container charge or deposit of sixty cents (\$0.60) per case of twenty-four (24) twelve-ounce bottles or its equivalent in the same manner that the price of the malt beverage is collected.
 - (3) This section shall not prohibit a licensee from crediting to a purchaser the actual prices charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid by the purchaser for containers or as a deposit on containers when the title is retained by the vendor, if the containers or packages have been returned to the brewer or distributor.
 - (4) No right of action shall exist to collect any claim for credit extended contrary to this section.
 - (5) This section shall not apply to sales by wholesalers or distributors to licensees that are private clubs or voluntary associations.

➔Section 586. KRS 244.050 is amended to read as follows:

- (1) No retail licensee shall give away any alcoholic beverage in any quantity or deliver it in any quantity for less than a full monetary consideration, except as provided by KRS 243.155, 243.157, and subsection (2) of this section.
- (2) A retailer licensed to sell distilled spirits and wine under KRS 243.030(7), (8), or (26) may, after acquiring a license under KRS 243.030(39), allow customers to sample distilled spirits and wine under the following conditions:
 - (a) Sampling shall be permitted only on licensed premises and, for licensees licensed under KRS 243.030(7), (8), or (26), during regular business hours;
 - (b) A licensee shall not charge for the samples provided to customers;
 - (c) Sample sizes shall not exceed:
 - 1. One (1) ounce for wine; and
 - 2. One-half (1/2) ounce for distilled spirits; and
 - (d) A licensee shall limit a customer to:
 - 1. Two (2) distilled spirits samples per day; and
 - 2. Six (6) wine samples per day.
- (3) Retailers licensed under KRS 243.030(7) or (8) shall:
 - (a) Notify the ~~Department~~~~Office~~ of Alcoholic Beverage Control at least seven (7) days in advance of conducting a sampling event; and
 - (b) Limit a sampling event to a period not to exceed four (4) consecutive hours between 12 noon and 8 p.m.

➔Section 587. KRS 244.085 is amended to read as follows:

- (1) As used in KRS 244.083 and this section: "Premises" has the meaning it is given in KRS 241.010 and also means the place of business of a person licensed to sell alcoholic beverages including, in the case of drive-in establishments, the entire lot upon which the business establishment is situated.
- (2) A person under 21 years of age shall not enter any premises licensed for the sale of alcoholic beverages for the purpose of purchasing or receiving any alcoholic beverages.
- (3) A person under 21 years of age shall not possess for his or her own use or purchase or attempt to purchase or have another purchase for him or her any alcoholic beverages. No person shall aid or assist any person under 21 years of age in purchasing or having delivered or served to him or her any alcoholic beverages.
- (4) A person under 21 years of age shall not misrepresent his or her age for the purpose of inducing any licensee, or the licensee's agent, servant, or employee, to sell or serve any alcoholic beverages to the underage person.
- (5) A person under 21 years of age shall not use, or attempt to use any false, fraudulent, or altered identification card, paper, or any other document to purchase or attempt to purchase or otherwise obtain any alcoholic beverage.
- (6) Except as provided in KRS 244.087 and 244.090, a licensee, or his or her agents, servants, or employees shall not permit any person under twenty-one (21) years of age to remain on any premises where alcoholic beverages are sold by the drink or consumed on the premises, unless:
 - (a) The usual and customary business of the establishment is a hotel, motel, restaurant, convention center, convention hotel complex, racetrack, simulcast facility, golf course, private club, park, fair, church, school, athletic complex, athletic arena, theater, small farm winery, distillery or brewery or winery tour, convenience store, grocery store, drug store, or similar establishment;
 - (b) All alcoholic beverage inventory is kept in a separate, locked department at all times when minors are on the premises;
 - (c) Written approval has been granted by the ~~department~~~~office~~ to allow minors on the premises until 10 p.m. where the sale of alcohol is incidental to a specific family or community event including but not limited to weddings, reunions, or festivals. The licensee's request shall be in writing and shall specifically describe the event for which approval is requested. The state director shall approve or deny the request in writing; or
 - (d) The usual and customary business of the establishment is an entertainment facility where prebooked concerts are held. For the purpose of this paragraph, house bands, disc jockeys, and karaoke are not considered concerts. During the times minors are on the premises under this paragraph, the licensee shall:
 1. Maintain the responsibility of all ticket sales;
 2. Sell the concert tickets directly to the patron or have a contractual agreement with a vendor or promoter to sell the concert tickets for the licensee;
 3. Maintain records of all gross concert ticket sales. The concert tickets shall have the name of a band or performer as well as the date of the concert;
 4. Permit minors to be in the area where the concert is taking place only during the time of the concert; and
 5. Prohibit minors on the premises until thirty (30) minutes prior to the concert and prohibit minors from remaining on the premises more than thirty (30) minutes after the concert performance has ended.
- (7) Except as provided in subsection (6) of this section, a licensee or the licensee's agent, servant, or employee shall not allow any person under the age of twenty-one (21) to remain on any premises that sells alcoholic beverages by the package unless the underage person is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.
- (8) Except as provided in subsection (6) of this section, a person under the age of twenty-one (21) shall not remain on any premises that sells alcoholic beverages by the package unless he or she is accompanied by a parent or guardian or the usual and customary business of the establishment is a convenience store, grocery store, drugstore, or similar establishment.

- (9) A violation of subsection (2), (3), (4), (5), or (8) of this section shall be deemed a status offense if committed by a person under the age of eighteen (18) and shall be under the jurisdiction of the juvenile session of the District Court or the family division of the Circuit Court, as appropriate.

➔Section 588. KRS 244.150 is amended to read as follows:

- (1) Each licensee under KRS 243.020 to 243.670 shall keep and maintain upon the licensed premises, or make readily available upon request of the ~~department~~~~office~~ or the Department of Revenue, adequate books and records of all transactions involved in the manufacture or sale of alcoholic beverages, in the manner required by regulations of the ~~department~~~~office~~ and the Department of Revenue.
- (2) The ~~commissioner~~~~executive director~~ may require common carriers to provide information in such form as he or she deems wise respecting all shipments of alcoholic beverages to, from, or between persons in Kentucky.

➔Section 589. KRS 244.165 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, it shall be unlawful for any person in the business of selling alcoholic beverages in another state or country to ship or cause to be shipped any alcoholic beverage directly to any Kentucky resident who does not hold a valid wholesaler or distributor license issued by the Commonwealth of Kentucky.
- (2) A small farm winery located in another state may ship wine to a customer in Kentucky if:
- (a) The wine is purchased by the customer in person at the winery;
 - (b) The wine is shipped by licensed common carrier; and
 - (c) The amount of wine shipped is limited to two (2) cases per customer per visit.
- (3) Any person who violates subsection (1) of this section shall, for the first offense, be mailed a certified letter by the ~~department~~~~office~~ ordering that person to cease and desist any shipments of alcoholic beverages to Kentucky residents, and for the second and each subsequent offense, be guilty of a Class D felony.

➔Section 590. KRS 244.167 is amended to read as follows:

- (1) It is unlawful:
- (a) For any distiller, rectifier, vintner, brewer, or importer to solicit, accept, or fill any order for any distilled spirits, wine, or malt beverage from any wholesaler or distributor in the Commonwealth of Kentucky unless the supplier is the primary source of supply for the brand of alcoholic beverage sold or sought to be sold.
 - (b) For any wholesaler, distributor, or any other licensee in this Commonwealth to order, purchase, or receive any alcoholic beverage from any supplier unless the supplier is the primary source of supply for the brand ordered, purchased, or received.
 - (c) For a retailer to order, purchase, or receive any distilled, vinous, or malt alcoholic beverage from any source other than any of the following:
 - 1. A wholesaler or distributor who has purchased the brand from the primary source of supply.
 - 2. A wholesaler or distributor who is the designated representative of the primary source of supply in this Commonwealth and who has purchased the alcoholic beverage from the designated representative of the primary source of supply within or without this Commonwealth.
 - (d) For alcoholic beverages to be transported from a wholesaler's or distributor's warehouse within twenty-four (24) hours of the time they are unloaded.
- (2) The ~~Department~~~~Office~~ of Alcoholic Beverage Control may suspend for a period not to exceed one (1) year the license of any wholesaler, distributor, or retailer who violates the provisions of this section.
- (3) Upon determination by the ~~Department~~~~Office~~ of Alcoholic Beverage Control that a primary source of supply has violated the provisions of this section, no wholesaler, distributor, or retailer may accept any shipment of alcoholic beverages from the primary source of supply for a period of one (1) year.
- (4) For the purposes of this section, "primary source of supply" or "supplier" means the distiller, producer, brewer, owner of the commodity at the time it becomes a marketable product, bottler, or authorized agent of the brand

owner. In the case of imported products, the primary source of supply means either the foreign producer, owner, bottler, or agent of the prime importer from, or the exclusive agent in, the United States of the foreign distiller, producer, bottler, or owner.

➔Section 591. KRS 244.190 is amended to read as follows:

Any peace officers, state administrators, and field representatives of the ~~department~~~~office~~ may, upon probable cause, without warrant seize contraband regardless of whether it is in dry territory or not, and hold it subject to the order of the court before which the owner or one in possession of the contraband has been charged with violation of KRS Chapter 242 or KRS 243.020. Upon conviction of the defendant, the court shall enter an order for the destruction of all contraband property, except firearms or ammunition, included in KRS 244.180(1), (2), (3), (4), and (5). Contraband firearms and ammunition shall be transferred to the Department of Kentucky State Police for disposition as provided in KRS 500.090.

➔Section 592. KRS 244.195 is amended to read as follows:

- (1) Title to contraband included in KRS 244.180(1), (2), (3), (4), and (5) seized shall be vested in the appropriate court within whose jurisdiction the seizure occurred, irrespective of whether such contraband was seized by peace officers of the city or county or state administrators or field representatives of the ~~department~~~~office~~, notwithstanding the provisions of KRS 242.380.
- (2) The court shall order the sheriff for the county in which such contraband as included in subsection (1) of this section was seized to destroy such contraband, except firearms or ammunition, upon conviction of the defendant.
- (3) Contraband firearms and ammunition shall be transferred to the Department of Kentucky State Police for disposition as provided in KRS 500.090.

➔Section 593. KRS 244.200 is amended to read as follows:

- (1) Contraband property included in subsection (6) of KRS 244.180 shall be subject to the right of any owner or lienor, whose lien is valid and of record, to intervene and establish his rights in the property by proving that the property was being used in connection with traffic in alcoholic beverages without the knowledge, consent or approval of the owner or lienor. If the owner of the property does so prove, the court shall order the property restored to him. If the lienor so proves, the court shall order a sale of the property at public auction, unless an agreement is made between the lienor and the board, which shall not become final until it has been approved by the court. The board may deliver any property found to be contraband to a lienor whose claim has been established by order of a court of competent jurisdiction, upon payment to the board of the difference between the fair market value of the property so seized and the recorded claim of the lienor.
- (2) Where an agreement has been made between the lienor and the board and approved by the court, a public auction shall not be required. If an agreement is not entered into between the board and the lienor or approved by the court, and a public auction is required to be held, the public auction shall be conducted by the sheriff of the county in which the property is seized. The sheriff shall receive and be allowed the same fees as allowed for sales under execution.
- (3) The expenses of keeping and selling such property, and the amount of all valid recorded liens that are established by intervention as being bona fide, shall be paid out of the proceeds of the sales, whether they are private or public. The balance shall be paid into the State Treasury and be credited to the general fund.
- (4) If the defendant is acquitted, no property seized as contraband in connection with the arrest of the defendant shall be ordered returned or restored unless the person from whose possession the property was taken proves that he was in lawful possession of the property, and if no other person appears and proves that he owns the property or has a valid recorded lien on the property and that the property was being used without his knowledge and consent, title shall vest in the board at the end of ninety (90) days.
- (5) If the owners or lienholders of any contraband seized by state administrators or field representatives of the ~~department~~~~office~~ or turned over to the ~~department~~~~office~~ by other officials, cannot be located within ninety (90) days, and during that time fail to appear and claim the contraband, or if the owner or lienholder appears and agrees, title to the contraband shall immediately vest in the board, in which event it may sell the contraband at a private sale.

➔Section 594. KRS 244.230 is amended to read as follows:

- (1) KRS 244.260 and 244.340 notwithstanding, the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury, as they are now or may be hereafter, with respect to the labeling and standards of fill of distilled spirits and wine in their original sealed packages, are adopted and any distilled spirits and wine shall be deemed to be properly labeled under all the laws of this state, if the labels and standards of fill conform to those regulations.
- (2) Distilled spirits not produced or bottled in the United States shall be labeled in the same manner that distilled spirits produced or bottled in this state are required to be labeled.
- (3) Subsections (1) and (2) shall not prevent the ~~department~~~~office~~ from promulgating regulations on this subject that are in addition to but not contrary to the regulations of the Bureau of Internal Revenue in the United States Department of the Treasury.

➔Section 595. KRS 244.370 is amended to read as follows:

No whiskey produced in Kentucky, except whiskey the barrel containing which is branded "Corn Whiskey" under the internal revenue laws, shall be bottled in Kentucky or removed from this state unless such whiskey has been aged in oak barrels for a period of not less than one (1) full year; provided, however, that whiskey aged less than one (1) year may be removed from the state and bottled, or bottled in Kentucky, if the word "Kentucky" or any word or phrase implying Kentucky origin does not appear on the front label or elsewhere on the retail container or package except in the name and address of the distiller as required by federal regulation. For violations of this section, the ~~department~~~~office~~ shall revoke the permit of the licensee from whose warehouse or premises such whiskey shall have been removed or in which such whiskey shall have been bottled.

➔Section 596. KRS 244.440 is amended to read as follows:

- (1) Every resident and nonresident distiller, rectifier, blender, or vintner and nonresident wholesaler who owns or has an exclusive interest in any particular brands, which are intended for sale or sold in this state, shall register on a form to be provided by the ~~department~~~~office~~, the names of the wholesalers in this state to whom distributing rights have been granted on one or more or all of the brands of distilled spirits or wine offered for sale or sold in this state.
- (2) No distiller, rectifier, blender, or vintner shall offer to sell or sell, and no wholesaler shall offer to purchase or purchase, any brands which have not been registered as provided by this section.

➔Section 597. KRS 244.450 is amended to read as follows:

- (1) No wholesaler shall import, buy, offer for sale, or sell any brands offered for sale or sold by any nonresident distiller, rectifier, blender, vintner, or wholesaler without:
 - (a) Having previously been granted distributing rights by the nonresident distiller, rectifier, blender, vintner, or wholesaler; and
 - (b) Having previously applied for and received from the ~~department~~~~office~~ an importer's permit.
- (2) No wholesaler shall apply for or receive an importer's permit to import, buy, offer to sell, or sell any brands offered for sale or sold by any nonresident distiller, rectifier, blender, vintner, or wholesaler until the nonresident distiller, rectifier, blender, vintner, or wholesaler has granted distributing rights to the wholesaler.

➔Section 598. KRS 244.510 is amended to read as follows:

- (1) The ~~department~~~~office~~ may in its discretion adopt any regulations of the Bureau of Internal Revenue in the United States Department of the Treasury relating to labeling and advertising of malt beverages.
- (2) The adoption of regulations of the Bureau of Internal Revenue in the United States Department of the Treasury shall not become effective as to any brewer or distributor having labels on hand that would be outlawed by adoption of the regulation until a period of ninety (90) days from the date of adoption.

➔Section 599. KRS 244.585 is amended to read as follows:

- (1) It shall be unlawful for any distributor to sell any brand of malt beverage in the Commonwealth of Kentucky, except in the territory described in a written agreement between the supplier or brewer and distributor, authorizing sale by the distributor of that brand within a designated area, and within that designated area the distributor shall not refuse to sell or offer reasonable service to licensed retailers during the normal business hours of the distributor. Where a supplier or brewer sells several brands, the agreement need not apply to all

brands sold by the supplier or brewer and may apply to only one (1) brand. No supplier or brewer shall provide by the written agreement for the distribution of a brand of malt beverages to more than one (1) distributor for all or any part of the designated territory. All territorial agreements shall be filed with the *department*~~{office}~~.

- (2) Each distributor shall comply with such quality control standards as are specified in writing from time to time by the owner of the trademark of the brand of malt beverage, provided those controls are:
 - (a) Normal industry practice;
 - (b) Reasonably related to the maintenance of quality control;
 - (c) Consistent with the provisions of this chapter and all regulations promulgated pursuant thereto; and
 - (d) The distributor has received written notice of them from such owner.
- (3) A distributor may sell to only those licensed retailers, religious, charitable or fraternal organizations located within his designated geographical territory as provided in this section and to his employees and to other distributors of the same brand. No brand of malt beverage may be sold in the Commonwealth of Kentucky without prior written approval of the brewer and supplier filed with the *department*~~{office}~~.
- (4) A territorial designation in any agreement between a distributor and brewer or supplier pursuant to this section shall be modified only in accordance with all the rights and duties of the distributor and brewer or supplier contained in any written agreement between them or by such other action of the brewer, supplier or distributor that is consistent with the terms of their agreement, and such modification shall be filed pursuant to the provisions of this section. The board shall require each party to verify that the level of service within the designated territory will not be adversely affected by such modification. When a distributor is prevented from selling or servicing retailers within his territory due to natural disasters, labor disputes or other such causes beyond his control, the distributor may allow another distributor of the same brand of malt beverages to sell and service that brand within his territory upon approval of the brewer or supplier.
- (5) No provisions of any agreement shall expressly or impliedly establish or maintain the resale price of any brand of malt beverage by the distributor.

➔Section 600. KRS 247.088 is amended to read as follows:

The College of Agriculture of the University of Kentucky, through the agricultural experiment station and the cooperative extension service shall assess the effect of agricultural practices upon groundwater resources, establish basic and applied research programs to determine agricultural management practices which may be necessary to protect groundwater resources, and establish and implement an educational program to encourage the use of agricultural practices which conserve, maintain, and improve soil productivity and to assure protection of groundwater. The college shall seek the cooperation of the Division of Conservation within the ***Energy and Environment***~~{Environmental and Public Protection}~~ Cabinet, the Kentucky Farm Bureau, and other organizations in implementing the educational program.

➔Section 601. KRS 247.920 is amended to read as follows:

- (1) Application for an alcohol production exemption certificate shall be filed with the Department of Revenue in such manner and in such form as may be prescribed by regulations issued by the Department of Revenue and shall contain plans and specifications of the structure or structures including all materials incorporated and to be incorporated therein and a descriptive list of all equipment acquired or to be acquired by the applicant for the purpose of producing ethanol for fuel use and any additional information deemed necessary by the Department of Revenue for the proper administration of KRS 247.910 and this section. The ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ shall provide technical assistance and factual information as requested in writing by the Department of Revenue. If the Department of Revenue finds that the facility qualifies as an alcohol production facility as defined by KRS 247.910, it shall enter a finding and issue a certificate to that effect. The effective date of the certificate shall be the date of issuance of the certificate.
- (2) Before issuing an alcohol production tax exemption certificate, the Department of Revenue shall give notice in writing by mail to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~, and shall afford to the applicant and to the ***Department for Energy Development and Independence***~~{Office of Energy Policy}~~ an opportunity for a hearing. On like notice and opportunity for a hearing, the Department of Revenue shall on its own initiative revoke the certificate when any of the following appears:
 - (a) The certificate was obtained by fraud or misrepresentation;

- (b) The holder of the certificate has failed substantially to proceed with the construction, reconstruction, installation, or acquisition of the alcohol production facilities; or
 - (c) The structure or equipment or both to which the certificate relates has ceased to be used for the primary purpose of alcohol production for fuel use and is being used for a different purpose.
- (3) If the circumstances so require, the Department of Revenue, in lieu of revoking the certificate, may modify it.
 - (4) On mailing of notice of the action of the Department of Revenue revoking or modifying a certificate as provided in subsection (5) of this section, the certificate shall cease to be in force or shall remain in force only as modified as the case may require.
 - (5) An alcohol production tax exemption certificate, when issued, shall be sent by certified mail to the applicant and the notice of issuance in the form of certified copies thereof shall be sent to the **Department for Energy Development and Independence**~~{Office of Energy Policy}~~. Notice of an order of the Department of Revenue denying, revoking, or modifying a certificate in the form of certified copies thereof shall be sent by certified mail to the applicant or the holder and shall be sent to the **Department for Energy Development and Independence**~~{Office of Energy Policy}~~. The applicant or holder and the **Department for Energy Development and Independence**~~{Office of Energy Policy}~~ shall be deemed parties for the purpose of the review afforded by subsection (6) of this section.
 - (6) Any party aggrieved by the issuance, refusal to issue, revocation, or modification of an alcohol production tax exemption certificate may appeal from the final ruling of the Department of Revenue to the Kentucky Board of Tax Appeals as provided in KRS 131.340.
 - (7) In the event of the sale, lease, or other transfer of an alcohol production facility, not involving a different location or use, the holder of an alcohol production tax exemption certificate for the facility may transfer the certificate by written instrument to the person who, except for the transfer of the certificate, would be obligated to pay taxes on the facility. The transferee shall become the holder of the certificate and shall have all rights pertaining thereto, effective as of the date of transfer of the certificate. The transferee shall give written notice of the effective date of the transfer, together with a copy of the instrument of transfer to the **Department for Energy Development and Independence**~~{Office of Energy Policy}~~ and the Department of Revenue.
 - (8) In the event an alcohol production facility for which an exemption certificate is held ceases to be used for the primary purpose of alcohol production for fuel use or is used for a different purpose other than that for which the exemption certificate was granted, the holder of the certificate shall give written notice by certified mail of the change to the **Department for Energy Development and Independence**~~{Office of Energy Policy}~~ and to the Department of Revenue.
 - (9) The alcohol production facility exemption certificate, upon approval, shall exempt said facilities from taxes outlined in the provisions of KRS 247.910 and this section and included in KRS Chapters 132, 136, 138, and 139. Each exemption certificate shall remain in force for a period of eight (8) years from the date of issuance and at the end of said period shall lapse. Any alcohol production facility previously exempted under the terms of KRS 247.910 and this section shall not be eligible for recertification upon completion of the eight (8) year certificate period.

➔Section 602. KRS 250.482 is amended to read as follows:

As used in KRS 250.483 to 250.488:

- (1) "**Department**"~~"{Office}"~~ means the **Department**~~{Office}~~ of Insurance;
- (2) "Division" means the Division of Fire Prevention in the **Department**~~{Office}~~ of Housing, Buildings and Construction.
- (3) "Anhydrous ammonia" refers to the compound formed by the combination of the two (2) gaseous elements, nitrogen and hydrogen, in the proportion of one (1) part nitrogen to three (3) parts of hydrogen by volume. Anhydrous ammonia is ammonia gas in compressed or liquefied form, and is not aqueous ammonia.
- (4) "Approved container" means a container for anhydrous ammonia which meets or exceeds the requirements of the Federal law or regulation for the storage and handling of anhydrous ammonia.

➔Section 603. KRS 250.483 is amended to read as follows:

The Division of Fire Prevention in the ~~*Department*~~~~*Office*~~ of Housing, Buildings and Construction shall make, promulgate, and enforce administrative regulations setting forth minimum general standards covering the design, construction, location, installation, and operation of equipment for storing, handling, transporting by tank truck, tank trailer, and utilizing anhydrous ammonia. The administrative regulations shall be such as are reasonably necessary for the protection and safety of the public and persons using such materials, and shall be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter. Administrative regulations in substantial conformity with the published standards of the Fertilizer Institute and the Compressed Gas Association for the design, installation, and construction of containers and equipment for the storage and handling of anhydrous ammonia shall be deemed to be in substantial conformity with the generally-accepted standards of safety concerning the same subject matter.

➔Section 604. KRS 262.906 is amended to read as follows:

- (1) There is hereby created the Purchase of Agricultural Conservation Easement Corporation which shall oversee all issues involving purchases of agricultural conservation easements. The corporation shall be a de jure municipal corporation and political subdivision of the Commonwealth. The corporation shall be a public agency within the meaning of KRS 61.805 and 61.870 and shall be attached for administrative purposes to the Department of Agriculture.
- (2) (a) The corporation shall be governed by a board of directors, consisting of the following eleven (11) members: four (4) public directors who shall be the Commissioner of the Department of Agriculture, the secretary of the *Energy and Environment*~~*Environmental and Public Protection*~~ Cabinet, the dean of the University of Kentucky College of Agriculture, and the chair of the Soil and Water Conservation Commission, or their designees; and seven (7) private directors who shall be appointed by the Governor, as follows:
 1. One (1) private director from each of the six (6) congressional districts; and
 2. One (1) private director from a list of three (3) persons suggested by the Kentucky Farm Bureau Federation, Inc.
- (b) Initial appointment of the private directors by the Governor shall be for staggered terms.
- (c) No more than four (4) of the private directors shall be from the same political party. Members shall serve a term of four (4) years, with the exception of the initial members, and may be reappointed. Vacancies shall be filled in the same manner as the appointment is made.
- (3) (a) Any member who has an ownership interest in any of the lands eligible for the purchase of an agricultural conservation easement or other property interest and who wishes to apply to sell an easement while serving on the board of directors shall withdraw himself from all board activities prior to application and until the transaction is complete. The Governor shall appoint an interim member to fill the vacancy until the transaction is complete.
- (b) Any person who has previously applied for or sold an agricultural conservation easement may serve on the board.
- (4) Members shall not be compensated for their services but shall be reimbursed for expenses incurred in the performance of their duties.

➔Section 605. KRS 278.702 is amended to read as follows:

- (1) There is hereby established the Kentucky State Board on Electric Generation and Transmission Siting. The board shall be composed of seven (7) members as follows:
 - (a) The three (3) members of the Kentucky Public Service Commission;
 - (b) The secretary of the *Energy and Environment*~~*Environmental and Public Protection*~~ Cabinet or the secretary's designee;
 - (c) The secretary of the Cabinet for Economic Development or the secretary's designee;
 - (d) 1. If the facility subject to board approval is proposed to be located in one (1) county, two (2) ad hoc public members to be appointed by the Governor from a county where a facility subject to board approval is proposed to be located;

- a. One (1) of the ad hoc public members shall be the chairman of the planning commission with jurisdiction over an area in which a facility subject to board approval is proposed to be located. If the proposed location is not within a jurisdiction with a planning commission, then the Governor shall appoint either the county judge/executive of a county that contains the proposed location of the facility or the mayor of a city, if the facility is proposed to be within a city; and
 - b. One (1) of the ad hoc public members shall be appointed by the Governor and shall be a resident of the county in which the facility is proposed to be located.
 - 2. If the facility subject to board approval is proposed to be located in more than one (1) county, two (2) ad hoc public members to be chosen as follows:
 - a. One (1) ad hoc public member shall be the county judge/executive of a county in which the facility is proposed to be located, to be chosen by majority vote of the county judge/executives of the counties in which the facility is proposed to be located; and
 - b. One (1) ad hoc public member shall be a resident of a county in which the facility is proposed to be located, and shall be appointed by the Governor.

If a member has not been chosen by majority vote, as provided in subdivision a. of this subparagraph, by thirty (30) days after the filing of the application, the Governor shall directly appoint the member.
 - 3. Ad hoc public members appointed to the board shall have no direct financial interest in the facility proposed to be constructed.
- (2) The term of service for the ad hoc members of the board shall continue until the board issues a final determination in the proceeding for which they were appointed. The remaining members of the board shall be permanent members.
 - (3) The board shall be attached to the Public Service Commission for administrative purposes. The commission staff shall serve as permanent administrative staff for the board. The members of the board identified in subsection (1)(a) to (d) of this section shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement KRS 278.700 to 278.716.
 - (4) No member of the board shall receive any salary or fee for service on the board or shall have any financial interest in any facility the application for which comes before the board, but each member shall be reimbursed for actual travel and expenses directly related to service on the board.
 - (5) The chairman of the Public Service Commission shall be the chairman of the board. The chairman shall designate one (1) member of the board as vice chairman. A majority of the members of the board shall constitute a quorum for the transaction of business. No vacancy on the board shall impair the right of the remaining members to exercise all of the powers of the board. The board shall convene upon the call of the chairman.

➔Section 606. KRS 278.704 is amended to read as follows:

- (1) No person shall commence to construct a merchant electric generating facility until that person has applied for and obtained a construction certificate for the facility from the board. The construction certificate shall be valid for a period of two (2) years after the issuance date of the last permit required to be obtained from the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet after which the certificate shall be void. The certificate shall be conditioned upon the applicant obtaining necessary air, water, and waste permits. If an applicant has not obtained all necessary permits and has not commenced to construct prior to the expiration date of the certificate, the applicant shall be required to obtain a valid certificate from the board.
- (2) Except as provided in subsections (3), (4), and (5) of this section, no person shall commence to construct a merchant electric generating facility unless the exhaust stack of the proposed facility is at least one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility.
- (3) If the merchant electric generating facility is proposed to be located in a county or a municipality with planning and zoning, then setback requirements from a residential neighborhood, school, hospital, or nursing home

facility may be established by the planning and zoning commission. Any setback established by a planning and zoning commission for a facility in an area over which it has jurisdiction shall:

- (a) Have primacy over the setback requirement in subsections (2) and (5) of this section; and
 - (b) Not be subject to modification or waiver by the board through a request for deviation by the applicant, as provided in subsection (4) of this section.
- (4) The board may grant a deviation from the requirements of subsection (2) of this section on a finding that the proposed facility is designed and located to meet the goals of KRS 224.10-280, 278.010, 278.212, 278.214, 278.216, 278.218, and 278.700 to 278.716 at a distance closer than those provided in subsection (2) of this section.
- (5) If the merchant electric generating facility is proposed to be located on a site of a former coal processing plant in the Commonwealth where the electric generating facility will utilize on-site waste coal as a fuel source, then the one thousand (1,000) foot property boundary requirement in subsection (2) of this section shall not be applicable; however, the applicant shall be required to meet any other setback requirements contained in subsection (2) of this section.

➔Section 607. KRS 286.01-011 is amended to read as follows:

- (1) There is created within the ~~{Department of Public Protection in the Environmental and}~~ Public Protection Cabinet *a Department*~~{an Office}~~ of Financial Institutions, which shall be headed by *a commissioner*~~{an executive director}~~ of financial institutions, who shall be the executive head of the *department*~~{office}~~ and shall be charged with the administration of the *department*~~{office}~~.
- (2) The *Department*~~{Office}~~ of Financial Institutions shall exercise all administrative functions of the state in relation to the regulation, supervision, chartering and licensing of banks, trust companies, savings and loan associations, consumer loan companies, investment and industrial loan companies, and credit unions, and in relation to the regulation of securities.
- (3) There ~~are~~*is* established within the *Department*~~{Office}~~ of Financial Institutions the following divisions:
 - (a) The Division of *Depository*~~{Financial}~~ Institutions, which shall be headed by a director appointed by the secretary of the ~~{Environmental and}~~ Public Protection Cabinet~~{, subject to prior written approval of the Governor}~~ in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the ~~{executive}~~ director;
 - (b) The Division of *Non-Depository Institutions*~~{Securities}~~, which shall be headed by a director appointed by the secretary of the ~~{Environmental and}~~ Public Protection Cabinet in accordance with KRS 12.050. The division shall consist of entities deemed appropriate by the ~~{executive}~~ director; and
 - (c) The Division of *Securities*~~{Administrative Services}~~, which shall be headed by a director appointed by the *secretary of the Public Protection Cabinet*~~{executive director}~~ in accordance with KRS 12.050. The division shall ~~consist~~*be composed* of ~~organizational~~ entities deemed appropriate by the ~~{executive}~~ director.
- (4) The *department*~~{office}~~ may accept any application or other document required to be filed with the *department*~~{office}~~ in electronic format or in any other technology acceptable to the *department*~~{office}~~.

➔Section 608. KRS 286.01-012 is amended to read as follows:

The ~~{secretary of the Environmental and Public Protection Cabinet, with the approval of the}~~ Governor, in accordance with KRS ~~12.040~~*12.050*, shall appoint as *commissioner*~~{executive director}~~ of financial institutions a person knowledgeable in banking with not less than three (3) years' banking experience. For this purpose, "banking experience" means service as an executive officer in a bank with its principal office located in Kentucky or service in a supervisory capacity in a state or federal agency having regulatory authority over banks or other financial institutions.

➔Section 609. KRS 286.01-013 is amended to read as follows:

- (1) There is created a Financial Institutions Board. The board shall consist of twelve (12) members appointed by the Governor who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided. It is recommended that the board appointments made by the Governor be selected from the following:

- (a) Three (3) members selected from the banking industry regulated by the ***department***~~{office}~~ with appropriate recognition as to bank size and geographic diversity;
 - (b) Three (3) members selected from the broker/dealer securities industry regulated by the ***department***~~{office}~~;
 - (c) One (1) member selected from the credit union industry regulated by the ***department***~~{office}~~;
 - (d) One (1) member selected from the consumer finance or industrial loan industry regulated by the ***department***~~{office}~~;
 - (e) Three (3) members selected from the public at large who are knowledgeable concerning financial institutions, the legislative process and consumer interests, two (2) of whom are not employees, officers, or directors of any financial institution; and
 - (f) The ***commissioner***~~{executive director}~~, who shall also serve as chairman of the board.
- (2) All members of the board from the banking industry, securities industry, credit union industry, consumer finance, or industrial loan industry shall be persons with practical experience in the industry so represented and currently serving at the executive level of that industry at the time of their appointment.
 - (3) At the first meeting of the board, a drawing by lot shall be conducted to determine the length of each original member's term. Initially, there shall be four (4) four (4) year terms, five (5) three (3) year terms, and two (2) two (2) year terms. Vacancies in the membership of the board shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
 - (4) No member of the board, other than the ***commissioner***~~{executive director}~~, shall serve more than two (2) consecutive terms on the board.
 - (5) The board shall first meet at the call of the Governor and thereafter as the chairman shall determine at a time and place determined by the chairman. The board may elect other officers for the conduct of its business. A majority of board members shall constitute a quorum, and a decision shall require the majority vote of those present. Each board member shall have one (1) vote, and voting by proxy shall be prohibited.
 - (6) Board members shall receive one hundred dollars (\$100) per diem for each board meeting which they attend and shall be reimbursed for other reasonable and necessary expenses incurred while engaged in carrying out the duties of the board.
 - (7) The board shall:
 - (a) Prepare and submit at the Governor's request a list of candidates qualified to serve as ***commissioner***~~{executive director}~~ and recommend to the Governor a proposed salary for each nomination for ***commissioner***~~{executive director}~~;
 - (b) Recommend to the Governor a proposed salary structure for other ***department***~~{office}~~ staff in order to provide competitive salaries for recruitment and retention of staff;
 - (c) Receive and comment on various reports relating to the ***department***~~{office}~~ and its activities as submitted to the board by the ***commissioner***~~{executive director}~~ or the Governor; and
 - (d) Review, consider and make recommendations to the ***commissioner***~~{executive director}~~ on any matters referred to the board by the ***commissioner***~~{executive director}~~ or the Governor.
 - (8) In no event shall the board or its members interfere with the statutory duties of the ***commissioner***~~{executive director}~~ whose decisions shall be governed by law.
- ➔Section 610. KRS 286.01-020 is amended to read as follows:
- (1) The ***commissioner***~~{executive director}~~ may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and carry out the provisions and intent of this chapter. ***The commissioner***~~{He}~~ shall devise a seal for ***the***~~{his}~~ department, a description of which, together with an impression thereof and a certificate of approval by the Governor, shall be filed in the office of the Secretary of State. The seal shall be renewed whenever necessary.

- (2) The **commissioner**~~{executive director}~~ of financial institutions and his **or her** deputies shall be allowed their necessary traveling and other expenses of conducting their office.
- (3) The **commissioner**~~{executive director}~~ of financial institutions may issue a finding of permissible activities, services, or products to authorize banks to engage in any banking activity in which the banks could engage were they operating as national banks at the time the authority is granted. Any finding shall be specifically limited to the activity, service, or products contained therein and shall be mailed to all banks. This section shall not apply to activities prohibited under Subtitle 9 of KRS Chapter 304.
- (4) Nothing herein contained shall be construed to repeal, modify, or alter the restrictions of KRS 286.3-105 relative to the leasing of motor vehicles, or of KRS 286.3-180 relative to the establishment of branches.
- (5) The **commissioner**~~{executive director}~~ may designate the deputy **commissioner**~~{director}~~, division directors, general counsel, or branch managers to sign documents under his **or her** instructions.

➔Section 611. KRS 286.01-025 is amended to read as follows:

The secretary of the ~~{Environmental and}~~ Public Protection Cabinet may appoint a deputy **commissioner**~~{director}~~ of financial institutions with the prior written approval of the Governor. The deputy **commissioner**~~{director}~~ shall, during the absence or inability of the **commissioner**~~{executive director}~~ or under his **or her** instructions, or in the event of a vacancy in the office of the **commissioner**~~{executive director}~~ and until the vacancy is filled, be vested with all the powers and perform all the duties of the **commissioner**~~{executive director}~~.

➔Section 612. KRS 286.01-440 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall appoint a sufficient number of examiners and assistant examiners to examine all institutions coming under the supervision of the **department**~~{office}~~. A salary schedule for examiners and assistant examiners shall be prepared by the **commissioner**~~{executive director}~~ and presented to the secretary of the Finance and Administration Cabinet for approval. In the event an advisory state banking board is established by law, the appointment and compensation of examiners and assistant examiners shall be with the advice of such board.
- (2) The **commissioner**~~{executive director}~~, the deputy **commissioner**~~{director}~~, and each examiner shall take the constitutional oath of office.
- (3) Neither the **commissioner**~~{executive director}~~, nor the deputy **commissioner**~~{director}~~, nor any examiner or assistant examiner shall be indebted directly or indirectly either as borrower, indorser, surety, or guarantor, to any bank or trust company under his supervision or subject to his examination, nor shall he **or she** be a director, officer or employee in such bank or trust company, nor engage or become interested in the sale of securities as a business or in the negotiation of loans for others.
- (4) No person shall be assigned to examine the affairs of any bank or trust company in a county in which he holds stock in either a state or national bank or trust company.
- (5) The **commissioner**~~{executive director}~~ may enter into contracts with any bank supervisory agency that has concurrent jurisdiction over a state bank or the branch of an out-of-state state bank operating in this state to engage the services of the agency's examiners at a reasonable rate of compensation, or to provide the services of the **commissioner's**~~{executive director's}~~ examiners to the agency at a reasonable rate of compensation. Any contract entered into pursuant to this subsection shall be deemed a sole source contract under the provisions of KRS 45A.095.

➔Section 613. KRS 286.01-485 is amended to read as follows:

All fees collected and paid into the State Treasury under the provisions of KRS Chapters 292 and 366 and of Subtitles 1, 2, 3, 4, 5, 6, 7, and 8 of KRS Chapter 286, or any industry regulated by the **department**~~{office}~~ shall be credited to a revolving trust or agency fund account, as provided in KRS 45.253, for the **Department**~~{Office}~~ of Financial Institutions and shall be separately accounted for and shall be used solely for the administration and enforcement of said KRS chapters.

➔Section 614. KRS 286.2-015 is amended to read as follows:

- (1) All political subdivisions of the Commonwealth shall be prohibited from enacting and from enforcing ordinances, resolutions, and regulations pertaining to the financial or lending activities of persons or entities which:

- (a) Are subject to the jurisdiction of the ~~*department*~~~~*{office}*~~ or the provisions of this chapter;
 - (b) Are subject to the jurisdiction or regulatory supervision of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, the Farm Credit Administration, the Federal Deposit Insurance Corporation, or the United States Department of Housing and Urban Development; or
 - (c) Originate, purchase, sell, assign, securitize, assist, facilitate, or service property interests or obligations created by financial transactions or loans made, executed, or originated by persons or entities referred to in paragraph (a) or (b) of this subsection.
- (2) The requirements of this section shall apply to all ordinances, resolutions, or regulations pertaining to lending activities, including any ordinances, resolutions, or regulations which limit or disqualify persons or entities from doing business with a political subdivision based upon financial or lending activities or the imposition of additional reporting requirements or other obligations on such persons or entities seeking to do business with a political subdivision.
 - (3) Any provision of this chapter preempted by federal law with respect to a national bank or federal savings association shall not apply to the same extent to an operating subsidiary of a national bank or federal savings association.
 - (4) The provisions of this chapter shall be interpreted and applied to the fullest extent practicable in a manner consistent with applicable federal laws and regulations and with applicable policies and orders of federal regulatory agencies and shall not be deemed to constitute an attempt to override federal law.
 - (5) Nothing in this section shall be interpreted as preventing the enforcement of ordinances, regulations, or resolutions of political subdivisions of the Commonwealth pertaining to civil rights.

➔Section 615. KRS 286.2-990 is amended to read as follows:

Unless otherwise specifically provided for in this subtitle, the ~~*commissioner*~~~~*{executive director}*~~ may levy a civil penalty against any person who violates any provision of this subtitle, any administrative regulation promulgated under this subtitle, or any order issued by the ~~*commissioner*~~~~*{executive director}*~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.

➔Section 616. KRS 286.3-010 is amended to read as follows:

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

- (1) "Bank or state bank" means any bank which is now or may hereafter be organized under the laws of this state or a combined bank and trust company;
- (2) "National bank" or "national bank association" means a bank created by Congress and organized pursuant to the provisions of federal law, including savings and loan associations;
- (3) "Out-of-state bank" means a bank chartered under the laws of any state other than Kentucky;
- (4) "Home state" means:
 - (a) With respect to a state bank or out-of-state state bank, the state by which the bank is chartered; and
 - (b) With respect to a national bank, the state in which the main office of the bank is located;
- (5) "Home state regulator" means, with respect to an out-of-state state bank, the bank supervisory agency of the state in which such bank is chartered;
- (6) "Host state" means a state, other than the home state, in which the bank maintains, or seeks to establish and maintain, a branch;
- (7) "~~*Commissioner*~~~~*{Executive director}*~~" means the ~~*commissioner*~~~~*{executive director}*~~ of financial institutions;
- (8) "~~*Department*~~~~*{Office}*~~" means the ~~*Department*~~~~*{Office}*~~ of Financial Institutions;
- (9) "Population" means the population as indicated by the latest regular United States census;

- (10) "Trust company" includes every corporation authorized by this subtitle to do a trust business;
- (11) "Undivided profits" means the composite of the bank's net retained earnings from current and prior years' operations;
- (12) "Capital stock" shall mean, at any particular time, the sum of:
 - (a) The par value of all shares of the corporation having a par value that have been issued;
 - (b) The amount of the consideration received by the corporation for all shares of the corporation that have been issued without par value except such part of the consideration as has been allocated to surplus in a manner permitted by law; and
 - (c) Such amounts not included in paragraphs (a) and (b) of this subsection as have been transferred to stated capital of the corporation, whether through the issuance of stock dividends, resolution of the bank's board of directors under applicable corporate law or otherwise by law;
- (13) "Surplus" means the amount of consideration received by the corporation for all shares issued without par value that has not been allocated to capital stock or the amount of consideration received by the corporation in excess of par value for all shares with a par value, or both;
- (14) "Municipality" means a county, city, or urban-county government;
- (15) "Political subdivision" means a municipality, school district, or other municipal authority;
- (16) "Corporation" means either a for-profit corporation or limited liability company;
- (17) "Share" means the shares of stock or the unit of equity into which the proprietary interests in a corporation are divided;
- (18) "Stock" means the corporation's shares;
- (19) "Stockholder" or "shareholder" means an owner of the corporation's shares;
- (20) "Board of directors" means the governing body of a corporation elected or otherwise chosen by the shareholders, including the managers of a limited liability company;
- (21) "Director" means a member of the board of directors;
- (22) "Articles of incorporation" means the organizing documents of a corporation filed with the Secretary of State in accordance with KRS Chapter 271B or 275; and
- (23) "Dividends" means a distribution of money, stock, or other property to shareholders of a corporation.

➔Section 617. KRS 286.3-050 is amended to read as follows:

- (1) Before filing the articles of incorporation of any financial institution mentioned in KRS 286.3-040, the organizers shall present a copy of their proposed articles to the **commissioner**~~executive director~~ who shall investigate the financial standing, moral character, and capability of each of the organizers and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation.
- (2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the **commissioner**~~executive director~~ may waive all or any part of the requirements of this subtitle.
- (3) If the **commissioner**~~executive director~~ determines that it is expedient and desirable to permit the proposed corporation to engage in business, **the commissioner**~~he~~ shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation or limited liability company law.
- (4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 286.3-040 shall be approved by the **commissioner**~~executive director~~ before filing with the Secretary of State.

➔Section 618. KRS 286.3-060 is amended to read as follows:

- (1) Before any financial institution mentioned in KRS 286.3-040 may transact any banking or trust business, it shall file a written oath with the **commissioner**~~[executive director]~~. The oath shall be taken by each director of the institution, and shall state in substance:
 - (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;
 - (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;
 - (c) That he will uphold the laws of the state, and particularly the banking and trust laws.
- (2) The oath shall be taken before any officer authorized to administer oaths, and shall be taken upon the election of any subsequent director or reelection of any director. The oath shall be maintained by the bank and be subject to review at examinations.
- (3) The **commissioner**~~[executive director]~~ shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:
 - (a) The oath mentioned in subsections (1) and (2) of this section has been filed; and
 - (b) The **commissioner**~~[executive director]~~ has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and
 - (c) The **commissioner**~~[executive director]~~ has received satisfactory proof that the institution has subscribed and paid in the required capital and has otherwise fully complied with all pertinent laws and regulations; and
 - (d) A period of thirty (30) days has elapsed since the rendition by the **commissioner**~~[executive director]~~ of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.
 - (e) If an appeal from a final order of the **commissioner**~~[executive director]~~ has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:
 1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or
 2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal.

➔Section 619. KRS 286.3-070 is amended to read as follows:

The minimum capital stock of any bank or trust company organized after May 30, 1938 shall be two million five hundred thousand dollars (\$2,500,000). Additional capital may be required depending upon an investigation of the application, at the discretion of the **commissioner**~~[executive director]~~.

➔Section 620. KRS 286.3-090 is amended to read as follows:

No reduction in the capital stock of a bank or trust company shall be made to an amount less than is required for organization, nor shall any reduction be valid until it has been approved by the **commissioner**~~[executive director]~~ upon his finding that the interest of creditors of the bank or trust company will not be prejudiced thereby.

➔Section 621. KRS 286.3-095 is amended to read as follows:

- (1) At least sixty (60) days prior to a change occurring in the outstanding voting stock of any bank or trust company which will result in control or in a change in the control of the bank or trust company, the proposed acquiring party or parties shall report such facts to the **commissioner**~~[executive director]~~ for approval unless the **commissioner**~~[executive director]~~ finds that:
 - (a) The terms of the acquisition are not in accordance with the laws of this state; or
 - (b) The financial condition, or the competence, experience, and integrity of the acquiring party or parties are such as will jeopardize the financial stability of the bank; or
 - (c) The public convenience and advantage will not be served by the acquisition.

- (2) As used in subsection (1) of this section, the term "control" means the power to directly or indirectly direct or cause the direction of the management or policies of the bank or trust company. A change in ownership of voting stock which would result in direct or indirect ownership by a stockholder or an affiliated group of stockholders of less than twenty-five percent (25%) of the outstanding voting stock shall not be considered a change of control. If there is any doubt as to whether a change in the outstanding voting stock is sufficient to result in control thereof or to effect a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the **commissioner**~~executive director~~.
- (3) Whenever a bank makes a loan or loans, secured, or to be secured, by twenty-five percent (25%) or more of the outstanding voting stock of a bank, the president or other chief executive officer of the lending bank shall promptly report such fact to the **commissioner**~~executive director~~ upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one (1) year or more, or the stock is that of a newly organized bank prior to its opening.
- (4) The reports required by subsections (1), (2), and (3) of this section shall contain the following information to the extent that it is known by the person making the report:
- (a) The number of shares involved;
 - (b) The names of the sellers (or transferors);
 - (c) The names of the purchasers (or transferees);
 - (d) The names of the beneficial owners if the shares are registered in another name;
 - (e) The purchase price;
 - (f) The total number of shares owned by the seller (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction; and in the case of a loan:
 - 1. The name of the borrower;
 - 2. The amount of the loan; and
 - 3. The name of the bank issuing the stock securing the loan and the number of shares securing the loan.

In addition to the foregoing, such reports shall contain such other information as may be available to inform the **commissioner**~~executive director~~ of the effect of the transaction upon control of the bank or trust company whose stock is involved.

- (5) Whenever such a change as described in subsection (1) of this section occurs, each bank or trust company shall report promptly to the **commissioner**~~executive director~~ any changes or replacement of its chief executive officer or of any director occurring in the next twelve (12) month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or directors.

➔Section 622. KRS 286.3-100 is amended to read as follows:

A bank may:

- (1) Hold personal property that has been transferred to it as collateral for the payment of any debt;
- (2) Acquire and hold title to real estate, provided:
 - (a) The real estate is necessary or appropriate for the transaction of legitimate business; and
 - (b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the **commissioner**~~executive director~~;
- (3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;
- (4) Invest in the bonds of any federal home loan bank;

- (5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;
- (6) Invest, subject to the approval of the **commissioner**~~executive director~~, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;
- (7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of the company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue these instruments of indebtedness;
 - (d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;
- (8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;
- (9) Invest in:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;
- (10)
 - (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and
 - (b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the **commissioner**~~executive director~~ authorized to extend the disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;
- (11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;
- (12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank;
- (13) Invest, with the prior approval of the **commissioner**~~executive director~~, in the capital stock or bonds of a trust company; and
- (14) Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.

Investments in accordance with subsections (7) and (9) of this section are subject to KRS 286.3-280 and 286.3-290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

➔Section 623. KRS 286.3-102 is amended to read as follows:

- (1) As used in this section, a CAMEL rating means a system of rating used by examiners of financial institutions to rate the institutions in five (5) categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, and liquidity.
- (2) In addition to all other banking activities permitted by this subtitle, a state bank receiving a CAMEL rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage and is exempted from any statutes or administrative regulations which would be preempted if:
 - (a) It was operating as a national bank in Kentucky;
 - (b) It was operating as a state bank, state thrift, or state savings bank in any state; or
 - (c) It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.
- (3) Before a state bank may engage in any of the banking activities permitted by subsection (2) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage and the conditions under which such activity is allowed. This legal opinion shall be maintained by the bank and provided to the ~~department office~~ upon request.
- (4) This section shall not apply to exempt any laws which regulate Kentucky state banks pertaining to deferred deposit transactions in Subtitle 9 of this chapter, title pledge lending in Subtitle 10 of this chapter, visitorial or examination powers, and interest rates.

➔Section 624. KRS 286.3-115 is amended to read as follows:

- (1) With the approval of the ~~commissioner~~~~executive director~~ a bank or trust company may, at any time, by resolution of its board of directors, which resolution shall have been approved at a stockholders' meeting by two-thirds (2/3) of the outstanding capital stock of the bank, issue and sell its capital notes or debentures in an amount not in excess of one hundred percent (100%) of its unimpaired paid-in capital stock plus fifty percent (50%) of its unimpaired surplus. The aggregate amount of such capital notes or debentures issued or sold by a bank or trust company shall be exempt from the limitations and restrictions on indebtedness, as may be provided in its articles of incorporation.
- (2) Such capital notes and debentures shall be subordinate to the claims of creditors and depositors, and shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full, with such interest as may be provided by law, before any payment shall be made on account of principal of or interest on said capital notes or debentures, and may provide that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes shall be entitled to be paid from the remaining assets of the bank, the unpaid principal amount of the capital notes or debentures, plus accrued and unpaid interest thereon, before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock of the bank.
- (3) The capital notes or debentures shall in no case be subject to any assessment. The holders of such capital notes or debentures shall not be liable for any debts, contracts, or engagements of such bank, nor for assessments to restore impairments in the capital of such bank, unless the holder is a stockholder in such bank.
- (4) Such capital notes or debentures issued or sold by a bank or trust company shall be considered as a portion of the capital and unimpaired surplus or capital structure of the issuing bank or trust company and shall be considered as such in determining the bank's legal lending or investment limits, and for other purposes, when based upon the capital and unimpaired surplus of the bank or trust company; except that such capital notes and debentures shall not be considered in determining the amount of ad valorem taxes payable by the bank or trust company.
- (5) No such capital notes or debentures may be retired or paid by the bank or trust company if at the time of retirement or payment or immediately after, there be an existing deficiency of the bank's or trust company's capital stock, as determined by the ~~commissioner~~~~executive director~~.

- (6) No such capital notes or debentures shall be issued or sold by a bank or trust company except for cash, and no bank or trust company which issues such capital notes or debentures shall acquire or hold any of its capital notes or debentures in its own assets or in fiduciary capacity. Any of its own notes or debentures acquired by a bank contrary to the provisions of this section shall be forthwith disposed of by sale or charged to its undivided profits account.
- (7) Wherever the terms "capital," "capital stock," or "capital structure" are used in this section, they shall be construed to have reference only to capital actually paid in and capital stock actually issued.

➔Section 625. KRS 286.3-135 is amended to read as follows:

- (1) Notwithstanding any other provisions of law, any bank doing business in the Commonwealth, whether state or nationally chartered, may purchase for its own account shares of a bank or bank holding company which owns or controls such a bank provided:
 - (a) The stock of such bank or bank holding company is owned exclusively (except to the extent director's qualifying shares are required by law) by depository institutions; and
 - (b) Such bank or bank holding company and all subsidiaries thereof are engaged exclusively in providing services for depository institutions, their parent companies, their subsidiaries, the officers, directors, and employees of each.
- (2) In no event shall the total amount of stock held by a bank in any bank or bank holding company described in subsection (1) above exceed at any time ten percent (10%) of a bank's capital stock and paid in and unimpaired surplus and in no event shall the purchase of such stock result in a bank acquiring more than five percent (5%) of any class of voting securities of such bank or bank holding company.
- (3) The **commissioner**~~executive director~~ is authorized to receive applications, hold hearings on such applications, and issue charters for a banker's bank.

➔Section 626. KRS 286.3-140 is amended to read as follows:

- (1) A bank may, with the consent of a majority in number and interest of its stockholders, amend its articles of incorporation or reorganize to permit it to engage in a trust business. The stock of the old corporation, if unimpaired, may be converted into stock in the new corporation.
- (2) Any bank or trust company may consolidate and the consolidated corporation shall issue stock for an equivalent amount in value of the stock of the constituent corporations.
- (3) Upon written approval of the **commissioner**~~executive director~~, a bank or trust company may transfer one (1) or more fiduciary accounts under its administration to an affiliate of the trust company or bank, as defined in KRS 286.3-230(6), located in the Commonwealth, if the transferring bank or trust company shall also:
 - (a) Not later than thirty (30) days prior to the date of the transfer of the fiduciary accounts, send written notice to the person or entity that was the recipient of the last report of the status of the account. The notice shall include notification of the recipient's rights to object to the transfer in the probate division of District Court and shall be deemed effective when mailed by the bank or trust company; and
 - (b) Within ten (10) days after the date of a transfer of the fiduciary accounts, file an affidavit recording the transfer in the District Court, probate division, of the county in which its main office is located.

➔Section 627. KRS 286.3-172 is amended to read as follows:

- (1) A national banking association may convert into or merge with a state bank under a state charter, provided that the action taken complies with federal law.
- (2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the **commissioner**~~executive director~~. Such plan shall be in form satisfactory to the **commissioner**~~executive director~~, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the **commissioner**~~executive director~~. With such plan of conversion there shall be submitted, in duplicate, to the **commissioner**~~executive director~~ a certificate of the president, secretary, or cashier of the national banking

association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The **commissioner**~~{executive director}~~ shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the **commissioner**~~{executive director}~~ shall take into account:

- (a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;
- (b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and
- (c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the **commissioner**~~{executive director}~~ shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the **commissioner**~~{executive director}~~, in the office of the **commissioner**~~{executive director}~~, and the other duplicate of such plan, together with a duplicate of such certificate and a duplicate of the **commissioner's**~~{executive director's}~~ approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 286.3-050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the **commissioner**~~{executive director}~~ shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

- (3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the **commissioner**~~{executive director}~~. Such plan shall be in form satisfactory to the **commissioner**~~{executive director}~~ and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of Subtitle 3 of KRS Chapter 286 relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the **commissioner**~~{executive director}~~ the following:
 - (a) By the national banking association, a certificate of the president, secretary, or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;
 - (b) By the state bank, a certificate of the president, secretary, or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.
- (4) The **commissioner**~~{executive director}~~ shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the **commissioner**~~{executive director}~~ shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the **commissioner**~~{executive director}~~, in the office of the **commissioner**~~{executive director}~~, and the other duplicate of such plan, together with a duplicate of each of such certificates and a duplicate of the **commissioner's**~~{executive director's}~~ approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located. Upon such filing in the office of the **commissioner**~~{executive director}~~, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.
- (5) At the time when such conversion or merger becomes effective:

- (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties, the resulting bank is a state bank;
- (b) All of the property, rights, and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations, and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties, and relationships had been originally acquired, incurred, or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege, or franchise which is not conferred by the provisions of Subtitle 3 of KRS Chapter 286 upon such resulting state bank;
- (c) Any reference to the national banking association in any contract, will, or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will, or document;
- (d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

➔Section 628. KRS 286.3-180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) A bank may establish within any state, the District of Columbia, or a territory of the United States a branch and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the ~~commissioner~~~~executive director~~ may designate by the promulgation of administrative regulations, shall apply to the ~~commissioner~~~~executive director~~ for permission to establish a branch. Before the ~~commissioner~~~~executive director~~ shall approve or disapprove any application made under this subsection the ~~commissioner~~~~executive director~~ shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing the branch. The following conditions shall apply to applications for branches:
 - (a) The permission to open a branch shall lapse one (1) year after the ~~commissioner~~~~executive director~~ has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the ~~commissioner~~~~executive director~~, be extended for any period of time the ~~commissioner~~~~executive director~~ deems to be necessary; and
 - (b) An application to establish a branch office shall be approved or disapproved by the ~~commissioner~~~~executive director~~ based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating an agency or branch bank may continue to retain and operate the agency or branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing agency or branch bank but only as to those agencies or branch banks which may be established in the future in accordance with the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided

the ***commissioner***~~[executive director]~~ shall determine that the public convenience and necessity will be served by the operation. The bank which does not survive the merger shall surrender its charter.

- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch or agency bank has once been established any operation of the branch or agency bank shall not be discontinued, and the branch or agency bank shall not be closed until after ninety (90) days' notice in writing to the ***commissioner***~~[executive director]~~. In the discretion of the ***commissioner***~~[executive director]~~ the branch or agency bank proposing to discontinue operation may be required to give notice of the date when its operation will cease.

➔Section 629. KRS 286.3-185 is amended to read as follows:

A bank may move its principal office or a branch from one (1) location to another. A bank, except for a bank that the ***commissioner***~~[executive director]~~ may designate through the promulgation of administrative regulations, shall apply to the ***commissioner***~~[executive director]~~ for approval to relocate its principal office or a branch. Before the ***commissioner***~~[executive director]~~ shall approve or disapprove any change of location, he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location.

➔Section 630. KRS 286.3-187 is amended to read as follows:

- (1) Except as set forth in subsection (7) of this section, with prior approval of the ***commissioner***~~[executive director]~~ and upon compliance with the requirements of this section, any state bank may agree to receive deposits, renew time deposits, close loans, service loans, receive payments on loans and other obligations, and perform other services as may be authorized by administrative regulations, as an agent for any national bank, savings and loan, or savings bank having its principal office in Kentucky or any state bank.
- (2) A state bank that proposes to enter into an agency agreement under this section shall file with the ***commissioner***~~[executive director]~~, at least thirty (30) days before the effective date of the agreement:
 - (a) A notice of intention to enter into an agency agreement with a national bank, savings and loan, or savings bank having its principal office in Kentucky or a state bank;
 - (b) A description of the services to be performed under the agency agreement; and
 - (c) A copy of the agency agreement.
- (3) The ***commissioner***~~[executive director]~~ shall decide whether to approve the agency agreement within thirty (30) days of the receipt of the notice required by subsection (2) of this section; except if the ***commissioner***~~[executive director]~~ requests additional information after receiving such notice, the time limit for the ***commissioner's***~~[executive director's]~~ decision shall be thirty (30) days after receiving the additional information.
- (4) The ***commissioner***~~[executive director]~~ may order a state bank to cease acting as an agent or principal under any agency agreement with a state bank or a national bank, savings and loan, or savings bank having its principal office in Kentucky that the ***commissioner***~~[executive director]~~ finds to be inconsistent with safe and sound banking practices.
- (5) A state bank acting as an agent for a state bank or a national bank, savings and loan, or savings bank having its principal office in Kentucky in accordance with this section shall not be considered to be a branch of that institution.
- (6) Except as set forth in subsection (7) of this section, a state bank may act as an agent for a national bank, savings and loan, or savings bank having its principal office outside Kentucky to the same extent it could act were it operating as a national bank at the time.
- (7) Nothing in this section authorizes a state bank to conduct any activity as an agent under this section which the bank is not permitted to conduct as a principal under any applicable federal or state law.

➔Section 631. KRS 286.3-199 is amended to read as follows:

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

- (a) "***Commissioner***~~[Executive director]~~" means the ***commissioner***~~[executive director]~~ of financial institutions and any other person lawfully exercising the powers of the ***commissioner***~~[executive director]~~.
 - (b) "Officers" means the person or persons designated by the board of directors of a bank to act for the bank in carrying out the provisions of this section.
 - (c) "Emergency" means any condition which interferes with the conduct of normal business operations at one (1) or more or all offices of a bank or banks, or which poses an imminent or existing threat to the safety and security of persons or property, or both. Without limiting the generality of the foregoing an emergency may arise as a result of any one (1) or more of the following: fire, flood, wind, rain or snowstorms, labor disputes, power failures, transportation failures, war and riots, civil commotions, and other acts of lawlessness or violence.
 - (d) "Office" means any place at which a bank transacts business or conducts operations related to the transaction of business.
 - (e) "Person" includes natural persons, corporations, partnerships and associations.
- (2) Whenever the ***commissioner***~~[executive director]~~ is of the opinion that an emergency exists in this state or in any part or parts of this state, ***the commissioner***~~[he]~~ shall, by proclamation, authorize those banks which, in the opinion of their officers, are directly or indirectly affected by such emergency to close one (1) or more or all their offices.
 - (3) Whenever the officers of a bank are of the opinion that an emergency exists which affects one (1) or more or all the bank's offices, they shall have authority to close one (1) or more or all such offices even though the ***commissioner***~~[executive director]~~ has not issued a proclamation of emergency, and they may provide that the business normally transacted at a closed office will be transacted at another office designated by the bank until further notice. The office or offices so closed shall remain closed until the ***commissioner***~~[executive director]~~ proclaims that the emergency has ended, or until such earlier time as the officers of the bank determine that one (1) or more offices, theretofore closed because of the emergency, should reopen, or, if the ***commissioner***~~[executive director]~~ has issued no proclamation of emergency, until the officers of the bank determine that such office or offices should reopen. The discretion of the officers in acting pursuant to this section, when exercised in good faith, shall not be questioned in any court or place.
 - (4) A bank closing an office or offices pursuant to this section shall give prompt notice to the ***commissioner***~~[executive director]~~ as conditions will permit.
 - (5) No bank and no director, officer or employee of a bank shall be liable to any person for any direct or indirect loss suffered by reason of the bank's failure or inability to make access to the bank's premises and facilities available to such person or by reason of the bank's failure or delay in performing any contractual, statutory or other duty assumed by or imposed upon the bank in any capacity when such failure, inability or delay is caused by an emergency as defined by this section. The immunity from liability provided for herein shall endure during the period of such emergency and for such time thereafter as may reasonably be necessary to afford such access or perform such duty.
 - (6) The provisions of this section shall be construed and applied as being in addition to any other law of this state or United States excusing delays by banks in the performance of duties or obligations, or authorizing the closing of banks because of emergencies or conditions beyond the bank's control, or otherwise.
 - (7) The ***commissioner***~~[executive director]~~ may make such orders and regulations, not inconsistent with this section, as ***he or she*** shall deem necessary during an emergency to provide for the uninterrupted continuance of business by banks to the extent consistent with the safety and security of persons and property.

➔Section 632. KRS 286.3-212 is amended to read as follows:

- (1) Notwithstanding any other provision of law, any bank, when acting as a fiduciary or when holding securities as custodian for a fiduciary, is authorized to deposit, or arrange for the deposit, with the federal reserve bank in its district of any securities, the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one (1) or more accounts on the books of said federal reserve bank in the name of such bank, to be designated fiduciary for safekeeping accounts, to which account other similar securities may be credited. A bank so depositing

securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of a bank organized under the laws of this state, the **commissioner**~~executive director~~, and, in the case of the national banking associations, the comptroller of the currency, may from time to time issue. The records of such bank shall at all times show the ownership of the securities held in such account. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A bank acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party, to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary.

- (2) This section shall apply to any fiduciary, and any custodian for fiduciaries, acting on June 21, 1974, or who thereafter may act regardless of the date of the agreement, instrument or court order by which it is appointed.
- (3) As used in this section, "fiduciary" includes an executor, administrator, trustee under any trust, express, implied, resulting or constructive, guardian, conservator, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of a corporation, public or private, public officer or any other person acting in a fiduciary capacity for any person, trust or estate.

➔Section 633. KRS 286.3-230 is amended to read as follows:

- (1) Any trust company or bank empowered to act as a fiduciary under the laws of this state and subject to examination by state or federal banking authorities may establish and maintain one (1) or more common trust funds for the collective investment of funds held in any fiduciary capacity by such trust company or bank or by an affiliate of the trust company or bank including, without limitation, funds held as agent where the trust company, bank, or affiliate exercises investment discretion and assumes fiduciary responsibilities.
- (2) Before establishing a common trust fund as provided in subsection (1) of this section, the trust company or bank shall file with the **commissioner**~~executive director~~ a statement of the plan under which it proposes to establish, maintain, operate, and ultimately liquidate the trust fund, and shall secure the written approval of the plan by the **commissioner**~~executive director~~.
- (3) After such a trust fund has been established, it may be modified or amended by filing with the **commissioner**~~executive director~~ a statement setting forth the proposed modification or amendment, and securing the written approval of the change by the **commissioner**~~executive director~~.
- (4) The bank, trust company, or affiliate shall at all times maintain definite records showing all securities and properties held in such fund.
- (5) The trust company, bank, or affiliate may invest funds held by it in any fiduciary capacity in one (1) or more common trust funds established as provided in subsection (1) of this section, or one (1) or more common trust funds wherever located established, owned, or controlled by an affiliate of the trust company, bank, or affiliate so long as:
 - (a) The investment is not specifically prohibited by the instrument, judgment decree, or order creating the fiduciary relationship; and
 - (b) In the case of cofiduciaries, the trust company, bank, or affiliated bank procures the written consent of its cofiduciary or cofiduciaries to the investment, which consent the cofiduciary or cofiduciaries are hereby authorized to grant.
- (6) As used in subsection (1) of this section, "affiliate of the trust company or bank" means any trust company, bank, or other entity that controls, is controlled by, or is under common control with the trust company, bank, or other entity.

➔Section 634. KRS 286.3-290 is amended to read as follows:

In the case of obligations to banks and trust companies, the limitations and restrictions of KRS 286.3-280 shall not apply to:

- (1) Obligations of the United States or of the State of Kentucky;
- (2) Obligations guaranteed as to principal and interest by the United States or the State of Kentucky; or all obligations to the extent secured or covered by guarantees or by commitments or agreements to take over or to

purchase the same made by any federal reserve bank or by the United States or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or consolidated bonds issued by or for federal land banks or consolidated debentures issued by or for federal intermediate credit banks under the Act of Congress known as the "Federal Farm Loan Act," and amendments thereto; or consolidated debentures issued by or for banks for cooperatives under the Act of Congress known as the "Farm Credit Act of 1933," and amendments thereto; or obligations issued by the federal home loan banks; or obligations which are insured by the federal housing administrator pursuant to Title 12, Section 12, Section 1713, United States Code, if the debentures to be issued in payment of such insured obligations are guaranteed as to the principal and interest by the United States; or obligations of national mortgage associations; except that the **commissioner**~~executive director~~ may make, alter and repeal regulations respecting the total liabilities of any person which:

- (a) Are secured by direct obligations of the United States or the State of Kentucky, and
 - (b) Have a face value at least equal to the amount of such liabilities, and
 - (c) Will mature within five (5) years from the date such liabilities were incurred.
- (3) Obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized by KRS 68.320 and 160.540.

➔Section 635. KRS 286.3-330 is amended to read as follows:

- (1) Banks, subject to statutory or charter limitations, may pledge such portion of their assets or provide surety bonds as may be required by law as collateral security for government deposits made with them, or any of them, by or under the authority of the United States, or for any other deposit required by law to be secured.
- (2) Notwithstanding any law requiring security for deposits in the form of collateral, surety bond, or in any other form, security for such deposits shall not be required to the extent said deposits are insured under the provisions of Section 12B of the Federal Reserve Act (38 Stat. 251) as amended.
- (3) If a bank proposes to sell its assets and transfer its deposit liability to another bank and the purchasing bank is unwilling to accept a sufficient amount of the assets to cover the liability to depositors and other creditors, the selling bank may, with the consent of the **commissioner**~~executive director~~, pledge all or a part of its remaining or unacceptable assets to secure a loan for an amount sufficient to cover the remaining liability to the depositors and other creditors.

➔Section 636. KRS 286.3-350 is amended to read as follows:

- (1) The board of directors of any bank or trust company organized under the laws of this state may declare a dividend of so much of the net profits as they deem expedient. The net profits shall be computed by deducting all expenses, losses, and interest and taxes accrued or due from the bank.
- (2) The approval of the **commissioner**~~executive director~~ shall be required if the total of all dividends declared by such institution in any calendar year shall exceed the total of its net profits of that year combined with its retained net profits of the preceding two (2) years, less any required transfers to surplus or a fund for the retirement of preferred stock or debt.

➔Section 637. KRS 286.3-375 is amended to read as follows:

- (1) Every bank shall retain its business records for such periods as are or may be prescribed by or in accordance with the terms of this section.
- (2) Each bank shall retain permanently the minute book of meetings of its stockholders and directors, its capital stock ledger and capital stock certificate ledger or stubs, its general ledger, its daily statements of condition, its general journal, its investment ledger, its copies of bank examination reports, and all records which the **commissioner**~~executive director~~ shall, in accordance with the terms of this section, require to be retained permanently.
- (3) All other bank records shall be retained for such periods as the **commissioner**~~executive director~~ shall, in accordance with the terms of this section, prescribe.
- (4) The **commissioner**~~executive director~~ shall from time to time issue regulations classifying all records kept by banks and prescribing the period for which records of each class shall be retained. Such periods may be

permanent or for a lesser term of years. Such regulations may from time to time be amended or repealed. Prior to issuing any such regulation the **commissioner**~~[executive director]~~ shall consider:

- (a) Actions at law and administration proceedings in which the production of bank records might be necessary or desirable;
 - (b) State and federal statutes of limitation applicable to such actions or proceedings;
 - (c) The availability of information contained in bank records from other sources;
 - (d) Such other matters as the **commissioner**~~[executive director]~~ shall deem pertinent in order that its regulations will require banks to retain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this state in having bank records available.
- (5) Any bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.
 - (6) Any bank, including the **Department**~~[Office]~~ of Financial Institutions, may cause any or all records at any time in its custody to be reproduced by the microphotographic process, nonerasable optical image discs (CD's), or other records retention technology approved by the **department**~~[office]~~, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.
 - (7) To the extent that they are not in contravention of any law of the United States, the provisions of this section shall apply to all banks doing business in this state.

➔Section 638. KRS 286.3-420 is amended to read as follows:

Within ten (10) days after the **commissioner**~~[executive director]~~ calls upon a bank or trust company, it shall publish pursuant to KRS Chapter 424 on a form furnished by the **commissioner**~~[executive director]~~, a condensed statement of its financial condition, at the close of business on the date named in the call. The **commissioner**~~[executive director]~~ may make the call at any time he *or she* desires. Such published statement shall contain all information as the **commissioner**~~[executive director]~~ shall require. The reports shall be signed and sworn to either by the president, vice president, cashier, or one (1) of the directors. A copy of the report, certified to by the publisher, shall be kept in the files of the bank or trust company for review by the **department**~~[office]~~.

➔Section 639. KRS 286.3-450 is amended to read as follows:

- (1) Every state bank, branch of an out-of-state state bank, or trust company doing business under the laws of this state shall be subject to inspection by the **commissioner**~~[executive director]~~ or by an examiner appointed by the **commissioner**~~[executive director]~~. Examination shall be made of each institution at least once every twenty-four (24) months, unless other examinations are accepted as provided in subsections (3), (4), and (5) of this section, and not more than twice unless it appears from examination or from the reports of the institution that it has failed to comply with laws or regulations relating to banks or trust companies, or has engaged in unsafe or unsound banking practices.
- (2) The **commissioner**~~[executive director]~~, deputy **commissioner**~~[director]~~, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the institution being examined.
- (3) Any bank that becomes a member of a Federal Reserve Bank shall be subject to the examination required by the Federal Reserve Act, (38 Stat. 251) as amended, and the **commissioner**~~[executive director]~~ may, in his discretion, accept examinations made by the Federal Reserve authorities in lieu of examinations made under state laws. The **commissioner**~~[executive director]~~ shall furnish to the Federal Reserve agent of the district in which the member bank is situated, copies of reports and examinations made of the member bank.
- (4) The **commissioner**~~[executive director]~~ may, in his discretion, accept examinations made by the Federal Deposit Insurance Corporation in lieu of examinations made under state laws.
- (5) The **commissioner**~~[executive director]~~ may, in his discretion, enter into cooperative, coordinating, and information-sharing agreements with any other bank supervisory agencies or any organization affiliated with or representing one (1) or more bank supervisory agencies with respect to the periodic examination or other supervision of any branch of an out-of-state state bank, or any branch of a state bank in any host state. The **commissioner**~~[executive director]~~ may accept reports of examinations and reports of investigation from other

bank supervisory agencies and home state regulators in lieu of examinations made under state law. The ***commissioner***~~[executive director]~~ may enter into joint examinations or joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any bank, bank holding company, branch of an out-of-state state bank or any branch of a state bank located in any host state. Information produced or provided under this section shall be considered confidential as provided in KRS 286.3-470.

➔Section 640. KRS 286.3-460 is amended to read as follows:

In examinations under KRS 286.3-450 the examining officer shall investigate:

- (1) The cash, bills, collateral, securities, other assets, books of account, and all other papers and books of the bank or trust company;
- (2) The condition and resources of the bank, the mode of conducting and managing its affairs, the actions of its directors, the investment and disposition of its funds, the safety and prudence of its management and the security afforded to those by whom its engagements are held;
- (3) Whether the requirements of its charter and of the laws of this state have been complied with in the administration of its affairs; and
- (4) Such other matters as the ***commissioner***~~[executive director]~~ deems necessary.

➔Section 641. KRS 286.3-470 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a bank or trust company shall be considered confidential information. No officer or director of a bank or trust company, employee of the ***department***~~[office]~~, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or
 - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the bank, or to outside persons for the purpose of evaluating the bank for possible acquisition. Reports of examination released to outside persons providing professional services to the bank or for the purpose of evaluating the bank for possible acquisition, shall require a written request from such outside persons and prior approval by the board of directors or an executive committee of the bank.
- (2) The ***department***~~[office]~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities, including the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency.
- (3) Every official report concerning a bank or trust company, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the ***department***~~[office]~~, bank, or trust company is a party.

➔Section 642. KRS 286.3-480 is amended to read as follows:

- (1) The following fees shall be paid to the ***commissioner***~~[executive director]~~ by corporations engaged in a banking or trust business:
 - (a) For the investigation incident to the approval of articles of incorporation, applications for branch banks and loan production offices, and applications to relocate a main or branch office, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense;
 - (b) For each state bank and branch of an out-of-state state bank subject to inspection and examination by the ***commissioner***~~[executive director]~~, an annual assessment based on the assets of the banks and branches, other than assets held by it in a fiduciary capacity, as reported to the ***department***~~[office]~~ by the banks and branches as of the thirty-first day of December of the previous year. The assessment schedule shall be at the rates the ***commissioner***~~[executive director]~~ shall determine to be necessary to carry out the duties of the ***department***~~[office]~~ and shall be reasonably related to the costs incurred by the

~~department~~~~{office}~~ in regulating banks and branches. The assessment schedule shall be set by administrative regulation;

- (c) For the examination of the assets held by the institution in a fiduciary capacity, the fee shall be sufficient to cover the cost of the investigation based upon fair compensation for time and actual expense. The ~~commissioner~~~~{executive director}~~ may accept examinations made of the trust department in combined banks and trust companies by examiners for the Federal Reserve System, Federal Deposit Insurance Corporation, or a certified public accountant; and
 - (d) Extraordinary services performed, in addition to examinations, for any financial institution, including institutions in liquidation under the supervision of the ~~commissioner~~~~{executive director}~~, shall be paid for by the institution upon the basis of fair compensation for time and actual expense.
- (2) The ~~commissioner~~~~{executive director}~~, in his discretion, may enter into cooperative agreements with other bank supervisory agencies having concurrent jurisdiction over any bank, bank holding company, branch of an out-of-state state bank or any branch of a state bank located in any host state, or any organization affiliated with one (1) or more bank supervisory agencies for the collection, remittance, and sharing of fees authorized in subsection (1) of this section.

➔Section 643. KRS 286.3-490 is amended to read as follows:

- (1) Every institution under the supervision of the ~~department~~~~{office}~~ shall make a report to the ~~commissioner~~~~{executive director}~~ whenever required by *the commissioner*~~{him}~~ to do so. The ~~commissioner~~~~{executive director}~~ shall not require more than five (5) reports from any one (1) institution in any one (1) year, unless he *or she* deems it necessary in order to obtain complete information.
- (2) The reports shall show the actual condition of the bank making the report at the close of business on a date designated by the ~~commissioner~~~~{executive director}~~ and shall specify any information required by the ~~commissioner~~~~{executive director}~~.
- (3) Any officer, director, or board of directors of a bank or trust company shall immediately notify the ~~commissioner~~~~{executive director}~~ concerning any information relating to that financial institution of which they have personal knowledge, involving fraud, defalcation, misfeasance, or violations of this subtitle. Failure to so notify the ~~commissioner~~~~{executive director}~~ shall be grounds for officer or director removal pursuant to KRS 286.3-690.

➔Section 644. KRS 286.3-530 is amended to read as follows:

The ~~department~~~~{office}~~ shall examine banks and trust companies in the hands of a receiver, as other banks and trust companies, until its affairs are wound up, and a copy of the examination shall be filed with the circuit clerk in the county where the bank is located. The receiver or person in charge of the insolvent bank or trust company shall make reports to the ~~department~~~~{office}~~, and shall submit the affairs of the institution under his control to examination in the same manner as required in the case of other banks and trust companies.

➔Section 645. KRS 286.3-660 is amended to read as follows:

Each June, the ~~commissioner~~~~{executive director}~~ shall make a report to the Governor setting forth:

- (1) A summary of the condition of every bank or trust company organized and doing business under the laws of this state, subject to examination and inspection under this subtitle, and such other information relating to such banks and trust companies, as, in *the commissioner's*~~{his}~~ judgment, may be useful;
- (2) A statement of every bank or trust company whose business has been closed during the year, that has failed or voluntarily retired during the year;
- (3) The name of banks or trust companies placed in *the commissioner's*~~{his}~~ hands in process of liquidation, and the amount of dividends paid thereon;
- (4) Any proposed amendment of the laws relating to banks and trust companies, by which the system, in *the commissioner's*~~{his}~~ judgment, may be improved, and by which the security of creditors, depositors, and stockholders may be increased.

➔Section 646. KRS 286.3-690 is amended to read as follows:

- (1) If the ~~commissioner~~~~{executive director}~~ has knowledge or reasonable cause to believe that any bank or trust company, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of

the bank or trust company has engaged in violations of law, or charter, or administrative regulation promulgated by the ~~department~~~~office~~, or in unsafe or unsound business practices, ~~the commissioner~~~~he~~ may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to alleged violations or practices, and shall fix the time and place at which an administrative hearing shall be held to determine whether an order to cease and desist should issue against the bank, trust company, director, officer, employee, agent, or other person. The hearing shall be conducted in accordance with KRS Chapter 13B.

- (2) Unless the party or parties so served shall appear at the hearing personally or by a duly-authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order.
- (3) If the parties consent, or if upon the record made at the hearing the ~~commissioner~~~~executive director~~ shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, ~~the commissioner~~~~he~~ may issue and serve upon the bank, trust company, director, officer, employee, agent, or other person an order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.
- (4) If the ~~commissioner~~~~executive director~~ shall determine that the violation or practice, as specified in the notice of charges pursuant to subsection (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank or trust company, or is likely to otherwise seriously prejudice the interests of its depositors or investors, ~~the commissioner~~~~he~~ may issue an emergency order pursuant to KRS 13B.125 requiring the bank or trust company, director, officer, employee, agent, or other person to cease and desist from any violation or practice.
- (5) A cease and desist order or an emergency cease and desist order shall become effective upon service upon the bank or trust company. Unless set aside, limited or suspended, as provided by subsection (6) of this section, a cease and desist order shall remain effective and enforceable pending completion of an administrative hearing conducted in accordance with KRS Chapter 13B.
- (6) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court for the county in which the bank is located, or the Circuit Court of Franklin County, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of the administrative hearing, and the court shall have jurisdiction to issue an injunction.
- (7) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the ~~commissioner~~~~executive director~~ may apply to the Circuit Court for the county in which the bank or trust company is located, or the Circuit Court of Franklin County, for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.
- (8) If the ~~commissioner~~~~executive director~~ shall determine that any officer or director of a bank or trust company has committed any violation of law, of an administrative regulation, or of a cease and desist order which has become final, or has engaged in or participated in any unsafe or unsound practice in connection with the bank or trust company, or has committed or engaged in any act, omission, or practice which constitutes a breach of his *or her* fiduciary duty as officer or director, and the ~~commissioner~~~~executive director~~ determines that the bank or trust company has suffered or will probably suffer substantial financial loss or other damages or that the interests of its depositors or investors could be seriously prejudiced by reason of the violation or practice of breach of fiduciary duty or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty, the ~~commissioner~~~~executive director~~ may serve upon the director or officer a written notice of intention to remove him *or her* from office. The violation, practice, or breach shall be one (1) involving personal dishonesty on the part of the director or officer, or one (1) which demonstrates a willful or continuing disregard for the safety or soundness of the bank. The written notice shall serve to suspend the officer or director from office. The suspension shall become effective upon service of the notice and, unless stayed by a court in proceedings authorized by subsection (10) of this section, shall remain in effect pending the completion of the administrative hearing under subsection (9) of this section. The resignation of an officer or director from the bank shall not prohibit the ~~commissioner~~~~executive director~~ from pursuing an action for removal of the officer or director.
- (9) A notice of intention to remove an officer or director from office shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which an administrative hearing shall be held in accordance with KRS Chapter 13B.

- (10) Within ten (10) days after an officer or director has been suspended from office, the officer or director may apply to the Circuit Court for the county in which the bank or trust company is located for a stay of the suspension pending the completion of the administrative hearing pursuant to the notice served upon the officer or director, and the court shall have jurisdiction to grant the stay.
- (11) The bank, trust company, or person assessed shall be afforded an opportunity for an administrative hearing upon request made to the **commissioner**~~{executive director}~~ within ten (10) days after issuance of the assessment notice. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (12) Any person aggrieved by a final order of the **commissioner**~~{executive director}~~ under subsections (9) or (11) of this section may obtain a review of the order by filing in the Circuit Court for the county in which the bank or trust company is located a petition of appeal in accordance with KRS Chapter 13B.
- (13) The **commissioner**~~{executive director}~~ may apply to the Circuit Court for the county in which the bank or trust company is located for an injunction to enforce any final order issued under subsection (9) of this section or any assessment made under subsection (11) of this section, and it shall be the duty of the court to issue the injunction.

➔Section 647. KRS 286.3-820 is amended to read as follows:

- (1) For the purpose of this section:
 - (a) "Loan production office" means a bank office located at a place other than the principal or branch office, at which bank employees solicit and originate loans for final approval and disbursement of funds at the principal or branch office; and
 - (b) "Disbursement of funds" is the process by which a bank officer in a principal or branch office issues a negotiable instrument at the principal or branch office.
- (2) A bank, except for a bank that the **commissioner**~~{executive director}~~ may designate by the promulgation of administrative regulations, shall apply to the **commissioner**~~{executive director}~~ for permission to establish a loan production office. The **commissioner**~~{executive director}~~ shall approve the application unless he *or she* finds that:
 - (a) The proposed operation of the loan production office is not in accordance with this section;
 - (b) The financial standing, moral character, and capability of the bank and its management which proposes to operate a loan production office will jeopardize the financial stability of the bank;
 - (c) There is no reasonable assurance of sufficient volume of business for the proposed loan production office to be successful; and
 - (d) The public convenience and advantage will not be promoted by the opening of the proposed loan production office.
- (3) All extensions of credit originated in a loan production office shall be in accordance with disclosure provisions, usury rates, and other fees and charges authorized by law for banks.
- (4) Loan production offices shall not accept deposits or conduct any other banking functions except those enumerated in paragraph (a) of subsection (1) of this section.
- (5) The **commissioner**~~{executive director}~~ may examine the operations of any loan production office for the purpose of determining that the scope of its activities does not exceed that allowed in this section. Banks operating loan production offices shall maintain copies of records relating to extensions of credit originated in loan production offices at the principal office for examination purposes.
- (6) The application and appeal process set forth in KRS Chapter 13B and the cease and desist powers of the **commissioner**~~{executive director}~~ set forth in KRS 286.3-690 shall apply to loan production offices.

➔Section 648. KRS 286.3-854 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may take possession and close a bank for purposes of liquidation in any case in which *the commissioner*~~{he}~~ finds that the bank:
 - (a) Is insolvent;
 - (b) Has permitted capital to become impaired to a level which does not permit the bank to operate in a safe and sound manner;

- (c) Has had insurance of depositors' accounts terminated by the FDIC; or
 - (d) Has requested through its board of directors that the **commissioner**~~[executive director]~~ take possession for the benefit of depositors, other creditors and shareholders.
- (2) If the **commissioner**~~[executive director]~~ has taken possession of and closed a bank for purpose of liquidation, the **commissioner**~~[executive director]~~ shall forthwith issue a written finding of one (1) or more of the grounds for closing provided in this section and shall appoint a receiver for the bank. The **commissioner**~~[executive director]~~ shall immediately thereafter apply to the receivership court for confirmation of the appointment of a receiver. The court shall act upon the application forthwith and may proceed without notice to any person.

➔Section 649. KRS 286.3-856 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall tender appointment as receiver to the FDIC if any deposits in the closed bank are insured by the FDIC. Upon acceptance of the appointment as receiver, the FDIC shall not be required to post bond.

➔Section 650. KRS 286.3-860 is amended to read as follows:

Immediately after closing any state bank for purposes of liquidation under the provisions of KRS 286.3-854, the **commissioner**~~[executive director]~~ shall post an appropriate notice of closing at the main entrance of the bank, and thereafter no judgment lien, attachment lien or any voluntary lien shall attach to any asset of said bank, nor shall the directors, officers or agents of such bank thereafter have authority to act on behalf of said bank or to convey, transfer, assign, pledge, mortgage or encumber any assets thereof.

➔Section 651. KRS 286.3-900 is amended to read as follows:

- (1) For purposes of this section and KRS 286.3-905:
- (a) "Bank" means any institution organized under this subtitle, the banking laws of another state, or the National Bank Act, as amended, to do a banking business;
 - (b) "Bank holding company," "company," and "control" have the meanings accorded them in the Federal Bank Holding Company Act of 1956, as amended (12 U.S.C. secs. 1841 et seq.). "Control" may be acquired by acquisition of voting securities, by purchase of assets, by merger or consolidation, by contract, or otherwise;
 - (c) "Individual" means a natural person, partnership, association, business trust, voting trust, or similar organization. "Individual" does not include a corporation; and
 - (d) "Deposit" has the meaning accorded it in the Federal Deposit Insurance Act, as amended, and regulations promulgated thereunder; excluded, however, from deposits are all interbank deposits and all deposits in foreign branches and international banking facilities, as shown in the reports made by all federally insured depository institutions to their respective supervisory authorities.
- (2) No individual or bank holding company wherever located may acquire control of any bank or bank holding company if, upon the acquisition, the individual or bank holding company would control banks in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the acquisition.
- (3) The limitations set forth in this section or any other provision of this subtitle or any administrative regulation promulgated thereunder, as now in effect or amended after July 13, 1984, shall not apply to the acquisition of a bank if, in his or her discretion, the **commissioner**~~[executive director]~~, if the bank is organized under the laws of this state, or the comptroller of the currency, if the bank is a national bank, determines that an emergency exists and the acquisition is appropriate in order to prevent the probable failure of the bank which is closed or is in danger of closing.
- (4) The provisions of this section shall not be construed to prohibit or restrict the merger or consolidation of banks or bank holding companies having their principal places of business in the same county and the operation by the merged or consolidated corporation of the banks, nor to prohibit the sale of any bank or bank holding company to, and the purchase thereof by, any other bank or bank holding company with its principal place of

business in the same county and the operation of the bank as a branch so long as the provisions of KRS 286.3-180(4) have been satisfied.

➔Section 652. KRS 286.3-905 is amended to read as follows:

- (1) Any bank holding company which proposes to acquire control of a bank chartered in this state or a bank holding company which includes a bank chartered in this state, shall concurrently file with the ~~commissioner~~~~executive director~~ copies of the application filed with the federal reserve board under applicable federal law. The ~~commissioner~~~~executive director~~ shall approve such acquisition within ninety (90) days of acceptance of a complete application if ~~the commissioner~~~~he~~ finds that:
 - (a) The terms of the acquisition are in accordance with the laws of this state;
 - (b) The financial condition, or the competence, experience, and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired bank or bank holding company;
 - (c) The public convenience and advantage will be served by the acquisition; and
 - (d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition.
- (2) A nonrefundable fee shall accompany each application and shall be set by the ~~commissioner~~~~executive director~~ in accordance with KRS 286.3-480.
- (3) The ~~commissioner~~~~executive director~~ may examine or elect to participate in a joint examination, with the applicable federal or state regulatory agency, of any holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank. The provisions of KRS 286.3-690 apply to the holding company or nonbank subsidiary of the holding company that controls or is affiliated with a state-chartered bank.
- (4) The ~~commissioner~~~~executive director~~ may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state bank that is controlled by a Kentucky bank holding company or is controlled by a bank holding company which includes a state-chartered bank, or accept reports of examinations of such out-of-state banks from federal or state regulatory authorities in lieu of conducting examinations.
- (5) The ~~commissioner~~~~executive director~~ may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of banks and bank holding companies.
- (6) The cost of an examination shall be assessed against and paid by the company examined. The assessment for the examination shall be calculated in the same manner as that used for bank examinations.

➔Section 653. KRS 286.3-915 is amended to read as follows:

- (1) Notwithstanding any other provision of Subtitle 1, 2, or 3 of KRS Chapter 286:
 - (a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and
 - (b) Any combination authorized by this section shall not require the approval of the ~~commissioner~~~~executive director~~ of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the ~~commissioner~~~~executive director~~ of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.
- (2) Following any combination authorized by this section:
 - (a) The surviving bank may, subject to the approval of the ~~commissioner~~~~executive director~~ as provided in KRS 286.3-180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;

- (b) Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than quarterly to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;
 - (c) The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and
 - (d) With the approval of the **commissioner**~~executive director~~, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank.
- (3) For purposes of this section:
- (a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;
 - (b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;
 - (c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
 - (d) "Surviving bank" means a bank into which a combined bank has been combined;
 - (e) "Bank" includes a national bank, savings and loan association, and federal savings bank; and
 - (f) "Individual," "bank holding company," and "deposit" shall have the same meanings attributed to them in KRS 286.3-900(1).

➔Section 654. KRS 286.3-920 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
- (a) "Interstate merger transaction" means the merger or consolidation of banks with different home states, and the conversion of branches of any bank involved in the merger or consolidation into branches of the resulting bank; and
 - (b) "Resulting bank" means a bank that has resulted from an interstate merger transaction under this section.
- (2) A Kentucky state bank may establish, maintain, and operate one (1) or more branches in a state other than Kentucky in accordance with an interstate merger transaction in which the Kentucky state bank is the resulting bank, or if the other state permits, by acquisition of a branch or branches in the other state. Not later than the date on which the required application for the interstate merger transaction or branch acquisition is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the **commissioner**~~executive director~~ and pay the fee prescribed by KRS 286.3-480. The applicant shall also comply with the applicable provisions of KRS 286.3-180(2) and the **commissioner**~~executive director~~ shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).
- (3) An out-of-state state bank may establish, maintain, and operate one (1) or more branches in Kentucky in accordance with an interstate merger transaction in which the out-of-state state bank is the resulting bank in accordance with the requirements of Kentucky laws and administrative regulations. If the laws of the home state of the out-of-state bank place more restrictive terms or requirements on Kentucky state banks seeking to acquire and merge with a bank in that state, the interstate merger of the out-of-state bank may be allowed only under substantially the same terms and conditions as applicable to Kentucky state banks in that state. Not later than the date on which the required application for the interstate merger transaction is filed with the responsible federal bank supervisory agency, the applicant shall file an application on a form prescribed by the **commissioner**~~executive director~~, pay the fee prescribed by KRS 286.3-480, and agree in writing to comply with the laws of this state applicable to its operation of branches in Kentucky. The applicant shall also comply with the applicable provisions of KRS 286.3-180(2) and the **commissioner**~~executive director~~ shall base his or her approval or disapproval in the same manner as prescribed in KRS 286.3-180(2).

- (4) No interstate merger transaction under subsection (2) or (3) of this section shall be approved if the transaction would result in a bank holding company having control of banks or branches in this state holding more than fifteen percent (15%) of the total deposits and member accounts in the offices of all federally insured depository institutions in this state as reported in the most recent June 30 quarterly report made by the institutions to their respective supervisory authorities which are available at the time of the transaction.
- (5) An individual or bank holding company that controls two (2) or more banks may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank.
- (6) A branch of an out-of-state state bank may conduct any activities that are authorized under the laws of this state for state banks. Additionally, the branch of an out-of-state state bank is authorized to conduct any activities relating to the administration of trusts that are authorized under the laws of its home state, if the activities are conducted in conformity with the laws of its home state.
- (7) A branch of a Kentucky state bank located in a host state may conduct any activities that are:
 - (a) Authorized under the laws of the host state for banks chartered by the host state; or
 - (b) Authorized for branches of national banks located in the host state, but whose principal location is in a state other than the host state.

➔Section 655. KRS 286.3-990 is amended to read as follows:

- (1) Any person who violates KRS 286.3-030(2) may be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for each day he *or she* is engaged in the private banking business.
- (2) Any institution that fails to make the report required by KRS 286.3-420 to the **commissioner**~~executive director~~ within five (5) days after the report is due or demanded, or that fails to have the report published as required by KRS 286.3-420, may be assessed and, if assessed, shall pay a penalty of two hundred dollars (\$200).
- (3) If any person violates KRS 286.3-440(3) his *or her* office shall ipso facto become vacant. The president or cashier of any bank or trust company to which any person becomes indebted in violation of KRS 286.3-440(3) shall immediately report such fact to the **commissioner**~~executive director~~, who may remove the person so offending.
- (4) Any receiver of an insolvent institution who fails to comply with the provisions of this subtitle shall be subject to the same penalties provided for solvent institutions and officers so offending.
- (5) Any directors of a bank who knowingly violate, or knowingly permit any officer or employee of the bank to violate, any of the laws relating to banks, shall be jointly and severally liable to the creditors and stockholders for any loss or damage resulting from such violation. If the loss or damage is not made good within a reasonable time, the **commissioner**~~executive director~~, with the consent of the Attorney General, shall institute proceedings to revoke the corporate powers of the bank.
- (6) Any deputy **commissioner**~~director~~ or any examiner who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who fails to immediately present a signed report of such facts to the **commissioner**~~executive director~~, or who violates any of the provisions of this subtitle, shall forfeit his *or her* office and shall be fined not less than one hundred (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any **commissioner**~~executive director~~ who has knowledge of the insolvency or unsafe condition of a state bank or trust company, or that it is inexpedient to permit the bank or trust company to continue business, and who willfully fails to take the action prescribed by this subtitle, or who violates any of the provisions of this subtitle, shall forfeit his *or her* office and shall be fined not less than five hundred (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (8) Any bank or trust company that knowingly fails to make a report required by law or by the **commissioner**~~executive director~~ within the time designated for the making thereof, or fails to include in such report any matter required by law or by the **commissioner**~~executive director~~, or fails to publish a report within thirty (30) days after it should have been published, or fails to pay when due the fees for filing reports or for an examination of the bank, shall be subject to a penalty of one hundred dollars (\$100) for each day of delinquency, but the aggregate penalty for each kind of offense shall not exceed one thousand dollars (\$1,000).

- (9) Each person, bank, or trust company that willfully makes or transmits a false report or refuses to submit its books, papers, and assets for examination, or any officer of a bank who refuses to be examined under oath concerning the affairs of the bank, shall be severally fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).
- (10) Whenever any fine imposed by subsection (1), (2), (4), (6), (7), (8), (9), (15), (16), (17), or (18) of this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the fine.
- (11) Any person violating any of the provisions of KRS 286.3-225 shall be guilty of a misdemeanor and fined not less than fifty dollars (\$50) nor more than two thousand dollars (\$2,000).
- (12) Any person who willfully makes charges in excess of those permitted by KRS 286.3-720 to 286.3-770 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding five hundred dollars (\$500) or by imprisonment for not more than six (6) months, or both.
- (13) Any bank which violates any provision of KRS 286.3-720 to 286.3-770, except as a result of an accidental or bona fide error, shall be barred from the recovery of any finance charges permitted by KRS 286.3-740 and 286.3-750, and the debtor, or *the debtor's*~~his~~ legal representatives, may recover back, in an action against the bank, any amounts paid to the bank on account of such finance charge; provided such action is commenced within two (2) years from the date such violation first occurred; but the bank may nevertheless recover from the debtor an amount equal to the principal of extensions of credit made pursuant to a revolving credit plan and any charges not prohibited by KRS 286.3-760.
- (14) Notwithstanding the provisions of subsections (12) and (13) of this section, any failure, other than a willful and intentional failure, to comply with any provisions of KRS 286.3-710 to 286.3-770 may be corrected during the billing cycle next succeeding the receipt by the bank of written notice thereof from the debtor, and if so corrected, the bank shall not be subject to any penalty under KRS 286.3-710 to 286.3-770.
- (15) Any bank or trust company which violates or any officer, director, employee, agent, or other person participating in the conduct of the affairs of a bank who violates the terms of any order issued under KRS 286.3-690 which has become final shall forfeit and pay a fine of not more than one thousand dollars (\$1,000) per day for each day such violation continues. The fine shall be assessed by the *commissioner*~~executive director~~ by written notice. As used in this subsection, the term "violates" includes any action causing, participating in, counseling, aiding, or abetting a violation. In determining the amount of the fine the *commissioner*~~executive director~~ shall consider the financial resources and good faith of the bank or person charged, the gravity of the violation, the history of previous violations and such other factors as justice requires.
- (16) Any bank which violates the provisions of KRS 286.3-065 may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). The fines may be assessed by the *commissioner*~~executive director~~ by written notice.
- (17) Any bank which violates any provisions of KRS 286.3-100(10) may be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000) for the first violation, and may be fined not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000) for any subsequent violations.
- (18) Any officer or director who violates the provisions of KRS 286.3-280(1) or (2) may be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation, and any officer or director who violates the provisions of KRS 286.3-280(3) may be fined not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for each violation. The fine may be assessed by the *commissioner*~~executive director~~ by written notice.

➔Section 656. KRS 286.4-410 is amended to read as follows:

- (1) As used in this subtitle, unless the context requires otherwise:
 - (a) "*Commissioner*~~Executive director~~" means the *commissioner*~~executive director~~ of financial institutions; and
 - (b) "Licensee" means a person licensed under this subtitle; and
 - (c) "Person" means an individual, partnership, association, trust, corporation and any other legal entity.

- (2) This subtitle shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations, cooperative marketing associations, credit unions, loan and investment companies, or licensed pawnbrokers. This subtitle does not apply to the purchase or acquisition, directly or indirectly, of notes, chattel mortgages, installment or conditional sales contracts, embodying liens or evidencing title retention arising from the bona fide sale of goods or services by a seller of such goods or services.

➔Section 657. KRS 286.4-420 is amended to read as follows:

No person shall, without first obtaining a license from the **commissioner**~~[executive director]~~, engage in the business of making loans in the amount or of the value of fifteen thousand dollars (\$15,000) or less at a greater rate of interest, or consideration therefor than otherwise permitted by law. All persons licensed under the provisions of this subtitle on July 15, 1982, are licensed to make loans pursuant to this subtitle, and the **commissioner**~~[executive director]~~ shall, upon request, deliver evidence of licensing within ninety (90) days of such request.

➔Section 658. KRS 286.4-430 is amended to read as follows:

- (1) Each application for a license under this subtitle shall be made in writing, under oath or affirmation, in such form as the **commissioner**~~[executive director]~~ prescribes.
- (2) The application shall contain:
 - (a) In the case of an individual, his name and the address of his residence and place of business;
 - (b) In the case of a partnership or association, the name and address of every member thereof and the address of the place where the business is to be conducted;
 - (c) In the case of a corporation, the names and addresses of the principal officers and directors thereof and the address of the place where the business is to be conducted; and
 - (d) Such additional information as the **commissioner**~~[executive director]~~ prescribes.

➔Section 659. KRS 286.4-440 is amended to read as follows:

- (1) Each applicant at the time of making application shall pay two hundred fifty dollars (\$250) to the **commissioner**~~[executive director]~~ as a fee for investigating the application for the initial location in Kentucky, or a fee of one hundred fifty dollars (\$150) for additional locations, and the additional sum of four hundred dollars (\$400) as an annual license fee for each location for the period terminating on the last day of the current calendar year. If the application is filed after June 30 in any year, the payment shall be two hundred dollars (\$200) as a license fee in addition to the fee for investigation.
- (2) If any person regulated by the **department**~~[office]~~ desires to purchase an existing licensed location or locations, the person shall submit an application to the **commissioner**~~[executive director]~~ containing the information as the **commissioner**~~[executive director]~~ may prescribe. The fee for this application shall be one hundred dollars (\$100) per location not to exceed one thousand dollars (\$1,000).

➔Section 660. KRS 286.4-450 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall, after investigation, issue to the applicant a license to make loans in accordance with this subtitle, if the **commissioner**~~[executive director]~~:
 - (a) Approves the form of the application;
 - (b) Finds that the financial responsibility, experience, character, and general fitness of the applicant, and of the members thereof if the applicant is a partnership or association, and of the officers and directors thereof if the applicant is a corporation, command the confidence of the community and to warrant the belief that the business of the applicant will be operated honestly, fairly, and efficiently in accordance with the purposes of this subtitle; and
 - (c) Finds that the applicant has complied with KRS 286.4-440.
- (2) If the **commissioner**~~[executive director]~~ does not so find, he or she shall not issue a license and shall notify the applicant of the denial and return the sum paid by the applicant as a license fee, retaining the two hundred fifty dollars (\$250) investigation fee to cover the cost of investigating the application.
- (3) The **commissioner**~~[executive director]~~ shall approve or deny every application for license within sixty (60) days from the filing thereof with the fees unless the time is extended by a written agreement between the

applicant and the ***commissioner***~~[executive director]~~. If the ***commissioner***~~[executive director]~~ denies a license, the applicant may appeal, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

- (4) The official record of the hearing shall be filed in the office of the ***commissioner***~~[executive director]~~ as public records, open to public inspection.

➔Section 661. KRS 286.4-470 is amended to read as follows:

- (1) No licensee shall conduct the business authorized by this subtitle in any office, room, or place of business in which any other business, except purchase of retail and installment sales contracts and motor club memberships, is solicited or engaged in, or in association or conjunction therewith, except upon a written authorization from the ***commissioner***~~[executive director]~~.
- (2) Nothing in this subtitle shall be construed to limit the loans of any licensee to residents of the community in which the licensed place of business is situated, nor to prohibit the making and collecting of loans by mail.
- (3) Nothing in this subtitle shall be construed to limit the ability of any licensee to make a loan or loans in the principal amount greater than fifteen thousand dollars (\$15,000) at the licensed location at the same rates as provided in KRS 360.010.

➔Section 662. KRS 286.4-480 is amended to read as follows:

Each license shall remain in full force and effect until it is surrendered by the licensee or suspended or revoked as provided in this subtitle. Each licensee shall, on or before each December 20, pay to the ***commissioner***~~[executive director]~~ the annual license fee for the next succeeding calendar year.

➔Section 663. KRS 286.4-490 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may revoke any license issued under this subtitle if ***the commissioner***~~[he]~~ finds:
 - (a) That the licensee has failed to pay his annual license fee; or
 - (b) That the licensee has violated any provision of this subtitle or has failed to comply with any administrative regulation lawfully promulgated pursuant thereto; or
 - (c) That any fact or condition then exists which clearly would have warranted the ***commissioner***~~[executive director]~~ in refusing to issue a license on an original application; or
 - (d) That the licensee has failed to open an office for business within one hundred twenty (120) days from the date the license is granted, or has failed to remain open for business for a period of one hundred twenty (120) days, unless in each case good cause be shown.
- (2) The ***commissioner***~~[executive director]~~ may suspend any license for a period not exceeding thirty (30) days, pending investigation of possible grounds for revocation under paragraphs (b) or (c) of subsection (1) of this section.
- (3) Before the revocation of a license under subsection (1), or suspension under subsection (2), the licensee shall be given ten (10) days' written notice of the contemplated revocation or suspension of his license, the grounds therefor stated specifically, and an opportunity for an administrative hearing to be conducted in accordance with KRS Chapter 13B.
- (4) The ***commissioner***~~[executive director]~~ may reinstate suspended licenses or issue new licenses to a licensee whose license has been revoked if no fact or condition then exists which clearly would have warranted him ***or her*** in refusing originally to issue such license under this subtitle.
- (5) Any licensee may surrender any license by delivering it to the ***commissioner***~~[executive director]~~ together with written notice that he ***or she*** thereby surrenders his license.

➔Section 664. KRS 286.4-500 is amended to read as follows:

Whenever the ***commissioner***~~[executive director]~~ denies any application for a license under the provisions of this subtitle or revokes any license issued pursuant to this subtitle, ***the commissioner***~~[he]~~ shall forthwith file in his ***or her*** office a written order to that effect, stating his ***or her*** findings with respect thereto and the reasons for ***the***~~[his]~~ action. The ***commissioner***~~[executive director]~~ shall also forthwith serve upon the applicant for license or licensee a copy of

the order, and the applicant or licensee may appeal to the Circuit Court of Franklin County, within thirty (30) days after the service of a copy of the order.

➔Section 665. KRS 286.4-560 is amended to read as follows:

Notwithstanding the provisions of this or any other law:

- (1) A licensee may request a borrower to insure tangible personal property, except household goods, offered as security for a loan exceeding three hundred dollars (\$300) under this subtitle against any substantial risk of loss, damage, or destruction for an amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is greater, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and the maturity and other circumstances of the loan; provided such insurance is sold by a licensed agent, broker, or solicitor.
- (2) A licensee may also request, provide, obtain, or take as security for any loan obligation insurance on the life, unemployment, health, or disability, or all, of the borrower, or two (2) of them if there are two (2) or more. Life insurance shall be in the approximate amount of the indebtedness scheduled to be due the licensee under the loan contract. Not more than one (1) policy of life insurance may be written in connection with any loan transaction under this subtitle. The aggregate amount of periodic benefits payable by any unemployment, health, or disability insurance provided, obtained, or requested by the licensee in the event of unemployment or disability, as defined in the policy, shall not exceed the aggregate of the scheduled installments and the waiting period provided in such policy must be fourteen (14) days or longer. The premium rate for insurance provided under this section shall be reasonable in relation to the benefits provided and shall be filed with the **commissioner**~~executive director~~ of insurance. The **commissioner**~~executive director~~ of insurance shall, within thirty (30) days after the filing of any premium rate, disapprove such premium rate if it is excessive in relation to the benefits. In determining whether to approve or disapprove any premium rate, the **commissioner**~~executive director~~ of insurance shall give due consideration to the unemployment, mortality, and morbidity costs with respect to such insurance on borrowers under this subtitle or similar acts in other states, a reasonable margin for underwriting expenses and profit and contingencies to the insurer, and cost and compensation to the licensees for providing and servicing such insurance, plus the premium taxes payable on such insurance.
- (3) In accepting any insurance provided for by this section as security for a loan the licensee, its officers, agents, or employees may deduct the premiums or identifiable charge therefor from the proceeds of the loan, which premium or identifiable charge shall not exceed the rate filed with the **commissioner**~~executive director~~ of insurance and not disapproved and remit such premiums to the insurance company writing such insurance and any gain or advantage to the licensee or any employee, officer, director, agent, affiliate, or associate from such insurance or its sale shall not be considered as additional or further charge in connection with any loan made under this subtitle. The arranging for and collecting of an identifiable charge shall not be deemed the sale of insurance.
- (4) Every insurance policy or certificate written in connection with a loan transaction pursuant to subsection (2) of this section shall provide for cancellation of coverage and a refund of the premium or identifiable charge unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim. Such refund shall be under a formula filed by the insurer with the **commissioner**~~executive director~~ of insurance.
- (5) Whenever insurance is written in connection with a loan transaction pursuant to this section the licensee shall deliver or cause to be delivered to the borrower a policy, certificate, or other memorandum which shall show the coverages and the cost thereof, if any, to the borrower within thirty (30) days from the date of the loan.
- (6) All such insurance shall be written by a company authorized to conduct such business in this state and the licensee shall not require the purchase of such insurance from any agent or broker designated by the licensee nor shall the licensee decline existing coverages which equal or exceed the standards of this section.

➔Section 666. KRS 286.4-590 is amended to read as follows:

Each licensee shall annually on or before January 30, file with the **commissioner**~~executive director~~ a report for the preceding calendar year. The report shall give information with respect to the financial condition of the licensee and other relevant information as the **commissioner**~~executive director~~ may reasonably require. In the event any person or affiliated group of corporations holds more than one (1) license in the state, he, she, or they may file a composite annual report in lieu of separate reports for each licensed office. The report shall be made under oath in the form

prescribed by the ***commissioner***~~[executive director]~~, who shall make and publish annually an analysis and recapitulation of the reports.

➔Section 667. KRS 286.4-600 is amended to read as follows:

Each licensee shall keep and use in his ***or her*** business and shall preserve for at least two (2) years after making the final entry therein, such books, accounts, records, or card systems in accordance with sound accounting principles and practices to enable the ***commissioner***~~[executive director]~~ to determine whether the licensee is complying with the provisions of this subtitle, and with the regulations made pursuant thereto, and for at least three (3) years on loans secured by residential property.

➔Section 668. KRS 286.4-610 is amended to read as follows:

- (1) The provisions of this subtitle shall be enforced by the ***commissioner***~~[executive director]~~, who may, after notice to licensees and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business licensed under this subtitle. All regulations of general application shall state the date of promulgation and the effective date. A copy of every such regulation shall be sent to all licensees before the effective date thereof and a copy shall be kept in an indexed permanent book in the office of the ***commissioner***~~[executive director]~~ as a public record.
- (2) The ***commissioner***~~[executive director]~~ shall make an annual examination of the affairs, business, office, and records of every licensee, and such further examinations or investigations as ***the commissioner***~~[he]~~ deems necessary for the purpose of discovering violations of this subtitle or of securing information necessary for its proper enforcement. Every licensee shall pay a fee sufficient to cover the cost of each examination based upon fair compensation for time and actual expenses.
- (3) For the purpose of making such examinations or investigations the ***commissioner***~~[executive director]~~ and his ***or her*** representatives may require the attendance of and examine under oath all persons whose testimony he ***or she*** may require, relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this subtitle.

➔Section 669. KRS 286.4-613 is amended to read as follows:

No licensee shall be subject to any liability for any act or omission made in conformity with a written notice, opinion, or interpretation issued by the ***commissioner***~~[executive director]~~.

➔Section 670. KRS 286.4-615 is amended to read as follows:

In undertaking the examination of a consumer loan company neither the Commonwealth of Kentucky, the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said consumer loan company by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said consumer loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.4-610 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors, or other obligors of said consumer loan companies.

➔Section 671. KRS 286.4-630 is amended to read as follows:

In addition to any other available remedy, any person considering himself aggrieved by any act or omission of the ***commissioner***~~[executive director]~~ may, within thirty (30) days from the date of such act or failure to act, bring an action in the Circuit Court in and for Franklin County to review such act or omission. The hearing before the court shall be based on the record before the ***commissioner***~~[executive director]~~ and ***the commissioner's***~~[his]~~ findings, if any, and on such new evidence as may be introduced.

➔Section 672. KRS 286.4-991 is amended to read as follows:

- (1) Any person who shall engage in the business regulated by this subtitle without first securing a license therefor shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). Any loan contract made in violation of this subtitle shall be void and the lender shall have no right to collect any principal, charges or recompense whatsoever.

- (2) Any person who willfully violates any rule or order of the ***commissioner***~~[executive director]~~ authorized under this subtitle, shall be guilty of a Class A misdemeanor, but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge. This section shall not be deemed to limit the power of the ***commissioner***~~[executive director]~~ to revoke any license as provided in KRS 286.4-490.

➔Section 673. KRS 286.5-011 is amended to read as follows:

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

- (1) "Association" means a savings and loan association subject to the provisions of this subtitle and as used in KRS 136.290, 136.300 and 136.310.
- (2) "Combination home and business structure" means a building or buildings, including residences for not more than four (4) families, which are used in part for business purposes. The residential use of such a building must be substantial and permanent, not merely transitory. The business use may predominate.
- (3) "***Commissioner***~~[Executive director]~~" means the ***commissioner***~~[executive director]~~ of financial institutions.
- (4) "Direct-reduction loan" means a loan repayable in consecutive weekly, monthly or semiannual installments, equal or unequal, sufficient to retire the debt, interest, and principal; provided, however, that the initial loan contract shall not provide for any subsequent monthly installment of an amount larger than any previous monthly installment; and, provided further, that in the case of construction loans the first payment under said contract shall be made not later than twelve (12) months after the date of the first advance. Any such loan is an amortized loan.
- (5) "Dividend" or "earnings" means that part of the net income of an association which is declared payable on savings accounts and savings certificates from time to time by the board of directors, and is the cost of savings money to the association. Dividend or earnings also may be referred to as "interest."
- (6) "Gross income" means the sum for an accounting period of the following:
 - (a) Operating income.
 - (b) Real estate income.
 - (c) All profits actually received during such accounting period from the sale of securities, real estate, or other property.
 - (d) Other nonrecurring income.
- (7) "Home" means a dwelling or dwellings for not more than four (4) families, the principal use of which is for residential purposes. A home on a farm is a home.
- (8) "Home loan" means a real estate loan the security for which is home property.
- (9) "Home property" means real estate on which there is located, or will be located pursuant to a home loan, a home or a combination home and business structure.
- (10) "Impaired condition" means a condition in which the assets of an association in the aggregate do not have a fair value equal to the aggregate amount of liabilities of the association to its creditors, including its members and all other persons.
- (11) "Improved real estate" means real estate on which there is a structure or an enclosure, or which is cultivated, reclaimed, used for the purpose of agriculture in any form, or otherwise occupied, made better, more useful, or of greater value by care so as to produce an enjoyment thereof.
- (12) "Insured association" means an association the savings accounts of which are insured in accordance with the provisions of this subtitle.
- (13) "Member" means a person holding a savings account or a savings certificate of an association, or a person borrowing from or assuming or obligated upon a loan or interest therein held by an association, or purchasing property securing a loan or interest therein held by an association. A joint and survivorship relationship, whether of investors or borrowers, constitutes a single membership.
- (14) "Net income" means gross income for an accounting period less the aggregate of the following:
 - (a) Operating expenses.
 - (b) Real estate expenses.

- (c) All losses actually sustained during such accounting period from the sale of securities, real estate or other property, or such portion of such losses as shall not have been charged to reserves, pursuant to the provisions of this subtitle.
- (d) All interest paid, or due but unpaid, on borrowed money.
- (e) Other nonrecurring charges.
- (15) "Net income available for dividends or earnings" means net income for an accounting period less amount transferred to reserves as provided in this subtitle.
- (16) "Operating expenses" means all expenses actually paid, or due but unpaid, by an association during an accounting period, excluding the following:
 - (a) Real estate expenses.
 - (b) Interest on borrowed money.
 - (c) Other nonrecurring charges.

That portion of prepaid expenses which is not apportionable to the period may be excluded from operating expenses, in which event operating expenses for future periods shall include that portion of such prepaid expenses apportionable thereto.

- (17) "Operating income" means all income actually received by an association during an accounting period, excluding the following:
 - (a) Foreclosed real estate income.
 - (b) Other nonrecurring income.
- (18) "Other real estate loan" means a real estate loan the security for which is real estate other than home property.
- (19) "Real estate expenses" means all expenses actually paid, or due but unpaid, in connection with the ownership, maintenance, and sale of real estate (other than office building or buildings and real estate held for investment) by an association during an accounting period, excluding capital expenditures and losses on the sale of real estate.
- (20) "Real estate income" means all income actually received by an association during an accounting period from real estate owned (other than from office building or buildings and real estate held for investment) excluding profit from sale of real estate.
- (21) "Real estate loan" means any loan or other obligation secured by real estate, whether in fee or in a leasehold.
- (22) "Savings account" means that part of the savings liability of the association which is credited to the account of the holders thereof.
- (23) "Savings certificate" means that part of a savings account which is fully paid and is represented by a certificate.
- (24) "Savings liability" means the aggregate amount of savings accounts and savings certificates of members, including dividends credited to such accounts, less redemptions and withdrawals. Savings liability also may be referred to as "deposit."
- (25) "Withdrawal value" means the amount credited to a savings account and savings certificate of a member, less lawful deductions therefrom, as shown by the records of the association.
- (26) "Minor" means a person over fourteen (14) years of age and under eighteen (18) years of age.
- (27) "Capital stock" as used in this subtitle may be used interchangeably with the term savings account and savings certificate.

➔Section 674. KRS 286.5-021 is amended to read as follows:

Any five (5) or more residents of this state (hereinafter referred to as the "incorporators") may form an association to promote thrift and home financing, subject to approval as provided in this subtitle, by signing and acknowledging, before an officer competent to take acknowledgements of deeds, two (2) copies of a petition for a certificate of incorporation in the form prescribed by the **commissioner**~~executive director~~, and of the bylaws in a form approved

by the ***commissioner***~~[executive director]~~, which shall be filed with the ***commissioner***~~[executive director]~~, accompanied by the incorporation fee.

➔Section 675. KRS 286.5-024 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 286.5-451(13) any state savings and loan association which has not become insured by December 31, 1974, must furnish proof satisfactory to the ***commissioner***~~[executive director]~~ of financial institutions prior to June 30, 1975, that it has:
 - (a) Obtained insurance of its savings accounts and share accounts by the Federal Savings and Loan Insurance Corporation, any agency of this state or other federal agency established for the purpose of insuring savings accounts in associations, or with any other insurer approved by the ***commissioner***~~[executive director]~~ and meeting the qualifications prescribed in this subsection; provided that no association subject to the provisions of this subtitle shall have the power to obtain insurance of accounts from, or represent in any way its accounts are insured by, any insurer other than the Federal Savings and Loan Insurance Corporation, or other federal agency or state agency, unless the ***commissioner***~~[executive director]~~, after application to him for approval and after reasonable notice and an opportunity to be heard the ***commissioner***~~[executive director]~~ shall have determined:
 1. That the contract of insurance contemplated is written upon substantially the same basis as to form, amount, coverage, maturity, voluntary and involuntary termination and other provisions as the insurance contract provided at that time by the Federal Savings and Loan Insurance Corporation, and complies with the further requirements for protection as the ***commissioner***~~[executive director]~~ in his discretion may deem reasonably necessary; and
 2. That the contract is underwritten by an insurer having a net worth reasonably commensurate with the risk underwritten, which is licensed in this state and authorized to do business in this state, and the ***commissioner***~~[executive director]~~ shall have issued a certificate of approval of such application; or
 - (b) Become a federal savings and loan association member of the Federal Home Loan Bank Board; or
 - (c) Merged into an existing insured savings and loan association, either state or federal; or
 - (d) Entered into voluntary liquidation.

Any merger into an insured savings and loan association or any voluntary liquidation must have the prior written approval of the ***commissioner***~~[executive director]~~.

- (2) Any state savings and loan association which has not by the close of business June 30, 1975, accomplished any one of the four steps prescribed in subsection (1) shall on and after July 1, 1975, be prohibited from:
 - (a) Making any loans pursuant to this subtitle; and
 - (b) Accepting any savings accounts, payments on share accounts or membership fees.
- (3) Notwithstanding any other provisions of state law to the contrary, if any state savings and loan association has not accomplished one of the four steps prescribed in subsection (1) of this section by December 31, 1974, the ***commissioner***~~[executive director]~~ shall apply to a court of general jurisdiction in the county in which the home office of such association is located for the appointment of a liquidating receiver for purposes of liquidating the assets and winding up the business affairs of such association. However, if such state savings and loan association shall furnish to the ***commissioner***~~[executive director]~~ proof satisfactory to him that a definite plan of accomplishment of one of said four conditions prescribed in subsection (1) of this section has been substantially completed, the ***commissioner***~~[executive director]~~ may, in his sole discretion, extend the time for taking action for the appointment of such receiver. The ***commissioner***~~[executive director]~~ in granting such extension may permit the acceptance of savings account payments on share accounts, membership fees or the making of loans.

➔Section 676. KRS 286.5-025 is amended to read as follows:

No certificate of incorporation as provided for under this subtitle shall be granted or approved by the ***commissioner***~~[executive director]~~ after June 16, 1972, unless the applicant for such certificate:

- (1) Submits sufficient evidence of being fully insured by the Federal Savings and Loan Insurance Corporation or other federal agency; or

- (2) Submits sufficient evidence of commitment by the Federal Savings and Loan Insurance Corporation or other federal agency that the applicant will be issued federal insurance immediately subsequent to the execution of the certificate of incorporation by the **commissioner**~~{executive director}~~.

➔Section 677. KRS 286.5-031 is amended to read as follows:

- (1) Upon receipt of the articles of incorporation, the **commissioner**~~{executive director}~~ shall first determine whether or not the articles comply with the provisions of this subtitle and, if he so finds, he shall promptly notify any state or federal savings and loan association in the locality in which the proposed office or offices are to be located specifying a time in which they must file objections. The **commissioner**~~{executive director}~~ shall then inquire into the advisability of approving the application by investigating:
- (a) The moral character and the financial responsibility of the incorporators and the principles of the applicant.
 - (b) The public necessity of such an association in the community to be served, and
 - (c) The reasonable probability of its usefulness and success. In so doing he shall determine whether or not the savings and loan association can be established without undue injury to properly conducted existing savings and loan associations, in connection with which the incorporators and principals shall furnish such information as they may desire and as the **commissioner**~~{executive director}~~ may require.
- (2) After allowing the specified time for filing objections, the **commissioner**~~{executive director}~~ shall approve the application if he finds that the moral character and financial responsibility of the incorporators and principals are sound and such as to justify public confidence and to insure the reasonable probability of the success of the association; that the incorporators and principals have complied with the provisions of this subtitle, that the incorporation is advisable and, after investigation there is reason to believe that no undue injury to properly conducted existing savings and loan associations, either state or federal, will result. Unless the application, after investigation, meets all the above requirements the **commissioner**~~{executive director}~~ shall disapprove it.
- (3) If approved, the **commissioner**~~{executive director}~~ shall at the same time execute in triplicate a certificate of incorporation in the form prescribed by him.
- (4) The **commissioner**~~{executive director}~~ shall file one (1) signed copy of such certificate of approval and of the certificate of incorporation with the Secretary of State. The **commissioner**~~{executive director}~~ shall indorse upon the two (2) copies of the petition for certificate of incorporation filed with him *or her* such certificate of approval and return the duplicate original and a copy of the certificate of incorporation to the association, addressed to the chairman of the incorporators, and shall retain the original petition for certificate of incorporation and a copy of the certificate of incorporation in the permanent files of *the department*~~{his office}~~. The certificate of incorporation shall not be filed or recorded in any other state or county office. The failure of the **commissioner**~~{executive director}~~ to file, return, or retain any such document shall not affect the validity of the incorporation of any association.

➔Section 678. KRS 286.5-041 is amended to read as follows:

- (1) (a) The name of every association incorporated shall include the words "Savings and Loan Association." These words shall be preceded by an appropriate descriptive word or words approved by the **commissioner**~~{executive director}~~ of financial institutions. An ordinal number may not be used as a single descriptive word preceding the words, "Savings and Loan Association," unless such word is followed by the words "of" the blank being filled by the name of the town, city, or county in which the association has its home office. An ordinal number may be used together with another descriptive word, preceding the words "Savings and Loan Association," provided the other descriptive word has not been used in the corporate name of any other association in the state, in which case the suffix mentioned above is not required to be used. An ordinal number may be used, together with another descriptive word, preceding the words "Savings and Loan Association," even when such other descriptive word has been used in the corporate name of an association in the state, provided the suffix "of", as provided above, is also used. The suffix provided above may be used in any corporate name.
- (b) The use of the words, "National," "Federal," "United States," "Insured," "Guaranteed," or any form thereof, separately or in any combination thereof with other words or syllables, is prohibited as part of the corporate name of an association. No certificate of incorporation of a proposed association having the same name as a corporation authorized to do business under the laws of this state or a name so

nearly resembling it as to be calculated to deceive shall be issued by the **commissioner**~~{executive director}~~.

- (2) (a) No person, unless lawfully authorized to do business in this state under the provisions of this subtitle, and is actually engaged in carrying on a savings and loan association business, shall do business under any name or title which contains the terms "savings association," "savings and loan association," "building and loan association," "building association," or any combination employing either or both of the words "building" or "loan" with one or more of the words "saving," "savings," "thrift," or words of similar import, or any combination employing one or more of the words "saving," "savings," "thrift," or words of similar import with one or more of the words "association," "institution," "society," "company," "corporation" or words of similar import, or use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner which indicates or reasonably implies that his or its business is the character or kind of business carried on or transacted by an association or which is calculated to lead any person to believe that his or its business is that of an association.
- (b) Upon application by the **commissioner**~~{executive director}~~ or any association, a court of competent jurisdiction may issue an injunction to restrain any such entity from violating or continuing to violate any of the provisions of this subsection.
- (c) The prohibitions of this subsection shall not apply to any corporation or association formed for the purpose of promoting the interests of savings associations, the membership of which is comprised of savings associations, their officers or other representatives.

➔Section 679. KRS 286.5-051 is amended to read as follows:

- (1) Without the prior approval of the **commissioner**~~{executive director}~~, as provided in this subtitle, no association shall establish any office other than its home office, which shall be in the city and county named in the certificate of incorporation. No office of an association shall be moved from its immediate vicinity unless approved by the **commissioner**~~{executive director}~~.
- (2) The name or the location of the home office of any association fixed in the certificate of incorporation may be changed in the following manner: The proposed new name or the new location of the home office of the association shall be approved by a resolution adopted by the board of directors. Immediately preceding application to the **commissioner**~~{executive director}~~ for approval, notice of intention to change the name or the location of the home office, signed by two (2) officers, shall be published once a week for two (2) successive weeks in a newspaper of general circulation in the county in which the home office is located, and a copy of such notice shall be displayed during such consecutive two (2) weeks' period in a conspicuous place in the home office of the association. Five (5) copies of an application to the **commissioner**~~{executive director}~~ for approval shall be signed by two (2) officers of the association, acknowledged before an officer competent to take acknowledgments of deeds and filed with the **commissioner**~~{executive director}~~. Upon approval of an application for change of name, the **commissioner**~~{executive director}~~ shall indorse on each copy of the application therefor a certificate of approval thereof, and the change of name of such association shall be effective immediately. Upon approval of an application for change of location of the home office of an association, the **commissioner**~~{executive director}~~ shall indorse on each copy of such application a certificate of approval, as provided in this subtitle. When the **commissioner**~~{executive director}~~ shall have indorsed such approval upon the copies of an application for approval of change of name or change of location of the home office, he shall file one copy thereof with the secretary of state, two (2) copies with the federal home loan bank of which the association is a member, return one (1) copy to the applicant association and retain the original copy in the permanent files of **the department**~~{his office}~~.

➔Section 680. KRS 286.5-061 is amended to read as follows:

- (1) A branch office is a legally established place of business of the association other than the home office authorized by the board of directors and approved by the **commissioner**~~{executive director}~~, at which savings accounts and loan payments may be accepted and applications for loans may be received, and at which account books and membership certificates may be issued.
- (2) No association may establish or maintain a branch office without the prior written approval of the **commissioner**~~{executive director}~~.
- (3) Each application for approval of the establishment and maintenance of a branch office shall state the proposed location, the need, the functions to be performed, the estimated annual expense, and the mode of payment

therefor. Each such application shall be accompanied by a budget of the association for the current dividend period and for the next succeeding semiannual period, which reflects the estimated additional expense of the maintenance of such a branch office. Upon the receipt by the *commissioner*~~[executive director]~~ of such an application, he shall determine whether the establishment and maintenance of such office will unduly injure any properly conducted existing association or federal savings and loan association in the community where such branch office or agency is proposed to be established. If he finds that no undue injury is likely to result, that the establishment and maintenance of such branch office is advisable, and in the public interest, *the commissioner*~~he~~ may approve the application.

- (4) No branch shall be established in any county other than the county in which is located the principal office of the association.

➔Section 681. KRS 286.5-071 is amended to read as follows:

The corporate existence of an association shall begin when the *commissioner*~~[executive director]~~ shall issue the certificate of incorporation of the association, and such existence shall be perpetual unless terminated in accordance with the provisions of this subtitle.

➔Section 682. KRS 286.5-091 is amended to read as follows:

- (1) Every association shall keep at the home office correct and complete books of account and minutes of the proceedings of members and directors. Complete records of all business transacted at the home office shall be maintained at the home office. Control records of all business transacted at each branch office shall be maintained at the home office.
- (2) Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the home office.
- (3) No association by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any other person, partnership, association, or corporation or under any title or designation that is not truly descriptive of such assets.
- (4) The bonds or other interest-bearing obligations purchased by an association shall not be carried on its books at more than the actual cost.
- (5) An association shall not carry any real estate on its books at a sum in excess of the total amount invested by such association on account of such real estate, including advances, costs, and improvements.
- (6) Every association shall appraise each parcel of real estate at the time of acquisition. The report of each such appraisal shall be submitted in writing to the board of directors and shall be kept in the records of the association. The *commissioner*~~[executive director]~~ may require the appraisal of real estate securing loans which are delinquent more than twelve (12) months.
- (7) Every association shall maintain membership records, which shall show the name and address of the member, the status of the member as a savings account holder, or an obligor, or a savings account holder and obligor, and the date of their membership.
- (8) Any association may cause any or all records kept by such association to be copied or reproduced by any photostatic, photographic or microfilming process which correctly and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and such association may thereafter dispose of the original record. Any such copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. A facsimile, exemplification or certified copy of any such copy or reproduction reproduced from a film record shall, for all purposes, be deemed a facsimile, exemplification or certified copy of the original record.

➔Section 683. KRS 286.5-111 is amended to read as follows:

Savings and loan associations, their officers, employees or agents, savings accounts, and the sale, issuance or offering of savings accounts of any association or federal savings and loan associations are exempted from all laws of this state, other than this subtitle, which provide for supervision, registration or regulation in connection with the sale, issuance or offering of securities, and the sale, issuance or offering of any such accounts shall be legal without any

action or approval whatsoever on the part of any official, other than the **commissioner**~~{executive director}~~, authorized to license, regulate, or supervise the sale, issuance or offering of securities.

➔Section 684. KRS 286.5-121 is amended to read as follows:

Every association shall prepare and publish annually in a newspaper of general circulation in the county in which the home office of such association is located, and shall deliver to each member upon application therefor, a statement of its financial condition in the form prescribed or approved by the **commissioner**~~{executive director}~~.

➔Section 685. KRS 286.5-131 is amended to read as follows:

In each January every association shall file with the **commissioner**~~{executive director}~~ a statement of its condition at the close of business on December 31 preceding. The statement shall be signed and sworn to by the president, manager or secretary and attested by at least two (2) directors, and shall show the amount of paid-up capital, the amount of all cash receipts and disbursements and such other facts as the **commissioner**~~{executive director}~~ requires.

➔Section 686. KRS 286.5-141 is amended to read as follows:

The chairman of the incorporators shall procure from a surety company or other surety acceptable to the **commissioner**~~{executive director}~~, a surety bond in form approved by the **commissioner**~~{executive director}~~ in an amount at least equal to the amount subscribed by the incorporators plus the expense fund. Such bond shall name the **commissioner**~~{executive director}~~ as obligee and shall be delivered to him. It shall assure the safekeeping of the funds subscribed and their delivery to the association after the issuance of the certificate of incorporation and after the bonding of the officers. In the event of the failure to complete organization, such bond shall assure the return of the amounts collected to the respective subscribers or their assigns, less reasonable expenses which shall be deducted from the expense fund.

➔Section 687. KRS 286.5-151 is amended to read as follows:

- (1) The number of shares into which the capital stock of an association is divided shall be at least two hundred (200) in cities having less than five thousand (5,000) population and at least five hundred (500) in other cities.
- (2) The capital stock to be accumulated shall be divided into shares of the ultimate value fixed by the articles of incorporation, except associations in operation on March 20, 1918, in which case a copy of the bylaws, attested by the secretary of such association, shall be filed with the **commissioner**~~{executive director}~~.
- (3) The shares may be issued at such times and in such classes as the bylaws designate, and they may be issued upon the continuing or permanent plan, if so provided in the bylaws.
- (4) Nothing within this subtitle shall be interpreted to permit the establishment of an association which could issue a type of capital stock which in essence would destroy the mutuality concept of a savings, building and loan association as presently existing.

➔Section 688. KRS 286.5-171 is amended to read as follows:

- (1) Every domestic association shall set aside at least one percent (1%) of the net income each year as a reserve fund to provide against contingent losses, until the total amount of the fund so set aside equals twelve percent (12%) of the assets of the association. The **commissioner**~~{executive director}~~ may require other specific reserves in his *or her* discretion.
- (2) Any losses from sale of real estate may be charged against this fund and in the event of any such charges then any profits from the sale of real estate shall, to the extent of losses charged, be credited to the said fund.

➔Section 689. KRS 286.5-181 is amended to read as follows:

Within thirty (30) days after the corporate existence of an association begins, the directors of the association shall hold an organization meeting and shall elect officers pursuant to the provisions of this subtitle. At the organization meeting the directors shall take such other action as is appropriate in connection with beginning the transaction of business by the association. The **commissioner**~~{executive director}~~ may extend by order the time within which the organization meeting shall be held.

➔Section 690. KRS 286.5-191 is amended to read as follows:

Any association, which does not commence business within six (6) months after the date of its corporate existence, shall forfeit its corporate existence, unless the **commissioner**~~{executive director}~~, before the expiration of such six (6) months' period, shall have approved the extension of time within which it may commence business, upon a written application stating the reasons for such delay. Upon such forfeiture the certificate of incorporation shall expire, and all

action taken in connection with the incorporation thereof except the payment of the incorporation fee, shall become void. Amounts credited on savings accounts, less expenditures authorized by law, shall be returned pro rata to the respective holders thereof.

➔Section 691. KRS 286.5-271 is amended to read as follows:

- (1) Every member shall have the right to inspect such books and records of an association as pertain to his loan or savings account. Otherwise, the right of inspection and examination of the books and records shall be limited:
 - (a) To the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ duly authorized representatives as provided in this subtitle;
 - (b) To persons duly authorized to act for the association; and
 - (c) To any federal instrumentality or agency authorized to inspect or examine the books and records of an insured association.
- (2) Except as otherwise authorized by KRS 205.835, the books and records pertaining to the accounts and loans of members shall be kept confidential by the association, its directors, officers and employees, and by the **commissioner and the commissioner's**~~[executive director, his]~~ examiners and representatives, except where the disclosure thereof shall be compelled by a court of competent jurisdiction, and no member or any other person shall have access to the books and records or shall be furnished or shall possess a partial or complete list of the members except upon express action and authority of the board of directors.

➔Section 692. KRS 286.5-451 is amended to read as follows:

- (1) Associations may make loans on the direct reduction plan. The board of directors may or the bylaws of the association shall prescribe interest rates which may be variable and may prescribe the duration of the loan, and the loan shall be payable in equal weekly or monthly installments.
- (2) The applicant for such loan shall subscribe for and shall pledge one (1) or more shares of stock of the association or the association may require the applicant for such loan to subscribe for and pledge shares or fractional shares of stock, equal, when paid up, to the amount of the loan. Payment of dues and interest shall be credited upon the loan and shares in accordance with the direct reduction plan adopted. In consideration of making loans upon such plan no dividend shall be declared or paid or credited upon amounts credited as dues or principal upon such loans, but all payments, made on the loans shall be first applied to interest due to the date of respective payments and the balance applies as dues on principal, and interest shall be collected only on the balance. When the amount paid in as dues and credited as payment on the shares as calculated equals the value of a share or shares, such shares shall be considered paid in full and automatically canceled but such cancellation shall in no manner affect or reduce the stipulated weekly or monthly installment payments provided to be paid in the note or mortgage given to evidence and secure the payment of the loan. No borrower shall be permitted more than one (1) vote for any and all shares owned by him, which are pledges as security for a loan.
- (3) When any such installment becomes due and remains unpaid for six (6) weeks after it has become due and payable, then all the balance of such installments, both due and to become due, shall immediately become due and payable at the option of the holder of the note, and the borrower shall be notified of the delinquency, and payments shall be demanded, by mail with postage prepaid to the address of the borrower as it appears on the books of the association. If the delinquent payments of principal and interest are not paid within thirty (30) days from the mailing of the notice, then all money paid in as dues or principal and such shares, may be forfeited by the association and applied first to the payment of interest due and the balance on principal and suit may be brought to enforce payment of the note and mortgage.
- (4) Associations may make loans on the sole security of savings accounts or savings certificates. No such loan shall exceed the withdrawal value of the accounts owned or savings certificates or otherwise pledged for or by the borrower. No such loan shall be made when an association has applications for withdrawal which have been on file more than sixty (60) days and not reached for payment.
- (5) (a) Associations may make loans on a reduction plan where the reduction of loan or credit upon loan shall be made at the end of every semiannual period. The applicants for such loans shall subscribe for shares equal, when paid up, to the amount of such loans.

- (b) The bylaws shall prescribe the interest rate and duration of the loan, and the loan shall be payable in equal weekly or monthly installments. Payment of dues, interest, and premium, shall be credited upon the semiannual reduction plan. At the end of each semiannual period, the dues paid, and any dividends credited, shall be credited upon the loan.
 - (c) All payments made on the loan shall first be credited to payment of interest and premium, and the balance, with dividends credited, shall be applied on principal at the end of every semiannual period. After such credit, interest shall be charged on the balance. When the amount paid is as dues together with dividends credited, equals the par value of the shares, such shares shall automatically be canceled, and the mortgage released.
 - (d) All loans made under this plan shall be subject to the provisions relating to repayment of loans, and relating to default in payment of dues and interest as provided in this subtitle.
- (6) Associations may make without regard to the foregoing any loan, secured or unsecured, which is insured or guaranteed in any manner and in any amount by the United States or any instrumentality thereof.
 - (7) In the case of loans made under subsections (4), (5), and (6) of this section, in the event the ownership of the real estate security or any part thereof becomes vested in a person other than the party or parties originally executing the security instruments, and provided there is not an agreement in writing to the contrary, an association may, without notice to such party or parties, deal with such successor or successors in interest with reference to said mortgage and the debt thereby secured in the same manner as with such party or parties, and may forbear to sue or may extend time for payment of or otherwise modify the terms of the debt secured thereby, without discharging or in any way affecting the original liability of such party or parties thereunder or upon the debt thereby secured.
 - (8) Associations may make property improvement loans to home owners and other property owners for maintenance, repair, modernization and improvement of their properties and loans for the financing of mobile homes with or without security, provided that no such loans made at rates in excess of those permitted by KRS 360.010 shall exceed the rate provided by Title I of the Federal Housing Act of 1934, as amended and the Servicemen's Readjustment Act of 1944, as amended, and provided, further, that not in excess of twenty-five percent (25%) of assets of the association shall be so invested.
 - (9) The power to make loans shall include:
 - (a) The power to purchase loans of any type that the association may make and
 - (b) The power to make loans upon the security of loans of any type that the association may make.
 - (10) Associations may participate with other lenders in loans of any type that such an association may otherwise make, provided that the other participants are instrumentalities of or corporations owned wholly or in part by the United States or this state, or are associations organized under the laws of this state, or are associations or corporations insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation, or are life insurance companies with assets in excess of one hundred million dollars (\$100,000,000), or are employees' or self-employed persons' trusts qualified and exempt from federal income tax under the provisions of the laws of the United States.
 - (11) Associations may sell without recourse any loan, including any participating interests therein, at any time, provided that the total dollar amount of such loans sold, including such sale, within the calendar year beginning January 1 immediately preceding the date of such sale, does not exceed a sum equivalent to twenty-five percent (25%) of the dollar amount of all loans and participating interests in loans held by such association at the beginning of such calendar year; provided, further, that the ~~commissioner~~~~executive director~~, upon application of the association showing good cause, may authorize the sale of a greater amount during a calendar year. Notwithstanding the limitations of this subsection, loans may be assigned with recourse to any federal home loan bank of which the association is a member.
 - (12) Associations may service mortgages. The maximum principal amount of mortgages thus serviced by an association at any one (1) time shall not exceed two-thirds (2/3) of the amount of the savings liability of such association.
 - (13) Provided, however, that the ability of savings and loan associations to make such loans as set forth in this section, which are not insured or guaranteed as herein set forth, shall be contingent and conditioned upon the savings and loan association being fully insured by the Federal Savings and Loan Insurance Corporation as provided by Title IV of the National Housing Act of 1934, as amended.

- (14) The **commissioner**~~[executive director]~~ is authorized and directed to prescribe such rules, regulations, and forms as are deemed to be necessary and appropriate to accomplish the basic purposes of and the provisions contained within this subtitle.

➔Section 693. KRS 286.5-571 is amended to read as follows:

If conversion, merger or consolidation as provided in KRS 286.5-561 is authorized, a copy of the resolutions adopted with respect thereto, verified by the affidavit of the president or a vice president and the secretary or assistant secretary of the association, shall be filed in the office of the **commissioner**~~[executive director]~~ within ten (10) days from the date of the meeting.

➔Section 694. KRS 286.5-581 is amended to read as follows:

- (1) If conversion, merger or consolidation under KRS 286.5-561 is authorized, the officers and directors shall, within six (6) months from the date of the adoption of the resolution, take the steps necessary to effect a conversion, merger or consolidation of the association into a federal savings and loan association, and upon such terms as may then be agreed upon between the board of directors of the association and the federal home loan bank board, or other proper federal authority. The conversion, merger or consolidation shall be void if not consummated within eighteen (18) months.
- (2) Upon the filing in the office of the **commissioner**~~[executive director]~~ of a certified copy of the charter or authorization issued to the association by the federal home loan bank board, or other proper federal authority, or of a certificate showing the organization of the association as a federal association, certified to by the federal home loan bank board, or its authorized representative, the association shall cease to be a state association and shall be a federal association, except that the corporate existence of the state association shall continue for three (3) years for the purpose of prosecuting or defending suits by or against it, and enabling it to close its affairs.

➔Section 695. KRS 286.5-611 is amended to read as follows:

- (1) Any federal savings and loan association may convert itself into a state-chartered association upon a vote of two-thirds (2/3) or more of the votes of members of such federal savings and loan association cast at an annual meeting or at any special meeting called to consider such action. Copies of the minutes of the proceedings of such meeting, verified by the affidavit of the secretary or an assistant secretary, shall be filed in the office of the **commissioner**~~[executive director]~~ and mailed to the federal home loan bank board, Washington, D. C., within ten (10) days after such meeting. The verified copies of the proceedings of the meeting when so filed shall be presumptive evidence of the meeting and action taken at such meeting.
- (2) At the meeting at which conversion is voted upon, the members shall also vote upon the directors who shall be the directors of the state-chartered association after conversion takes effect. Such directors then shall execute two (2) copies of the petition for certificates of incorporation provided for in this subtitle and two (2) copies of the bylaws, as provided in this subtitle.
- (3) The **commissioner**~~[executive director]~~ shall insert in the certificates of incorporation, at the end of the paragraph preceding the testimonium clause, the following: "This association is incorporated by conversion from a federal savings and loan association."
- (4) Each of the directors chosen for the association shall sign and acknowledge the petition for certificates of incorporation as subscribers thereto and the proposed bylaws as incorporators of the association.
- (5) The provisions of this subtitle shall, so far as applicable, apply to such conversion under this subtitle. The **commissioner**~~[executive director]~~ may provide, by regulation for the procedure to be followed by any such federal savings and loan association converting into a state-chartered association. All the provisions regarding property and other rights contained in KRS 286.5-591 shall apply, in reverse order, to the conversion of a federal savings and loan association into a state-chartered association, so that the state-chartered association shall be continuation of the corporate entity of the converting federal association and continue to have all of its property and rights.

➔Section 696. KRS 286.5-621 is amended to read as follows:

- (1) Any association may reorganize or go into voluntary liquidation by the votes of its members owning at least two-thirds (2/3) of the shares in force at the time the vote is taken.

- (2) Whenever the members desire to reorganize or go into voluntary liquidation, the board of directors or the committee of members appointed for that purpose shall submit the question of reorganization or voluntary liquidation to a vote of the members at a special meeting of members, but no association shall reorganize or go into voluntary liquidation without the approval of the **commissioner**~~{executive director}~~.

➔Section 697. KRS 286.5-631 is amended to read as follows:

- (1) Whenever a meeting of the members is to be called as provided in KRS 286.5-621, the board of directors or the committee shall convene a special meeting of the members at the principal office of the association at such time as the directors or committee determine.
- (2) Notice of meeting shall be given to every member of the association by mailing at least ten (10) days before the time fixed for the meeting, a notice properly addressed to every member at his last recorded address. The directors or committee shall also cause a notice of the meeting to be certified to the **commissioner**~~{executive director}~~ at the time notice is given to the members.

➔Section 698. KRS 286.5-641 is amended to read as follows:

- (1) The directors or committee shall prepare or have prepared a full exhibit of the affairs, property and condition of the association, including an itemized statement of its assets and liabilities, which exhibits shall be sworn to by a majority of the directors or of the committee before some officer authorized to take acknowledgments of deeds in this state. The report shall be printed and a copy thereof mailed along with the notice convening the special meeting.
- (2) The original exhibit and the notice of meeting shall be filed with the **commissioner**~~{executive director}~~ at the time they are mailed to the members.

➔Section 699. KRS 286.5-651 is amended to read as follows:

At the special meeting all votes taken shall be by ballot, and votes by the members owning at least two-thirds (2/3) of its shares in force at the time the vote is taken shall be necessary to carry any resolution for the reorganization or liquidation of the association. If the members pass a resolution for reorganization or liquidation, a copy of the resolution, certified by the presiding officer and secretary of the meeting, and containing full instructions and defining the authority and compensation of the parties to be named therein, shall be given to the parties named, and a like duly certified copy of the resolution, instructions and authority shall immediately be filed with the **commissioner**~~{executive director}~~ by the parties named in any resolution before they enter upon the discharge of their duties. Before the parties named in any resolution assume the duties of their trust, they shall become bound with two (2) or more sufficient sureties or some surety company authorized to do business in this state in such sum as the **commissioner**~~{executive director}~~ approves.

➔Section 700. KRS 286.5-690 is amended to read as follows:

The **commissioner**~~{executive director}~~ and examiners shall not be interested in an association, directly or indirectly, either as creditor (except that each may be a savings account holder and receive dividends thereon), director, officer, employee, borrower, trustee or attorney, nor shall any one (1) of them receive, directly or indirectly, any payment, compensation or gratuity from any association.

➔Section 701. KRS 286.5-700 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall have general supervision over all associations and corporations which are subject to the provisions of this subtitle. He shall enforce the purposes of this subtitle by use of the powers herein conferred and by reference to the courts when required.
- (2) Every approval by the **commissioner**~~{executive director}~~ given pursuant to the provisions of this subtitle and every communication having the effect of an order or instruction to any association shall be in writing signed by the **commissioner**~~{executive director}~~ under seal, and shall be sent by certified mail, return receipt requested to the association affected, addressed to the president at the home office of the association.

➔Section 702. KRS 286.5-702 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall have full authority to issue administrative regulations and promulgate orders to carry out the provisions of this subtitle.

➔Section 703. KRS 286.5-705 is amended to read as follows:

- (1) Notwithstanding any restrictions elsewhere contained in this subtitle the **commissioner**~~{executive director}~~ may prescribe, amend and repeal regulations authorizing state-chartered savings and loan associations to make any loans and any investments, accept savings accounts and deposits, and provide for the payments of dividends or interest thereon, and other matters under the same terms, conditions, limitations, restrictions and safeguards which such associations could make or do were they operating as federal savings and loan associations at the time such authority is granted, provided that such regulations shall have as their objective the placing of state-chartered savings and loan associations on a substantial, competitive, operating parity with federal savings and loan associations, in order that the dual system of savings associations may be preserved.
- (2) Nothing herein contained shall be construed to repeal, modify or alter the restrictions of subsection (4) of KRS 286.5-061 with respect to branching.

➔Section 704. KRS 286.5-710 is amended to read as follows:

- (1) The affairs of every association not in liquidation shall be examined by the **commissioner**~~{executive director}~~ or an examiner of the **commissioner**~~{executive director}~~ as often as is deemed necessary, and at least once in every year, without any notice to the association, its officers or agents. The examiner shall make a thorough examination into the condition, workings and affairs of the association. All books, papers and records and assets of the association shall be subject to his inspection.
- (2) The examiner shall file a report of his findings in the office of the **commissioner**~~{executive director}~~ and the **commissioner**~~{executive director}~~ shall furnish a copy of such report to the association examined. The examiner shall report any violation of law or any unauthorized or unfit practices or any failure to keep and have correct amounts of business of the association, and if he finds that any director has willfully neglected to attend meetings regularly, he shall recommend the discharge of such director.
- (3) No examiner acting under the provisions of this subtitle shall disclose to any person, other than officially to the **commissioner**~~{executive director}~~, in the report made to him or in compliance with the order of some court, the names of stockholders or members in any association, or any information respecting their private accounts.
- (4) All reports and information in the hands of the **commissioner**~~{executive director}~~ concerning federal associations, or federally insured associations, shall be subject to inspection by the federal home loan bank and the Federal Home Loan Bank Board and their authorized representatives.

➔Section 705. KRS 286.5-720 is amended to read as follows:

- (1) In lieu of the examination provided for in KRS 286.5-710, the **commissioner**~~{executive director}~~ may accept any examination made by a federal home loan bank, the federal home loan bank board, or by the Federal Savings and Loan Insurance Corporation. Two (2) copies of any audit, signed and certified by the auditor making such audit, shall be filed promptly with the **commissioner**~~{executive director}~~.
- (2) Whenever, in the judgment of the **commissioner**~~{executive director}~~, the condition of any association renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, the **commissioner**~~{executive director}~~ shall cause such work to be done. A full and complete copy of the report of all examinations shall be furnished to the association examined. Such report of examination or audit shall be presented by the president to the board of directors at its next regular or special meeting.
- (3) The **commissioner**~~{executive director}~~, or the **commissioner's**~~{his}~~ examiners or auditors, shall have access to all books and papers of an association which relate to its business, and books and papers kept by any officer, agent, or employee, relating to or upon which any record of its business is kept, and may summon witnesses and administer oaths or affirmations in the examination of the directors, officers, agents, or employees of any such association or any other person in relation to its affairs, transactions, and conditions, and may require and compel the production of records, books, papers, contracts, or other documents by court order, if not voluntarily produced.

➔Section 706. KRS 286.5-740 is amended to read as follows:

If the **commissioner**~~{executive director}~~, as a result of any examination or from any report made to him, finds that any association is violating the provisions of its certificate of incorporation or bylaws, or any state or federal laws, or any lawful order or regulation of the **commissioner**~~{executive director}~~, the **commissioner**~~{he}~~ shall, by a formal written order delivered to the association pursuant to subsection (2) of KRS 286.5-700, state any alleged violation, together with a statement of the facts alleged to be such violation, and order discontinuance of such violation and conformance

with all requirements of law. The order shall specify the effective date thereof, which may be immediate or may be at a later date, and such order shall remain in effect until withdrawn by the **commissioner**~~[executive director]~~ or until terminated by a court order. Such order of the **commissioner**~~[executive director]~~, upon application made on or after the effective date thereof by the **commissioner**~~[executive director]~~ to a court of general jurisdiction in the county in which the home office of the association is located, shall be enforced ex parte and without notice by an order to comply, entered by such court. Any association affected by such order of the **commissioner**~~[executive director]~~ may, after receipt thereof, apply within thirty (30) days to the court for an immediate hearing and order suspending the order of the **commissioner**~~[executive director]~~ until such time as the hearing has been completed. The hearing of such application to the court shall be upon such notice to the **commissioner**~~[executive director]~~ as the court shall provide. Whether upon application by the **commissioner**~~[executive director]~~ or by the association, the court shall have power and shall, after service of process, adjudicate the question and enter the proper order or orders and enforce the same.

➔Section 707. KRS 286.5-750 is amended to read as follows:

- (1) If the **commissioner**~~[executive director]~~, as a result of any examination or from any report made to **the commissioner**~~[him]~~, believes that the public interest may be served by the appointment of a conservator, applies to a court of general jurisdiction in the county in which the home office of the association is located for the appointment of a conservator court may appoint a conservator if it finds that the association:
 - (a) Is in an impaired condition, or
 - (b) Is in violation of an order or injunction, as authorized by this section, which has become final in that the time to appeal has expired without appeal, or a final order entered from which there can be no appeal.
- (2) The **commissioner**~~[executive director]~~, **the commissioner's**~~[his]~~ examiner, or another person may be appointed by the court as conservator, and a certified copy of the order of the court making the appointment shall be evidence thereof. The conservator shall have the power and authority provided in this subtitle and such other power and authority as is expressed in the order of the court. The conservator shall endeavor promptly to remedy the situations complained of in the petition for his **or her** appointment.
- (3) Within six (6) months of the date of the appointment, or within twelve (12) months if the court extends the six (6) months' period, the association shall be returned to its board of directors and thereafter shall be managed and operated as if no conservator had been appointed, or a receiver shall be appointed as provided in KRS 286.5-760.
- (4) If the **commissioner**~~[executive director]~~, or examiner, is appointed conservator he **or she** shall receive no additional compensation, but if another person is appointed, then the compensation of the conservator, as determined by the court, shall be paid by the association.
- (5) A certified copy of the order of the court discharging the conservator and returning such association to its directors shall be sufficient evidence thereof.
- (6) Any conservator appointed shall have all the rights, powers, and privileges possessed by the officers, board of directors, and members of the association.
- (7) The conservator shall not retain special counsel or other experts, incur any expense other than normal operating expenses, or liquidate assets except in the ordinary course of operations.
- (8) The directors and officers shall remain in office and the employees shall remain in their respective positions, but the conservator may remove any director, officer, or employee, if the order of removal of a director or officer is approved in writing by the **commissioner**~~[executive director]~~.
- (9) While the association is in the charge of a conservator, members of such association shall continue to make payments to the association in accordance with the terms and conditions of their contracts, and the conservator, in his discretion, may permit savings account members to withdraw their accounts, from the association pursuant to the provisions of this subtitle or under such rules and regulations as the **commissioner**~~[executive director]~~ may prescribe. The conservator shall have power to accept savings accounts and additions to savings accounts, but any amounts received by the conservator may be segregated if the **commissioner**~~[executive director]~~ so orders in writing; if so ordered, such amounts shall not be subject to offset and shall not be used to liquidate any indebtedness of such association existing at the time the conservator was appointed for it or any subsequent indebtedness incurred for the purposes of liquidating the indebtedness of any such association existing at the time such conservator was appointed. All expenses of the association during such conservatorship shall be paid by the association.

➔Section 708. KRS 286.5-760 is amended to read as follows:

- (1) If in the judgment of the ***commissioner***~~[executive director]~~ the public interest requires it, he may apply to a court of general jurisdiction in the county in which the home office of any association is located for the appointment of a receiver. Such court is authorized to appoint a receiver if it finds that such association:
 - (a) Is in an impaired condition; or
 - (b) Is in violation of an order or injunction, as provided in KRS 286.5-740 and 286.5-750, which has become final in that the time to appeal has expired without appeal or a final order entered from which there can be no appeal. The ***commissioner***~~[executive director]~~, an examiner or other person may be appointed by the court as receiver, and a certified copy of the order of the court making such appointment shall be evidence thereof. Such receiver shall have all the powers and authority of a conservator, plus the power to liquidate, and shall have such other powers and authority as may be expressed in the order of the court. If the ***commissioner***~~[executive director]~~ or an examiner is appointed receiver, he shall receive no additional compensation, but if another person is appointed, then the compensation of the receiver, as determined by the court, shall be paid from the assets of the association.
- (2) If the association is an institution insured by the Federal Savings and Loan Insurance Corporation, the Federal Savings and Loan Insurance Corporation shall be tendered appointment as receiver or coreceiver. If it accepts such appointment, it may, nevertheless, make loans on the security of or purchase at public or private sale any part or all of the assets of the association of which it is receiver or coreceiver, provided such loan or purchase is approved by the court.
- (3) The procedure in such receivership action shall be in all other respects in accordance with the practice in the court, including all rights of appeal and review. The directors, officers and attorneys of an association in office at the time of the initiation of any proceeding under this or the preceding section are expressly authorized to contest any such proceeding and shall be reimbursed for reasonable expenses and attorneys' fees by the association or from its assets. Any court having any such proceeding before it shall allow and order paid reasonable expenses and attorneys' fees for such directors, officers and attorneys.

➔Section 709. KRS 286.5-780 is amended to read as follows:

If a controversy arises between the ***commissioner***~~[executive director]~~ and an association with respect to any question of law or regulation or with respect to any question involving immeasurable or irreparable damage to the association, prior to an administrative or judicial hearing, the association or the ***commissioner***~~[executive director]~~ may apply to any court of competent jurisdiction of the county in which the home office of the association is located for a declaratory judgment as to such question, and such court shall decide the controversy on its merits in accordance with the weight of the evidence, and such court shall have full power to enforce its orders.

➔Section 710. KRS 286.5-790 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall compile the reports of all associations required to be filed in *the department*~~[his office]~~ and shall present the reports, together with such additional information concerning associations as may be of general interest, in his annual report to the Governor.

➔Section 711. KRS 286.5-800 is amended to read as follows:

Excepting banks, no association or foreign association or any other person shall advertise or represent or accept or offer to accept any savings accounts in this state as insured accounts or as savings accounts of an insured institution unless the same are insured as provided in KRS 286.5-081, and any violation of this provision shall be a separate offense for each day of such violation and shall be a misdemeanor and shall be enjoined upon the application of the Attorney General, the ***commissioner***~~[executive director]~~ or other state prosecuting official, or by any association in this state.

➔Section 712. KRS 286.5-910 is amended to read as follows:

- (1) Any savings and loan association holding company which proposes to acquire control of a Kentucky state chartered savings and loan association, or of a savings and loan association holding company which controls a Kentucky state chartered savings and loan association, shall concurrently file with the ***commissioner***~~[executive director]~~ copies of the application filed with the applicable federal supervisory authority. The

commissioner~~executive director~~ shall approve such acquisition within ninety (90) days of acceptance of a complete application if he *or she* finds that:

- (a) The terms of the acquisition are in accordance with the laws of this state;
 - (b) The financial condition, or the competence, experience and integrity of the acquiring company or its principals are such as will not jeopardize the financial stability of the acquired savings and loan association or savings and loan association holding company;
 - (c) The public convenience and advantage will be served by the acquisition; and
 - (d) No federal regulatory authority whose approval is required has disapproved the transaction because it would result in a monopoly or substantially lessen competition, or has otherwise disapproved the transaction.
- (2) A nonrefundable fee shall accompany each application and shall be set by the **commissioner**~~executive director~~ in accordance with the fee-setting principles set out in KRS 286.3-480.
 - (3) The **commissioner**~~executive director~~ may enter into cooperative agreements with federal or state regulatory authorities to examine an out-of-state savings and loan association that is controlled by a savings and loan association holding company having its principal place of business in this state, or accept reports of examinations of such out-of-state regulatory authorities in lieu of conducting examinations.
 - (4) The **commissioner**~~executive director~~ may enter into cooperative agreements with federal or state regulatory authorities to exchange confidential information and reports of examination relating to interstate acquisitions of savings and loan associations and savings and loan association holding companies.
 - (5) The cost of an examination shall be assessed against and paid by the savings and loan association or savings and loan association holding company examined. The assessment for the examination shall be calculated in the same manner as that used for savings and loan association examinations.

➔Section 713. KRS 286.5-991 is amended to read as follows:

- (1) Any person who violates any provision of subsection (2) of KRS 286.5-041 shall be fined not more than five thousand dollars (\$5,000), and each day of violation constitutes a separate offense.
- (2) Any person guilty of conduct for which civil liability is provided for by subsection (1) of KRS 286.5-231 shall be punished in the manner prescribed for stealing property of the same value as the property so used, disposed of, assigned, transferred or canceled.
- (3) Every association, officer, agent or manager that fails to make the report required by KRS 286.5-131, and to furnish any information called for by the **commissioner**~~executive director~~ under oath and attestation of its officers shall be severally fined not less than one hundred dollars (\$100).
- (4) The president and secretary of any association that fails to make and file any report required by this subtitle within thirty (30) days after it is due, shall be fined not more than one hundred dollars (\$100).
- (5) Any examiner who violates subsection (3) of KRS 286.5-710 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any examiner in the office who knows of the insolvency or unsafe condition of any association, or knows that it is inexpedient to permit an association to continue business, and who neglects to immediately present a signed report of that fact to the **commissioner**~~executive director~~, or who illegally discloses any information obtained by him *or her* by virtue of his *or her* office, or who violates any of the provisions of this subtitle or fails to perform any duty imposed upon him by this subtitle except as provided in subsection (5), shall be fined not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (7) Any **commissioner**~~executive director~~ who knows of the insolvency or unsafe condition of any association or knows that it is inexpedient to permit an association to continue business, and who willfully fails to take the action provided in this subtitle, or who illegally discloses any information obtained by him *or her* by virtue of his *or her* office, or violates any of the provisions of this subtitle, or fails to perform any duty imposed upon him *or her* by this subtitle, shall forfeit ~~the~~*his* office and be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense.
- (8) Except as provided in subsection (3), any association which knowingly fails to make any report required by law or by the **commissioner**~~executive director~~ within the specified time, or to include any matter required, or to

pay the fees for filing reports or for examinations when due, shall be fined twenty-five dollars (\$25) for each day of delinquency. The aggregate penalty for each offense shall not exceed two hundred and fifty dollars (\$250).

- (9) Every person or association that willfully makes or transmits a false report, or refuses to submit its books, papers or assets for examination, or any officer of an association who refuses to be examined under oath concerning the affairs of the association, shall severally be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (10) Whenever any penalty imposed by this section is not paid, the Attorney General shall institute an action, in the name of the state, in the Franklin Circuit Court or the Circuit Court of the county in which the offense was committed, for the recovery of the penalty.
- (11) Any association that violates KRS 286.5-805 by not carrying the required statement, or by carrying a statement that an application for insurance is pending when in fact it is not, shall be fined five hundred dollars (\$500) for each offense.

➔Section 714. KRS 286.6-005 is amended to read as follows:

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

- (1) "Credit union" means a cooperative, nonprofit association, incorporated under this subtitle, for the purposes of encouraging thrift among its members, creating a source of credit at a fair and reasonable rate of interest, and providing an opportunity for its members to use and control their own money on a democratic basis in order to improve their economic and social condition.
- (2) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~ of financial institutions.

➔Section 715. KRS 286.6-012 is amended to read as follows:

Any party aggrieved by a decision of the ~~commissioner~~~~[executive director]~~ under the provisions of KRS 286.6-015, 286.6-035, 286.6-055, 286.6-065, 286.6-700, or 286.6-710 may request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔Section 716. KRS 286.6-015 is amended to read as follows:

- (1) Any seven (7) or more residents of this state, of legal age, who have a common bond referred to in KRS 286.6-107 may organize a credit union and become charter members thereof by complying with this section.
- (2) The subscribers shall execute in duplicate articles of incorporation and agree to the terms thereof, which articles shall state:
 - (a) The name, which shall include the words "credit union" and which shall not be the same as that of any other credit union in this state, and the location where the proposed credit union is to have its principal place of business;
 - (b) That the existence of the credit union shall be perpetual;
 - (c) The par value of the shares of the credit union; and
 - (d) The names and addresses of the subscribers to the articles of incorporation, and the number of shares subscribed to by each, which shall be determined by the board.
- (3) The subscribers shall prepare and adopt bylaws for the general government of the credit union, consistent with this subtitle, and execute the same in duplicate.
- (4) The subscribers shall select at least five (5) qualified persons who agree to serve on the board of directors, and at least three (3) other qualified persons who agree to serve on the supervisory committee. A signed agreement to serve in these capacities until the first annual meeting or until the election of their successors, whichever is later, shall be executed by those who so agree.
- (5) The subscribers shall forward any required fee, the articles of incorporation, the bylaws and the agreements to serve to the ~~commissioner~~~~[executive director]~~, who shall act upon the application for a charter within thirty (30) days. The ~~commissioner~~~~[executive director]~~ shall issue a certificate of approval, if the articles and bylaws are in conformity with this subtitle and ~~the commissioner~~~~[he]~~ is satisfied that:

- (a) The characteristics of the sponsoring group are favorable to the economic viability of such credit union;
 - (b) The standing and character of the proposed organizers are such as to give assurance that its affairs will be properly administered; and
 - (c) The share and deposit insurance requirements of KRS 286.6-405 will be met.
- (6) The **commissioner**~~[executive director]~~ shall return a copy of the bylaws and the articles to the applicants or their representatives, which shall be preserved in the permanent files of the credit union.
 - (7) The subscribers for a credit union charter may not transact any business until formal approval of the charter has been received.

➔Section 717. KRS 286.6-025 is amended to read as follows:

In order to simplify the organization of credit unions, the **commissioner**~~[executive director]~~ shall cause to be prepared a form of articles of incorporation and a form of bylaws, consistent with this subtitle, which may be used by credit union incorporators for their guidance. Such articles of incorporation and bylaws shall be available without charge to persons desiring to organize a credit union.

➔Section 718. KRS 286.6-035 is amended to read as follows:

- (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the **commissioner**~~[executive director]~~ who shall approve or disapprove the amendments within sixty (60) days.
- (2) Amendments shall become effective upon approval in writing by the **commissioner**~~[executive director]~~.

➔Section 719. KRS 286.6-055 is amended to read as follows:

- (1) A credit union may change its principal place of business within this state upon written authorization by the **commissioner**~~[executive director]~~. If the **commissioner**~~[executive director]~~ has not notified a credit union of his or her action on an application to change the place of business within fifteen (15) calendar days of the date the application was received by the **commissioner**~~[executive director]~~, the credit union may proceed with the change in its place of business.
- (2) A credit union may maintain service facilities, including automated teller machines, at locations other than its principal office upon written authorization by the **commissioner**~~[executive director]~~ or as permitted by administrative regulation. The maintenance of these facilities must be reasonably necessary to furnish service to its members.
- (3) A credit union may join with one (1) or more credit unions in the operation of a service facility to meet member needs, including an automated teller machine, upon written authorization by the **commissioner**~~[executive director]~~ or as permitted by administrative regulation.

➔Section 720. KRS 286.6-065 is amended to read as follows:

- (1) A credit union organized in another state may conduct business as a credit union in this state with the approval of the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall find that the out-of-state credit union:
 - (a) Is a credit union organized under laws similar to this subtitle;
 - (b) Is financially solvent;
 - (c) Has account insurance comparable to that required for credit unions incorporated under this subtitle;
 - (d) Is effectively examined and supervised by the supervisory authority of the state in which it is organized; and
 - (e) Needs to conduct business in this state to adequately serve its members in this state.
- (2) The out-of-state credit union shall agree to:
 - (a) Grant loans at rates not in excess of the rates permitted for credit unions incorporated under this subtitle;
 - (b) Comply with the same consumer protection provisions that credit unions incorporated under this subtitle must obey;

- (c) Designate and maintain an agent for the service of process in this state; and
 - (d) Submit copies of reports to the **commissioner**~~{executive director}~~ when requested.
- (3) The **commissioner**~~{executive director}~~ may examine the out-of-state credit union or enter into cooperative or reciprocal agreements with the out-of-state credit union's regulatory authority for periodic examinations.

➔Section 721. KRS 286.6-070 is amended to read as follows:

Credit unions shall be under the supervision of the **commissioner**~~{executive director}~~, who may make general rules and regulations, and special rulings, demands and findings necessary for the proper conduct and regulation of the business. Such action by the **commissioner**~~{executive director}~~ shall be in addition to and not in conflict with the provisions of this subtitle.

➔Section 722. KRS 286.6-075 is amended to read as follows:

A credit union organized under this subtitle may:

- (1) Make contracts;
- (2) Sue and be sued;
- (3) Adopt and use a common seal and alter same;
- (4) Acquire, lease, hold, assign, pledge, hypothecate, sell and otherwise dispose of property, either in whole or in part, necessary or incidental to its operations;
- (5) Offer its members and other credit unions various classes of shares, share certificates, deposits or deposit certificates, upon written authorization of the **commissioner**~~{executive director}~~;
- (6) Lend its funds to its members as hereinafter provided;
- (7) Borrow from any source provided that a credit union must secure approval from the **commissioner**~~{executive director}~~ in writing of its intention to borrow in excess of an aggregate of forty percent (40%) of its capital;
- (8) Discount or sell any of its assets, and purchase the assets of another credit union, subject to the approval of the **commissioner**~~{executive director}~~;
- (9) Make deposits in legally chartered banks, savings banks, savings and loan associations, trust companies, and other credit unions, including corporate credit unions, and invest funds as otherwise provided in KRS 286.6-585;
- (10) Hold membership in other credit unions organized under this subtitle or other acts, and in associations and organizations controlled by or fostering the interests of credit unions, including a central liquidity facility organized under state or federal law;
- (11) Engage in activities and programs as requested by the federal government or by this state or any agency or political subdivision thereof, when approved by the **commissioner**~~{executive director}~~ and not inconsistent with this subtitle; and
- (12) Act as fiscal agent for and receive payments on shares and deposits from the federal government, this state, or any agency or political subdivision thereof.

➔Section 723. KRS 286.6-090 is amended to read as follows:

Each credit union shall make a report of its condition to the **commissioner**~~{executive director}~~, on blank forms to be supplied by the **Department**~~{Office}~~ of Financial Institutions on the dates of the calls made to state banks. Notice of the calls shall be sent out by the **commissioner**~~{executive director}~~. The reports shall be verified by the oath of a majority of the members of the supervisory committee, or by the oath of the president and treasurer or secretary, and further reports shall be made as the **commissioner**~~{executive director}~~ at any time demands.

➔Section 724. KRS 286.6-092 is amended to read as follows:

- (1) If any credit union fails to make the report prescribed by KRS 286.6-090 within fifteen (15) days after it is due, or fails to pay the charges required by this subtitle, including the charges for delay in filing reports, the **commissioner**~~{executive director}~~ shall give notice to the credit union of his intention to revoke the certificate of approval of the corporation. If failure continues for fifteen (15) days after the notice, the

commissioner~~[executive director]~~ may, in his discretion, revoke the certificate of approval and take possession of the property and business of the credit union until such time as the **commissioner**~~[executive director]~~ permits it to resume business, or until its affairs are liquidated.

- (2) If the **commissioner**~~[executive director]~~ has knowledge or reasonable cause to believe that any credit union, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of the credit union has engaged in violations of law, or charter, bylaw, or administrative regulation of the **department**~~[office]~~, or in unsafe or unsound business practices, or a breach of any written agreement with the **department**~~[office]~~, **the commissioner**~~he~~ may issue and serve upon the credit union, director, officer, employee, agent, or other person a notice of charges containing a statement of facts with respect to alleged violations or practices and shall fix the time and place at which an administrative hearing shall be held to determine whether an order to cease and desist should issue against the credit union, director, officer, employee, agent, or other person. The hearing shall be conducted in accordance with KRS Chapter 13B.
- (3) Unless the party or parties so served shall appear at the hearing personally or by a duly-authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order.
- (4) If there is consent, or if upon the record made at any hearing the **commissioner**~~[executive director]~~ shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, **the commissioner**~~he~~ may issue and serve upon the credit union, director, officer, employee, agent, or other person a final order to cease and desist from any violation or practice and, further, to take affirmative action to correct the conditions resulting from any violation or practice.
- (5) If the **commissioner**~~[executive director]~~ shall determine that the violation or practice, as specified in the notice of charges pursuant to subsection (2) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the credit union, or is likely to otherwise seriously prejudice the interests of its members, **the commissioner**~~he~~ may issue an emergency order pursuant to KRS 13B.125 requiring the credit union, director, officer, employee, agent, or other person to immediately upon service cease and desist from any violation or practice.
- (6) Unless set aside, limited, or suspended, as provided by subsection (7) of this section, an emergency cease and desist order shall remain effective and enforceable pending completion of the administrative hearing.
- (7) Within ten (10) days after service of an emergency cease and desist order, the party or parties served may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending completion of an administrative hearing, and the court shall have jurisdiction to issue an injunction.
- (8) In the case of violation or threatened violation of, or failure to obey, an emergency cease and desist order or a cease and desist order issued pursuant to this section, the **commissioner**~~[executive director]~~ may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction to enforce the order, and it shall be the duty of the court to issue the injunction.

➔Section 725. KRS 286.6-095 is amended to read as follows:

Notwithstanding any other provision of law, the **commissioner**~~[executive director]~~ may make reasonable rules authorizing credit unions to exercise any of the powers conferred upon federal credit unions, if **the commissioner**~~he~~ deems it reasonably necessary for the well-being of such credit unions.

➔Section 726. KRS 286.6-100 is amended to read as follows:

- (1) Credit unions shall be under the supervision of the **commissioner**~~[executive director]~~ and shall make financial reports to **the commissioner**~~him~~ as and when he *or she* may require, but at least annually. Each credit union shall be subject to examination by, and for this purpose shall make its books and records accessible to, any person designated by the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall fix a scale of examination fees to be paid by credit unions, giving due consideration to the time and expense incident to such examinations and to the ability of credit unions to pay such fees, which fees shall be assessed and paid by each credit union promptly after completion of such examination.
- (2) In lieu of the examination provided for in this section, the **commissioner**~~[executive director]~~ may accept any examination made by the national credit union administration. One (1) copy of the examination report shall be promptly submitted to the **commissioner**~~[executive director]~~ for processing and analysis by the **Department**~~[Office]~~ of Financial Institutions.

- (3) When, in the judgment of the ***commissioner***~~[executive director]~~, the condition of any credit union organized under the provisions of this subtitle renders it necessary or expedient to make an examination or to devote any extraordinary attention to its affairs, the ***commissioner***~~[executive director]~~ shall cause such work to be done. A full and complete copy of the report of all examinations shall be furnished to the credit union so examined. Such report of examination shall be presented by the president to the board of directors at its next regular or special meeting.

➔Section 727. KRS 286.6-105 is amended to read as follows:

In undertaking the examination of any credit union, neither the Commonwealth of Kentucky, the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor, or other obligor of said credit union by reason of said examination or omission of said examination to fully and effectively disclose the financial condition of said credit union, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.6-100 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said credit unions.

➔Section 728. KRS 286.6-165 is amended to read as follows:

Within fifteen (15) days after election or appointment, a record of the names and addresses of the members of the board, committees and all officers of the credit union shall be filed with the ***commissioner***~~[executive director]~~ on forms provided by the ***department***~~[office]~~.

➔Section 729. KRS 286.6-185 is amended to read as follows:

- (1) A credit union has a special obligation of confidentiality to its members; therefore, any contrary provisions of KRS Chapter 271B notwithstanding, a credit union shall be obligated to provide a shareholder only names and addresses of its member shareholders.
- (2) No officer or director of a credit union or employee of the ***department***~~[office]~~ shall release any information contained in the report of examination, except so far as necessary in the performance of his official duties as provided by law.
- (3) The ***department***~~[office]~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.
- (4) Every official report concerning a credit union and every report of an examination shall be prima facie evidence of the facts therein stated for all purposes in any action in which the ***department***~~[office]~~ or credit union is a party. Such reports shall not be made public except when required in proper legal proceedings.

➔Section 730. KRS 286.6-285 is amended to read as follows:

- (1) Unless the credit union has been audited by a licensed public accountant or other qualified person or firm, the supervisory committee shall make or cause to be made a comprehensive annual audit of the books and affairs of the credit union. It shall submit a report of each annual audit to the board of directors and the ***commissioner***~~[executive director]~~ and a summary of that report to the members at the next annual meeting of the credit union.
- (2) The supervisory committee shall make or cause to be made such supplementary audits, examinations or verifications of members' accounts as it deems necessary or as are required by the ***commissioner***~~[executive director]~~ or by the board of directors, and submit reports of these supplementary audits to the board of directors.

➔Section 731. KRS 286.6-296 is amended to read as follows:

- (1) The supervisory committee by a unanimous vote may suspend any member of the credit committee and shall report such action to the board of directors for appropriate action.
- (2) The supervisory committee by a unanimous vote may suspend any officer or member of the board of directors until the next members' meeting, which shall be held not less than seven (7) nor more than twenty-one (21) days after such suspension. At such meeting the suspension shall be acted upon by the members.
- (3) Any member of the supervisory committee may be removed by the board of directors for failure to perform his duties in accordance with this subtitle, the articles of incorporation, or the bylaws.

- (4) If the ***commissioner***~~[executive director]~~ shall determine that any officer or director of a credit union has committed any violation of law, administrative regulation or of a cease and desist order which has become final, or has engaged in or participated in any unsafe or unsound practice in connection with the credit union, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such officer or director, and the ***commissioner***~~[executive director]~~ determines that the credit union has suffered or will probably suffer substantial financial loss or other damages or that the interests of its members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, or that the director or officer has received financial gain by reason of the violation or practice or breach of fiduciary duty, the ***commissioner***~~[executive director]~~ may serve upon such director or officer a written notice of intention to remove him *or her* from office. The violation, practice or breach must be one involving personal dishonesty on the part of such director or officer, or one which demonstrates a willful or continuing disregard for the safety or soundness of the credit union. The written notice shall serve to suspend the officer or director from office. Such suspension shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (6) of this section, shall remain in effect pending the completion of the administrative proceedings under subsection (5) of this section and until such time as the ***commissioner***~~[executive director]~~ shall dismiss the charges specified in such notice or, if an order of removal is issued against the officer or director, the effective date of any such order.
- (5) A notice of intention to remove an officer or director from office shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty (30) days nor later than sixty (60) days after the date of service of such notice, unless an earlier date is set by the ***commissioner***~~[executive director]~~ at the request of such officer or director and for good cause shown. Unless such officer or director shall appear at the hearing in person or by duly authorized representative, he *or she* shall be deemed to have consented to the issuance of an order of removal. In the event of such consent, or if upon the record made at any such hearing the ***commissioner***~~[executive director]~~ shall find that any of the grounds specified in such notice have been established, the ***commissioner***~~[executive director]~~ may issue such orders of suspension or removal from office as he *or she* deems appropriate.
- (6) Within ten (10) days after an officer or director has been suspended from office, such officer or director may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for a stay of such suspension pending the completion of the administrative proceedings pursuant to the notice served upon such officer or director, and such court shall have jurisdiction to grant such stay.
- (7) Any person aggrieved by a final order of the ***commissioner***~~[executive director]~~ under subsection (5) of this section may obtain a review of the order by filing in the Circuit Court of the residence of the individual or of the principal office of the credit union a petition of appeal within ten (10) days after the rendition of a final order. A copy of the petition shall be served upon the ***commissioner***~~[executive director]~~ and thereupon the ***commissioner***~~[executive director]~~ or *the commissioner's*~~[his]~~ agent shall certify and file in court a copy of the record or other evidence upon which the order is entered. No objection to the order may be considered by the court unless it was argued before the ***commissioner***~~[executive director]~~ or there were reasonable grounds for failure to do so.
- (8) The ***commissioner***~~[executive director]~~ may apply to the Circuit Court of the residence of the individual or of the principal office of the credit union for an injunction to enforce any order under subsection (5) of this section and it shall be the duty of the court to issue such injunction.

➔Section 732. KRS 286.6-325 is amended to read as follows:

- (1) At such intervals and for such periods as the board of directors may authorize, and after provision for the required reserves, the board of directors may declare dividends to be paid on shares and share certificates from net earnings. Prior approval of the ***commissioner***~~[executive director]~~ shall be required for the payment of dividends in excess of net earnings, except that if the excess is less than one percent (1%) of undivided earnings prior approval shall not be required.
- (2) Dividends may be paid at various rates, or not paid at all, with due regard to the conditions that pertain to each class of share.

➔Section 733. KRS 286.6-335 is amended to read as follows:

A credit union may offer deposits and deposit certificates to its members and other credit unions, subject to such terms, rates and conditions as the board of directors establishes and any regulations the **commissioner**~~[executive director]~~ may prescribe.

➔Section 734. KRS 286.6-345 is amended to read as follows:

Christmas clubs and vacation clubs may be operated under conditions established by the board of directors, and other special purpose share and deposit accounts may be operated with authorization from the **commissioner**~~[executive director]~~.

➔Section 735. KRS 286.6-355 is amended to read as follows:

- (1) Shares, share certificates, deposits, and deposit certificates may be withdrawn for payment to the account holder or to third parties, in such manner and in accordance with such procedures as may be established by the board of directors, subject to approval by the **commissioner**~~[executive director]~~. The board may restrict one (1) class of share so it may not be redeemed, withdrawn or transferred except upon termination of membership in the credit union.
- (2) Shares, share certificates, deposits, and deposit certificates shall be subject to any withdrawal notice requirement which may be imposed pursuant to the bylaws.

➔Section 736. KRS 286.6-405 is amended to read as follows:

- (1) Not later than December 31, 1984, a credit union shall apply for insurance on shares and deposits as provided by the national credit union administration under Title II of the Federal Credit Union Act (12 U.S.C. secs. 1781 et seq.), or alternatively, a form of comparable insurance approved by the **commissioner**~~[executive director]~~. This requirement does not apply to a credit union with debt and equity capital consisting primarily of funds from other credit unions.
- (2) A credit union which has been denied a commitment for such insurance shall within thirty (30) days commence steps to either liquidate, or merge with an insured credit union, or apply in writing to the **commissioner**~~[executive director]~~ for additional time to obtain an insurance commitment. The **commissioner**~~[executive director]~~ may grant one (1) or more extensions of time to obtain the insurance commitment upon satisfactory evidence that the credit union has made or is making substantial effort to achieve the conditions precedent to issuance of the commitment.
- (3) No credit union shall be granted a charter by the **commissioner**~~[executive director]~~ unless such credit union has obtained a commitment for insurance of its member share and deposit accounts.
- (4) The **commissioner**~~[executive director]~~ may make available reports of condition and examination findings to the National Credit Union Administration or to any qualified insuring organization and may accept any report of examination made on behalf of such agency or organizations. The **commissioner**~~[executive director]~~ may appoint an official of the National Credit Union Administration or of any qualified insuring organization as liquidating agent of an insured credit union.

➔Section 737. KRS 286.6-575 is amended to read as follows:

- (1) A credit union may act as trustee or custodian of:
 - (a) Individual retirement accounts authorized by federal or state law;
 - (b) Pension funds of self-employed individuals or of a company or organization sponsoring the credit union; or
 - (c) Other similar retirement or pension plans, with authorization from the **commissioner**~~[executive director]~~.
- (2) A credit union may act as trustee under pension and profit-sharing plans with authorization from the **commissioner**~~[executive director]~~.

➔Section 738. KRS 286.6-585 is amended to read as follows:

Funds not used in loans to members may be invested:

- (1) In securities, obligations, or other instruments of or issued by or fully guaranteed as to principal and interest by the United States of America or any agency thereof or in any trust or trusts established for investing directly or collectively in the same;
- (2) In obligations of any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the several territories organized by Congress, or any political subdivision thereof;
- (3) In certificates of deposit or passbook-type accounts issued by a state or national bank, mutual savings bank, or savings and loan association;
- (4)
 - (a) In loans, not to exceed twenty-five percent (25%) of capital at the lending credit union, to; or
 - (b) In shares or deposits, not to exceed twenty percent (20%) of the capital of the investing credit union, of other credit unions, central credit unions, corporate credit unions, or a central liquidity facility established under state or federal law;
- (5) In shares, stocks, loans, or other obligations of any organization, corporation, or association, provided the membership or ownership, as the case may be, of the organization, corporation, or association is primarily confined or restricted to credit unions, or organizations of credit unions, and provided further the purpose for which it is organized is to strengthen or advance the development of credit unions or credit union organizations;
- (6) In shares of a cooperative society organized under the laws of this state or of the laws of the United States in the total amount not exceeding ten percent (10%) of the shares, deposits, and surplus of the credit union;
- (7) In stocks and bonds of corporations organized in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the several territories organized by Congress to an aggregate maximum of five percent (5%) of members' shares in stocks and an aggregate maximum of five percent (5%) of members' shares in bonds, provided that investments shall be limited to stocks or bonds which appear on a list approved by the **commissioner**~~executive director~~ and published quarterly or annually, the list to include not less than thirty (30) corporations.

➔Section 739. KRS 286.6-605 is amended to read as follows:

The regular reserve shall belong to the credit union and shall be used to meet losses resulting from loans and risk assets and to meet such other losses as are approved by the **commissioner**~~executive director~~ and shall not be distributed except on liquidation of the credit union, or in accordance with a plan approved by the **commissioner**~~executive director~~.

➔Section 740. KRS 286.6-615 is amended to read as follows:

The **commissioner**~~executive director~~ shall define by regulation what is deemed "risk assets" for the purpose of establishing the regular reserve.

➔Section 741. KRS 286.6-625 is amended to read as follows:

In addition to such regular reserve, special reserves to protect the interest of members shall be established when required by regulation, or when found by the board of directors of the credit union or by the **commissioner**~~executive director~~, in any special case, to be necessary for that purpose.

➔Section 742. KRS 286.6-700 is amended to read as follows:

- (1) If it appears that any credit union is bankrupt or insolvent, or that it has willfully violated this subtitle, or is operating in an unsafe or unsound manner, the **commissioner**~~executive director~~ may issue an order temporarily suspending the credit union's operations for not less than thirty (30) nor more than sixty (60) days. The board of directors shall be given notice by registered mail of such suspension, which notice shall include a list of the reasons for such suspension, or a list of the specific violations of this subtitle, or both. The **commissioner**~~executive director~~ shall also notify any government agency or other organization insuring the accounts of the credit union of any suspension.
- (2) Upon receipt of such suspension notice, the credit union shall cease all operations, except those authorized by the **commissioner**~~executive director~~. The board of directors shall then file with the **commissioner**~~executive director~~ a reply to the suspension notice, and may request a hearing to present a plan of corrective actions proposed if it desires to continue operations. The board may request that the credit union be declared insolvent and a liquidating agent be appointed.

- (3) Upon receipt from the suspended credit union of evidence that the conditions causing the order of suspension have been corrected, the **commissioner**~~[executive director]~~ may revoke the suspension notice, permit the credit union to resume normal operations, and notify any interested insuring agency of such action.
- (4) If the **commissioner**~~[executive director]~~, after issuing notice of suspension and providing an opportunity for a hearing, rejects the credit union's plan to continue operations, **the commissioner**~~[he]~~ may issue a notice of involuntary liquidation and appoint a liquidating agent. The credit union may request the appropriate court to stay execution of such action. Involuntary liquidation may not be ordered prior to the conclusion of suspension procedures outlined in this section.
- (5) If, within the suspension period, the credit union fails to answer the suspension notice or request a hearing, the **commissioner**~~[executive director]~~ may then revoke the credit union's charter, appoint a liquidating agent and liquidate the credit union.

➔Section 743. KRS 286.6-705 is amended to read as follows:

- (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section.
- (2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily, and directing that the question of liquidation be submitted to the members.
- (3) Within ten (10) days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the **commissioner**~~[executive director]~~ and any government agency or other organization insuring member accounts thereof in writing, setting forth the reasons for the proposed liquidation. Within ten (10) days after the members act on the question of liquidation, the president shall notify the **commissioner**~~[executive director]~~ and any government agency or other organization insuring member accounts in writing as to the action of the members on the proposal.
- (4) As soon as the board of directors decides to submit the question of liquidation to the members, payments on shares, share certificates, deposits, deposit certificates, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.
- (5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds (2/3) majority of the members present at a regular or special meeting of the members is required. Where authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by first class mail, at least ten (10) days prior to such meeting.
- (6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting on loans and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully concluded.
- (7) The board of directors or the liquidating agent shall use the assets of the credit union to pay: first, expenses incidental to liquidation including any surety bond that may be required; second, any liability due non-members; third, deposits and deposit certificates as provided in this subtitle. Assets then remaining shall be distributed to the members proportionately to the shares held by each member of the date dissolution was voted.
- (8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, they shall execute a certificate of dissolution on a form prescribed by the **commissioner**~~[executive director]~~ and file it, together with all pertinent books and records of the liquidating credit union, with the **commissioner**~~[executive director]~~, whereupon such credit union shall be dissolved.

➔Section 744. KRS 286.6-710 is amended to read as follows:

- (1) Any credit union may, with the approval of the **commissioner**~~[executive director]~~, merge with another credit union under the existing charter of the other credit union, pursuant to any plan agreed upon by the majority of each board of directors of each credit union joining in the merger, approved by the affirmative vote of a majority of the members of the merging credit union present at a meeting of its members duly called for such

purpose, and consented to by any government agency or other organization insuring the accounts of the credit union.

- (2) The ***commissioner***~~[executive director]~~ may approve a merger according to the plan agreed upon by the majority of the board of directors of each credit union if approved by less than a majority of the entire membership, as provided in this section, if ***the commissioner***~~[he]~~ finds upon the written and verified application filed by the board of directors that:
 - (a) Notice of the meeting called to consider the merger was mailed to each member entitled to vote upon the question;
 - (b) Such notice disclosed the purpose of the meeting and properly informed the membership that approval of the merger might be sought pursuant to this section; and
 - (c) A majority of the votes cast upon the question were in favor of the merger.
- (3) After agreement by the directors and approval by the members of the merging credit union, the president and secretary of the credit union shall execute a certificate of merger, which shall set forth all of the following:
 - (a) The time and place of the meeting of the board of directors at which the plan was agreed upon;
 - (b) The vote in favor of the adoption of the plan;
 - (c) A copy of the resolution or other action by which the plan was agreed upon;
 - (d) The time and place of the meeting of the members at which the plan agreed upon was approved; and
 - (e) The vote by which the plan was approved by the members.
- (4) Such certificate and a copy of the plan of merger agreed upon shall be forwarded to the ***commissioner***~~[executive director]~~, certified by him, and returned to both credit unions within thirty (30) days.
- (5) Upon return of the certificate from the ***commissioner***~~[executive director]~~, all property, property rights, and members' interest of the merged credit union shall vest in the surviving credit union without deed, endorsement or other instrument of transfer; and all debts, obligations and liabilities of the merged credit union shall be deemed to have been assumed by the surviving credit union under whose charter the merger was effected. The rights and privileges of the members of the merged credit union shall remain intact.
- (6) This section shall be construed, whenever possible, to permit a credit union organized under any other act to merge with one (1) incorporated under this subtitle, or to permit any credit union incorporated under this subtitle to merge with one (1) organized under any other act.

➔Section 745. KRS 286.6-715 is amended to read as follows:

- (1) A credit union incorporated under the laws of this state may be converted to a credit union organized under the laws of any other state or under the laws of the United States, subject to regulations issued by the ***commissioner***~~[executive director]~~.
- (2) A credit union organized under the laws of the United States or of any other state may convert to a credit union incorporated under the laws of this state. To effect such a conversion, a credit union must comply with all the requirements of the jurisdiction under which it was originally organized and the requirements of the ***commissioner***~~[executive director]~~ and file proof of such compliance with said ***commissioner***~~[executive director]~~.

➔Section 746. KRS 286.6-990 is amended to read as follows:

- (1) Any credit union that fails to make the report required by KRS 286.6-090, when notified, shall pay to the ***department***~~[office]~~ ten dollars (\$10) for each day of such failure, unless excused.
- (2) Any officer or any member of a committee who participates in the making of a loan to a nonmember shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) or imprisoned for not less than thirty (30) days nor more than six (6) months, or both.

➔Section 747. KRS 286.6-991 is amended to read as follows:

- (1) Violation of KRS 286.6-045 constitutes a misdemeanor punishable by a fine of not more than five hundred dollars (\$500), by imprisonment for not more than one (1) year, or both.

- (2) The ***commissioner***~~[executive director]~~ may petition a court of competent jurisdiction to enjoin a violation of KRS 286.6-045.

➔Section 748. KRS 286.7-410 is amended to read as follows:

As used in KRS 286.7-410 to 286.7-600, unless the context otherwise requires:

- (1) "***Commissioner***"~~[Executive director]~~ means the ***commissioner***~~[executive director]~~ of financial institutions;
- (2) "Certificate holder" means an industrial loan corporation organized under the provisions of KRS 286.7-410 to 286.7-600 to which a certificate, as defined in subsection (3) of this section, has been issued by the ***commissioner***~~[executive director]~~.
- (3) "Certificate" means a written instrument issued by the ***commissioner***~~[executive director]~~ authorizing the corporation therein named to do business under the provisions of KRS 286.7-410 to 286.7-600, except when used in the phrase "certificate of investment."

➔Section 749. KRS 286.7-420 is amended to read as follows:

- (1) Any five (5) or more persons may organize an industrial loan corporation in any city upon the terms and conditions and subject to the liabilities prescribed in KRS 286.7-410 to 286.7-600.
- (2) No person shall engage in the industrial loan business in this state other than in the corporate form as provided in KRS 286.7-410 to 286.7-600.
- (3) The name of the corporation shall not contain the words "bank" or "trust" or the phrase "loan association," nor shall these words be used in any printed or advertising matter to refer to the corporation. Such corporation need not use the word "incorporated" in addition to its corporate name, either in its place of business or on any printed matter or advertising matter. No certificate of incorporation of an applicant having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be approved by the ***commissioner***~~[executive director]~~, except to a corporation formed by reincorporation, reorganization, merger or consolidation of other corporations, or upon the sale of the property or license of a corporation.

➔Section 750. KRS 286.7-430 is amended to read as follows:

- (1) The capital stock of any such industrial loan corporation shall not be less than one hundred thousand dollars (\$100,000) if located in counties containing a city of the first or second class, or not less than fifty thousand dollars (\$50,000) if located in any other county. The amount of the capital stock shall be paid in full, and in money, before the corporation may transact any business other than that relating to its formation and organization.
- (2) At the time an industrial loan corporation applies for a certificate it shall file with the ***commissioner***~~[executive director]~~ a statement verified by its president and secretary showing its assets and liabilities, and the address at which it proposes to operate its business. A separate certificate shall be required for each place of business.
- (3) Each industrial loan corporation at the time of making application shall pay sixty dollars (\$60) to the ***commissioner***~~[executive director]~~ as a fee for investigating the application, and the additional sum of three hundred dollars (\$300) as an annual fee for the privilege of doing business for the period terminating on the succeeding January 15. If the application is filed after June 30 in any year, the payments shall be one hundred and fifty dollars (\$150) as a fee for the privilege of doing business in addition to the fee for investigation. The annual fee shall be paid for each place of business. In addition to the annual fee for the privilege of doing business, every corporation organized under the provisions of KRS 286.7-410 to 286.7-600 shall pay a fee for examinations by the ***Department***~~[Office]~~ of Financial Institutions, which fee shall be computed by the ***Department***~~[Office]~~ of Financial Institutions on the basis of fair compensation for time and actual expenses.

➔Section 751. KRS 286.7-440 is amended to read as follows:

- (1) Before delivering the articles of incorporation to the Secretary of State for recording, a copy of the articles shall be presented to the ***commissioner***~~[executive director]~~ for approval. Upon receipt of such articles, the ***commissioner***~~[executive director]~~ shall first determine whether or not the articles comply with the provisions of KRS 286.7-410 to 286.7-600 and, if ***the commissioner***~~[he]~~ so finds, he ***or she*** shall promptly notify the industrial loan companies in the locality in which the proposed office or offices are to be located, specifying a

time within which they may file objections. The ***commissioner***~~[executive director]~~ shall then inquire into the advisability of approving the application by investigating:

- (a) The moral character and financial responsibility of the incorporators and principals of the applicant.
- (b) The public necessity for such association in the community to be served; and
- (c) The reasonable probability of its usefulness and success. In so doing ***the commissioner***~~he~~ shall determine whether or not the industrial loan company can be established without undue injury to properly conducted existing industrial loan companies, in connection with which the incorporators and principals shall furnish such information as they may desire and as the ***commissioner***~~[executive director]~~ may require.

- (2) After allowing the specified time for the filing of objections, the ***commissioner***~~[executive director]~~ shall approve the application if he ***or she*** finds that the moral character and financial responsibility of the incorporators and principals are sound and such as to justify public confidence and to insure the reasonable probability of the success of the corporation, that the incorporators and principals have complied with the provisions of KRS 286.7-410 to 286.7-600, that the incorporation is advisable and, after investigation, there is reason to believe that no undue injury to properly conducted existing industrial loan companies will result. Unless the application, after investigation, meets all of the above requirements, the ***commissioner***~~[executive director]~~ shall disapprove it.

➔Section 752. KRS 286.7-450 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall upon approval issue a certificate of approval in triplicate, one (1) copy of which shall be delivered to the applicant and one (1) copy to the Secretary of State which shall constitute the authority of the Secretary of State to file and record the articles as provided in the general corporation law.
- (2) Upon the receipt of payment of fees and filing of the articles of incorporation by the Secretary of State, the ***commissioner***~~[executive director]~~ shall issue a certificate or certificates authorizing the corporation to operate an industrial loan business in this state at the places specified, such certificates to be in any form the ***commissioner***~~[executive director]~~ prescribes.
- (3) The ***commissioner***~~[executive director]~~ shall mail one (1) copy of the certificate to each office of the corporation and shall retain one (1) copy, which shall be filed in the office of the ***commissioner***~~[executive director]~~.
- (4) If the ***commissioner***~~[executive director]~~ does not approve the application, ***the commissioner***~~he~~ shall notify the applicant of the denial and return the sum paid by the applicant as a fee for the privilege of doing business, retaining the fifty-dollar (\$50) investigation fee.
- (5) The ***commissioner***~~[executive director]~~ shall approve or deny every application within sixty (60) days after the filing thereof with the fees paid, unless the time is extended by the ***commissioner***~~[executive director]~~ for good cause.
- (6) All findings of the ***commissioner***~~[executive director]~~, together with a summary of the evidence supporting them, shall be filed in the office of the ***commissioner***~~[executive director]~~ as public records.
- (7) The certificate or certificates issued to the corporation shall expire on the succeeding January 15, and shall be renewed only on compliance with the provisions of KRS 286.7-410 to 286.7-600.
- (8) Whenever the ***commissioner***~~[executive director]~~ denies any application for certificate under the provisions of KRS 286.7-410 to 286.7-600, ***the commissioner***~~he~~ shall promptly file in his office a written order to that effect, stating his ***or her*** findings with respect thereto and the reasons for his ***or her*** action. The ***commissioner***~~[executive director]~~ shall also promptly serve upon the applicant for a certificate a copy of the order. The applicant may request an administrative hearing to be conducted in accordance with KRS Chapter 13B. Any party aggrieved by a final order issued pursuant to a hearing authorized under this subsection may appeal to the Circuit Court of Franklin County in accordance with KRS Chapter 13B.
- (9) The corporation shall not conduct any industrial loan business until it receives a certificate from the ***commissioner***~~[executive director]~~ stating that it has fully complied with all the provisions of KRS 286.7-410 to 286.7-600, and that the requisite capital is in good faith subscribed and paid in cash.

➔Section 753. KRS 286.7-480 is amended to read as follows:

In addition to the charge permitted by KRS 286.7-410 to 286.7-600, no further amount shall be directly or indirectly charged, contracted for or received on any such installment loan, except lawful fees actually paid to a public official for filing, recording or releasing any instrument securing the loan, delinquency and deferral charges as set out in subsection (1) of KRS 286.7-500. Provided, however, that the certificate holder may request, as collateral for any loan, and collect premiums for:

- (1) Notwithstanding the provisions of this or any other law:
 - (a) A certificate holder may request a borrower to insure tangible personal property, except household goods, offered as security for a loan not exceeding seven thousand five hundred dollars (\$7,500) under KRS 286.7-410 to 286.7-600 against any substantial risk of loss, damage or destruction for any amount not to exceed the actual value of such property or the approximate amount of the loan, whichever is lesser, and for a term and upon conditions which are reasonable and appropriate considering the nature of the property and the maturity and other circumstances of the loan; provided, such insurance is sold by a licensed agent, broker or solicitor.
 - (b) A certificate holder may also request as security for any loan obligation insurance on the life of the borrower, or one of them if there are two or more. The initial amount of credit life insurance shall not exceed the total amount repayable under the contract of indebtedness and, where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Not more than one policy of life insurance may be written in connection with any loan transaction under KRS 286.7-410 to 286.7-600.
 - (c) In accepting any insurance provided for by KRS 286.7-410 to 286.7-600 as security for a loan the certificate holder, its officers, agents or employees may deduct the premiums or identifiable charge therefor from the proceeds of the loan, and remit such premiums to the insurance company writing such insurance and any gain or advantage to the certificate holder or any employee, officer, director, agent, affiliate or associate from such insurance or its sale, shall not be considered as additional or further charge in connection with any loan made under KRS 286.7-410 to 286.7-600. The arranging for and collecting of an identifiable charge shall not be deemed the sale of insurance.
 - (d) Every insurance policy or certificate written in connection with a loan transaction pursuant to paragraph (b) of this subsection shall provide for cancellation of coverage and a refund of the premium or identifiable charge unearned upon the discharge of the loan obligation for which such insurance is security without prejudice to any claim.
 - (e) Whenever insurance is written in connection with a loan transaction pursuant to KRS 286.7-410 to 286.7-600, the certificate holder shall deliver or cause to be delivered to the borrower a policy, certificate or other memorandum which shall show the coverages and the costs thereof, if any, to the borrower within thirty days from the date of the loan.
 - (f) All such insurance shall be written by a company authorized to conduct such business in this state and the certificate holder shall not require the purchase of such insurance from any agent or broker designated by the certificate holder nor shall the certificate holder decline existing coverages which equal or exceed the standards of KRS 286.7-410 to 286.7-600.
- (2) Insurance on real property pledged as security for a loan in an amount not to exceed the actual value of such property or the approximate amount of the loan whichever is lesser.
- (3) Accident and health insurance on not less than a fourteen-day retroactive basis, covering one borrower in aggregate amount not to exceed the approximate amount of the loan with each periodic indemnity payment not to exceed the original indebtedness divided by the number of periodic installments; all subject to the general provisions and limitations of KRS 286.7-410 to 286.7-600. Premium rates for accident and health insurance written pursuant to KRS 286.7-410 to 286.7-600 shall be reasonable in relation to benefits, and shall be filed with the ~~commissioner~~~~executive director~~ of insurance.

➔Section 754. KRS 286.7-520 is amended to read as follows:

- (1) KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 do not apply to loans made under authority of KRS 286.7-460 to 286.7-510, but KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 remain in full force and effect for all other purposes and nothing in this section or in KRS 286.7-480 to 286.7-510 shall be construed to impair

the validity or effect of KRS 286.3-215, 286.4-420, 286.4-620, and 360.010 with respect to loans other than those made pursuant to KRS 286.7-460 to 286.7-510.

- (2) Any contract of loan in the making or collection of which any act has been done which constitutes a willful violation of any provision of KRS 286.7-460 to 286.7-510 is void, and the corporation has no right to collect or receive any interest or charges whatsoever on such loan, but the unpaid principal of the loan shall be paid in full to the lending institution.
- (3) Those industrial loan corporations operating under KRS 286.7-410 to 286.7-600 that issue certificates of investment shall establish as a reserve against such certificates of investment an amount which shall not be less than five percent (5%) of the amount of such certificates of investment outstanding. In addition the **commissioner**~~executive director~~ shall have authority to require a blanket surety bond with an approved corporate surety which shall include fidelity coverage in an amount deemed adequate by the **commissioner**~~executive director~~ to protect holders of certificates of investment.
- (4) No corporation organized under KRS 286.7-410 to 286.7-600 shall deposit any of its funds with any bank or trust company unless such bank or trust company has been designated as such depository by a vote of the majority of the directors of the executive committee exclusive of any director who is an officer, director or trustee of the depository so designated. A corporation operating under KRS 286.7-410 to 286.7-600 may invest in the bonds of any federal instrumentality or bonds issued by the Commonwealth of Kentucky or any governmental subdivision thereof.
- (5) No corporation organized under KRS 286.7-410 to 286.7-600, nor any foreign industrial loan corporation nor any other person shall conduct its business in the same office in which there is conducted a petty loan business under Subtitle 4 of KRS Chapter 286, or solicit any other business, or associate or be in conjunction with any other business except upon a written authorization by the **commissioner**~~executive director~~.

➔Section 755. KRS 286.7-530 is amended to read as follows:

- (1) Every corporation organized under the provisions of KRS 286.7-410 to 286.7-600 shall report to and be subject to examination, supervision, and control by the **Department**~~Office~~ of Financial Institutions.
- (2) KRS 286.7-410 to 286.7-600 shall be enforced by the **commissioner**~~executive director~~, who may, after notice to holders of certificates and a hearing, promulgate regulations, referenced to the section or sections which set forth the legislative standards they interpret or apply, for the proper conduct of the business authorized under KRS 286.7-410 to 286.7-600.
- (3) On or before January 30 of each year, every industrial loan company shall file with the **commissioner**~~executive director~~ a report for the preceding calendar year. The report shall give information with respect to the financial condition of the industrial loan company, and other relevant information as the **commissioner**~~executive director~~ may reasonably require.

➔Section 756. KRS 286.7-535 is amended to read as follows:

In undertaking the examination of any industrial loan company, neither the Commonwealth of Kentucky, the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Financial Institutions, nor any examiner employed by the Commonwealth shall become liable to any depositor, investor or other obligor of said industrial loan company by reason of said examination or omission of such examination to fully and effectively disclose the financial condition of said industrial loan company, it being the policy of the Commonwealth of Kentucky that such examinations as are required by KRS 286.7-530 are for the purpose of determining compliance with state law and not for the purpose of protecting or guaranteeing the depositors, investors or other obligors of said industrial loan companies.

➔Section 757. KRS 286.7-540 is amended to read as follows:

No corporation organized under the provisions of KRS 286.7-410 to 286.7-600, nor any foreign corporation, nor any other person not authorized by other specific statutory provisions, shall engage in the business of making loans at a rate of interest in excess of the legal rate of interest prescribed in KRS 360.010 unless there is on file in the office of the **commissioner**~~executive director~~ a certificate issued by the **commissioner**~~executive director~~ authorizing the transaction of an industrial loan business under the provision of KRS 286.7-410 to 286.7-600.

➔Section 758. KRS 286.7-550 is amended to read as follows:

- (1) The **commissioner**~~executive director~~, for good cause and after an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B, may revoke and remove from **the department's**~~his~~ file, or suspend for thirty (30) days, any certificate issued under KRS 286.7-410 to 286.7-600 if **the commissioner**~~he~~ finds that:

- (a) The holder of the certificate has failed to pay his *or her* annual fee for the privilege of doing business;
 - (b) The certificate holder has violated any provision of KRS 286.7-410 to 286.7-600 or has failed to comply with any administrative regulation lawfully promulgated pursuant thereto;
 - (c) Any fact or condition then exists which clearly would have warranted the ~~commissioner~~~~executive director~~ in refusing to issue a certificate on an original application; or
 - (d) The certificate holder has failed to open an office for business within one hundred and twenty (120) days from the date the certificate is granted, or has failed to remain open for business for a period of one hundred and twenty (120) days, unless in each case good cause be shown.
- (2) The ~~commissioner~~~~executive director~~ may reinstate suspended certificates or issue new certificates to a certificate holder whose certificate has been revoked if no fact or condition then exists which clearly would have warranted him in refusing originally to issue such certificate under KRS 286.7-410 to 286.7-600.
 - (3) Any certificate holder may surrender any certificate by delivering it to the ~~commissioner~~~~executive director~~ together with written notice that he *or she* thereby surrenders the certificate.
 - (4) Any person whose certificate is revoked or suspended may appeal the final order by filing in the Franklin Circuit Court a petition for judicial review in accordance with KRS Chapter 13B.

➔Section 759. KRS 286.7-580 is amended to read as follows:

No foreign corporation may conduct an industrial loan business in this state without applying for and receiving a certificate from the ~~commissioner~~~~executive director~~ authorizing such business in this state. The issuance or denial of such certificate or certificates shall be governed by reasonable rules and regulations of the ~~department~~~~office~~ designed to assure that no foreign corporation shall be permitted to transact an industrial loan business in this state upon more favorable terms and conditions than would be permitted a domestic corporation.

➔Section 760. KRS 286.7-590 is amended to read as follows:

The privilege of the corporation to advertise to the public that it is under the supervision of the ~~Department~~~~Office~~ of Financial Institutions may be denied by the ~~commissioner~~~~executive director~~ at any time ~~the commissioner~~~~he~~ has reason to believe there is a violation of any of the provisions of KRS 286.7-410 to 286.7-600 or any rule or regulations promulgated thereunder.

➔Section 761. KRS 286.8-010 is amended to read as follows:

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

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with another person;
- (2) "~~Department~~~~Office~~" means the ~~Department~~~~Office~~ of Financial Institutions;
- (3) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the ~~department~~~~office~~;
- (4) "Applicant" means a person filing an application or renewal application for a license, registration, or claim of exemption under this subtitle;
- (5) "Borrower" means any person that seeks, applies for, or obtains a mortgage loan;
- (6) "Branch" or "branches" means any location other than the mortgage loan company's or mortgage loan broker's principal location where the mortgage loan company, mortgage loan broker, or its employees maintain a physical presence for the purpose of conducting business in the mortgage lending process, including the servicing of mortgage loans;
- (7) "Classroom" means a physical classroom environment in which teachers and participants are physically present for the teaching of a course. Courses taught through Internet, mail, or correspondence classes shall not be considered to be courses taught in a classroom;
- (8) "Clerical or support duties" means administrative functions such as gathering information, requesting information, word processing, sending correspondence, or assembling files, and may include:
 - (a) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; or

- (b) Any communication with a borrower to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include taking a residential mortgage loan application, offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms;
- (9) "Control" means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise;
- (10) "Control records" means all records relating to the operation of a branch that are necessary to exercise control and supervision over the branch;
- (11) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any pattern of residential mortgage fraud on a continuing basis;
- (12) "Depository institution" means a depository institution as defined in the Federal Deposit Insurance Act, 12 U.S.C. sec. 1813(c), and amendments thereto, and includes any credit union;
- (13) "Employ or use" means to employ, utilize, or contract with a person or the person's employees for the purpose of participating in the mortgage lending process, including the servicing of mortgage loans;
- (14) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild;
- (15) "Licensee" means a person to whom a license has been issued;
- (16) "Managing principal" means a natural person who meets the requirements of KRS 286.8-032(6) and who agrees to actively participate in and be primarily responsible for the operations of a licensed mortgage loan broker;
- (17) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including the solicitation, application, origination, negotiation of terms, processing, underwriting, signing, closing, and funding of a mortgage loan and the services provided incident to a mortgage loan, including the appraisal of the residential real property. Documents involved in the mortgage lending process include but are not limited to:
 - (a) Uniform residential loan applications or other loan applications;
 - (b) Appraisal reports;
 - (c) Settlement statements;
 - (d) Supporting personal documentation for loan applications, including:
 - 1. Form W-2 or other earnings or income statements;
 - 2. Verifications of rent, income, and employment;
 - 3. Bank statements;
 - 4. Tax returns; and
 - 5. Payroll stubs;
 - (e) Any required mortgage-related disclosures; and
 - (f) Any other document required as a part of, or necessary to, the mortgage lending process;
- (18) "Mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on residential real property or any loan primarily for personal, family, or household use that is secured by collateral that has a mortgage lien interest in residential real property;
- (19) "Mortgage loan broker" means any person who for compensation or gain, or in the expectation of compensation or other gain, received directly or indirectly, serves as an agent for any borrower in an attempt to obtain a mortgage loan, or holds oneself out as being able to do so;
- (20) "Mortgage loan company" means any person who directly or indirectly:
 - (a) Makes, purchases, or sells mortgage loans, or holds oneself out as being able to do so; or
 - (b) Services mortgage loans, or holds oneself out as being able to do so;

- (21) "Mortgage loan originator" means a natural person who, in exchange for compensation or gain or in the expectation of compensation or gain:
- (a) Performs any one (1) or more of the following acts in the mortgage lending process:
 - 1. Solicits, places, negotiates, or offers to make a mortgage loan;
 - 2. Obtains personal and financial information from a borrower or prospective borrower;
 - 3. Assists a borrower or prospective borrower with the preparation of a mortgage loan or related documents;
 - 4. Explains, recommends, discusses, negotiates, or quotes rates, terms, and conditions of a mortgage loan with a borrower or prospective borrower, whether or not the borrower or prospective borrower makes or completes an application;
 - 5. Explains any term or aspect of any disclosure or agreement given at or after the time a mortgage loan application is received; or
 - 6. Takes a residential mortgage loan application; or
 - (b) Is an independent contractor engaging in the mortgage lending process as a mortgage loan processor;
- (22) "Mortgage loan processor" means a natural person who performs only clerical or support duties at the direction of and subject to the supervision and instruction of a mortgage loan originator;
- (23) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators;
- (24) "Originate" means to solicit, place, negotiate, offer to make, or broker a mortgage loan;
- (25) "Pattern of residential mortgage fraud" means residential mortgage fraud that involves two (2) or more mortgage loans that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics;
- (26) "Person" means a natural person, or any type or form of corporation, company, partnership, proprietorship, or association;
- (27) "Physical location" means any location where the mortgage lending process, including the servicing of mortgage loans, is conducted;
- (28) "Record" means any books of account or other books, papers, journals, ledgers, statements, instruments, documents, files, messages, writings, correspondence, or other internal data or information, made or received in the regular course of business or otherwise, regardless of the mode in which it is recorded;
- (29) "Registrant" means a person to whom a certificate of registration has been issued;
- (30) "Residential mortgage loan application" means the submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan;
- (31) "Residential real property" means a dwelling as defined in the Federal Truth in Lending Act, 15 U.S.C. sec. 1602(v), or any real property upon which is constructed or intended to be constructed a dwelling as so defined;
- (32) "Service" or "servicing" means:
- (a) Receiving any scheduled periodic mortgage loan payments from a borrower, including amounts for escrow accounts or other fees or obligations related to the mortgage loan, and making or crediting the payments to the mortgage loan account, owner of the loan, or a third party assigned to receive said payments;
 - (b) Maintaining accountings of principal, interest, and other accounts associated with the servicing of mortgage loans and responding to borrower inquiries regarding the status of these loans or accounts;
 - (c) Initiating, supervising, or conducting foreclosure proceedings and property dispositions in the case of default, except this shall not include licensed attorneys representing clients in such matters; or

- (d) In the case of a home equity conversion mortgage or reverse mortgage, making payments to the borrower;
- (33) "Takes a residential mortgage loan application" means:
 - (a) Recording the borrower's application information in any form for use in a credit decision; or
 - (b) Receiving the borrower's application information in any form for use in a credit decision;
- (34) "Transact business in Kentucky" or "transacting business in Kentucky" means to participate in any meaningful way in the mortgage lending process, including the servicing of mortgage loans, with respect to any residential real property located in Kentucky;
- (35) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry; and
- (36) "Wholly owned subsidiary" means a subsidiary that is entirely owned or controlled by another person.

➔Section 762. KRS 286.8-012 is amended to read as follows:

Any party aggrieved by any decision of the ~~commissioner~~~~executive director~~ under the provisions of KRS 286.8-020 or 286.8-100 may request an administrative hearing which shall be conducted in accordance with KRS Chapter 13B.

➔Section 763. KRS 286.8-020 is amended to read as follows:

- (1) The following mortgage loan companies and mortgage loan brokers shall be subject to KRS 286.8-046, 286.8-180, 286.8-220(1), and subsections (12), (13), and (14) of this section, but shall be exempt from all other provisions of this subtitle:
 - (a) Any person duly licensed, chartered, and otherwise subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency under the laws of this state or any other state or the United States as a bank, bank holding company, trust company, credit union, savings and loan association, savings and loan association holding company, service corporation subsidiary of a savings and loan association, insurance company, real estate investment trust as defined in 26 U.S.C. sec. 856, an institution of the farm credit system organized under the Farm Credit Act of 1971 as amended, or any wholly owned subsidiary of any such person if the subsidiary is subject to regular examination at least once every two (2) years by a state or federal financial institution regulatory agency;
 - (b) Any natural person who makes a mortgage loan secured by a dwelling that served as the natural person's residence, unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) Any natural person who makes a mortgage loan to an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (d) The United States of America; the Commonwealth of Kentucky; any other state, district, territory, commonwealth, or possession of the United States of America; any city, county, or other political subdivision; and any agency, division, or corporate instrumentality of any of the foregoing;
 - (e) The Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Government National Mortgage Association (GNMA);
 - (f) Any mortgage loan company or mortgage loan broker making or brokering a mortgage loan involving housing initially transferred by certificate of title under KRS Chapter 186A;
 - (g) A consumer loan or finance company or an industrial loan company licensed under Subtitle 4 or 7 of this chapter whose primary business is originating consumer or industrial loans as provided under Subtitle 4 or 7 of this chapter or any wholly owned subsidiary of such a consumer loan or finance company or an industrial loan company, except that they shall be subject to the prohibited acts of KRS 286.8-220(2)(e) and (f) and 286.8-110(4); and

- (h) A nonprofit organization that is recognized as tax-exempt under 26 U.S.C. sec. 501(c)(3) and authorized to do business in this Commonwealth, and that has affordable housing as a primary purpose in its operations.
- (2) The following shall be exempt from the licensing provisions of this subtitle and the examination provisions of KRS 286.8-170 and 286.8-180, unless it appears on grounds satisfactory to the **commissioner**~~executive director~~ that an examination is necessary, but shall otherwise be subject to all other provisions of this subtitle:
 - (a) A mortgage loan company or mortgage loan broker approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth; and
 - (b) Any branch of a mortgage loan company or mortgage loan broker listed in paragraph (a) of this subsection, provided the branch is approved and regulated by the United States Department of Housing and Urban Development to perform business in this Commonwealth.
- (3) Any nonprofit organization, mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (1)(h) or (2)(a) or (b) of this section shall file with the **commissioner**~~executive director~~ a written application for a claim of exemption. The **commissioner**~~executive director~~ shall approve an application for an exemption that is timely filed and meets the requirements of this subtitle. The period of exemption shall be from January 1 through December 31, and the exemption shall expire on December 31 of the same calendar year. Every person granted an exemption under this section shall file a written application for a new exemption on an annual basis. The application shall be received by the **commissioner**~~executive director~~ on or before December 31 of the same calendar year. A written application for a partial-year exemption shall also expire on December 31 of the same calendar year that the written application for an exemption is granted.
- (4) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall fund or broker a minimum of twelve (12) Federal Housing Administration-insured loans on Kentucky residential real properties each year in order to maintain its exemption.
- (5) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section who ceases to be approved or regulated by the Department of Housing and Urban Development shall notify the **commissioner**~~executive director~~, in writing, within ten (10) days after it ceases to be regulated by the United States Department of Housing and Urban Development.
- (6) Any person listed in subsection (1)(a), (b), (c), (d), (e), (f), or (g) of this section shall not be required to file with the **commissioner**~~executive director~~ a claim of exemption.
- (7) (a) Any natural person making a loan under subsection (10) of this section shall make the following disclosure, on a separate sheet of paper in minimum eighteen (18) point type, to the borrower:

DISCLOSURE

(Name and address of lender) is not licensed or regulated by the Kentucky **Department**~~Office~~ of Financial Institutions.

(Name of lender) is making this mortgage loan with his or her own funds, for the person's own investment, without intent to resell the mortgage loan.

(The phone number and address of the Kentucky **Department**~~Office~~ of Financial Institutions.)

- (b) A copy of the disclosure, signed by the borrower, shall be maintained by the natural person for a period not to exceed three (3) years after the date the mortgage loan is paid in full.
- (8) Any mortgage loan company, mortgage loan broker, or branch thereof relying upon an exemption under subsection (2)(a) or (b) of this section shall provide a list of funded or brokered Federal Housing Administration-insured loans from December 1 of the previous calendar year to November 30 of the current calendar year to the **commissioner**~~executive director~~ by December 31 of each year on a form prescribed by the **commissioner**~~executive director~~.
- (9) Any mortgage loan company, mortgage loan broker, or branch thereof applying for an exemption under subsection (2)(a) or (b) of this section shall not be approved for an exemption under subsection (2)(a) or (b) of this section unless the mortgage loan company, mortgage loan broker, or branch thereof has:

- (a) Held a mortgage loan company or mortgage loan broker license or registration for five (5) consecutive years prior to the filing of the application for an exemption under this section with the ***commissioner***~~[executive director]~~; or
 - (b) Been approved and regulated by the United States Housing and Urban Development to conduct business in the mortgage lending process for five (5) consecutive years prior to the filing of the application for an exemption under this section with the ***commissioner***~~[executive director]~~.
- (10) Any natural person not exempted in subsection (1)(b) or (c) of this section who makes a mortgage loan with his or her own funds for the person's investment without the intent to resell the mortgage loan shall be exempt from the provisions of this subtitle except for the following:
- (a) Examination provisions of KRS 286.8-170 and 286.8-180 when it appears on grounds satisfactory to the ***commissioner***~~[executive director]~~ that an examination is necessary;
 - (b) Disclosure requirements of subsection (7) of this section;
 - (c) Any investigation and enforcement provisions of this subtitle including KRS 286.8-170(6), and KRS 286.8-046, 286.8-090, 286.8-190, and 286.8-990;
 - (d) Prohibited acts under KRS 286.8-125 and 286.8-220; and
 - (e) Registration and regulatory requirements of KRS 286.8-255.
- (11) No person shall hold both a claim of exemption and a license granted under this subtitle.
- (12) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker shall make available and grant access to the ***commissioner***~~[executive director]~~ or an examiner of the ***commissioner***~~[executive director]~~ the records in its possession or control that are subject to the provisions of this subtitle.
- (13) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan company or mortgage loan broker shall impede the ***commissioner***~~[executive director]~~ or an examiner of the ***commissioner***~~[executive director]~~ from interviewing any person regarding any potential violations of this subtitle.
- (14) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan company and mortgage loan broker that employs or utilizes the direct services of a mortgage loan originator subject to the registration and regulatory requirements of KRS 286.8-255 shall complete and timely submit to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, along with any other information which may be required by the ***commissioner***~~[executive director]~~.

➔Section 764. KRS 286.8-030 is amended to read as follows:

- (1) (a) It is unlawful for any person to transact business in Kentucky, either directly or indirectly, as a mortgage loan company or mortgage loan broker if the mortgage loan company or mortgage loan broker is not licensed in accordance with the requirements of this subtitle, unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3) has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the ***commissioner***~~[executive director]~~.
- (b) It is unlawful for any natural person to make a loan under KRS 286.8-020(10) without making the disclosure required by KRS 286.8-020(7).
- (c) It is unlawful for any natural person to transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor, unless otherwise exempted, if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255.
- (d) It is unlawful for any mortgage loan company or mortgage loan broker to employ or use a mortgage loan originator or a mortgage loan processor if the mortgage loan originator or mortgage loan processor is not registered in accordance with KRS 286.8-255 or otherwise exempted.
- (e) It is unlawful for any mortgage loan company to employ or use, with or without compensation, a mortgage loan broker if the mortgage loan broker is not licensed in accordance with the requirements of this subtitle unless that person is exempt under KRS 286.8-020 and, if required by KRS 286.8-020(3),

has timely filed a completed application for a claim of exemption, and the filed application for a claim of exemption has been approved by the **commissioner**~~[executive director]~~.

- (2) Neither the fact that a license or certificate of registration has been issued nor the fact that any person, business, or company is effectively registered or licensed, constitutes a finding by the **commissioner**~~[executive director]~~ that any document filed under this subtitle is true, complete, and not misleading. Nor does such fact directly or indirectly imply approval of the registrant or licensee by the **commissioner**~~[executive director]~~ or the Commonwealth of Kentucky. It is unlawful to make or cause to be made to any prospective customer or client any representation inconsistent with this subsection.
- (3) Any mortgage loan company or mortgage loan broker who willfully transacts business in Kentucky in violation of subsection (1) of this section shall have no right to collect, receive, or retain any interest or charges whatsoever on a loan contract, but the unpaid principal of the loan shall be paid in full.
- (4) Each solicited, attempted, or closed loan shall constitute a separate violation of this section.
- (5) The unique identifier, name, and signature of any person originating a mortgage loan shall be clearly shown on the mortgage loan application. It shall be unlawful to make or cause to be made any representations on a mortgage loan application that are inconsistent with this subsection. The unique identifier shall also be displayed on solicitations or advertisements, including business cards or Web sites, of all persons holding themselves out as being able to originate mortgage loans in Kentucky, and any other document as established by rule, regulation, or order of the **commissioner**~~[executive director]~~.

➔Section 765. KRS 286.8-032 is amended to read as follows:

- (1) A license as a mortgage loan company or a mortgage loan broker may be obtained by filing a written application with the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ may require the electronic filing of the application and fees with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities, as part of the nationwide mortgage licensing system, and consistent with the intent found in KRS 286.8-285.
- (2) The application shall:
 - (a) Be sworn to;
 - (b) State the name of the applicant and each of the applicant's affiliates and operating subsidiaries engaged in business as a mortgage loan company or a mortgage loan broker;
 - (c) State the name under which the applicant will conduct business in Kentucky;
 - (d) State the physical address of the applicant's principal office and branch or branches;
 - (e) List the name, residence, and business address of each person having an interest in the business as principal, partner, officer, trustee, and director, specifying the capacity and title of each;
 - (f) Indicate the general plan and character of the business;
 - (g) Contain a corporate surety bond or other instrument as prescribed by KRS 286.8-060;
 - (h) If applying for a mortgage loan broker license, contain a compiled financial statement of the applicant; or, if applying for a mortgage loan company license, contain a reviewed or audited financial statement of the applicant prepared by a licensed or certified public accountant;
 - (i) Include payment of the required fees; and
 - (j) Include such other information as the **commissioner**~~[executive director]~~ determines necessary.
- (3) No mortgage loan company license may be granted unless the applicant:
 - (a) Has and maintains, so long as the license is in effect, a minimum, documented funding source of one million dollars (\$1,000,000);
 - (b) Has a net worth in excess of one million dollars (\$1,000,000); or
 - (c) Has and maintains a net worth in excess of one hundred thousand dollars (\$100,000) and certifies to the **commissioner**~~[executive director]~~ that the company will not make or purchase loans secured by mortgages on residential real property located in Kentucky so long as the license is in effect.

- (4) A license issued to a mortgage loan company or a mortgage loan broker shall entitle all officers and employees of the person, if a corporation, and all members, partners, trustees, and employees, if an association, partnership, natural person, or trust, to engage in the mortgage loan business pursuant to this subtitle, subject to the applicable requirements of this subtitle.
- (5) If a licensee desires to establish a branch, the licensee shall file an application with the **commissioner**~~executive director~~ that includes the physical location and telephone number of the branch, the name of the prospective manager, the anticipated opening date, and any other information requested by the **commissioner**~~executive director~~.
- (6) Each applicant for a mortgage loan broker license shall have at least one (1) managing principal at all times. This managing principal shall provide the **commissioner**~~executive director~~ sufficient proof of a minimum of two (2) years' experience working in the mortgage industry. The **commissioner**~~executive director~~ shall determine from the application whether an applicant has sufficient experience to meet this requirement. Each mortgage loan broker shall obtain written approval from the **commissioner**~~executive director~~ prior to a change of managing principal.
- (7) All applicants for a mortgage loan broker license shall have successfully completed an educational training course, approved by the **department**~~office~~, of not less than thirty (30) classroom hours' duration. Applicants who have held a mortgage loan broker license for at least one (1) year in the past five (5) years shall be exempt from this requirement. This section shall not apply to renewals of existing licenses. Approval of an applicant for a mortgage loan broker license under this subsection shall be conditioned on the applicant establishing that the district, state, or territory from which the applicant applies, resides, or performs the primary portion of his or her mortgage business has rules, regulations, or other provisions which by reciprocity or comity are at least equivalent to this subsection.
- (8) The application for a mortgage loan broker and mortgage loan company license shall state:
 - (a) The address of the physical location where the business is to be located in compliance with KRS 286.8-250 and whether such location is a residence. The physical location where the mortgage lending process is conducted shall have a street address. A post office box or similar designation shall not meet the requirements of this subsection. The physical location shall be accessible to the general public as a place of business, unless the physical location is a residence and proof of residence has been submitted as required by this section. Photographs of the exterior, interior, and exterior sign of each location shall accompany the application. If the physical location is not a residence and is leased, the lease shall be for a minimum term of one (1) year. A copy of the lease and the names of all employees conducting business under the lease shall accompany the application. If the physical location is a residence, proof that the location is a residence, in a form as required by the **commissioner**~~executive director~~, shall accompany the application. Proof of residence shall confirm that the residence is owned or leased by the mortgage loan broker, mortgage loan company, or its employees or owners and that the residence is the main residence of any such persons. Proof of physical location shall include proof that local zoning requirements are satisfied.
 - (b) A mortgage loan company or mortgage loan broker shall notify the **commissioner**~~executive director~~ of a change in the location or name of its business or the addition of any branch or branches in writing at least ten (10) days prior to the change.
- (9) On or after January 1, 2009, every mortgage loan company and mortgage loan broker shall maintain an agent for service of process in the Commonwealth. The name, address, telephone number, and electronic mail address of the agent for service of process shall be filed with the application. The **commissioner**~~executive director~~ shall be notified in writing at least five (5) days prior to any change in the status of an agent for service of process.
- (10) The **commissioner**~~executive director~~ may deem an application abandoned when an applicant fails to provide or respond to a request for additional information.

➔Section 766. KRS 286.8-034 is amended to read as follows:
- (1) An applicant for a license under this subtitle shall provide the **commissioner**~~executive director~~ with separate checks payable to the Kentucky State Treasurer for:
 - (a) An investigation fee of three hundred dollars (\$300) for the principal office and one hundred fifty dollars (\$150) for each branch office; and

- (b) A license fee of four hundred fifty dollars (\$450) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky if the applicant applies for a license on or between November 1 and June 30 of the following calendar year or of one hundred fifty dollars (\$150) for the principal office and one hundred dollars (\$100) for each branch if the applicant applies for a license on or between July 1 and October 31 of the same calendar year.
- (2) A license issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A license issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year.
- (3) A license may be renewed by paying the annual renewal license fee which is three hundred fifty dollars (\$350) for the principal office and two hundred fifty dollars (\$250) for each branch originating mortgages on residential real properties located in Kentucky, submitting to the Nationwide Mortgage Licensing System and Registry an annual report of condition, which shall be in such form and contain such information as the Nationwide Mortgage Licensing System and Registry may require, and submitting to the ~~commissioner~~~~executive director~~ any other information required by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ shall not approve the renewal of a mortgage loan broker's license if the ~~commissioner~~~~executive director~~ has not received the information on physical location as required in KRS 286.8-032(8).
- (4) The application, fees, and any required information shall be received by the ~~commissioner~~~~executive director~~ on or before November 30 prior to the December 31 expiration date. The ~~commissioner~~~~executive director~~ may reinstate the license within thirty-one (31) days of the expiration of the license if the licensee pays the filing fee and a reinstatement fee of two hundred fifty dollars (\$250). A license shall not be reinstated when the application, fees, or any required information is received on or after February 1 of the following year that the renewal application was due.
- (5) The ~~commissioner~~~~executive director~~ shall provide a licensee with a duplicate copy of any license upon a satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.

➔Section 767. KRS 286.8-036 is amended to read as follows:

- (1) Each license issued under this subtitle shall state the address or addresses at which business is to be conducted, the name of the licensee, and the date and place of its incorporation, if applicable.
- (2) A licensee shall post a copy of such license in a conspicuous place in the office to which it pertains.
- (3) A license may not be transferred or assigned without the prior written approval of the ~~commissioner~~~~executive director~~.
- (4) No licensee shall transact the business provided for by this subtitle under any other name or maintain an office at any location other than that designated in the license.
- (5) Every licensed mortgage loan company or mortgage loan broker shall notify the ~~commissioner~~~~executive director~~, in writing, within ten (10) days of the closing of any licensed office or registered Kentucky branch.

➔Section 768. KRS 286.8-044 is amended to read as follows:

- (1) Notice of entry of any order of suspension or denial of a license, registration, or claim of exemption to any applicant, registrant, or licensee shall be given in writing and served personally or sent by certified mail to the last known address of the person affected. The affected person, upon timely written request to the ~~commissioner~~~~executive director~~, shall be entitled to a hearing in accordance with the provisions of KRS Chapter 13B; but if no written request is received within twenty (20) days of service of the notice, the ~~commissioner~~~~executive director~~ shall enter a final order suspending or denying the license or registration.
- (2) The ~~commissioner~~~~executive director~~ may file an administrative complaint against any person if it appears on grounds satisfactory to the ~~commissioner~~~~executive director~~ that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.8-046, 286.8-090, and 286.8-990. The ~~commissioner~~~~executive director~~ shall serve the administrative complaint by certified mail or personal delivery to the last known address of the person named in the complaint. The person named in the administrative complaint shall be entitled to a hearing, but only upon timely receipt of a written answer and request for a hearing within twenty (20) days of the service or hand delivery of the administrative complaint. If

timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If a written answer and request for hearing are not made within twenty (20) days of service or delivery of the complaint, the **commissioner**~~{executive director}~~ shall enter a final order granting the relief requested in the complaint.

(3) Service by certified mail shall be complete upon the earlier of the following:

- (a) The date on which the person receives the mail;
- (b) The date on which the agency receives the return receipt; or
- (c) The date on which the agency receives notice that the mail has been returned undelivered.

➔Section 769. KRS 286.8-046 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may levy a civil penalty against any person who violates any provision of or any administrative regulation promulgated under this subtitle or order issued by the **commissioner**~~{executive director}~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than twenty-five thousand dollars (\$25,000) per violation, plus the state's costs and expenses for the examination, investigation, and prosecution of the matter, including reasonable attorney's fees and court costs.
- (2) The **commissioner**~~{executive director}~~ may order restitution, refund, recovery of expenses, or direct such other affirmative action as the **commissioner**~~{executive director}~~ deems necessary against any person who violates any order issued by the **commissioner**~~{executive director}~~ or any provision of, or administrative regulation promulgated under, this subtitle.

➔Section 770. KRS 286.8-048 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may enter an emergency order suspending, limiting, or restricting the license, claim of exemption, or registration of any mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor without notice or hearing if it appears upon grounds satisfactory to the **commissioner**~~{executive director}~~ that the mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has engaged or is engaging in unsafe, unsound, and illegal practices that pose an imminent threat to the public interest.
- (2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that:
 - (a) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;
 - (b) The mortgage loan broker or mortgage loan company is in such financial condition that it cannot continue in business with safety to its customers;
 - (c) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;
 - (d) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business in the mortgage lending process, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;
 - (e) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has made or caused to be made to the **commissioner**~~{executive director}~~ any false representation of material fact, has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the **commissioner**~~{executive director}~~;
 - (f) The mortgage loan broker, mortgage loan company, mortgage loan originator, or mortgage loan processor has had any license, registration, or claim of exemption related to the financial services

industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or

- (g) The surety bond required under KRS 286.8-060 has terminated, expired, or no longer remains in effect.
- (3) An emergency order issued under this section becomes effective when signed by the **commissioner**~~[executive director]~~. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the party or parties. The order shall be deemed served upon delivery or upon return of the order.
- (4) A party aggrieved by an emergency order issued by the **commissioner**~~[executive director]~~ under this section may request an emergency hearing. The request for hearing shall be filed with the **commissioner**~~[executive director]~~ within twenty (20) days of service of the emergency order.
- (5) Upon receipt of a written request for emergency hearing, the **commissioner**~~[executive director]~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.
- (6) An emergency order issued under this section shall remain in effect until it is withdrawn or superseded by an order of the **commissioner**~~[executive director]~~ or until it is terminated by a court order.

➔Section 771. KRS 286.8-060 is amended to read as follows:

- (1) Except as otherwise provided in this section, each mortgage loan company, mortgage loan broker, and mortgage loan originator shall post or be covered by a surety bond for the entire licensure or registration period in an amount prescribed by the **commissioner**~~[executive director]~~, but in no event shall the bond be less than two hundred fifty thousand dollars (\$250,000) for mortgage loan companies and fifty thousand dollars (\$50,000) for mortgage loan brokers.
- (2) Every bond shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.
- (3) The bond shall be in a form prescribed by the **commissioner**~~[executive director]~~ and shall be made payable to the **commissioner**~~[executive director]~~. The terms of the bond shall provide that it may not be terminated without thirty (30) days prior written notice to the **commissioner**~~[executive director]~~.
- (4) Every bond shall be available for the recovery of expenses, fines, restitution, and fees levied by the **commissioner**~~[executive director]~~ under this subtitle, and for losses or damages that have been incurred by any borrower or consumer as a result of the registrant's or licensee's failure to comply with the requirements of this subtitle.
- (5) Every bond shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.
- (6) If the **commissioner**~~[executive director]~~ or the **commissioner's**~~[executive director's]~~ representative shall at any time reasonably determine that the bond or securities aforesaid are insecure, deficient in amount, or exhausted in whole or part, he may by written order require the filing of a new or supplemental bond or the deposit of new or additional securities in order to secure compliance with this subtitle, the order to be complied with within thirty (30) days following service thereof upon the registrant or licensee.

➔Section 772. KRS 286.8-070 is amended to read as follows:

- (1) The use of the words "certified" or "licensed" or any form thereof separately or in any combination thereof with other words or syllables, is prohibited as part of the name of a mortgage loan company or a mortgage loan broker. No license of a proposed mortgage loan company or a mortgage loan broker having the same name as a corporation authorized to do business under the laws of this state or a name so nearly resembling it as to be calculated to deceive shall be issued by the **commissioner**~~[executive director]~~.
- (2) No person, unless lawfully authorized to do business in this state under the provisions of this subtitle, and actually engaged in carrying on a mortgage loan or loan broker business, shall do business under any name or title which contains the terms "mortgage company," "mortgage loan company," "mortgage loan broker," "loan broker," "financial broker," or any combination employing the words "mortgage," "loan," or "broker," with one (1) or more of the words "association," "institution," "society," "company," "corporation," or words of similar

import, or use any name or represent in any manner which indicates or reasonably implies that his or its business is that of a mortgage loan company or mortgage loan broker as defined by KRS 286.8-010.

- (3) A mortgage loan company or mortgage loan broker required to have a license under this subtitle shall not use the words "bank," "trust," "national," or "federal," or any form thereof separately or in combination thereof with other words or syllables as a part of its name or to otherwise identify itself.

➔Section 773. KRS 286.8-075 is amended to read as follows:

- (1) As used in this section, "change of control" means:
 - (a) A transfer of voting stock which results in giving a person, directly or indirectly, the power to direct the management and policy of a mortgage loan company or mortgage loan broker; or
 - (b) A transfer of at least ten percent (10%) of the outstanding voting stock of a mortgage loan company or a mortgage loan broker.
- (2) A transfer of voting stock of a mortgage loan company or mortgage loan broker which constitutes a change of control shall be approved in writing by the **commissioner**~~[executive director]~~, prior to the transfer.
- (3) The owner, president, chief executive officer or a partner shall apply to the **commissioner**~~[executive director]~~ for approval of a transfer of voting stock in his mortgage loan company or mortgage loan broker which constitutes a change of control. The application must contain information which shows that the requirements of this subtitle for obtaining a license will be satisfied after the change of control.

➔Section 774. KRS 286.8-080 is amended to read as follows:

Upon receipt of the application the **commissioner**~~[executive director]~~ shall first determine whether or not it complies with the provisions of this subtitle and, if **the commissioner**~~he~~ so finds, he **or she** shall then inquire into the advisability of approving the application by determining whether the applicant demonstrates such financial responsibility, financial condition, and business expertise, character and general fitness to reasonably warrant the belief that the applicant's business will be conducted honestly, fairly and efficiently and in such a way as to justify public confidence. The **commissioner**~~[executive director]~~ may investigate and consider the qualifications of officers and directors or principals of an applicant in determining whether this qualification has been met. If the **commissioner**~~[executive director]~~ finds that the applicant meets all the above requirements, he shall approve the application.

➔Section 775. KRS 286.8-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend; revoke; place on probation; condition; refuse to issue or renew a license, registration, or exemption; or accept surrender of a license, registration, or exemption in lieu of revocation or suspension; or issue a cease and desist order if the **commissioner**~~[executive director]~~ finds that the person, applicant, licensee, or registrant:
 - (a) Does not meet, no longer meets, or has failed to comply with the requirements of this subtitle;
 - (b) Is unfit through lack of financial responsibility or experience to conduct the business of a mortgage loan company or mortgage loan broker, as the case may be;
 - (c) Does not conduct his business in accordance with the law or the method of business includes or would include activities which are illegal where performed;
 - (d) Collects interest at a usurious rate;
 - (e) Is in such financial condition that he cannot continue in business with safety to his customers;
 - (f) Is guilty of fraud in connection with any transaction governed by this subtitle, or is the subject of an administrative cease and desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act;
 - (g) Has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the mortgage lending process, or has engaged in a course of business that has worked or tended to work a fraud upon any person or would so operate;
 - (h) Has made or caused to be made to the **commissioner**~~[executive director]~~ any false representation of material fact or has suppressed or withheld from the **commissioner**~~[executive director]~~ any information that the person possesses and which, if submitted to the **commissioner**~~[executive director]~~, would have

rendered the person ineligible to be licensed, registered, or exempted from licensing or registration under this subtitle;

- (i) Has failed to account to persons interest for all funds received for the escrow account required under KRS 286.8-130;
 - (j) Has refused to permit an examination or investigation by the ~~commissioner~~~~executive director~~ of his books and affairs or has refused or failed, within a reasonable time, to furnish any information or make any report that may be required by the ~~commissioner~~~~executive director~~ under the provisions of this subtitle;
 - (k) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty, or any felony, or has pending against him any felony charge;
 - (l) Has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action;
 - (m) Has employed or contracted with a person who has failed to register or has had a license or registration denied, revoked, or suspended in this Commonwealth or another state;
 - (n) Has demonstrated incompetence or untrustworthiness to act as a licensee or registrant or to continue a claim of exemption granted by application under this subtitle;
 - (o) Has failed to pay any required fee under this subtitle;
 - (p) Has abandoned an application by failing to provide the ~~commissioner~~~~executive director~~ any information required under this subtitle, or requested by the ~~commissioner~~~~executive director~~, to complete an application;
 - (q) Has influenced, or attempted to influence through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal sought in connection with a mortgage loan;
 - (r) Has failed to comply with an administrative or court order imposing child support obligations;
 - (s) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
 - (t) Has improperly used notes or other resources to complete an examination for a license or registration;
 - (u) Has violated any provision of KRS 360.100; or
 - (v) Has violated any provision of this subtitle, administrative regulation promulgated hereunder, or order issued by the ~~commissioner~~~~executive director~~.
- (2) Any person whose license, registration, or claim of exemption has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a registrant or licensee under this subtitle and from engaging in any business activity on the premises where a licensee or registrant under this subtitle is conducting its business.
- (3) The ~~commissioner~~~~executive director~~ shall execute a written order whenever a license, registration, or claim of exemption issued pursuant to this subtitle is suspended or revoked. The ~~commissioner~~~~executive director~~ shall serve the written order upon the licensee, registrant, or person claiming the exemption. The written order shall be sent by certified mail, return receipt requested, postage prepaid, to the last known principal business address of such licensee, registrant, or person claiming the exemption, as set forth in the records of the ~~commissioner~~~~executive director~~. The written order shall be deemed to have been received by the licensee, registrant, or person claiming the exemption three (3) business days following the mailing thereof.
- (4) Any person who continues to participate in any business activity covered by this subtitle after such person's license, registration, or claim of exemption has been revoked, suspended, or denied shall be subject to the penalties in this section, KRS 286.8-046, and KRS 286.8-990 and shall be in violation of KRS 367.170.

- (5) Any person who has had a license, registration, or claim of exemption denied by the ***commissioner***~~[executive director]~~ shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of one (1) year from the date of denial.
- (6) Any person who has had a license, registration, or claim of exemption revoked by the ***commissioner***~~[executive director]~~ shall not be eligible to apply for a license, registration, or claim of exemption under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license, registration, or claim of exemption has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license, registration, or claim of exemption under this subtitle.
- (7) The provisions of this section shall be in addition to any other penalties or remedies available, including the penalties of KRS 286.8-046.
- (8) The ***commissioner***~~[executive director]~~ may notify the Department of Revenue which may institute an action in the name of the Commonwealth of Kentucky in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
- (9) The ***commissioner***~~[executive director]~~ may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction, against any person, where the ***commissioner***~~[executive director]~~ has reason to believe from evidence satisfactory to the ***commissioner***~~[executive director]~~ that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief that is proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court.
- (10) The surrender or expiration of a license, registration, or exemption shall not affect the licensee's civil or criminal liability for acts committed prior to the surrender or expiration. No revocation, suspension, refusal to renew, surrender, or expiration of any license, registration, or exemption shall impair or affect the obligation of any preexisting lawful contract between the licensee and the borrower. The surrender or expiration of a license, registration, or exemption shall not affect a proceeding to suspend or revoke a license or registration.

➔Section 776. KRS 286.8-100 is amended to read as follows:

- (1) No licensee shall establish or maintain a branch transacting business in Kentucky, either directly or indirectly, without filing the application as described in KRS 286.8-032(5) and receiving prior written approval of the ***commissioner***~~[executive director]~~.
- (2) Each application for approval of the establishment and maintenance of a branch shall state the physical address of the proposed location, the functions to be performed, and other information the ***commissioner***~~[executive director]~~ may require if different from that contained in the original application for a license or registration.
- (3) Each application under this section shall be sworn to and accompanied by the appropriate fee as set out in KRS 286.8-034(1)(b).
- (4) Upon the receipt by the ***commissioner***~~[executive director]~~ of an application and the required fee, if he finds that the applicant is otherwise in compliance with the provisions of this subtitle, he shall approve the application.
- (5) The ***commissioner***~~[executive director]~~ may deem an application abandoned and subject to KRS 286.8-090 when the application is received incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the ***commissioner***~~[executive director]~~ for further information.

➔Section 777. KRS 286.8-120 is amended to read as follows:

- (1) Every mortgage loan company may require borrowers to pay all necessary and reasonable expenses incurred in connection with the making, closing, disbursing, extending, readjusting, or renewing of loans. Without limiting the generality of the foregoing, such expenses may include appraisal, attorneys' fees, abstract, recording and registration fees, title examination, title insurance, mortgage insurance, credit report, survey, drawing of papers, origination fees, loan closing costs, and taxes or charges imposed upon or in connection with the making and reporting of any mortgage.

- (2) Every mortgage loan company also may require the borrowers to pay the cost of all other necessary and incidental services rendered by the mortgage loan company or by others in connection with loans in reasonable amounts. Without limiting the generality of the foregoing, such costs may include the cost of services of inspectors, engineers, and architects.
- (3) Such initial charges as described in subsections (1) and (2) of this section may be collected by the mortgage loan company from the borrower and paid to any person rendering such services, or paid directly by the borrower.
- (4) In lieu of such initial charges to cover such expenses and costs as described in subsections (1) and (2) of this section, a mortgage loan company may make a reasonable charge, part or all of which may be retained by the mortgage loan company which renders such service, or part or all of which may be paid to others who render such services.
- (5) The fees and charges authorized by this section shall be in addition to interest authorized by law, and shall not be deemed to be a part of the interest collected or agreed to be paid on such loans within the meaning of any law of this Commonwealth which limits the rate of interest which may be exacted in any transaction.
- (6) No person shall receive any fee or other compensation of any kind in connection with procuring any loan, except for services actually rendered as above provided, and in no event shall a mortgage loan company or mortgage loan broker require the payment of a fee greater than one hundred dollars (\$100) as a condition to submitting a loan application unless the **commissioner**~~executive director~~ shall otherwise prescribe by rule.
- (7) All "letters of commitment," or any other contracts or agreements between prospective borrowers and a mortgage loan company or a loan broker, where the borrowers employ services, for a fee or commission, to obtain a loan commitment or funding from a lending institution shall indicate the terms and conditions thereof, including a full and detailed description of the services the broker or company undertakes to perform, a specific statement of the circumstances in which the broker or company will be entitled to obtain or retain consideration and the period that such agreement shall remain in effect.
- (8) Failure on the part of any party, with the exception of the borrower, to fulfill the terms of any loan commitment, letter of commitment, agreement, or contract for the loan of money within the time and on such terms specified therein, or the failure to make a bona fide effort to secure a loan after receiving a fee for such service, shall constitute default by the mortgage loan company and any other person so in default; and any person damaged by such default may sue at law or equity for damages, reasonable attorneys' fees and interest at the legal rate of interest under KRS 360.010. Every cause of action for damages under this subsection survives the death of any person who might have been a plaintiff or defendant. No person may sue under this subsection more than five (5) years after any act constituting default.

➔Section 778. KRS 286.8-130 is amended to read as follows:

- (1) All moneys paid to the mortgage loan company for payment of taxes or insurance premiums on property which secures any loan made or serviced by the mortgage loan company shall be deposited in an account which is insured by the Federal Deposit Insurance Corporation or any other account acceptable to the Federal National Mortgage Association or the United States Department of Housing and Urban Development or the Government National Mortgage Association or the United States **Department of Veterans Affairs**~~Administration~~ and kept separate, distinct, and apart from funds *that* belong to the mortgage loan company. The funds, when deposited, shall be designated as an "escrow account" or under some other appropriate name indicating that the funds are not the funds of the mortgage loan company.
- (2) Any interest earned on funds deposited into an escrow account under subsection (1) shall belong to the borrower and shall be applied to the expenses to be paid from the account.
- (3) The mortgage loan company shall, upon reasonable notice, account to any debtor whose property secures a loan made by the mortgage company for any funds which that person has paid to the mortgage loan company for the payment of taxes or insurance premiums on the property in question.
- (4) The mortgage loan company shall, upon reasonable notice, account to the **commissioner**~~executive director~~ for all funds in the company's escrow account.
- (5) Escrow account funds shall not be subject to execution or attachment on any claim against the mortgage company. It shall be unlawful for any mortgage company to knowingly keep or cause to be kept any funds or money in any bank under the heading of "escrow account" or any other name designating the funds or money

belonging to the debtors of the mortgage loan company, except actual funds paid to the mortgage loan company for the payment of taxes and insurance premiums on property securing loans made or serviced by the company.

- (6) Payments to the debtor's escrow account shall be promptly and properly credited. All escrowed taxes, insurance, and other items shall be paid in a timely fashion and not later than the statutory or contractual deadline applicable thereto.

➔Section 779. KRS 286.8-140 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall exercise general supervision and control over mortgage loan companies and mortgage loan brokers doing business in the Commonwealth of Kentucky. In addition to the other duties imposed upon him by law, the powers and duties of the **commissioner**~~{executive director}~~ are:

- (1) To prescribe such rules, regulations, and forms and to promulgate such orders as are deemed to be necessary and appropriate to accomplish the basic purposes of and the provisions contained within this subtitle. The **commissioner**~~{executive director}~~ may from time to time make, amend, and rescind such rules, forms, and orders, including rules and forms governing applications, registration, reports, and loan disclosure statements, and defining any terms, whether or not used in this subtitle, insofar as the definitions are not inconsistent with the provisions of this subtitle. For the purpose of rules and forms, the **commissioner**~~{executive director}~~ may classify loans, persons, and matters within his jurisdiction, and prescribe different requirements for different classes. No rule, form, or order may be made, amended, or rescinded unless the **commissioner**~~{executive director}~~ finds that the action is necessary or appropriate in the public interest and consistent with the purposes fairly intended by the policy and provisions of this subtitle. In prescribing rules and forms the **commissioner**~~{executive director}~~ may cooperate with other state and federal agencies with a view to achieving maximum uniformity in the form and content of applications, reports and loan disclosure statements whenever practical;
- (2) To conduct such investigations as may be necessary to determine whether any person has engaged in or is about to engage in any act, practice, or course of conduct constituting a violation of any provision of this subtitle;
- (3) To conduct such examinations, investigations, and hearings, in addition to those specifically provided for by law, as may be necessary and proper for the efficient administration of this subtitle; and
- (4) At the **commissioner's**~~{executive director's}~~ discretion, to require filings and fees required under this subtitle to be electronically filed with the State Regulatory Registry, LLC, or its successor organization; its parent, affiliate, or operating subsidiary; or other agencies or authorities that are part of the nationwide mortgage licensing system, or other agencies or authorities consistent with the intent of KRS 286.8-285. The **commissioner**~~{executive director}~~ may accept uniform mortgage examinations or other procedures designed to implement a uniform national mortgage regulatory system or facilitate common practices and procedures among the states.

➔Section 780. KRS 286.8-150 is amended to read as follows:

- (1) Except as otherwise provided by law, applications for registration or renewals, all papers, documents, reports, and other written instruments filed with the **commissioner**~~{executive director}~~ under this subtitle, or obtained pursuant to an examination by the **Department**~~{Office}~~ of Financial Institutions are open to public inspection, except that the **commissioner**~~{executive director}~~ pursuant to the provisions of KRS Chapter 61 may classify as confidential or withhold from public inspection for such time as he *or she* considers necessary any information which, in his *or her* judgment, the public welfare or the welfare of any licensee or registrant or its customers requires to be so withheld. All investigations and information contained therein shall not be public until such time as the **commissioner**~~{executive director}~~ makes all or part of the investigation public or the investigation is closed.
- (2) The **commissioner**~~{executive director}~~ may classify as confidential certain records and information obtained by the **Department**~~{Office}~~ of Financial Institutions when such matters are obtained from the Nationwide Mortgage Licensing System and Registry or from a governmental agency.
- (3) The **commissioner**~~{executive director}~~ may classify as confidential and prohibit the disclosure of any request for documents or records submitted pursuant to KRS 286.8-180, for such time as deemed necessary if, in the **commissioner's**~~{executive director's}~~ judgment, the disclosure of said request for documents or records may

impede or interfere with an ongoing investigation conducted pursuant to KRS 286.8-140 or may cause the destruction or secretion of documents by the targeted party.

- (4) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, any information, documents, or material provided to or obtained from the Nationwide Mortgage Licensing System and Registry shall be subject to the confidentiality requirements set forth in Section 1512 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.

➔Section 781. KRS 286.8-160 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall make and keep such accounts, correspondence, memoranda, papers, books, data, and other records used in the mortgage lending process as the **commissioner**~~executive director~~ prescribes, or that are required by federal law.
- (2) The records governed in this subtitle shall be preserved for such time as the **commissioner**~~executive director~~ may by rule or order require, not to exceed a period of five (5) years after a mortgage loan application is completed, whether approved or rejected, or on mortgage loans paid in full, whichever is longer. Records shall be held for longer than five (5) years where federal law prescribes or supersedes this section.
- (3) Records required to be preserved under this subtitle may be kept in an electronic retrievable format, or other similar form of medium, that is readily accessible to examination, investigation, and inspection by the **commissioner**~~executive director~~.
- (4) Every mortgage loan company and mortgage loan broker shall file financial reports as the **commissioner**~~executive director~~ prescribes.
- (5) If the information contained in any document filed with the **commissioner**~~executive director~~ is or becomes inaccurate or incomplete in any material respect, the person who filed the document shall promptly file a correcting amendment.
- (6) Any person who ceases operating as a mortgage loan company or mortgage loan broker under the provisions of this subtitle shall, prior to the discontinuance of business in the residential mortgage lending process, notify the **commissioner**~~executive director~~ of the physical location where the records required to be kept under this subtitle will be preserved. The records shall be made accessible to the **commissioner**~~executive director~~ upon five (5) business days' written notice.
- (7) Any person who ceases operating as a mortgage loan company or mortgage loan broker under the provisions of this subtitle shall designate a custodian of records and notify the **commissioner**~~executive director~~ of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the **commissioner**~~executive director~~ access to the records for examination and investigation upon demand.
- (8) Records may be maintained by a mortgage loan company or mortgage loan broker at a location other than within this Commonwealth, so long as they are made accessible to the **commissioner**~~executive director~~ upon five (5) business days' written notice.
- (9) The **commissioner**~~executive director~~ may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (2) of this section.

➔Section 782. KRS 286.8-170 is amended to read as follows:

- (1) Every mortgage loan company and mortgage loan broker shall keep at its principal office correct and complete records of its business transactions, books of accounts, and minutes of proceedings of its directors, principals, or partners. Complete records of all business transactions at the principal office shall be maintained at the principal office. Each branch office shall keep detailed records of all transactions at such branch office and shall furnish full control records to the principal office.
- (2) No mortgage loan company or mortgage loan broker by any system of accounting or any device of bookkeeping shall, either directly or indirectly, enter any of its assets upon its books in the name of any person, partnership, association, or corporation, or under any title, designation, or value that is not thoroughly descriptive of any assets.

- (3) The affairs of every mortgage loan company, mortgage loan broker, mortgage loan originator, and mortgage loan processor, and the records required to be maintained by KRS 286.8-160 are subject at any time or from time to time to such periodic, special, or other examinations by the executive director or an examiner of the ~~commissioner~~ within or without this state and with or without notice to the person being examined, as the ~~commissioner~~ deems necessary or appropriate in the public interest. All records of the person being examined shall be subject to the ~~commissioner's~~ inspection.
- (4) The examiner shall make a thorough examination into the condition, workings and affairs of the person being examined and report any violation of law or any unauthorized unsafe practices or any failure to keep and have correct any required books and records as he *or she* may find to the ~~commissioner~~.
- (5) A mortgage loan company or mortgage loan broker shall pay a fee for each such examination of its operations or employees based on fair compensation for time and actual expense. For the purpose of avoiding unnecessary duplication of examinations, the ~~commissioner~~, insofar as he *or she* deems it practicable in administering this section, may cooperate and exchange information with any agency of the state or federal government, other states, the Nationwide Mortgage Licensing System and Registry, or the federal National Mortgage Association, Government National Mortgage Association, and Federal Home Loan Mortgage Corporation, and may accept such examinations in whole or in part in lieu of an examination by the ~~commissioner~~.
- (6) The ~~commissioner~~ or *the commissioner's* ~~his~~ examiners or designated representative shall have access to all records of a mortgage loan company, mortgage loan broker, mortgage loan originator, and mortgage loan processor which relate to their business, and records kept by any officers, agents, or employees, relating to or upon which any record of its business is kept.
- (7) A mortgage loan originator or mortgage loan processor shall make available and grant access to the ~~commissioner~~, or an examiner of the ~~commissioner~~, the records relating to its operations. A mortgage loan company or mortgage loan broker shall make available and grant access to all records of its current and former employees and contractors relating to its operations.
- (8) Any person subject to this subtitle shall make or compile reports or prepare other information as directed by the ~~commissioner~~ or an examiner of the ~~commissioner~~ to include:
 - (a) Accounting compilations;
 - (b) Information lists and data concerning loan transactions in a format prescribed by the ~~commissioner~~ or an examiner of the ~~commissioner~~; and
 - (c) Such other information deemed necessary to carry out the purposes of this section.
- (9) No mortgage loan company, mortgage loan broker, mortgage loan originator, or mortgage loan processor shall impede the ~~commissioner~~ or an examiner of the ~~commissioner~~ from interviewing its officers, principals, members, employees, independent contractors, agents, or customers.
- (10) In making any examination or investigation authorized by this subtitle, the ~~commissioner~~ may control access to any documents and records of the licensee or person under examination or investigation. The ~~commissioner~~ may take possession of the documents and records, or place a person in exclusive charge of the documents and records in the place where they are usually kept. During the period of control, no individual or person shall remove or attempt to remove any of the documents and records except pursuant to a court order or with the consent of the ~~commissioner~~. Unless the ~~commissioner~~ has reasonable grounds to believe the documents or records of the licensee have been, or are at risk of being, altered or destroyed for purposes of concealing a violation of this subtitle, the licensee or owner of the documents and records shall have access to the documents or records as necessary to conduct its ordinary business affairs.
- (11) It shall be unlawful for any person subject to investigation or examination under this subtitle to knowingly withhold, abstract, alter, remove, mutilate, destroy, or secrete any books, records, or other information.
- (12) In order to carry out the purposes of this subtitle, the ~~commissioner~~ may:
 - (a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;
 - (b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or

uniform methods or procedures, and documents, records, information, or evidence obtained under this subtitle; and

- (c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the persons subject to this subtitle.

- (13) The authority of this section shall remain in effect, whether a person acts or claims to act under any licensing or registration law of this subtitle, or claims to act without such authority.

➔Section 783. KRS 286.8-175 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a mortgage loan company or mortgage loan broker shall be considered confidential information. No officer or director of a mortgage loan company or mortgage loan broker, employee of the ~~department~~~~office~~, or employee of a state or federal regulatory authority shall release any information contained in the examination, except when:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality has been issued by a court of competent jurisdiction; or
 - (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings.
- (2) The ~~department~~~~office~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.
- (3) Every official report concerning a mortgage loan company or mortgage loan broker, and every report of examination, shall be prima facie evidence of the facts therein stated for all purposes in any action in which the ~~department~~~~office~~, mortgage loan company, or mortgage loan broker is a party.

➔Section 784. KRS 286.8-180 is amended to read as follows:

- (1) In the conduct of any examination, investigation, or hearing, the ~~commissioner~~~~executive director~~ or an officer designated by ~~the commissioner~~~~him~~ may compel the attendance of any person or obtain any documents by subpoenas; administer oaths or affirmations in the examination of the directors, officers, agents, employees of any mortgage loan company, or mortgage loan broker or any other person concerning the business and conduct of affairs or any person subject to the provisions of this subtitle, and in connection therewith may require and compel the production of any books, records, papers, or other documents relevant to the inquiry.
- (2) In the contumacy by, or refusal to obey a subpoena issued to, any person, Franklin Circuit Court, upon application by the ~~commissioner~~~~executive director~~, may issue to the person an order requiring him ~~or her~~ to appear before the ~~commissioner~~~~executive director~~, or the officer designated by ~~the commissioner~~~~him~~, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
- (3) The cost of any investigation or hearing conducted under KRS 286.8-190 may be assessed to and collected from the mortgage loan company or mortgage loan broker in question by the ~~commissioner~~~~executive director~~.

➔Section 785. KRS 286.8-190 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ may investigate either upon complaint or otherwise when it appears that any person is conducting business in an unsafe and injurious manner or otherwise is in violation of this subtitle, or any rule or order hereunder, or when it appears that any person is engaging in the mortgage loan business without being licensed or registered, or legally exempted from licensing or registration, under the provisions of this subtitle.
- (2) If it appears to the ~~commissioner~~~~executive director~~ upon sufficient grounds or evidence satisfactory to the ~~commissioner~~~~executive director~~ that any person has engaged in or is about to engage in any practice in violation of this subtitle or any rule or order hereunder, or that person's mortgage loan business affairs are in an unsafe condition, the ~~commissioner~~~~executive director~~ may:
 - (a) Order the person to cease and desist from the acts or practices by a formal written order delivered to the person stating any alleged violation. The order shall specify the effective date thereof, and notice of entry shall be served personally or sent by certified mail to the last known address of the person

affected. The person, upon written application, shall be entitled to a hearing; but if a written application for a hearing is not timely received by the **commissioner**~~{executive director}~~ within twenty (20) days after the certified mailing or personal delivery of the order, it shall be made final and shall remain in effect until withdrawn by the **commissioner**~~{executive director}~~ or terminated by a court order; and

- (b) Apply directly to Franklin Circuit Court, or any court of competent jurisdiction, to enjoin any acts or practices in violation of this subtitle and to enforce compliance with this subtitle or any rule or order hereunder. Upon proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The **commissioner**~~{executive director}~~ shall not be required to post a bond.

➔Section 786. KRS 286.8-210 is amended to read as follows:

Any person aggrieved by final order of the **commissioner**~~{executive director}~~ may obtain a review of the order in Franklin Circuit Court, by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the **commissioner**~~{executive director}~~, and thereupon the **commissioner**~~{executive director}~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce or set aside the order in whole or in part. No objection to the order may be considered by the court unless it was urged before the **commissioner**~~{executive director}~~ or there were reasonable grounds for failure to do so. The findings of the **commissioner**~~{executive director}~~ as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the **commissioner**~~{executive director}~~ the court may order the additional evidence to be taken before the **commissioner**~~{executive director}~~ and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The **commissioner**~~{executive director}~~ may modify his **or her** findings as to the facts, by reason of additional evidence so taken, and **the commissioner**~~{he}~~ shall file any modified or new findings, which if supported by substantial evidence shall be conclusive. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the **commissioner's**~~{executive director's}~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court upon any such appeal to the court of appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 787. KRS 286.8-220 is amended to read as follows:

- (1) It shall be unlawful for any person to make or cause to be made, in any document filed with the **commissioner**~~{executive director}~~, a governmental agency, the Nationwide Mortgage Licensing System and Registry, or in any proceeding under this subtitle, any statement that is, at the time and in light of the circumstances under which it is made, false or misleading in any material respect, including an omission of a material fact.
- (2) It shall be unlawful for any person, in connection with a transaction involving the mortgage lending process, or in connection with the operation of a mortgage loan business or the management or servicing of mortgage loans, directly or indirectly:
 - (a) To employ a device, scheme, or artifice to defraud;
 - (b) To engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) To fail to disburse funds in accordance with a loan commitment;
 - (d) To delay closing of any mortgage loan for the purpose of increasing interest, costs, fees, or charges payable by the borrower;
 - (e) Upon receipt of a customer's written request, to delay beyond five (5) business days the issuance of a written loan payoff amount or to delay beyond ten (10) business days the issuance of a payment history;
 - (f) To charge a fee for the issuance of an initial written loan payoff amount or payment history for each calendar quarter as set out in paragraph (e) of this subsection;
 - (g) To obtain property by fraud or misrepresentation;
 - (h) To fail to make disclosures as required by this subtitle or any other applicable state or federal law, including regulations thereunder; or

- (i) To fail to comply with state or federal laws, including the rules and regulations thereunder, that are applicable to transacting business in Kentucky.
- (3) Unless exempted by KRS 286.8-020(1), it shall be unlawful for any person to transact business in Kentucky unless it complies with the provisions of this subtitle.
- (4) It shall be unlawful for any person to use prescreened trigger lead information derived from a consumer report to solicit a consumer who has applied for a mortgage loan with another mortgage loan company or mortgage loan broker, when the person:
 - (a) Fails to state in the initial solicitation that the person is not affiliated with the mortgage loan company or mortgage loan broker with which the consumer initially applied;
 - (b) Fails in the initial solicitation to conform to state and federal law relating to prescreened solicitations using consumer reports, including the requirement to make a firm offer of credit to the consumer;
 - (c) Uses information regarding consumers who have opted out of the prescreened offers of credit or who have placed their contact information on the state or federal do-not-call registry; or
 - (d) Solicits a consumer with an offer of certain rates, terms, and costs with the knowledge that the rates, terms, or costs will be subsequently changed to the detriment of the consumer.

➔Section 788. KRS 286.8-225 is amended to read as follows:

There is hereby created in the State Treasury a trust and revolving fund designated as the "mortgage fraud prosecution fund." All civil penalties or contributions directed by the **commissioner**~~{executive director}~~ to be transmitted to the mortgage fraud prosecution fund shall be deposited into the fund. Expenditures from the fund may be used for the investigation and criminal prosecution of fraudulent activities within the residential mortgage lending process, training related to prevention, detection, and investigation of mortgage fraud, and consumer education related to mortgage fraud. Only the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions or the **commissioner's**~~{executive director's}~~ designee may authorize expenditures from the account. The money deposited in the fund is hereby appropriated for the uses set forth in this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close of any fiscal year shall not lapse but shall be carried forward to the next fiscal year. The fund may also receive additional state appropriations, gifts, grants, contributions, and federal funds. All interest earned on money in the fund shall be credited to the fund.

➔Section 789. KRS 286.8-227 is amended to read as follows:

The **commissioner**~~{executive director}~~ is authorized through the collection of civil penalties or contributions to retain the funds collected for the purpose of depositing the funds into the mortgage fraud prosecution fund created in KRS 286.8-225. The funds shall be transmitted monthly to the State Treasurer, who shall deposit the funds into the mortgage fraud prosecution fund created in KRS 286.8-225. The **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Financial Institutions is responsible for the distribution of the funds in the mortgage fraud prosecution fund and shall, in consultation with the Attorney General and local prosecutors, develop administrative regulations for the use of these funds.

➔Section 790. KRS 286.8-255 is amended to read as follows:

- (1) No natural person shall transact business in Kentucky, either directly or indirectly, as a mortgage loan originator or mortgage loan processor unless such mortgage loan originator or mortgage loan processor is registered with the **department**~~{office}~~ and has been issued a current certificate of registration by the **department**~~{office}~~, complies with all applicable requirements of this subtitle, and maintains a valid unique identifier issued by the Nationwide Mortgage Licensing System and Registry. The **department**~~{office}~~ shall maintain a database of all mortgage loan originators and mortgage loan processors originating or processing mortgage loans on residential real property in Kentucky. The **department**~~{office}~~ shall issue a certificate of registration to all registered mortgage loan originators and mortgage loan processors.
- (2) The application for registration shall:
 - (a) Be on a form prescribed by the **commissioner**~~{executive director}~~;
 - (b) Be accompanied by a registration fee in the amount of fifty dollars (\$50) which shall be used solely by the **department**~~{office}~~ to establish and maintain a database of all mortgage loan originators and

- mortgage loan processors, and any excess funds shall be retained by the **department**~~{office}~~ and shall not lapse to the general fund; and
- (c) Contain such information as the **commissioner**~~{executive director}~~ deems necessary to carry out the purposes of this subtitle.
- (3)
 - (a) Applications for initial registrations of mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the applicant has successfully completed twenty (20) hours of prelicensing education courses related directly to the mortgage lending process, as approved and designated by the **commissioner**~~{executive director}~~.
 - (b) For the purposes of paragraph (a) of this subsection, the prelicensing education courses approved and designated by the **commissioner**~~{executive director}~~ shall meet the minimum requirements set forth in Section 1505(c) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, and shall be reviewed, and approved by the Nationwide Mortgage Licensing System and Registry.
 - (c) For the purposes of paragraph (a) of this subsection, the **commissioner**~~{executive director}~~ may accept as credit towards the completion of the prelicensing education requirements in this state, the completion of prelicensing education requirements in any other state so long as the education has met the requirements set forth in paragraphs (a) and (b) of this subsection.
 - (4) Applications for renewals of certificates of registration by registered mortgage loan originators and mortgage loan processors shall be accompanied by satisfactory evidence that the individual has successfully met the continuing education requirements of KRS 286.8-260 and by payment of a renewal fee in the amount of fifty dollars (\$50). The renewal fee shall be used solely by the **department**~~{office}~~ to establish and maintain a database of all mortgage loan originators and mortgage loan processors and any excess funds shall be retained by the **department**~~{office}~~ and shall not lapse to the general fund.
 - (5) A certificate of registration issued between January 1 and October 31 of the same calendar year shall expire on December 31 of the same calendar year. A certificate of registration issued between November 1 and December 31 of the same calendar year shall expire on December 31 of the following calendar year. Any certificate of registration that has expired may be reinstated by the **commissioner**~~{executive director}~~ upon payment of the annual registration fee, and a reinstatement fee of two hundred fifty dollars (\$250), within thirty (30) days of the expiration of the certificate of registration.
 - (6) The **department**~~{office}~~ shall provide a registrant with a duplicate copy of any certificate of registration upon satisfactory showing of its loss and payment of a ten dollar (\$10) replacement fee.
 - (7) All mortgage loan originators and mortgage loan processors subject to the registration requirements of this section shall also be subject to and comply with all applicable provisions of this subtitle.
 - (8) The **commissioner**~~{executive director}~~ may require the submission of background records checks, including but not limited to checks for state, federal, and international criminal histories, civil or administrative records, and any other information as deemed necessary to comply with the minimum requirements set forth in Section 1505 of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto, as well as the submission of an independent credit report obtained from a consumer reporting agency described in the Fair Credit Reporting Act, 15 U.S.C. sec. 1681a, as part of an application or renewal application filed under this subtitle. The cost of the background and records checks, and credit report shall be borne by the applicant.
 - (9) No mortgage loan originator or mortgage loan processor shall be granted or shall be entitled to maintain a certificate of registration unless he or she satisfies the following minimum standards for registration:
 - (a) The applicant has never had a loan originator's license or registration revoked in any governmental jurisdiction, except revocations that have been formally vacated or set aside shall not be deemed a revocation for the purposes of this section;
 - (b) The applicant has not been convicted of, pled guilty to, or pled nolo contendere to a felony in any domestic, foreign, or military court:
 1. During the seven (7) year period preceding the date of the application for registration or renewal of registration; or
 2. At any time preceding such date of application for registration or renewal of registration, if such felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

- (c) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator or loan processor will operate honestly, fairly, lawfully, and efficiently within the purposes of the subtitle;
 - (d) The applicant has completed the preclicensing education requirement set forth in subsection (3) of this section;
 - (e) The applicant has passed a qualified written test which satisfies the minimum requirements set forth in Section 1505(d) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto; and
 - (f) If required by KRS 286.8-060, the applicant holds or is covered by a surety bond which satisfies the minimum requirements set forth in KRS 286.8-060.
- (10) No mortgage loan originator or mortgage loan processor shall be granted a renewal certificate of registration unless he or she satisfies the following minimum standards for renewal of registration:
- (a) The applicant has met and continues to meet the minimum standards set forth in subsection (9) of this section; and
 - (b) The applicant has satisfied the annual continuing education requirements set forth in KRS 286.8-260.
- (11) The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the minimum standards for registration renewal set forth in this section shall expire and shall promptly be deemed surrendered to the **commissioner**~~{executive director}~~ without demand. The **commissioner**~~{executive director}~~ may adopt procedures and requirements for the reinstatement of expired registrations consistent with the standards established by the Nationwide Mortgage Licensing System and Registry.
- (12) Mortgage loan originators engaging in any of the activities set forth in KRS 286.8-010(21)(a) shall provide loan origination services to not more than one (1) mortgage loan company or mortgage loan broker at a time.

➔Section 791. KRS 286.8-260 is amended to read as follows:

- (1) Any person required to be registered under this subtitle shall complete at least twelve (12) hours of continuing professional education on an annual basis that is approved and designated by the **commissioner**~~{executive director}~~. A minimum of four (4) hours of continuing professional education at least once every two (2) years shall be instruction on the requirements of this subtitle or KRS 360.100, or a combination of both.
- (2) For the purposes of subsection (1) of this section, the continuing professional education courses approved and designated by the **commissioner**~~{executive director}~~ shall meet the minimum requirements set forth in Section 1505(b) of the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto. The education courses approved and designated by the **commissioner**~~{executive director}~~ shall also be reviewed and approved by the Nationwide Mortgage Licensing System and Registry unless the Nationwide Mortgage Licensing System and Registry provides otherwise.
- (3) For the purposes of subsection (1) of this section, the **commissioner**~~{executive director}~~ may accept as credit towards the completion of the continuing professional education requirements in this state, the completion of continuing professional education requirements in any other state so long as the education has met the requirements set forth in subsections (1) and (2) of this section.
- (4) For good cause shown, the **commissioner**~~{executive director}~~ may grant an extension during which the continuing education requirement of this section may be completed, but the extension may not exceed thirty (30) days. What constitutes good cause for the extension of time rests within the discretion of the **commissioner**~~{executive director}~~.
- (5) The certificate of registration of any mortgage loan originator or mortgage loan processor that fails to comply with the continuing professional education requirements of this section and who has not been granted an extension of time to comply in accordance with subsection (4) of this section shall expire and shall promptly be deemed surrendered to the **commissioner**~~{executive director}~~ without demand.

➔Section 792. 286.8-275 is amended to read as follows:

- (1) Any person having knowledge or believing that a violation of this subtitle or any other illegal act or practice is being or has been committed may provide the **commissioner**~~{executive director}~~ a report of information

pertinent to his or her knowledge or belief and any additional relevant information the ***commissioner***~~{executive director}~~ may request.

- (2) Documents, materials, or other information in the possession or control of the ***commissioner***~~{executive director}~~ that is provided according to this section shall be confidential by law, privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible as evidence in any civil action unless, after written notice to the ***commissioner***~~{executive director}~~ and a hearing, a court of competent jurisdiction determines the ***commissioner***~~{executive director}~~ would not be unduly prejudiced.
- (3) Neither the ***commissioner***~~{executive director}~~ nor any person who received documents, materials, or other information while acting under the authority of the ***commissioner***~~{executive director}~~ shall be permitted or required to testify in any civil action concerning any confidential documents, materials, or other information subject to subsection (2) of this section.
- (4) In order to assist in the performance of the ***commissioner's***~~{executive director's}~~ duties, the ***commissioner***~~{executive director}~~ may:
 - (a) Use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the ***commissioner's***~~{executive director's}~~ official duties;
 - (b) Share the documents, materials, or other information, including confidential and privileged documents, materials, or other information subject to subsections (2) and (3) of this section, with other state, federal, and international law enforcement authorities or the Conference of State Bank Supervisors or its affiliate if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, and other information; and
 - (c) Enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.
- (5) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the ***commissioner***~~{executive director}~~ under this section or as a result of sharing as authorized in subsection (4) of this section.

➔Section 793. KRS 286.8-280 is amended to read as follows:

- (1) In the absence of malice, fraud, or negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this subtitle or requested by the ***commissioner***~~{executive director}~~.
- (2) This section shall not abrogate or modify any common law or statutory privileges or immunity enjoyed by any person.

➔Section 794. KRS 286.8-285 is amended to read as follows:

- (1) (a) In addition to other duties imposed upon the ***commissioner***~~{executive director}~~ in this subtitle, the ***commissioner***~~{executive director}~~ shall be authorized to participate in the establishment and implementation of the Nationwide Mortgage Licensing System and Registry and to implement and comply with the minimum requirements set forth in the S.A.F.E. Mortgage Licensing Act, Pub. L. No. 110-289, and amendments thereto.
- (b) For such purpose, the ***commissioner***~~{executive director}~~ is authorized to waive or modify, in whole or in part, by rule or by order, any or all of the requirements of this subtitle and to establish new requirements as reasonably necessary to carry out the purpose of this section.
- (c) The ***commissioner***~~{executive director}~~ shall have authority to establish relationships or contracts with other governmental agencies, the Nationwide Mortgage Licensing System and Registry, or entities affiliated with the system that are necessary to carry out the purpose of this section.
- (d) The ***commissioner***~~{executive director}~~ may establish interim procedures to promote and establish an orderly and efficient transition for the registration, review, and acceptance of new applications. The ***commissioner***~~{executive director}~~ may also establish interim procedures and expedited review and registration procedures for previously registered individuals.

- (e) The ***commissioner***~~[executive director]~~ may use the Nationwide Mortgage Licensing System and Registry as an agent for receiving, requesting, and distributing information to and from any source so directed by the ***commissioner***~~[executive director]~~.
- (2) The ***commissioner***~~[executive director]~~ shall establish a process whereby licensees may challenge information entered into the Nationwide Mortgage Licensing System and Registry by the ***commissioner***~~[executive director]~~.
- (3) The ***commissioner***~~[executive director]~~ shall annually request audited financial reports, including inquiring as to the budget and fees collected, both proposed and actual, from the Nationwide Mortgage Licensing System and Registry.
- (4) The ***commissioner***~~[executive director]~~ shall annually request any nonconfidential protocols or reports for the security and safeguarding of personal information maintained by the Nationwide Mortgage Licensing System and Registry, including the following:
 - (a) Inquiring as to whether the system has implemented and complied with the data security guidelines set forth in the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6801;
 - (b) Inquiring as to the results of any nonconfidential periodic data protection audits that the system may conduct; and
 - (c) Inquiring as to whether any security breaches have occurred resulting in the substantial likelihood that personal information may be misused or stolen.
- (5) The ***commissioner***~~[executive director]~~ shall annually request from the Nationwide Mortgage Licensing System and Registry the following statistical information, if available, relating to the examinations taken by applicants seeking registration as a loan originator in Kentucky during the preceding calendar year:
 - (a) The total number of tested individuals, along with any relevant demographic information available such as race, ethnicity, or gender;
 - (b) The total number of individuals who received a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender;
 - (c) The total number of individuals who did not receive a passing score on the examination, along with any relevant demographic information available such as race, ethnicity, or gender; and
 - (d) All mean, average, or scaled scoring data.
- (6) When requested by the General Assembly, the ***commissioner***~~[executive director]~~ shall review and report to the General Assembly the content of any information received from the Nationwide Mortgage Licensing System and Registry pursuant to subsection (3), (4), or (5) of this section.
- (7) Notwithstanding any provision to the contrary in this subtitle or in KRS Chapter 61, the ***commissioner***~~[executive director]~~ shall regularly report violations of this subtitle, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

➔Section 795. KRS 286.8-290 is amended to read as follows:

- (1) The following mortgage loan originators shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
 - (a) An individual employed by the following institutions and acting on behalf of such institutions:
 - 1. A depository institution;
 - 2. A subsidiary that is:
 - a. Owned and controlled by a depository institution; and
 - b. Regulated by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the National Credit Union Administration, or the Federal Deposit Insurance Corporation; or
 - 3. An institution regulated by the Farm Credit Administration;

- (b) A licensed attorney who negotiates the terms of a mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator;
 - (c) A natural person who originates a mortgage loan on behalf of an immediate family member of the natural person unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator; and
 - (d) A natural person who originates a mortgage loan secured by a dwelling that served as the natural person's residence unless the natural person is compensated in connection with that transaction by a mortgage loan company, mortgage loan broker, or other mortgage loan originator, or by an agent of such company, broker, or other originator.
- (2) The following mortgage loan processors shall be subject to subsections (3) and (4) of this section, but shall be exempt from the registration and regulatory requirements of KRS 286.8-255:
- (a) Any natural person exempted in subsection (1) of this section; and
 - (b) Any natural person employed by a person exempted in KRS 286.8-020(1)(a), (b), (c), (d), (e), (f), or (g) and acting on behalf of such person.
- (3) Notwithstanding any provisions to the contrary set forth in this subtitle, no mortgage loan originator or mortgage loan processor shall impede the **commissioner**~~executive director~~ or an examiner of the **commissioner**~~executive director~~ from interviewing any person regarding any potential violations of this subtitle.
- (4) Notwithstanding any provisions to the contrary set forth in this subtitle, every mortgage loan originator and mortgage loan processor shall make available and grant access to the **commissioner**~~executive director~~ or an examiner of the **commissioner**~~executive director~~ the records in the originator's or processor's possession or control that are subject to the provisions of this subtitle.

➔Section 796. KRS 286.8-990 is amended to read as follows:

- (1) This section shall be known and cited as the "Kentucky Residential Mortgage Fraud Act."
- (2) A person is guilty of residential mortgage fraud when, with the intent to defraud, that person does any of the following in connection with the mortgage lending process:
- (a) Employs a device, scheme, or artifice to defraud;
 - (b) Engages in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) Fails to disburse funds in accordance with a loan commitment;
 - (d) Knowingly makes or attempts to make any material misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, mortgage broker, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (e) Knowingly uses or facilitates or attempts to use any misstatement, misrepresentation, or omission within the mortgage lending process with the intention that a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process relies on it;
 - (f) Receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew, or should have known, resulted from a violation of paragraph (a), (b), (c), (d), or (e) of this subsection;
 - (g) Knowingly causes to be filed with the **commissioner**~~executive director~~ or in any proceeding under this subtitle any document that is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect; or
 - (h) Conspires or solicits another to violate any of the provisions of this subsection.
- (3) It shall be sufficient in any prosecution under this section for residential mortgage fraud to show that the party accused acted with the intent to deceive or defraud. It shall be unnecessary to show that any particular person

or entity was harmed financially in the transaction or that the person or entity to whom the deliberate misstatement, misrepresentation, or omission was made relied upon the misstatement, misrepresentation, or omission.

- (4) In any criminal proceeding brought under this section, the crime shall be construed to have been committed:
 - (a) In the county in which the residential real property for which a mortgage loan is being sought is located;
 - (b) In any county in which any act was performed in furtherance of the violation;
 - (c) In any county in which any person alleged to have violated this section had control or possession of any proceeds of the violation;
 - (d) If a closing occurred, in any county in which the closing occurred; or
 - (e) In any county in which a document containing a deliberate misstatement, misrepresentation, or omission is filed with the official registrar of deeds or with the Division of Motor Vehicles.
- (5) Upon referral by the **commissioner**~~executive director~~, the Kentucky Real Estate Commission, the Attorney General, the Kentucky Board of Appraisers, or other parties; or upon its own investigation of available evidence concerning any violation of this subtitle; the proper Commonwealth's attorney or district attorney may institute the appropriate criminal proceedings under this section.
- (6) Unless the conduct is prohibited by some other provision of law providing for greater punishment, a violation of this section involving a mortgage loan is a Class D felony for the first or second offense and a Class C felony for each subsequent offense.
- (7)
 - (a) All real and personal property of every kind used or intended for use in the course of, derived from, or realized through a violation of this section shall be subject to forfeiture to the Commonwealth. However, the forfeiture of any real or personal property shall be subordinate to any security interest in the property taken by a lender in good faith as collateral for the extension of credit and recorded as provided by law, and no real or personal property shall be forfeited under this section against an owner who made a bona fide purchase of the property without knowledge of a violation of this section.
 - (b) In addition to the provisions of paragraph (a) of this subsection, courts may order restitution to any person who has suffered a financial loss due to violation of this section.
- (8) In the absence of fraud, bad faith, or malice, a person shall not be subject to an action for civil liability for filing reports or furnishing other information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency.
- (9) Nothing in this subtitle shall limit the powers of the state to punish any person for any conduct that constitutes a crime.
- (10) The court may assess a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000,) against any person who is convicted of violating any provision of this section.
- (11) Any person who knowingly engages in the business of residential mortgage lending regulated by this subtitle without first securing a license or registration therefore shall be guilty of a Class A misdemeanor.

➔Section 797. KRS 286.9-010 is amended to read as follows:

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

- (1) "Affiliate" means a person who directly or indirectly through one (1) or more intermediaries controls or is controlled by, or is under common control with, a licensee;
- (2) "Applicant" means a person filing an application or renewal application for a license under this subtitle;
- (3) "Archive" means to copy data to a long-term storage mechanism apart from the database;
- (4) "Cashing" means providing currency for a payment instrument;
- (5) "Check" means any check, draft, money order, personal money order, travelers' check, or other demand instrument for the transmission or payment of money;

- (6) "Closed" or "close" means that one (1) of the following has occurred in connection with a deferred deposit service transaction concerning the customer's payment instrument:
- (a) The payment instrument is redeemed by the customer by payment to the licensee of the face amount of the payment instrument in cash;
 - (b) The payment instrument is exchanged by the licensee for a cashier's check or cash from the customer's financial institution;
 - (c) The payment instrument is deposited by the licensee, and the licensee has evidence that the person has satisfied the obligation;
 - (d) The payment instrument is collected by the licensee or its agent through any civil remedy available under the laws of this state; or
 - (e) Any other reason that the **commissioner**~~executive director~~ may deem to be proper under this subtitle;
- (7) "Consideration" means any premium or fee charged of any kind for the sale of goods or services in excess of the cash price of the goods or services;
- (8) "Control" means:
- (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or the person in control of a licensee or applicant;
 - (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority over a licensee or applicant, or the person in control of a licensee or applicant; or
 - (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or the person in control of a licensee or applicant;
- (9) "Customer" means a person who inquires into the availability of or applies for a deferred presentment service transaction or a person who enters into a deferred presentment service transaction;
- (10) "Customer transaction data" means all data reported to the database pertinent to a particular customer transaction, including the date of the transaction, identification of the licensee and location, the sum of money involved, the time payment is deferred, fees charged, any alleged violations of this subtitle, and any identifying customer information;
- (11) "Database" means the database described in KRS 286.9-140;
- (12) "Database provider" means one (1) of the following:
- (a) A third-party provider selected by the **commissioner**~~executive director~~ under KRS 286.9-140 to operate the statewide database described in that section; or
 - (b) The **commissioner**~~executive director~~, if the **commissioner**~~executive director~~ has not selected a third-party provider under KRS 286.9-140;
- (13) "Deferred deposit service business" means a person who engages in deferred deposit transactions;
- (14) "Deferred deposit transaction" or "deferred presentment service transaction" means, for consideration, accepting a payment instrument, and holding the payment instrument for a period of time prior to deposit or presentment in accordance with an agreement with or any representation made to the customer whether express or implied;
- (15) "Delete" means to erase data by overwriting the data;
- (16) "**Commissioner**~~Executive director~~" means the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Financial Institutions;
- (17) "Identifying customer information" means the name of the customer, his or her Social Security number, driver license number, or other state-issued identification number, address, any account numbers or information specific to a payment instrument provided by a customer to a licensee, a bank, savings bank, savings and loan association, or credit union, and any other nonpublic, personal financial information of a customer entered into

the database or that comes into the possession of the database provider through customer or licensee inquiry or report;

- (18) "Licensee" means a person duly licensed by the **commissioner**~~[executive director]~~ under this subtitle to conduct check cashing or deferred deposit service business in the Commonwealth;
- (19) "Maturity date" means the date on which a payment instrument is authorized to be redeemed or presented for payment;
- (20) "**Department**~~[Office]~~" means the **Department**~~[Office]~~ of Financial Institutions;
- (21) "Payment instrument" means a check, draft, money order, or traveler's check, for the transmission or payment of money sold or issued to one (1) or more persons, whether or not such instrument is negotiable; and
- (22) "Person" means any individual, partnership, association, joint stock association, trust, corporation, or other entity however organized.

➔Section 798. KRS 286.9-020 is amended to read as follows:

Except as provided in KRS 286.9-030, no person shall engage in the business of cashing checks or accepting deferred deposit transactions for a fee or other consideration without having first obtained a license. A separate license shall be required for each location from which the business of cashing checks or accepting deferred deposit transactions is conducted. Any person engaged in that business on the effective date of this section may continue to engage in the business without a license until the **commissioner**~~[executive director]~~ shall have acted upon his **or her** application for a license if the application is filed within sixty (60) days after April 14, 1998.

➔Section 799. KRS 286.9-035 is amended to read as follows:

- (1) Any deferred deposit transaction agreement made with a person who is not licensed under this subtitle shall be void, and the person shall not collect any principal, fee, interest, charges, or recompense whatsoever.
- (2) The **commissioner**~~[executive director]~~ may void a deferred deposit transaction agreement when it is determined by the **commissioner**~~[executive director]~~ that the licensee has violated any provision of this subtitle. The licensee shall be allowed to recover from the customer any principal paid by the licensee to the customer, but the licensee shall not recover any service fee or other charge related to the deferred deposit transaction.
- (3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

➔Section 800. KRS 286.9-040 is amended to read as follows:

To qualify for a license, an applicant shall satisfy the following requirements:

- (1) The applicant shall deposit with the **commissioner**~~[executive director]~~ one (1) of the following instruments:
 - (a) An irrevocable letter of credit in the following amounts:
 - 1. If an applicant has only one (1) business location, the amount shall be fifty thousand dollars (\$50,000);
 - 2. If an applicant has two (2) to five (5) business locations, the amount shall be one hundred thousand dollars (\$100,000);
 - 3. If an applicant has six (6) to ten (10) business locations, the amount shall be one hundred fifty thousand dollars (\$150,000);
 - 4. If an applicant has eleven (11) to twenty (20) business locations, the amount shall be two hundred thousand dollars (\$200,000);
 - 5. If an applicant has twenty-one (21) to thirty (30) business locations, the amount shall be three hundred thousand dollars (\$300,000);
 - 6. If an applicant has thirty-one (31) to forty (40) business locations, the amount shall be four hundred thousand dollars (\$400,000); and

7. If an applicant has more than forty (40) business locations, the amount shall be five hundred thousand dollars (\$500,000);
 - (b) A corporate surety bond made payable to the **commissioner**~~[executive director]~~ in the same amount that is required in paragraph (1)(a) of this section;
 - (c) Evidence that the applicant has established an account payable to the **commissioner**~~[executive director]~~ in a federally insured financial institution in this state and has deposited money of the United States in an amount equal to the amount of the required letter of credit; or
 - (d) A savings certificate of a federally insured financial institution in this state for an amount payable that is equal to the amount of the required letter of credit and that is not available for withdrawal except by direct order of the **commissioner**~~[executive director]~~. Interest earned on the certificate accrues to the applicant.
- (2) Every instrument required in this section shall provide for suit thereon by any person who has a cause of action under this subtitle. The total liability of the surety, to all persons, cumulative or otherwise, shall not exceed the amount specified in the bond.
 - (3) Every instrument required in this section shall be made payable to the **commissioner**~~[executive director]~~.
 - (4) Every instrument required in this section shall be available for the recovery of expenses, fines, and fees levied by the **commissioner**~~[executive director]~~ under this subtitle, and for losses or damages that are determined by the **commissioner**~~[executive director]~~ to have been incurred by any customer as a result of the applicant's or licensee's failure to comply with the requirements of this subtitle.
 - (5) Every instrument required in this section shall provide that no suit shall be maintained to enforce any liability on the bond unless brought within three (3) years after the act upon which it is based.
 - (6) The financial responsibility, financial condition, business experience, character, and general fitness of the applicant shall reasonably warrant the belief that the applicant's business will be conducted honestly, carefully, and efficiently. In determining whether this qualification has been met, the **commissioner**~~[executive director]~~ may review and approve:
 - (a) The business record and the capital adequacy of the applicant;
 - (b) The competence, experience, integrity, and financial ability of any person who:
 1. Is a director, officer, supervisory employee, or five percent (5%) or more shareholder of the applicant; or
 2. Owns or controls the applicant; and
 - (c) Any record, on the part of the applicant or any person referred to in subparagraph (b)1. and 2. of:
 1. Any criminal activity;
 2. Any fraud or other act of personal dishonesty;
 3. Any act, omission, or practice which constitutes a breach of a fiduciary duty; or
 4. Any suspension, revocation, or removal, by any agency or department of the United States or any state, from participation in the conduct of any business.

➔Section 801. KRS 286.9-050 is amended to read as follows:

Each application for a license shall be in writing and under oath to the **department**~~[office]~~, in a form prescribed by the **commissioner**~~[executive director]~~, and shall include the following:

- (1) The legal name, residence, and business address of the applicant and, if the applicant is a partnership, association, or corporation, of every member, officer, and director thereof;
- (2) The location at which the initial registered office of the applicant shall be located in this Commonwealth;
- (3) The complete address of any locations at which the applicant proposes to engage in the business of cashing checks; and
- (4) Other data and information the **department**~~[office]~~ may require with respect to the applicant, its directors, trustees, officers, members, or agents.

➔Section 802. KRS 286.9-060 is amended to read as follows:

Each application for a license shall be accompanied by:

- (1) An investigation fee of five hundred dollars (\$500) for Kentucky residents and five hundred dollars (\$500) for nonresidents of Kentucky for each location which shall not be subject to refund but which, if the license is granted, shall constitute the license fee for the first license year or part thereof;
- (2) Audited financial statements prescribed by the **commissioner**~~{executive director}~~; and
- (3) Evidence that the applicant has complied or will comply with all workers', and unemployment compensation laws of Kentucky.

➔Section 803. KRS 286.9-070 is amended to read as follows:

- (1) Upon the filing of a completed application in a form prescribed by the **commissioner**~~{executive director}~~, accompanied by the fee and documents required in KRS 286.9-060, the **commissioner**~~{executive director}~~ shall investigate to ascertain whether the qualifications prescribed by KRS 286.9-040 have been satisfied. If the **commissioner**~~{executive director}~~ finds that the qualifications have been satisfied, and if the **commissioner**~~{executive director}~~ approves the documents, he or she shall issue to the applicant a license to engage in the business of cashing checks or deferred deposit transactions in this Commonwealth.
- (2) The license shall be kept conspicuously posted in the place of business of the licensee.
- (3) A license issued under this section shall remain in force and effect through the remainder of the fiscal year ended June 30 following its date of issuance, unless surrendered, suspended, or revoked under this subtitle. A license issued under this subtitle shall expire by June 30 following the date of its issuance unless renewed by the filing of a completed renewal application and payment of the required fees with the **commissioner**~~{executive director}~~.
- (4) A licensee shall notify the **commissioner**~~{executive director}~~ in writing at least fifteen (15) business days before any change in the licensee's business location or name.
- (5) A licensee shall file a written request for a change of control of that licensee with the **commissioner**~~{executive director}~~ at least fifteen (15) business days prior to any change of control of the licensee. The **commissioner**~~{executive director}~~ may require additional information considered necessary to determine whether a new application for a license is required. The person who requests the approval for a change of control shall pay the cost incurred by the **commissioner**~~{executive director}~~ in investigating the change of control request.
- (6) A license issued under this subtitle shall be transferable or assignable in cases of ownership changes of the business or to facilitate the transfer or assignment of a license if the licensee is closing an alternate office location, subject to approval of the **commissioner**~~{executive director}~~ and based on existing criteria of new applicant approvals in accordance with this section.
- (7) The **commissioner**~~{executive director}~~ may deem an application or renewal application abandoned when the application received is incomplete and the applicant fails to provide any required information or fee under this subtitle or fails to respond to a request by the **commissioner**~~{executive director}~~ for further information.

➔Section 804. KRS 286.9-071 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall not issue additional deferred deposit service business licenses for a period of ten (10) years after July 1, 2009.

➔Section 805. KRS 286.9-073 is amended to read as follows:

Every person licensed under this subtitle shall maintain an agent in this Commonwealth for service of process. The name, address, telephone number, and electronic mail address of the agent shall be filed with the application. The **commissioner**~~{executive director}~~ shall be notified in writing by the licensee at least five (5) days prior to any change in the status of an agent.

➔Section 806. KRS 286.9-074 is amended to read as follows:

- (1) Each licensee shall keep and use in its business any books, accounts, financial reports, and records the **commissioner**~~{executive director}~~ may require to administer and regulate the provisions of this subtitle and the

administrative regulations promulgated under this subtitle. Every licensee shall preserve the books, accounts, financial reports, and records for a minimum of three (3) years, unless applicable state or federal law requires a longer retention period.

- (2) Records required to be preserved under this section may be maintained in an electronic retrievable format, or other similar form of medium, provided that it is readily accessible to examination, investigation, and inspection by the **commissioner**~~[executive director]~~.
- (3) Any person who ceases operating a business licensed under this subtitle shall, at least thirty (30) days prior to the discontinuance of the business, notify the **commissioner**~~[executive director]~~ in writing of the physical location where the records required to be kept under this subtitle will be preserved or archived. The records shall be made accessible to the **commissioner**~~[executive director]~~ upon five (5) business days' written notice.
- (4) Any person who ceases operating as a business licensed under this subtitle shall designate a custodian of records and notify the **commissioner**~~[executive director]~~ of the name, physical address, electronic mail address, and telephone number of the custodian of records. The custodian of records shall preserve all records required under this subtitle and allow the **commissioner**~~[executive director]~~ access to the records for examination and investigation upon demand.
- (5) The **commissioner**~~[executive director]~~ may approve a written request for the destruction of records required to be preserved under this subtitle prior to the minimum retention period described in subsection (1) of this section.

➔Section 807. KRS 286.9-075 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee under this subtitle in connection with the licensee's regulated activities may file a written complaint with the **commissioner**~~[executive director]~~ who may investigate the complaint.
- (2) In the course of the investigation initiated by a complaint or by the **commissioner**~~[executive director]~~, the **commissioner**~~[executive director]~~ may:
 - (a) Subpoena witnesses;
 - (b) Administer oaths;
 - (c) Examine any individual under oath; and
 - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the **commissioner**~~[executive director]~~ under this section, the **commissioner**~~[executive director]~~ may petition any court of competent jurisdiction for enforcement.
- (4) The license of any licensee under this subtitle who fails to comply with a subpoena of the **commissioner**~~[executive director]~~ may be suspended pending compliance with the subpoena.
- (5) The **commissioner**~~[executive director]~~ shall have administrative power to investigate all complaints filed by any person if the complaints are not criminal in nature and if they relate to the check cashing or the deferred deposit service business.

➔Section 808. KRS 286.9-080 is amended to read as follows:

- (1) Each license may be renewed for the ensuing twelve (12) months period upon the timely submission of a completed renewal application and payment to the **commissioner**~~[executive director]~~ annually on or before June 20 of each year a license fee of five hundred dollars (\$500) for the first location and five hundred dollars (\$500) for each additional location.
- (2) The **commissioner**~~[executive director]~~ may reinstate a license that has expired within thirty-one (31) days of the expiration of the license if the licensee pays a late fee in the amount of one hundred dollars (\$100) and a reinstatement fee of five hundred dollars (\$500).
- (3) A license shall not be reinstated where the renewal application, fees, or any required information is received on or after August 1 of the year that the application was due.

➔Section 809. KRS 286.9-090 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ may adopt reasonable administrative regulations, not inconsistent with law, for the enforcement of this subtitle.
- (2) To assure compliance with the provisions of this subtitle, the ***commissioner***~~{executive director}~~ may examine the business, books, and records of any licensee, and each licensee shall pay an examination fee sufficient to cover the cost of the examination based upon fair compensation for time and actual expense as established by order or administrative regulations.
- (3) The affairs of every check cashing and deferred deposit service business licensee and the records required to be maintained by KRS 286.9-074 are subject at any time, or from time to time, to such periodic, special, or other examinations by the ***commissioner***~~{executive director}~~ or an examiner of the ***commissioner***~~{executive director}~~ within or without this state and with or without notice to the licensee, as the ***commissioner***~~{executive director}~~ deems necessary or appropriate in the public interest. All books, papers, and records of assets of the licensee shall be subject to the ***commissioner's***~~{executive director's}~~ inspection.
- (4) Reports of examination, related working papers, or other confidential information in the possession or control of the ***commissioner***~~{executive director}~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These reports of examination, related working papers, or other confidential information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless after notice to the ***commissioner***~~{executive director}~~ and a hearing, a court of competent jurisdiction determines that the ***commissioner***~~{executive director}~~ would not be prejudiced. However, the ***commissioner***~~{executive director}~~ may use such reports, working papers, and other confidential information in the furtherance of any regulatory or legal action brought as a part of the ***commissioner's***~~{executive director's}~~ official duties.
- (5) Neither the ***commissioner***~~{executive director}~~ nor any person who received documents, materials, reports, or other information while acting under the authority of the ***commissioner***~~{executive director}~~ shall be required to testify in any civil action concerning any reports of examination, related working papers, or other confidential information subject to subsection (4) of this section.
- (6) In order to assist in the performance of the ***commissioner's***~~{executive director's}~~ duties, the ***commissioner***~~{executive director}~~ may:
 - (a) Share documents, materials, annual reports, reports of examination or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (4) and (5) of this section, with other state, federal, and international regulatory agencies, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;
 - (b) Receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;
 - (c) Enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;
 - (d) Disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and
 - (e) Disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.
- (7) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the ***commissioner***~~{executive director}~~ under this subsection or as a result of sharing as authorized in subsection (6) of this section.

➔Section 810. KRS 286.9-100 is amended to read as follows:

- (1) Any fee charged by a licensee for cashing a check or entering into a deferred deposit transaction shall be disclosed in writing to the bearer of the check prior to cashing the check or entering into a deferred deposit transaction, and the fee shall be deemed a service fee and not interest. A licensee shall not charge a service fee in excess of fifteen dollars (\$15) per one hundred dollars (\$100) on the face amount of the deferred deposit check. A licensee shall prorate any fee, based upon the maximum fee of fifteen dollars (\$15) per one hundred dollars (\$100). This service fee shall be for a period of at least fourteen (14) days.
- (2) Before a licensee shall deposit with any bank or other depository institution a check cashed by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.
- (3) No licensee shall cash a check payable to a payee other than a natural person unless the licensee has previously obtained appropriate documentation from the board of directors or similar governing body of the payee clearly indicating the authority of the natural person or persons cashing the check, draft, or money order on behalf of the payee.
- (4) No licensee shall indicate through advertising, signs, billhead, or otherwise that checks may be cashed without identification of the bearer of the check; and any person seeking to cash a check shall be required to submit reasonable identification as prescribed by the **commissioner**~~[executive director]~~. The provisions of this subsection shall not prohibit a licensee from cashing a check simultaneously with the verification and establishment of the identity of the presenter by means other than the presentation of identification.
- (5) Within two (2) business days after being advised by a financial institution that a payment instrument has been altered, forged, stolen, obtained through fraudulent or illegal means, negotiated without proper legal authority, or otherwise represents the proceeds of illegal activity, the licensee shall notify the **commissioner**~~[executive director]~~ and the prosecutor or law enforcement authority in the county in which the check was received. If a payment instrument is returned to the licensee by a financial institution for any of these reasons, the licensee shall not release the payment instrument without the written consent of the prosecutor or law enforcement authority, or a court order.
- (6) No licensee shall alter or delete the date on any payment instrument accepted by the licensee.
- (7) No licensee shall engage in unfair or deceptive acts, practices, or advertising in the conduct of the licensed business.
- (8) No licensee shall require a customer to provide security for the transaction or require the customer to provide a guaranty from another person.
- (9) A licensee shall not have more than two (2) deferred deposit transactions from any one (1) customer at any one time. The total proceeds received by the customer from all of the deferred deposit transactions shall not exceed five hundred dollars (\$500).
- (10)
 - (a) Prior to the establishment of the common database of deferred deposit transactions established by KRS 286.9-140, each licensee shall inquire of any customer seeking to present a deferred deposit transaction, whether the customer has any outstanding deferred deposit transactions from any licensee.
 - (b) If the customer represents in writing that the customer has no more than one (1) deferred deposit transaction outstanding to any licensee and that the total proceeds received by the customer from the outstanding deferred deposit transaction issued by the customer does not equal or exceed five hundred dollars (\$500), a licensee may accept a deferred deposit transaction in an amount that, when combined with the customer's other outstanding deferred deposit transaction, does not exceed five hundred dollars (\$500) of total proceeds received by the customer.
 - (c) If the customer represents in writing that the customer has more than one (1) deferred deposit transaction outstanding to licensees or if the total proceeds received by the customer from the deferred deposit transactions equal or exceed five hundred dollars (\$500), a licensee shall not enter into another deferred deposit transaction with that customer until the customer represents to the licensee in writing that the customer qualifies to enter into a new deferred deposit transaction under the requirements set forth in this subtitle.
 - (d) If the database described in KRS 286.9-140 is unavailable due to technical difficulties with the database, as determined by the **commissioner**~~[executive director]~~, the licensee shall utilize the process established in this subsection to verify deferred deposit transactions.

- (11) A licensee shall not use any device or agreement, including agreements with an affiliate of a licensee, with the intent to obtain greater charges than are authorized in this subtitle.
- (12) No licensee shall agree to hold a deferred deposit transaction for more than sixty (60) days.
- (13) Each deferred deposit transaction shall be made according to a written agreement that shall be dated and signed by the customer and the licensee or an authorized agent of the licensee at the licensed location, and made available to the **commissioner**~~[executive director]~~ upon request. The customer shall receive a copy of this agreement.
- (14) A licensee or its affiliate shall not for a fee renew, roll over, or otherwise consolidate a deferred deposit transaction for a customer.
- (15) No individual who enters into a deferred deposit transaction with a licensee shall be convicted under the provisions of KRS 514.040.
- (16) No licensee who enters into a deferred deposit transaction with an individual shall prosecute or threaten to prosecute an individual under the provisions of KRS 514.040.
- (17) Each licensee shall conspicuously display in each of its deferred deposit business locations a sign supplied by the **commissioner**~~[executive director]~~ that gives the following notice: "No person who enters into a post-dated or deferred deposit transaction with this business establishment will be prosecuted for or convicted of writing cold checks or of theft by deception under the provisions of KRS 514.040."
- (18) A licensee may not enter into a deferred deposit transaction with a customer who has two (2) open deferred deposit transactions.
- (19) A licensee shall verify a customer's eligibility to enter into a deferred presentment service transaction by doing one (1) of the following, as applicable:
 - (a) If the **commissioner**~~[executive director]~~ has not implemented a database under KRS 286.9-140 or the database described in KRS 286.9-140 is not fully operational, as determined by the **commissioner**~~[executive director]~~, the licensee shall verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle. The licensee shall maintain a database of all of the licensee's transactions at all of its locations and search that database to meet its obligation under this subtitle.
 - (b) If the **commissioner**~~[executive director]~~ has implemented a database under KRS 286.9-140 and the database described in that section is fully operational, as determined by the **commissioner**~~[executive director]~~, the licensee shall promptly and accurately access the database through an Internet real-time connection, and verify that the customer meets the eligibility requirements for a deferred presentment service transaction under this subtitle.

➔Section 811. KRS 286.9-102 is amended to read as follows:

- (1) Each licensee who engages in deferred deposit transactions shall give the customer the disclosures in writing required by the Consumer Credit Protection Act (15 U.S.C. sec. 1601). Proof of this disclosure shall be made available to the **commissioner**~~[executive director]~~ upon request.
- (2) Each licensee shall conspicuously display a schedule of all fees, and charges for all services provided by the licensee that are authorized by this subtitle. The notice shall be posted at each location where a licensee conducts its business under this subtitle.
- (3) A licensee may charge, collect, and receive check collection charges made by a financial institution for each check returned or dishonored for any reason, provided that the terms and conditions upon which check collection charges will be charged to the customer are set forth in advance in the written disclosure.
- (4) Any personal check accepted from a customer must be payable to the licensee.
- (5) Before a licensee shall present for payment or deposit a check accepted by the licensee, the check shall be endorsed with the actual name under which the licensee is doing business.

➔Section 812. KRS 286.9-104 is amended to read as follows:

- (1) Each licensee shall file an annual report with the **commissioner**~~[executive director]~~ by March 1 of each year, containing the following information:
 - (a) The names and addresses of each person owning a controlling interest in each license;
 - (b) The location of all places of business operated by the licensee and the nature of the business conducted at each location;
 - (c) The names and addresses of all affiliated entities regulated under this subtitle and doing business in this state;
 - (d) Balance sheets, statement of income and expenses, and other statistical information as may be reasonably required by the **commissioner**~~[executive director]~~, consistent with generally accepted accounting practices, for the purpose of determining the general results of operations under this subtitle; and
 - (e) If the licensee is a corporation, the names and addressees of its principal officers and directors; or if the licensee is a partnership, the names and addresses of the partners; or if the licensee is a limited liability company, the names and addresses of the board of directors of the limited liability company.
- (2) If the licensee holds two (2) or more licenses or is affiliated with other licensees, a composite report may be filed.
- (3) All reports shall be filed in a form as may reasonably be required by the **commissioner**~~[executive director]~~ and shall be sworn to by a responsible officer of the licensee.
- (4) The information submitted by licensees under this section shall be held in confidence by the **department**~~[office]~~ and the **commissioner**~~[executive director]~~.

➔Section 813. KRS 286.9-105 is amended to read as follows:

- (1) Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall file with the **commissioner**~~[executive director]~~ all reports by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money laundering, for every transaction in this state. Every licensee required to register with the United States Treasury Financial Crimes Enforcement Network shall maintain copies of these reports in its records in compliance with KRS 286.9-074, or for a time period longer than allowed by KRS 286.9-074, where federal law prescribes.
- (2) The timely filing with the appropriate federal agency of a complete and accurate report required under subsection (1) of this section is deemed to be in compliance with the requirements of subsection (1) of this section, unless the **commissioner**~~[executive director]~~ notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.

➔Section 814. KRS 286.9-110 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend, revoke, place on probation, condition, restrict, refuse to issue or renew a license, accept the surrender of a license in lieu of revocation or suspension, order that refunds to customers be made, or issue a cease-and-desist order, if the **commissioner**~~[executive director]~~ finds that the person, licensee, or a person in control of a licensee:
 - (a) Has committed any fraud, engaged in any dishonest activities, or made any misrepresentation;
 - (b) Does not meet, has failed to comply with, or has violated any provisions of this subtitle or any administrative regulation issued pursuant thereto, or any order of the **commissioner**~~[executive director]~~ issued pursuant thereto, or has violated any other law in the course of its or his or her dealings as a licensee;
 - (c) Has made a false statement in the application for the license or failed to give a truthful reply to a question in the application;
 - (d) Has demonstrated his or her incompetence or untrustworthiness to act as a licensee;
 - (e) Is unfit, through lack of financial responsibility or experience, to conduct the business of a check-cashing or deferred deposit service business, as the case may be;

- (f) Does not conduct his or her business in accordance with the law or conducts business by a method that includes, or would include, activities that are illegal where performed, or has willfully violated any provision of this subtitle; or any administrative regulation promulgated or order of the **commissioner**~~[executive director]~~ issued hereunder;
 - (g) Is insolvent;
 - (h) Is the subject of an administrative cease-and-desist order or similar order, or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the person, applicant, or licensee;
 - (i) Has made or caused to be made to the **commissioner**~~[executive director]~~ any false representation of material fact or has suppressed or withheld from the **commissioner**~~[executive director]~~ any information that the applicant or licensee possesses and which, if submitted by him or her, would have rendered the applicant or licensee ineligible to be licensed under this subtitle;
 - (j) Has refused to permit an examination or investigation by the **commissioner**~~[executive director]~~ of his or her books and affairs or has refused or failed, within a reasonable time, to furnish any information or records, or make any report that may be required or requested by the **commissioner**~~[executive director]~~;
 - (k) Has been convicted of a felony;
 - (l) Has been convicted of any misdemeanor of which an essential element is fraud, breach of trust, or dishonesty;
 - (m) Has had any license, registration, or claim of exemption related to the financial services industry denied, revoked, suspended, conditioned, restricted, or probated under the laws of this state, any other state, or the United States, or has surrendered, withdrawn, or terminated any license, registration, or claim of exemption issued or registration granted by this state or any other jurisdiction under threat of administrative action;
 - (n) Has employed or contracted with a person who has failed to license or has had a license, registration, or claim of exemption denied, revoked, suspended, conditioned, restricted, or probated in this Commonwealth or another state;
 - (o) Has failed to pay any required fee under this subtitle;
 - (p) Has abandoned an application or renewal application by failing to provide the **commissioner**~~[executive director]~~ any information required under this subtitle, or requested by the **commissioner**~~[executive director]~~, to complete an application;
 - (q) Has failed to comply with an administrative or court order imposing child support obligations;
 - (r) Has failed to pay state income taxes or to comply with any administrative or court order directing the payment of state income tax;
 - (s) Has failed to properly verify a customer's eligibility for a deferred deposit transaction;
 - (t) Has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110;
 - (u) Has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
 - (v) Has violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103; or
 - (w) No longer meets the requirements under this subtitle to hold a license.
- (2) If the reason for revocation, suspension, restriction, condition, or probation of a licensee's license at any one location is of general application to all locations operated by a licensee, the **commissioner**~~[executive director]~~ may revoke, suspend, restrict, condition, or probate all licenses issued to a licensee.
- (3) Any person who has had a license denied by the **commissioner**~~[executive director]~~ shall not be eligible to apply for a license under this subtitle until after expiration of one (1) year from the date of denial.

- (4) Any person who has had a license revoked by the **commissioner**~~{executive director}~~ shall not be eligible to apply for a license under this subtitle until after expiration of three (3) years from the date of revocation. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
- (5) Any person whose license has been denied, suspended, revoked, or surrendered in lieu of revocation or suspension under this section is prohibited from participating in any business activity of a licensee under this subtitle and from engaging in any business activity on the premises where a licensee under this subtitle is conducting its business.
- (6) The surrender or expiration of a license shall not affect the person's civil or criminal liability for acts committed prior to the license surrender or expiration. Revocation, suspension, refusal to renew, surrender, or expiration of a license shall not impair or affect the obligation of any preexisting contract between a licensee and a customer. The surrender or expiration of a license shall not affect a proceeding to suspend or revoke a license.
- (7) The **commissioner**~~{executive director}~~ may notify the Department of Revenue, which may institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, or any court of competent jurisdiction, for the recovery of any civil penalty, fine, cost, or fee assessed or levied under this subtitle.
- (8) The **commissioner**~~{executive director}~~ may file a complaint in the Franklin Circuit Court, or any court of competent jurisdiction, for a temporary restraining order or injunction against any person, where the **commissioner**~~{executive director}~~ has reason to believe from evidence satisfactory to the **commissioner**~~{executive director}~~ that such person has violated, or is about to violate, a provision in this subtitle, for the purpose of restraining and enjoining such person from continuing or engaging in the violation or doing any act in furtherance thereof. The court shall have jurisdiction over the proceeding and shall have the power to enter an order or judgment awarding preliminary or final injunctive relief and any other relief that the court deems proper. Any person who violates a temporary restraining order or injunction issued by the court entered as a result of a violation of this subtitle shall be held in contempt of court and the court may assess a civil penalty in an amount equivalent to the amounts found in KRS 286.9-991.

➔Section 815. KRS 286.9-120 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may file an administrative complaint against any person if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that a potential or actual violation of this subtitle has been committed and when the person may be subject to the penalties of KRS 286.9-071, 286.9-110, and 286.9-991. The **commissioner**~~{executive director}~~ shall serve the administrative complaint to the last known address of the person named in the complaint. Service shall be by certified mail or personal delivery. The person named in the administrative complaint shall be entitled to an administrative hearing conducted in accordance with KRS Chapter 13B but only upon timely receipt of a written answer and request for an administrative hearing within twenty (20) days of the mailing or hand delivery of the administrative complaint. If timely requested, an administrative hearing shall be held in accordance with the provisions of KRS Chapter 13B. If an answer is not timely filed, or a written request for a hearing is not timely filed, the **commissioner**~~{executive director}~~ may enter a final order.
- (2) No license shall be denied, limited, conditioned, restricted, probated, suspended, or revoked unless the applicant or licensee is afforded the opportunity for a hearing to be conducted in accordance with KRS Chapter 13B.

➔Section 816. KRS 286.9-125 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may enter an emergency order suspending, conditioning, limiting, or restricting a license issued under this subtitle without notice or hearing if it appears upon grounds satisfactory to the **commissioner**~~{executive director}~~ that the licensee has engaged or is engaging in unsafe, unsound, or illegal practices that pose an imminent threat to the public interest.
- (2) One (1) or more of the following circumstances shall be considered sufficient grounds for an emergency order under this section if it appears on grounds satisfactory to the **commissioner**~~{executive director}~~ that:
 - (a) The licensee does not meet or has failed to comply with more than one (1) of the requirements of this subtitle and the violations appear to be willful;
 - (b) The licensee is in such financial condition that it cannot continue in business with safety to its customers;

- (c) The licensee has been indicted, charged with, or found guilty of any act involving fraud, deception, theft, or breach of trust, or is the subject of an administrative cease-and-desist order or similar order, or of a permanent or temporary injunction currently in effect entered by any court or agency of competent jurisdiction;
 - (d) The licensee has made any misrepresentations or false statements to, or concealed any essential or material fact from, any person in the course of doing business, or has engaged in any course of business that has worked or tended to work a fraud or deceit upon any person or would so operate;
 - (e) The licensee has refused to permit an examination, or has refused or failed, within a reasonable time, to furnish any information or make any report that may have been requested or required by the ***commissioner***~~{executive director}~~ in connection with an investigation or examination;
 - (f) The licensee has had any license, registration, or claim of exemption related to the financial services industry denied, suspended, or revoked under the laws of this state or any other state of the United States, or has surrendered or terminated any license, registration, or claim of exemption issued by this state or any other jurisdiction under threat of administrative action; or
 - (g) The deposit required under KRS 286.9-040(1) has terminated, expired, or otherwise no longer remains in effect.
- (3) An emergency order issued under this section becomes effective when signed by the ***commissioner***~~{executive director}~~. The emergency order shall be delivered by personal delivery or certified mail to the last known address of the person. The order shall be deemed served upon delivery or upon return of the order.
 - (4) A party aggrieved by an emergency order issued by the ***commissioner***~~{executive director}~~ under this section may request an emergency hearing. The request for hearing shall be filed with the ***commissioner***~~{executive director}~~ within twenty (20) days of service of the emergency order.
 - (5) Upon receipt of a written request for an emergency hearing, the ***commissioner***~~{executive director}~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the request for hearing, unless the parties agree otherwise.
 - (6) An emergency order issued under this section shall remain in effect until it is stayed, withdrawn, or superseded by an order of the ***commissioner***~~{executive director}~~ or until it is terminated by a court order.

➔Section 817. KRS 286.9-128 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ may enter into a consent order with another person at any time for the purpose of resolving a matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this subtitle, or an administrative regulation promulgated under this subtitle, or an order issued under this subtitle has been violated.
- (2) Any consent order that the ***commissioner***~~{executive director}~~ enters into to resolve a matter arising under this subtitle shall be deemed an administrative action and a public record.

➔Section 818. KRS 286.9-130 is amended to read as follows:

The ***commissioner***~~{executive director}~~ may stay, suspend, or postpone the effective date of an order issued under this subtitle, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person or licensee.

➔Section 819. KRS 286.9-140 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ shall, on or before July 1, 2010, implement a common database with real-time access through an Internet connection for deferred deposit service business licensees as provided in this subtitle unless implementing the database by that date would be financially impracticable for the ***commissioner***~~{executive director}~~ to design and operate a database or because a contract with a qualified third-party provider has not been entered into. The database shall be accessible to the ***department***~~{office}~~ and the deferred deposit service business licensee to verify whether any deferred deposit transactions are outstanding for a particular person. A deferred deposit service business licensee shall accurately and promptly submit such data before entering into each deferred deposit transaction in such format as the ***commissioner***~~{executive director}~~

~~director~~ may require by rule or order, including the customer's name, Social Security number or employment authorization alien number, address, driver's license number, amount of the transaction, date of transaction, date that the completed transaction is closed, and any additional information required by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ may adopt rules to administer and enforce the provisions of this subtitle and to assure that the database is used by deferred deposit service business licensees in accordance with this subtitle.

- (2) The ~~commissioner~~~~executive director~~ shall impose a fee of one dollar (\$1) per transaction for data required to be submitted by a deferred deposit service business licensee, which fee may be charged to the customer.
- (3) The ~~commissioner~~~~executive director~~ may operate the database described in subsection (1) of this section or may select and contract with a third-party provider to operate the database. If the ~~commissioner~~~~executive director~~ contracts with a third-party provider for the operation of the database, all of the following apply:
 - (a) The ~~commissioner~~~~executive director~~ shall ensure that the third-party provider selected as the database provider operates the database pursuant to the provisions of this subtitle;
 - (b) The ~~commissioner~~~~executive director~~ shall consider cost of service and ability to meet all the requirements of this subtitle in selecting a third-party provider as the database provider;
 - (c) In selecting a third-party provider to act as the database provider, the ~~commissioner~~~~executive director~~ shall give strong consideration to the third-party provider's ability to prevent fraud, abuse, and other unlawful activities associated with deferred presentment service transactions and provide additional tools for the administration and enforcement of this subtitle;
 - (d) The third-party provider shall use the data collected under this subtitle only as prescribed in this subtitle and the contract with the ~~department~~~~office~~ and for no other purpose;
 - (e) If the third-party provider violates this subtitle, the ~~commissioner~~~~executive director~~ may terminate the contract and the third-party provider may be barred from becoming a party to any other state contracts;
 - (f) A person injured by the third-party provider's violation of this subtitle may maintain a civil cause of action against the third-party provider and may recover actual damages plus reasonable attorney's fees and court costs; and
 - (g) The ~~commissioner~~~~executive director~~ may require that the third-party provider collect the fee assessed in subsection (2) of this section from the licensee. The third-party provider shall remit the fee collected from the licensee to the ~~commissioner~~~~executive director~~ no later than the first day of each month. The third-party provider shall deposit any fee collected in a separate escrow account in a federally insured financial institution and shall hold the fee deposited in trust for the Commonwealth of Kentucky.
- (4) The database described in subsection (1) of this section shall allow a deferred deposit service business licensee accessing the database to do all of the following:
 - (a) Verify whether a customer has any open deferred deposit transactions with any deferred deposit business service licensee that have not been closed;
 - (b) Provide information necessary to ensure deferred deposit service business licensee compliance with any requirements imposed by the United States Treasury Office of Foreign Assets Control and United States Treasury Office of Financial Crimes Enforcement Network; and
 - (c) Track and monitor the number of customers who notify a deferred deposit service business licensee of violations of this subtitle, the number of times a deferred deposit service business licensee agreed that a violation occurred, the number of times that a deferred deposit service business licensee did not agree that a violation occurred, the amount of restitution paid, and any other information the ~~commissioner~~~~executive director~~ requires by rule or order.
- (5) While operating the database, the database provider shall do all of the following:
 - (a) Establish and maintain a process for responding to transaction verification requests due to technical difficulties occurring with the database that prevent the licensee from accessing the database through the Internet;
 - (b) Comply with any applicable federal and state provisions to prevent identity theft;
 - (c) Provide accurate and secure receipt, transmission, and storage of customer data; and

- (d) Meet the requirements of this subtitle.
- (6) When the database provider receives notification that a deferred deposit service transaction has been closed, the database provider shall designate the transaction as closed in the database immediately, but in no event after 11:59 p.m. on the day the **commissioner**~~[executive director]~~ or database provider receives notification.
- (7) The database provider shall automatically designate a deferred deposit service transaction as closed in the database five (5) days after the transaction maturity date unless a deferred deposit service business licensee reports to the database provider before that time that the transaction remains open because of the customer's failure to make payment; that the transaction is open because the customer's payment instrument or an electronic redeposit is in the process of clearing the banking system; or that the transaction remains open because the customer's payment instrument is being returned to the deferred deposit service business licensee for insufficient funds, a closed account, or a stop payment order; or because of any other factors determined by the **commissioner**~~[executive director]~~. If a deferred deposit service business licensee reports the status of a transaction as open in a timely manner, the transaction remains an open transaction until it is closed and the database provider is notified that the transaction is closed.
- (8) If a deferred deposit service business licensee stops providing deferred deposit service transactions, the database provider shall designate all open transactions with that licensee as closed in the database sixty (60) days after the date the deferred deposit service business licensee stops offering deferred deposit service transactions, unless the deferred deposit service business licensee reports to the database provider before the expiration of the sixty (60) day period which of its transactions remain open and the specific reason each transaction remains open. The deferred deposit service business licensee shall also provide to the **commissioner**~~[executive director]~~ a reasonably acceptable plan that outlines how the deferred deposit service business licensee will continue to update the database after it stops offering deferred presentment service transactions. The **commissioner**~~[executive director]~~ shall promptly approve or disapprove the plan and immediately notify the deferred deposit service business licensee of the **commissioner's**~~[executive director's]~~ decision. If the plan is disapproved, the deferred deposit service business licensee may submit a new plan or may submit a modified plan for the deferred deposit service business licensee to follow. If at any time the **commissioner**~~[executive director]~~ reasonably determines that a deferred deposit service business licensee that has stopped offering deferred deposit service transactions is not updating the database in accordance with its approved plan, the **commissioner**~~[executive director]~~ shall immediately close or instruct the database provider to immediately close all remaining open transactions of that deferred deposit service business licensee.
- (9) The response to an inquiry to the database provider by a deferred deposit service business licensee shall state only that a person is eligible or ineligible for a new deferred deposit service transaction and describe the reason for that determination. Only the person seeking the transaction may make a direct inquiry to the database provider to request a more detailed explanation of a particular transaction that was the basis for the ineligibility determination. Any information regarding any person's transaction history is confidential; is not subject to public inspection; is not a public record subject to the disclosure requirements of the Kentucky Open Records Act, KRS 61.870 to 61.884; is not subject to discovery, subpoena, or other compulsory process, except in an administrative or legal action arising under this subtitle; and shall not be disclosed to any person other than the **commissioner**~~[executive director]~~.
- (10) The **commissioner**~~[executive director]~~ may access the database provided under subsection (1) of this section only for purposes of an investigation of, examination of, or enforcement action concerning an individual database provider, licensee, customer, or other person.
- (11) The **commissioner**~~[executive director]~~ shall investigate violations of and enforce this subtitle. The **commissioner**~~[executive director]~~ shall not delegate his or her responsibilities under this subsection to any third-party provider.
- (12) (a) The **commissioner**~~[executive director]~~ shall make a determination that the database is fully operational and shall send written notification to each licensee subject to the provisions of this subtitle:
1. That the database has been implemented; and
 2. Of the exact date that the database shall be considered operational for the data entry requirement established in paragraph (b) of this subsection.

- (b) A deferred deposit service business licensee shall promptly and accurately enter into the database all transactions undertaken by the licensee upon receipt of the written notification established in paragraph (a) of this subsection.
- (13) The **commissioner**~~[executive director]~~ may, by rule or order, do all of the following:
 - (a) Require that data be retained in the database only as required to ensure deferred deposit service business licensee compliance with this subtitle;
 - (b) Require that customer transaction data in the database are archived within three hundred sixty-five (365) days after the customer transaction is closed unless needed for a pending enforcement or legal action;
 - (c) Require that any identifying customer information is deleted from the database when data are archived; and
 - (d) Require that data in the database concerning a customer transaction are deleted from the database three (3) years after the customer transaction is closed or, if any administrative, legal, or law enforcement action is pending, three (3) years after the administrative, legal, or law enforcement action is completed, whichever is later.
- (14) The **commissioner**~~[executive director]~~ may maintain access to data archived under subsection (13) of this section for examination, investigation, or legislative or policy review.
- (15) A deferred deposit service business licensee may rely on the information contained in the database as accurate and is not subject to any administrative penalty or civil liability as a result of relying on inaccurate information contained in the database, provided the deferred deposit licensee accurately and promptly submits such data as required before entering into a deferred deposit transaction with a customer.
- (16) The **commissioner**~~[executive director]~~ may use the database to administer and enforce this subtitle.
- (17) The **commissioner**~~[executive director]~~ may require a database provider to file a report by March 1 of each year containing the following information:
 - (a) The total number and dollar amount of deferred deposit transactions entered into in the calendar year ending December 31 of the previous year;
 - (b) The total number and dollar amount of deferred deposit transactions outstanding as of December 31 of the previous year;
 - (c) The total dollar amount of fees collected for deferred deposit transactions as of December 31 of the previous year;
 - (d) The minimum, maximum, and average dollar amount of deferred deposit transactions entered into, the total dollar amount of the net charge-offs and write-offs, and the net recoveries of licensees as of December 31 of the previous year;
 - (e) The average deferred deposit transaction amount, the average number of transactions, and the average aggregate deferred deposit transaction amount entered into per customer as of December 31 of the previous year;
 - (f) The average number of days a customer was engaged in a deferred deposit transactions for the previous year; and
 - (g) An estimate of the average total fees paid per customer for deferred deposit transactions for the previous year.
- (18) Enforcement of this section shall be effective ninety (90) days after the database implementation date established by the **commissioner**~~[executive director]~~ as set forth in subsection (12) of this section.

➔Section 820. KRS 286.9-990 is amended to read as follows:

- (1) Any person who intentionally violates any provision of this subtitle, or violates any administrative regulation promulgated hereunder, or violates any order of the **commissioner**~~[executive director]~~, shall be guilty of a Class A misdemeanor. Each transaction in violation of this subtitle and each day that a violation continues shall constitute a separate offense.
- (2) This section shall not be deemed to limit the power of the **commissioner**~~[executive director]~~ to enforce any of the administrative penalties found in this subtitle.

- (3) For purposes of this section, "payment instrument" also includes debit authorization, electronic funds transfer, and any other form of electronic transmission of money.

➔Section 821. KRS 286.9-991 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may levy a civil penalty against a person who violates any provision of, or administrative regulation promulgated under, this subtitle or any order issued by the ***commissioner***~~[executive director]~~ under this subtitle.
- (2) The civil penalty shall be not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) per violation for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees and court costs.
- (3) Any civil penalties imposed may be in addition to any other remedy or penalty imposed in this subtitle.

➔Section 822. KRS 286.10-200 is amended to read as follows:

As used in KRS 286.10-200 to 286.10-285 and KRS 286.10-991, unless the context requires otherwise:

- (1) "Capital" means the assets of a business entity less the liabilities of that business entity. Assets and liabilities shall be measured according to generally accepted accounting principles or relevant pronouncements of the financial accounting standards board;
- (2) "***Department***~~[Office]~~" means the ***Department***~~[Office]~~ of Financial Institutions;
- (3) "Person" means any sole proprietorship, general partnership, corporation, limited liability company, or limited liability partnership duly qualified to do business in Kentucky;
- (4) "Pledgor" means any individual who executes a title pledge agreement as defined in subsection (5) of this section;
- (5) "Title pledge agreement" means a thirty (30) day written agreement whereby a title pledge lender agrees to make a loan of money to a pledgor, and the pledgor agrees to give the title pledge lender a security interest in unencumbered titled personal property owned by the pledgor, subject to the terms and conditions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991. A pledgor shall have no personal liability on a title pledge agreement and a title pledge agreement shall not be considered a debt transaction for any purpose of law;
- (6) "Title pledge lender" means any person engaged in the business of making title pledge agreements;
- (7) "Title pledge office" means the location at which, or premises in which, a title pledge lender regularly conducts business; and
- (8) "Titled personal property" means any personal property the ownership of which is evidenced and delineated by a state issued certificate of title but shall not include mobile homes.

➔Section 823. KRS 286.10-210 is amended to read as follows:

No person shall engage in the business of a title pledge lender without having first obtained a license. Any person engaged in the business of title pledge lending on July 15, 1998, may continue to engage in the business without a license until the ***commissioner***~~[executive director]~~ shall have acted upon his ***or her*** application for a license, if the application is filed within sixty (60) days after July 15, 1998.

➔Section 824. KRS 286.10-215 is amended to read as follows:

To qualify for a license, an applicant shall apply to the ***department***~~[office]~~ and satisfy the following requirements:

- (1) Be operating as a sole proprietorship, general partnership, limited liability partnership, corporation, or limited liability company duly qualified to do business in Kentucky;
- (2) Demonstrate the existence of initial capital of and the maintenance of, at least one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth;
- (3) Demonstrate the existence of a bond, with approved surety, in the amount of one hundred thousand dollars (\$100,000) for the security of all of the applicant's licensed title pledge offices within the Commonwealth. This bond shall be maintained for the benefit and security of the title pledge borrowers and for the benefit and security of the Commonwealth with respect to the civil and criminal penalties provided in KRS 286.10-991; and

- (4) Represent that the business will be operated lawfully, fairly, and ethically in accordance with KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

➔Section 825. KRS 286.10-220 is amended to read as follows:

Each application for a title pledge lending license shall be filed with the **department**~~[office]~~, and the application shall provide the following:

- (1) The name of the beneficial owner if a sole proprietorship; or in the case of a corporation, all individuals serving as officers or directors; or in the case of a partnership or limited liability company, the members thereof;
- (2) The street address where the title pledge office is to be operated;
- (3) Proof of the capital and surety bond requirements set forth in KRS 286.10-215, accompanied by an unaudited financial statement from a certified public accountant;
- (4) An affidavit from each individual set forth in subsection (1) of this section stating that each individual has not been convicted of a felony within the ten (10) year period preceding the date of application;
- (5) Certified funds in the amount of five hundred dollars (\$500) payable to the department; and
- (6) Other information as required by the **commissioner**~~[executive director]~~.

➔Section 826. KRS 286.10-225 is amended to read as follows:

- (1) Following verification by the **department**~~[office]~~ of the information contained in the application, every person having satisfied the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991 and having paid the business taxes and any other taxes required by law shall be granted a license as set forth in this section. The license issued under this section shall state the name of the person to whom issued, the place of business, and street address where the title pledge office is located. The license shall entitle the person to do business at the place designated on the license. The license shall not be transferable from one (1) person to another but, upon approval of the **commissioner**~~[executive director]~~, may be transferred from one (1) location to another within the county of the location originally licensed.
- (2) A title pledge lender license shall be renewed each year upon payment of an annual fee of five hundred dollars (\$500) and compliance with the provisions of KRS 286.10-200 to 286.10-285 and KRS 286.10-991.

➔Section 827. KRS 286.10-230 is amended to read as follows:

- (1) Every title pledge lender doing business under the laws of this Commonwealth shall be subject to inspection by the **commissioner**~~[executive director]~~ or by an examiner appointed by the **commissioner**~~[executive director]~~ in accordance with KRS 286.1-440. Examination shall be made of every title pledge lender at least once and not more than twice every twenty-four (24) months unless it appears from examination or from the report of the title pledge lender that it has failed to comply with laws or administrative regulations relating to title pledge lenders or has engaged in unsafe or unsound practices.
- (2) The **commissioner**~~[executive director]~~, deputy **commissioner**~~[director]~~, and each examiner may compel the appearance of any person for the purpose of the examination, which shall be made in the presence of one (1) of the officers of the title pledge lender, or the lender's designee.

➔Section 828. KRS 286.10-235 is amended to read as follows:

In undertaking the examination of any title pledge lender, neither the Commonwealth, the **commissioner**~~[executive director]~~, nor any examiner employed by the Commonwealth shall become liable to any pledgor of the title pledge lender if the examination or an omission in the examination fails to fully and effectively disclose the financial condition of the title pledge lender.

➔Section 829. KRS 286.10-240 is amended to read as follows:

- (1) Reports of examination, and correspondence that relates to the report of examination, of a title pledge lender shall be considered confidential information. No officer or director of a title pledge lender or employee of the **department**~~[office]~~ shall release any information contained in the examination, except if:
 - (a) Required in a proper legal proceeding in which a subpoena and protective order insuring confidentiality have been issued by a court of competent jurisdiction; or

- (b) The information is referred to an appropriate prosecuting attorney for possible criminal proceedings, to outside persons providing professional services to the title pledge lender, or to outside persons for the purpose of evaluating the title pledge lender for possible acquisition. Reports of examination released to outside persons providing professional services to the title pledge lender or for the purpose of evaluating the title pledge lender for possible acquisition, shall require a written request from the outside person and prior approval by the board of directors or an executive committee of the title pledge lender.
- (2) The ~~department~~~~office~~ may furnish to and exchange information and reports with officials and examiners of other properly authorized state or federal regulatory authorities.
- (3) Every official report concerning a title pledge lender, and every report of examination, shall be prima facie evidence of the facts stated therein for all purposes in any action in which the ~~department~~~~office~~ or title pledge lender is a party.

➔Section 830. KRS 286.10-245 is amended to read as follows:

A fee shall be collected by the ~~department~~~~office~~ for any examination as set forth in KRS 286.10-230. The fee shall be sufficient to cover the cost of the examination based upon fair compensation for time and actual expense.

➔Section 831. KRS 286.10-250 is amended to read as follows:

- (1) Every title pledge lender shall keep a consecutively numbered record of every title pledge agreement executed. A copy of the title pledge agreement shall be maintained for a period of two (2) years from the date the title pledge agreement was executed, and shall include the following:
 - (a) A clear and accurate description of the titled personal property, including its vehicle identification number, license plate number, year, make, model, type, and color;
 - (b) The date of the title pledge agreement;
 - (c) The amount of the loan made in accordance with the title pledge agreement;
 - (d) The date of maturity of the loan; and
 - (e) The name, date of birth, Social Security number, and residence address of the pledgor, together with a photocopy of the pledgor's motor vehicle operator's license.
- (2) The pledgor shall sign the title pledge agreement, and shall be provided with a copy of the agreement. The title pledge agreement shall also be signed by the title pledge lender or the lender's employee or agent.
- (3) This information shall be maintained at the title pledge office location, approved by the ~~department~~~~office~~, and made available for inspection by the law enforcement agencies where the title pledge lender is located during the regular business hours of the title pledge office.

➔Section 832. KRS 286.10-285 is amended to read as follows:

A title pledge lender shall not:

- (1) Accept a pledge from a person under eighteen (18) years of age, from anyone who appears to be intoxicated, or from any person known to the title pledge lender to have been convicted of larceny, burglary, or robbery;
- (2) Make any agreement giving the title pledge lender any recourse against the pledgor other than the title pledge lender's right to take possession of the titled personal property and certificate of title upon the pledgor's default, and to sell the titled personal property;
- (3) Accept any waiver, in writing or otherwise, or any right or protection accorded a pledgor under KRS 286.10-200 to 286.10-285 and KRS 286.10-991;
- (4) Fail to exercise reasonable care to protect from loss or damage titled personal property or certificates of title in the physical possession of the title pledge lender;
- (5) Purchase pledged titled personal property in the operation of its business;
- (6) Maintain more than one (1) title pledge office per license;
- (7) Violate the provisions of KRS 286.10-260 or any administrative regulation promulgated by the ~~department~~~~office~~;

- (8) Operate a title pledge office on the same premises as a pawnbroker as defined in KRS 226.010; or
- (9) Lend moneys in excess of four thousand dollars (\$4,000) to any one (1) title pledge borrower at a given time.

➔Section 833. KRS 286.10-991 is amended to read as follows:

- (1) Every person who knowingly violates any of the provisions of KRS 286.10-200 to 286.10-285 or this section is guilty of a Class A misdemeanor. Upon conviction of such a Class A misdemeanor the license of the title pledge lender may be suspended or revoked by the ***department***~~{office}~~.
- (2) Notwithstanding any other law to the contrary, apart from or in addition to any sanctions which may be imposed under subsection (1) of this section, upon an administrative finding by the ***department***~~{office}~~ that a title pledge lender has violated the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period, specified by the ***department***~~{office}~~, not to exceed forty-five (45) days. Notwithstanding the provisions of KRS 286.10-205, or any other law to the contrary, upon a finding by the ***department***~~{office}~~ that a title pledge lender has repeatedly and persistently engaged in a pattern of violating the provisions of KRS 286.10-260(3), the license of the title pledge lender may be revoked or suspended for a period specified by the ***department***~~{office}~~, of not less than ninety (90) days.
- (3) In addition to the sanctions which may be imposed under subsection (2) of this section, the ***department***~~{office}~~ may impose a fine against any person for a violation of KRS 286.10-200 to 286.10-285 or this section of no less than five hundred dollars (\$500) and no more than one thousand dollars (\$1,000) per violation.
- (4) During the period of any suspension or following any revocation, the title pledge lender shall not engage, in any county within this Commonwealth, in the business of making title pledge agreements with pledgors.

➔Section 834. KRS 286.11-003 is amended to read as follows:

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

- (1) "Affiliate" means any person who directly or indirectly through one (1) or more intermediaries controls, is controlled by, or is under common control with, another person;
- (2) "Agent" means a person authorized by written agreement and designated by the licensee to act on behalf of a licensee under the provisions of this subtitle;
- (3) "Applicant" means a person filing an application or renewal application for a license under this subtitle;
- (4) "Control" means:
 - (a) Ownership of, or the power to vote, directly or indirectly, twenty-five percent (25%) or more of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;
 - (b) The power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant; or
 - (c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant;
- (5) "Controlling person" means any person in control of a licensee;
- (6) "Director" means a member of a licensee's or applicant's board of directors if the applicant or licensee is a corporation, or manager if the applicant or licensee is a limited liability company, or a partner if the applicant or licensee is a partnership;
- (7) "Electronic instrument" means a card or other tangible object for the transmission or payment of money, including a stored value card or device, which contains a microprocessor chip, magnetic stripe, or other means for storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in the issuer's goods and services;
- (8) "***Commissioner***~~{Executive director}~~" means the ***commissioner***~~{executive director}~~ of the ***Department***~~{Office}~~ of Financial Institutions;
- (9) "Executive officer" means the president, chairperson of the executive committee, responsible individual, chief financial officer, and any other person who performs similar functions;

- (10) "Financial institution" means any person doing business under the laws of any state or commonwealth or the United States relating to banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions;
- (11) "Insolvent" means that appearing upon examination of any licensee or its agent that its liabilities exceeds its assets or it cannot meet its obligations in the usual and ordinary course of business for any reason;
- (12) "Key shareholder" means any person, or group of persons acting in concert, who is the owner of twenty percent (20%) or more of any voting class of an applicant's or licensee's stock;
- (13) "Licensee" means a person licensed under this subtitle;
- (14) "Material litigation" means litigation that according to generally accepted accounting principles is significant to an applicant's or a licensee's financial health, and would be required to be disclosed in the applicant's or licensee's annual audited financial statements, report to shareholders, or similar records, including any adjudication against an applicant or licensee by a federal or state administrative or regulatory agency relating to a violation of the Bank Secrecy Act, 31 U.S.C. secs. 5311-5332 and 31 C.F.R. pt. 103, regardless of whether the applicant or licensee has admitted liability or fault;
- (15) "Monetary value" means a medium of exchange whether or not redeemable in money;
- (16) "Money" means a medium of exchange that is authorized or adopted by the United States or a foreign government or other recognized medium of exchange, including a monetary unit of account established by an intergovernmental organization or by agreement between two (2) governments;
- (17) "Money transmission" means engaging in the business of receiving money or monetary value to transmit, deliver, or instruct to be transmitted or delivered, money or monetary value to another location inside or outside the United States by any and all means, including but not limited to wire, facsimile, electronic transfer, or issuing stored value;
- (18) "Money transmitter" means a person that is engaged in money transmission;
- (19) "Net worth" means the excess of assets over liabilities as determined by generally accepted accounting principles;
- (20) "~~Department~~~~Office~~" means the Kentucky ~~Department~~~~Office~~ of Financial Institutions;
- (21) "Outstanding payment instrument" means any payment instrument issued by the licensee which has been sold or issued in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an agent of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the issuer;
- (22) (a) "Payment instrument" means:
 - 1. A check, draft, money order, traveler's check, or other written or electronic instrument or order for the transmission or payment of money, sold or issued to one (1) or more persons, whether or not such instrument is negotiable; or
 - 2. The purchase or the deposit of funds for the purchase of a check, draft, money order, traveler's check, or other written or electronic instrument;(b) "Payment instrument" does not include any credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services;
- (23) "Person" means any individual, corporation, business trust, estate, trust, partnership, limited liability company, association, organization, joint venture, government and any subdivision, agency or instrumentality thereof, or any other legal or commercial entity;
- (24) "Record" means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form;
- (25) "Remit" means either to make direct payment of the funds to the licensee or its representatives authorized to receive those funds, or to deposit the funds in a bank, credit union, or savings and loan association, or other similar financial institution in an account specified by the licensee;

- (26) "Responsible individual" means an individual who is employed by a licensee and has principal managerial authority over the provision of money transmission by the licensee in this state;
- (27) "State" means a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession that is subject to the jurisdiction of the United States;
- (28) "Stored value" means monetary value that is evidenced by an electronic record; and
- (29) "Unsafe or unsound practice" means a practice or conduct by a person licensed to provide money transmission, or an agent of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

➔Section 835. KRS 286.11-009 is amended to read as follows:

- (1) Each application for a license under this subtitle shall be made in writing and in a form and medium prescribed by regulation by the **commissioner**~~executive director~~. The application shall state or contain the following:
 - (a) The legal name of the applicant, business addresses, and residential addresses, if applicable, of the applicant, and any fictitious or trade name used by the applicant in conducting its business;
 - (b) The legal name, residential and business addresses, date of birth, Social Security number, and employment history for the five (5) year period preceding the filing of the application, of the applicant's proposed responsible individual;
 - (c) A list and description of any criminal conviction, other than a traffic violation, of the applicant and proposed responsible individual, for the ten (10) year period preceding the filing of the application. The **commissioner**~~executive director~~ may request a copy of any criminal conviction from the applicant, which shall be promptly provided by the applicant to the **commissioner**~~executive director~~ within ten (10) working days of the request;
 - (d) A list and description of any material litigation of the applicant and proposed responsible individual, for the ten (10) year period preceding the filing of the application. The **commissioner**~~executive director~~ may request a copy of any material litigation from the applicant, which shall be promptly provided by the applicant to the **commissioner**~~executive director~~ within ten (10) working days of the request;
 - (e) A description of the activities conducted by the applicant and a history of operations, including, if applicable, a description of any money transmission that has been previously provided by the applicant in this state;
 - (f) A list of other states or countries in which the applicant is licensed to engage in money transmission or other similar money services, and any license revocations, suspensions, restrictions, or other disciplinary action taken against the applicant in another state or country;
 - (g) A list of any license revocations, suspensions, restrictions, or other disciplinary action taken against any money transmission business involving the proposed responsible individual;
 - (h) A description of the source of money and credit to be used by the applicant to provide money transmissions;
 - (i) A sample form of contract for an agent;
 - (j) A sample form of payment instrument;
 - (k) Information concerning any bankruptcy, reorganization, or receivership proceedings involving or affecting the applicant or the proposed responsible individual;
 - (l) A list identifying the name, physical location or locations, and telephone number at which the applicant and its proposed agents intend to conduct money transmission business in the state at the time of the filing of the license application;
 - (m) The name, address, and telephone number of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which such payment instruments will be payable;
 - (n) A copy of the written procedures that will be provided by the applicant or licensee to its agent or agents;

- (o) That neither the applicant, nor any executive officer, nor person who exercises control over the applicant, nor key shareholder, nor any proposed agent, nor the proposed responsible individual, is listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or the United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts and to finance terrorist acts; and
 - (p) Any other information regarding the background, experience, character, financial responsibility, or general fitness of the applicant, the applicant's responsible individual, or agent that the ~~commissioner~~~~executive director~~ may require by rule or order.
- (2) If the applicant is a corporation, limited liability company, partnership, or other entity, then the applicant shall also provide:
- (a) A copy of the applicant's filed articles of incorporation;
 - (b) The name, address, and telephone number of the registered process agent of the applicant in this state;
 - (c) If applicable, then a certificate of good standing from the state or country in which the applicant was incorporated or formed;
 - (d) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;
 - (e) The legal name, any fictitious or trade name, all business and residence addresses, date of birth, Social Security number, and employment history for the ten (10) year period preceding the filing of the application for each executive officer, board director, key shareholder, or person that has control of the applicant;
 - (f) Copies and description of material litigation for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;
 - (g) Copies and descriptions of criminal convictions, other than traffic violations, for the ten (10) year period prior to the filing date of the application of every executive officer or key shareholder of the applicant;
 - (h) A copy of the applicant's audited financial statements for the most recent fiscal year or, if the applicant is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation or the applicant's most recent audited consolidated annual financial statements and, in each case, if available, for the two (2) year period preceding the filing of the application;
 - (i) A copy of the applicant's unconsolidated financial statements for the current fiscal year, whether audited or not, and, if available, for the two (2) year period preceding the filing of the application;
 - (j) If the applicant is publicly traded, then a copy of the most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m;
 - (k) If the applicant is a wholly owned subsidiary of:
 - 1. A corporation publicly traded in the United States, then a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed with the United States Securities and Exchange Commission pursuant to 15 U.S.C. sec. 78m; or
 - 2. A corporation publicly traded outside of the United States, a copy of similar documentation for the most recent fiscal year filed with the regulator of the parent corporation's domicile outside the United States.
- (3) Every corporate applicant, at the time of filing of an application for a license under this subtitle and at all times after a license is issued, shall be in good standing in the state of its incorporation.
- (4) Every applicant shall, at the time of the filing of an application for a license under this subtitle and at all times after a license is issued, be registered or qualified to do business in this state.

- (5) The ***commissioner***~~[executive director]~~ is authorized, for good cause, to waive any requirement of this section with respect to any license application or to permit a license applicant to submit substituted information in its license application in lieu of the information required by this section.

➔Section 836. KRS 286.11-013 is amended to read as follows:

- (1) Each application shall be accompanied by a surety bond or other similar security acceptable to the ***commissioner***~~[executive director]~~, in the amount of at least five hundred thousand dollars (\$500,000). The ***commissioner***~~[executive director]~~ may increase the amount of the surety bond, or other similar security, to a maximum of five million dollars (\$5,000,000), upon the basis of the financial condition of an applicant, as evidenced by net worth, transaction volume, or other relevant criteria that the ***commissioner***~~[executive director]~~ may establish by order or rule.
- (2) The surety bond, or other similar security acceptable to the ***commissioner***~~[executive director]~~, shall be in a form satisfactory to the ***commissioner***~~[executive director]~~ and shall hold and bind the principal and surety to the Commonwealth of Kentucky for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or money transmissions by the licensee and its agent. The aggregate liability of the surety bond or other similar security accepted shall not exceed the principal sum of the bond.
- (3) A claimant may maintain a civil action on the surety bond, or other similar security acceptable to the ***commissioner***~~[executive director]~~, against a licensee, or the ***commissioner***~~[executive director]~~ may maintain an action on behalf of the claimant, in the Franklin Circuit Court, or in any other court of competent jurisdiction, either in one (1) action or in successive actions.
- (4) A licensee shall at all times maintain a surety bond, or other similar security acceptable to the ***commissioner***~~[executive director]~~, in the amount and type required under subsections (1) and (2) of this section. The ***commissioner***~~[executive director]~~ may, at any time, accept a substitute or replacement surety bond, or other acceptable similar security, from the licensee, provided that the requirements of subsections (1) and (2) are met.
- (5) The surety bond, or other similar security acceptable to the ***commissioner***~~[executive director]~~, shall be continuous and remain in effect until canceled. The licensee shall provide the ***commissioner***~~[executive director]~~ with at least a thirty (30) day written notice of the intent to cancel the surety bond or other similar security accepted by the ***commissioner***~~[executive director]~~. The cancellation of the surety bond or other acceptable security shall not affect any liability incurred or accrued during the thirty (30) day notice of cancellation period.
- (6) A surety bond, or other security acceptable to the ***commissioner***~~[executive director]~~, shall remain in place and cover claims for at least five (5) years after the date of any violation of this subtitle by the licensee or its agent, or the date the licensee ceases providing money transmission services in this state, whichever date occurs last. The ***commissioner***~~[executive director]~~ may permit the licensee to reduce or eliminate the surety bond, or other similar security approved by the ***commissioner***~~[executive director]~~, prior to the expiration of the five (5) years, to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced.

➔Section 837. KRS 286.11-015 is amended to read as follows:

- (1) Every licensee shall, at all times, maintain permissible investments that have a market value that is computed in accordance with generally accepted accounting principles. These investments shall not be less than the aggregate amount of all outstanding payment instruments.
- (2) Except to the extent otherwise limited in subsection (5) of this section, the following investments are permissible for a licensee:
 - (a) Cash, time deposits, savings deposits, demand deposits, a certificate of deposit, or senior debt obligation of an insured depository institution as defined in 12 U.S.C. sec. 1813 or as defined under 12 U.S.C. sec. 1781;
 - (b) Banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the federal reserve system and is eligible for purchase by a federal reserve bank;
 - (c) An investment bearing a rating of one (1) of the three (3) highest grades as defined by a nationally recognized organization that rates securities;

- (d) An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;
 - (e) Receivables that are payable to a licensee from its agents, in the ordinary course of business, pursuant to contracts which are not past due or doubtful of collection, if the aggregate amount of receivables under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not hold, at one (1) time, receivables under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments.
- (3) The following investments are permissible under this section, but only to the extent specified as follows:
- (a) An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this paragraph do not exceed twenty percent (20%) of the total permissible investments of a licensee and the licensee does not, at one (1) time, hold investments under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments;
 - (b) A share of a person traded on a national securities exchange or a national over-the-counter market or a share or certificate issued by an open-end management investment company that is registered with the United States Securities and Exchange Commission pursuant to 15 U.S.C. secs. 80a-1 to 80a-64, and whose portfolios are restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if:
 - 1. The aggregate of investments under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and
 - 2. The licensee does not, at one (1) time, hold investments under this paragraph in any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments; and
 - (c) A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange, if:
 - 1. The aggregate amount of principal and interest outstanding under demand-borrowing agreements under this paragraph does not exceed twenty percent (20%) of the total permissible investments of a licensee; and
 - 2. The licensee does not, at one (1) time, hold principal and interest outstanding under demand-borrowing agreements under this paragraph with any one (1) person aggregating more than ten percent (10%) of the licensee's total permissible investments.
- (4) The aggregate of investments under subsection (3) of this section shall not exceed fifty percent (50%) of the total permissible investments of a licensee.
- (5) The **commissioner**~~executive director~~ may limit the extent to which a type of investment within a class of permissible investments may be considered a permissible investment, except for money, time deposits, savings deposits, demand deposits, and certificates of deposit issued by a federally insured financial institution. The **commissioner**~~executive director~~ may by rule or order allow other types of investments that the **commissioner**~~executive director~~ determines to be substantially equivalent to other permissible investments in regards to safety and soundness.
- (6) Permissible investments, even if commingled with other assets of the licensee, shall be deemed by operation of law to be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of insolvency or bankruptcy of the licensee.
- ➔Section 838. KRS 286.11-019 is amended to read as follows:
- (1) Upon the filing of a complete application, the **commissioner**~~executive director~~ shall investigate the competence, experience, character, financial condition, and responsibility of the applicant. The **commissioner**~~executive director~~ may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. The **commissioner**~~executive director~~ shall review each application on a

case-by-case basis. If the ***commissioner***~~[executive director]~~ finds that the applicant has the competence, experience, character, financial condition, and responsibility, and has fulfilled the requirements of this subtitle, then the ***commissioner***~~[executive director]~~ shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state. If any of these requirements has not been met, then the ***commissioner***~~[executive director]~~ shall deny the application, in writing setting out the reason for the denial.

- (2) The ***commissioner***~~[executive director]~~ shall approve, or deny in writing, every completed application for a license within one hundred twenty (120) days from the date a complete application is submitted, which period may be extended for good cause by the ***commissioner***~~[executive director]~~.
- (3) The ***commissioner***~~[executive director]~~ may deny a license application where the applicant does not meet the requirements of this subtitle or for any of the grounds under KRS 286.11-039.
- (4) The ***commissioner***~~[executive director]~~ may probate, place conditions upon, or refuse to issue or renew any license issued under this subtitle.
- (5) The ***commissioner***~~[executive director]~~ may in writing deny or refuse to renew the designation of an agent by a licensee for any of the grounds found in KRS 286.11-041.
- (6) A person is deemed to have received a copy of a written denial issued by the ***commissioner***~~[executive director]~~ in this section within three (3) days of its mailing.
- (7) Any person who has had his *or her* license application or designation as an agent denied by the ***commissioner***~~[executive director]~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B. The written application shall be filed with the ***commissioner***~~[executive director]~~ within twenty (20) days of the date of the denial.
- (8) A written application for an appeal shall be made in good faith and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.
- (9) Any person who has had his *or her* license application, or designation as an agent, denied by the ***commissioner***~~[executive director]~~ may not file another application for a license, or designation as an agent, under this subtitle for one (1) year after the date of the denial.

➔Section 839. KRS 286.11-021 is amended to read as follows:

- (1) A licensee under this subtitle shall pay an annual renewal fee of five hundred dollars (\$500) no later than September 20 of each year.
- (2) The renewal fee shall be accompanied by a written renewal report, in a form prescribed by the ***commissioner***~~[executive director]~~, which shall include:
 - (a) A copy of the licensee's most recent audited annual financial statement, or if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent corporation, or the licensee's most recent audited financial statement;
 - (b) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty (120) days prior to the renewal date, a list of the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding;
 - (c) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the ***commissioner***~~[executive director]~~ on any other report required to be filed under this subtitle;
 - (d) A list of the licensee's permissible investments under this subtitle and a certification that the licensee continues to maintain permissible investments according to the requirements set forth in KRS 286.11-015; and
 - (e) A list of the locations, including names, physical addresses, and telephone numbers, in this state where the licensee or agent of the licensee engages in money transmission.
- (3) The failure of a licensee to pay the annual renewal fee or file the written renewal report, by the renewal date of September 20, shall result in the expiration of the licensee's license by operation of law by September 30 of the same year. The ***commissioner***~~[executive director]~~ may reinstate the license if the licensee becomes compliant

with this subtitle and pays a civil penalty equal to the amount of the annual renewal fee, as specified in this section, within thirty (30) days of the expiration of the license.

➔Section 840. KRS 286.11-023 is amended to read as follows:

A licensee shall file a written report with the **commissioner**~~[executive director]~~ within fifteen (15) business days of its knowledge of the occurrence of any one (1) of the events listed below. In the written report, the licensee shall describe the event and its expected impact on the licensee's activities in the state:

- (1) Any material change in information provided in a licensee's application or renewal report;
- (2) The cancellation or other impairment of the licensee's bond or other similar security accepted by the **commissioner**~~[executive director]~~;
- (3) Insolvency or the filing for bankruptcy or reorganization under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110, by the licensee, responsible individual, any agent, or any key officers or directors;
- (4) The filing of a petition by or against the licensee, or any agent of the licensee, for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;
- (5) The filing of any material litigation against the licensee by any state or federal governmental authority, or by any country in which the licensee engages in the business of money transmission or is licensed;
- (6) Any felony indictment of the licensee, responsible individual, agent, or any of its key officers or directors;
- (7) Any felony conviction of the licensee, responsible individual, agent, or any of its key officers or directors;
- (8) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving the business of money transmission; and
- (9) Any misdemeanor conviction of the licensee, responsible individual, agent, or any of its key officers or directors of any misdemeanor involving fraud, theft, or breach of trust.

➔Section 841. KRS 286.11-025 is amended to read as follows:

- (1) A licensee shall give the **commissioner**~~[executive director]~~ written notice of a proposed change of control within fifteen (15) days after learning of the proposed change of control and at least thirty (30) days prior to the proposed change of control.
- (2) A licensee shall file a written request for approval of the acquisition with the **commissioner**~~[executive director]~~. A licensee shall also submit, with the notice, a nonrefundable fee of one hundred dollars (\$100).
- (3) After review of a request for approval under subsection (1) of this section, the **commissioner**~~[executive director]~~ may require the licensee to provide additional information concerning the proposed person in control.
- (4) The **commissioner**~~[executive director]~~ shall approve a request for change of control under subsection (1) of this section if, after investigation, the **commissioner**~~[executive director]~~ determines that the person or group of persons requesting approval has the competence, experience, character, financial condition, and responsibility to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interest of the public will not be jeopardized by the change of control.
- (5) The following persons are exempt from the requirements of subsection (1) of the section, but the licensee shall notify the **commissioner**~~[executive director]~~, within fifteen (15) days after learning of a change of control:
 - (a) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;
 - (b) A person that acquires control of a licensee by devise or descent;
 - (c) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and
 - (d) A person that the **commissioner**~~[executive director]~~ exempts by regulation or order if it is in the public interest to do so.
- (6) Subsection (1) of this section does not apply to public offerings of securities.

- (7) Before filing a request for approval to acquire control, a person may request in writing a determination from the **commissioner**~~[executive director]~~ as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the **commissioner**~~[executive director]~~ determines that the person would not be a person in control of a licensee, then the **commissioner**~~[executive director]~~ may enter an order or respond in writing, to that effect, and the proposed person and transaction shall not be subject to the requirements of this section.

➔Section 842. KRS 286.11-027 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may conduct an examination or investigation of a licensee or any of its agents, as it relates to the business of money transmission.
- (2) The **commissioner**~~[executive director]~~ may conduct an examination or investigation in conjunction with representatives of other agencies of this state or agencies of another state or of the federal government. Instead of an examination, the **commissioner**~~[executive director]~~ may accept the examination report of an agency of this state or of another state or of the federal government or a report prepared by an independent licensed or certified public accountant. The reasonable expenses incurred by the **department**~~[office]~~, other Kentucky agencies, agencies of another state, agencies of the federal government, or an independent licensed or certified accountant in making such examination, investigation, or report shall be borne by the licensee.
- (3) A joint examination or an acceptance of an examination report does not preclude the **commissioner**~~[executive director]~~ from conducting an examination as provided by law. A joint report or a report accepted under this subsection is an official report of the **commissioner**~~[executive director]~~ for all purposes.
- (4) A licensee or agent is deemed to consent to the **commissioner's**~~[executive director's]~~ examination or investigation, whether or not prior notice is given to the licensee or agent, of the books, records, and business operations of the licensee or agent of the licensee.
- (5) A report of examination of a licensee under this section shall be considered confidential and privileged and not subject to disclosure under the Kentucky Open Records Act, KRS 61.870 to 61.884. However, a licensee may disclose a Kentucky report of examination to a financial institution upon written request from the financial institution for the purpose of assisting the financial institution in its compliance with the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103. The licensee shall provide written notice to the **commissioner**~~[executive director]~~ of the disclosure of the Kentucky report of examination at the same time that disclosure is made to the financial institution.

➔Section 843. KRS 286.11-029 is amended to read as follows:

- (1) Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of five (5) years, and these records shall be open to inspection by the **commissioner**~~[executive director]~~:
 - (a) A record or records of each payment instrument sold;
 - (b) A general ledger containing all assets, liability, capital, income, and expense accounts, which general ledger shall be posted at least monthly;
 - (c) Bank statements and bank reconciliation records;
 - (d) Records of outstanding payment instruments;
 - (e) Records of each payment instrument paid within the five (5) year period;
 - (f) A list of the names, addresses, and telephone numbers of all of the licensee's agents;
 - (g) Copies of all currency transaction reports and suspicious activity reports filed in compliance with KRS 286.11-031; and
 - (h) Any other record the **commissioner**~~[executive director]~~ may reasonably require by order or regulation.
- (2) Records required to be maintained in this subtitle may be kept in an electronic retrievable format or other similar form of medium.
- (3) Records may be maintained by a licensee or agent at a location other than within this state so long as they are made accessible to the **commissioner**~~[executive director]~~ upon seven (7) business days' written notice.

➔Section 844. KRS 286.11-031 is amended to read as follows:

- (1) Every licensee and its agent shall file with the ***commissioner***~~[executive director]~~ all reports by federal currency reporting, recordkeeping, and suspicious transaction reporting requirements as set forth in the Bank Secrecy Act, 31 U.S.C. secs. 5311 to 5332, 31 C.F.R. pt. 103, and other federal and state laws pertaining to money laundering, for every transaction in this state. Every licensee and its agent shall maintain copies of these reports in its records in compliance with KRS 286.11-029.
- (2) The timely filing of a complete and accurate report required under subsection (1) of this section with the appropriate federal agency is deemed compliance with the requirements of subsection (1) of this section, unless the ***commissioner***~~[executive director]~~ notifies the licensee that reports of the type required in subsection (1) of this section are not being regularly and comprehensively transmitted to the federal agency.

➔Section 845. KRS 286.11-033 is amended to read as follows:

- (1) Documents, materials, reports, or other information in the possession or control of the ***commissioner***~~[executive director]~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. These documents, materials, reports, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any civil action, unless, after notice to the ***commissioner***~~[executive director]~~ and a hearing, a court of competent jurisdiction determines that the ***commissioner***~~[executive director]~~ would not be prejudiced. However, the ***commissioner***~~[executive director]~~ may use the documents, materials, reports, or other information in the furtherance of any regulatory or legal action brought as a part of the ***commissioner's***~~[executive director's]~~ official duties.
- (2) Neither the ***commissioner***~~[executive director]~~ nor any person who received documents, materials, reports, or other information while acting under the authority of the ***commissioner***~~[executive director]~~ shall be permitted or required to testify in any civil action concerning any confidential documents, materials, reports, or information subject to subsection (1) of this section.
- (3) In order to assist in the performance of the ***commissioner's***~~[executive director's]~~ duties, the ***commissioner***~~[executive director]~~:
 - (a) May share documents, materials, reports, or other information, including the confidential and privileged documents, materials, reports, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the Money Transmitter Regulators Association, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, reports, or other information;
 - (b) May receive documents, materials, reports, or other information, including otherwise confidential and privileged documents, materials, reports, or information from the Money Transmitter Regulators Association, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, reports, or information received with notice or the understanding that they are confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, reports, or information;
 - (c) May enter into agreements governing the sharing and use of information, including the furtherance of any regulatory or legal action brought as part of the recipient's official duties;
 - (d) May disclose to the public a list of persons licensed under this subtitle or the aggregate financial data concerning those licensees; and,
 - (e) May disclose to the public any order issued under this subtitle that is the result of an administrative or legal action against a licensee, agent of a licensee, responsible individual, key shareholder, executive officer, or director.
- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, reports, or information shall occur as a result of disclosure to the ***commissioner***~~[executive director]~~ under this subsection or as a result of sharing as authorized in subsection (3) of this section.

➔Section 846. KRS 286.11-035 is amended to read as follows:

Licensees desiring to conduct licensed activities through agents shall authorize each agent to operate pursuant to an express written contract, which shall include the following provisions:

- (1) That the licensee designates the person as its agent with authority to engage in money transmission on behalf of the licensee as authorized under this subtitle;
- (2) That the agent shall operate in full compliance with this subtitle, and rules promulgated under this subtitle, and any order issued by the **commissioner**~~[executive director]~~ pursuant to this subtitle;
- (3) That neither a licensee nor an agent of the licensee may authorize subagents;
- (4) That the agent shall timely remit all money legally due to the licensee in accordance with the terms of the written contract between the licensee and the agent;
- (5) That the licensee and agent are subject to regulation by the **commissioner**~~[executive director]~~; and
- (6) That the licensee and agent shall comply with applicable federal and state law.

➔Section 847. KRS 286.11-037 is amended to read as follows:

- (1) An agent shall not make any fraudulent statements or misrepresentations to a licensee or to the **commissioner**~~[executive director]~~.
- (2) All money transmissions, or sale, or issuance of payment instrument activities conducted by agents shall be strictly in accordance with the licensee's written procedures provided to the agent.
- (3) An agent shall timely remit all money legally due to the licensee in accordance with the terms of the contract between the licensee and the agent. The **commissioner**~~[executive director]~~ shall have the discretion to set, by regulation or order, the maximum remittance time.
- (4) An agent shall act only as authorized under the contract with the licensee.
- (5) All funds, less fees, received by an agent of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an agent for transmission shall, from the time the funds are received by the agent until such time when the funds or an equivalent amount are remitted by the agent to the licensee, constitute trust funds owned by and belonging to the licensee. If an agent commingles any of these funds with any other funds or property owned or controlled by the agent, then all commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.
- (6) An agent shall report to the licensee the theft, forgery, or loss of payment instruments within twenty-four (24) hours from the time it knew of the theft, forgery, or loss.

➔Section 848. KRS 286.11-039 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may issue a written order to suspend or revoke a license issued under this subtitle if the **commissioner**~~[executive director]~~ finds that:
 - (a) The licensee no longer meets the requirements to hold a license under this subtitle;
 - (b) Any fact or condition exists that, if it had existed at the time the licensee applied for its license, would have been grounds for denying the application;
 - (c) The licensee's net worth, as determined in accordance with generally accepted accounting principles, falls below the required net worth as prescribed in KRS 286.11-011, and the licensee, after ten (10) days written notice from the **commissioner**~~[executive director]~~, fails to take such action as the **commissioner**~~[executive director]~~ deems necessary to remedy such deficiency;
 - (d) The licensee violates any provision of this subtitle, any administrative regulation promulgated thereunder, or order of the **commissioner**~~[executive director]~~ issued under authority of this subtitle, or any other state law or regulation related to the business of money transmission;
 - (e) The licensee is conducting its business in an unsafe or unsound manner;
 - (f) The licensee engages in an unfair and deceptive act or practice;
 - (g) The licensee engages in fraud, intentional misrepresentation, or gross negligence;
 - (h) The licensee is insolvent;

- (i) The licensee has suspended payment of its obligations or has made an assignment for the benefit of its creditors;
 - (j) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101-110;
 - (k) The licensee fails to cooperate in an examination, investigation, or subpoena issued by the **commissioner**~~{executive director}~~;
 - (l) The licensee fails to make any report required by this subtitle;
 - (m) The licensee has been found to have violated any of the recordkeeping and reporting requirements of the United States government including 31 U.S.C. secs. 5311 to 5332 and 31 C.F.R. pt. 103;
 - (n) The competence, experience, character, financial condition, or responsibility of the licensee indicates that it is not in the public interest to permit the licensee to continue to provide money transmission services;
 - (o) The licensee has been convicted of a felony;
 - (p) The licensee has been convicted of a misdemeanor related to the business of money transmission;
 - (q) The licensee has been convicted of a misdemeanor involving theft, fraud, or breach of trust;
 - (r) The licensee has failed to terminate or suspend its agent's authority to act on its behalf when the licensee knew, or has been given reasonable notice that its agent violated, or is about to violate, a material provision of this subtitle, an administrative regulation promulgated thereunder, or an order of the **commissioner**~~{executive director}~~, or any grounds that are found in KRS 286.11-041; or
 - (s) The licensee, its responsible individual, or any agent, key shareholder, executive officer, director, or other person in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts.
- (2) A licensee who has had his *or her* license revoked or suspended by the **commissioner**~~{executive director}~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B.
 - (3) A person is deemed to have received a copy of the written order of revocation or suspension with three (3) days of its mailing.
 - (4) A written application for an appeal shall be made with the **commissioner**~~{executive director}~~ within twenty (20) days of the date of the order of suspension or revocation and shall be made in good faith and shall briefly state the reason or reasons the person is aggrieved, together with the grounds to be relied upon.
 - (5) The **commissioner**~~{executive director}~~ shall not issue a license again under this subtitle to any person whose license has been revoked until three (3) years after the date of the revocation, and thereafter, not until the person again qualifies under the applicable provisions of this subtitle. A person whose license has been revoked twice shall be deemed permanently revoked and shall not again be eligible for a license under this subtitle.
 - (6) In determining whether a licensee is engaging in an unsafe or unsound practice under subsection (1)(e) of this section, the **commissioner**~~{executive director}~~ may consider the size and condition of the licensee's provision of money transmissions, the magnitude of the loss, the gravity of the violation of this subtitle, the administrative regulation adopted, or order issued under this subtitle, any action taken by another state or federal government against the licensee, or the previous conduct of the licensee.

➔Section 849. KRS 286.11-041 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may issue a written order suspending or revoking the designation of an agent if the **commissioner**~~{executive director}~~ finds that:
 - (a) The agent violates this subtitle or a rule adopted or an order issued under this subtitle;
 - (b) The agent does not cooperate with an examination, investigation, or subpoena issued by the **commissioner**~~{executive director}~~;

- (c) The agent has engaged in fraud, intentional misrepresentation, or gross negligence;
 - (d) The agent has been convicted of a felony;
 - (e) The agent has been convicted of a misdemeanor related to the business of money transmission;
 - (f) The agent has been convicted of a misdemeanor involving theft, fraud, or breach of trust;
 - (g) The competence, experience, character, or general fitness of the agent or a person in control of the agent indicates that it is not in the public interest to permit the agent to be engaged in the business of money transmission;
 - (h) The agent is engaged in or is engaging in an unsafe or unsound practice;
 - (i) The agent is engaged in, or is engaging in, an unfair and deceptive act or practice as that act or practice relates to the business of money transmission;
 - (j) The agent is insolvent;
 - (k) The agent has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110; or
 - (l) The agent fails to timely remit all money legally due to its licensee as required by this subtitle; or
 - (m) The agent, any executive officer, or other person in control of the agent is listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts.
- (2) In determining whether an agent is engaging in an unsafe or unsound practice under subsection (1)(h) of this section, the **commissioner**~~executive director~~ may consider the size and condition of the agent's provision of money transmissions, the magnitude of the loss, the gravity of the violation of this subtitle, the administrative regulation adopted, or order issued under this subtitle, any action taken by another state or federal government against the agent, or the previous conduct of the agent.
- (3) Any person who has his *or her* designation as an agent revoked or suspended by the **commissioner**~~executive director~~ may file a written application for an administrative hearing in accordance with KRS Chapter 13B.
- (4) An agent is deemed to have received a copy of the written order of revocation or suspension within three (3) days of its mailing.
- (5) A written application for an appeal shall be made with the **commissioner**~~executive director~~ within twenty (20) days of the date of the order of suspension or revocation in good faith and shall briefly state the reason or reasons the agent is aggrieved, together with the grounds to be relied upon.
- (6) The **commissioner**~~executive director~~ shall not designate a person as an agent again under this subtitle where the designation of an agent has been revoked, until after three (3) years after the date of revocation, and thereafter, not until the person again qualifies under the applicable provisions of this subtitle. Any person whose designation as an agent has been revoked twice by the **commissioner**~~executive director~~ shall be deemed permanently revoked and shall not again be eligible for designation as an agent under this subtitle.
- ➔Section 850. KRS 286.11-043 is amended to read as follows:
- (1) If the **commissioner**~~executive director~~ has reason to believe or determines that a violation of this subtitle, regulation adopted, or an order issued under this subtitle, by any person, licensee, or agent has occurred or will occur, then **the commissioner**~~he~~ may issue an order to show cause why an order to cease and desist should not be issued requiring the person, licensee, or agent to cease and desist from the violation.
 - (2) The **commissioner**~~executive director~~ may enter an order to cease and desist if the person, licensee, or agent fails to show cause for the violation of the subtitle, regulation, or order within ten (10) days of the date of the receipt of the order of show cause.
 - (3) The **commissioner**~~executive director~~ may petition the Franklin Circuit Court, or any court of competent jurisdiction, for an issuance of a temporary or permanent injunction, or any other appropriate judicial order, against any person, licensee, or agent that violates this subtitle, regulation adopted, or order issued.
 - (4) An order issued under this section becomes effective when signed by the **commissioner**~~executive director~~. The order shall be delivered by certified mail to the last known address of the person, licensee, or agent. The

order shall be deemed received by the person, licensee, or agent within three (3) days of its mailing with the United States Postal Service.

- (5) The ***commissioner***~~[executive director]~~ may issue an order against a licensee to cease and desist from providing money transmission through an agent that is subject of a separate order from the ***commissioner***~~[executive director]~~.
- (6) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding.

➔Section 851. KRS 286.11-045 is amended to read as follows:

- (1) If the ***commissioner***~~[executive director]~~ has reason to believe or determines that a violation of this subtitle or of a regulation adopted, or an order issued under this subtitle, by a licensee or agent will cause immediate or irreparable harm to the public health, safety, or welfare, then the ***commissioner***~~[executive director]~~ may enter an emergency order suspending, limiting, or restricting the licensee's license or the designation of an agent, without prior notice or hearing.
- (2) One (1) or more of the following circumstances shall be considered grounds for an emergency order suspending, limiting, or restricting a license or designation of an agent under this section:
 - (a) The licensee's or agent's indictment or conviction of a felony for a crime involving theft, fraud, or breach of trust;
 - (b) The licensee's or agent's indictment or conviction under the USA PATRIOT Act of 2001, Pub. L. No. 107-56;
 - (c) The suspension or revocation of any other money transmitter license or equivalent license held by the licensee, or designation held by the agent in another state or country;
 - (d) The licensee, its responsible individual, or any agent, key shareholder, executive officer, director, or other person in control of the licensee are listed or become listed on the specially designated nationals and blocked persons list prepared by the United States Department of the Treasury or United States Department of State under Presidential Executive Order No. 13224 as a potential threat to commit terrorist acts or to finance terrorist acts; or
 - (e) Insolvency, or the filing of an application of bankruptcy, reorganization, arrangement, or other relief under bankruptcy, or an adjudication under the United States Bankruptcy Code, 11 U.S.C. secs. 101 to 110 by the licensee or agent.
- (3) An emergency order issued under this section becomes effective when signed by the ***commissioner***~~[executive director]~~. The emergency order shall be delivered by certified mail to the last known address of the licensee or agent. The order shall be deemed received by the licensee or agent within three (3) days of its mailing with the United States Postal Service.
- (4) A licensee or agent aggrieved by an emergency order issued by the ***commissioner***~~[executive director]~~ under this section may file with the ***commissioner***~~[executive director]~~ a written appeal for an emergency hearing. The application for a hearing shall be filed with the ***commissioner***~~[executive director]~~ within twenty (20) days of the date of the emergency order.
- (5) Upon receipt of a written appeal by any licensee or agent aggrieved by an emergency order issued under this section, the ***commissioner***~~[executive director]~~ shall conduct an emergency hearing as required under KRS 13B.125, within ten (10) working days from the date of receipt of the appeal, unless the parties agree otherwise. The hearing officer shall render a written decision affirming, modifying, or reversing the emergency order within five (5) working days of the completion of the hearing. The emergency order shall be affirmed if there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare.

➔Section 852. KRS 286.11-047 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may levy a civil penalty against a person that violates any provision of or administrative regulation promulgated under this subtitle or order issued by the ***commissioner***~~[executive director]~~ under this subtitle. The civil penalty shall be not less than one thousand dollars (\$1,000) nor more than five thousand

dollars (\$5,000) per day for each day the violation is outstanding, plus the state's costs and expenses for the examination, investigation, and prosecution of this matter, including reasonable attorney's fees and court costs.

➔Section 853. KRS 286.11-049 is amended to read as follows:

The ***commissioner***~~{executive director}~~ may enter into a consent order with another person at any time, in order to resolve a matter arising under this subtitle. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this subtitle, or an administrative regulation promulgated under this subtitle, or an order issued under this subtitle has been violated. Any consent order that the ***commissioner***~~{executive director}~~ enters into in order to resolve a matter arising under this subtitle shall be deemed an administrative action and a public record.

➔Section 854. KRS 286.11-051 is amended to read as follows:

The ***commissioner***~~{executive director}~~ may stay, suspend, or postpone the effective date of an order issued under this subtitle, pending the administrative proceeding and the issuance of a final order resulting from the proceeding, upon written request by the affected person, licensee, or agent.

➔Section 855. KRS 286.11-053 is amended to read as follows:

- (1) Any person aggrieved by the entry of an order by the ***commissioner***~~{executive director}~~ under this subtitle may file written application for an administrative hearing.
- (2) The written application for a hearing under this subtitle shall be made in good faith and shall state the reasons or grounds the person is so aggrieved and the remedy sought at the hearing.
- (3) Any application for a hearing under this subtitle shall be filed with the ***commissioner***~~{executive director}~~ within twenty (20) days of the date of the order.
- (4) If the ***commissioner***~~{executive director}~~ finds that the application for a hearing is made in good faith, and that the applicant would be aggrieved as claimed if his ***or her*** grounds are established, then a hearing shall be held in accordance with KRS Chapter 13B.
- (5) An appeal from the ***commissioner***~~{executive director}~~ shall be taken only from a final order.
- (6) The appeal from a final order issued by the ***commissioner***~~{executive director}~~ shall be granted as a matter of right to the Franklin Circuit Court.

➔Section 856. KRS 286.11-055 is amended to read as follows:

- (1) Any person aggrieved by the conduct of a licensee or agent under this subtitle in connection with the licensee's or agent's regulated activities may file a written complaint with the ***commissioner***~~{executive director}~~ who may investigate the complaint.
- (2) In the course of the investigation initiated by a complaint or by the ***commissioner***~~{executive director}~~, the ***commissioner***~~{executive director}~~ may:
 - (a) Subpoena witnesses;
 - (b) Administer oaths;
 - (c) Examine any individual under oath; and
 - (d) Compel the production of records, books, papers, contracts, or other documents relevant to the investigation.
- (3) If any person fails to testify or to comply with a subpoena from the ***commissioner***~~{executive director}~~ under this section, then the ***commissioner***~~{executive director}~~ may petition the Franklin Circuit Court or any court of competent jurisdiction for enforcement.
- (4) The license of any licensee or the designation of an agent under this subtitle who fails to comply with a subpoena of the ***commissioner***~~{executive director}~~ may be suspended pending compliance with the subpoena.
- (5) The ***commissioner***~~{executive director}~~ may investigate all complaints filed by any person.

➔Section 857. KRS 286.11-061 is amended to read as follows:

- (1) The ~~department~~~~office~~ shall exercise all administrative functions of the state in relation to the regulation, supervision, and licensing of money transmitters.
- (2) The ~~commissioner~~~~executive director~~ may promulgate, amend, and repeal any administrative regulations, forms, and orders as are necessary to interpret and enforce the provisions of this subtitle.
- (3) The ~~commissioner~~~~executive director~~ may request any additional information as ~~the commissioner~~~~he~~ deems necessary to interpret and carry out any of the provisions of this subtitle from any applicant, licensee, agent, responsible individual, controlling person, executive officer, or key shareholder.

➔Section 858. KRS 292.310 is amended to read as follows:

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

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

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

other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

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

- (20) "Life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" does not include:
- (a) Any transaction between an owner and a life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a life settlement provider to another life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
 - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (21) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.
- ➔Section 859. KRS 292.320 is amended to read as follows:
- (1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:
- (a) To employ any device, scheme, or artifice to defraud;
 - (b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
 - (c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.
- (2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
- (a) To employ any device, scheme, or artifice to defraud the other person; or
 - (b) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
- (3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:
- (a) That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client unless the client is an "accredited investor," as defined by Rule 501 of the Securities Act of 1933;
 - (b) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and
 - (c) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (4) Paragraph (a) of subsection (3) of this section does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in paragraph (b) of subsection (3) of this section includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one (1) or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

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

➔Section 860. KRS 292.325 is amended to read as follows:

- (1) Except as otherwise provided in this section, the **commissioner**~~[executive director]~~ may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, radio, television, or other advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser, as part of a registered offering or as a part of an exemption offering required to be filed under KRS 292.415.
- (2) The provisions of this section shall not require a covered adviser to file with the **commissioner**~~[executive director]~~ any documents listed in subsection (1) of this section or any document, except a prospectus, relating to a covered security.

➔Section 861. KRS 292.327 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may require the filing of any of the following documents with respect to a covered security under Section 18(b)(2) of the Securities Act of 1933:
- (a) Prior to the initial offer of such covered security in this state, all documents that are part of a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933 or a notice form adopted by the **commissioner**~~[executive director]~~ in lieu thereof, together with a consent to service of process signed by the issuer and with payment of a filing fee as follows:
1. Five hundred dollars (\$500) for an investment company, other than a unit investment trust, that is registered or that has filed a registration statement, under the Investment Company Act of 1940; or
 2. Three hundred dollars (\$300) for a unit investment trust that is registered or that has filed a registration statement under the Investment Company Act of 1940; and
- (b) After the initial offer of such covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the United States Securities and Exchange Commission under the Securities Act of 1933, or a notice form adopted by the **commissioner**~~[executive director]~~ in lieu thereof, which shall be filed concurrently with the **commissioner**~~[executive director]~~;
- (c) Except for a notice filing by a unit investment trust, which shall be effective indefinitely, all notice filings for such covered securities are effective for a period of one (1) year upon receipt by the **commissioner**~~[executive director]~~ of a properly completed filing, including the correct fee, unless another date is requested by the issuer. An annual filing shall be required of an open-end investment company that continuously offers or sells its securities in this state, which filing shall consist of the documents specified in paragraph (a) of this subsection, exclusive of the consent to service of process, and a filing fee in the amount of five hundred dollars (\$500). The annual renewal filing shall be effective upon the expiration of the prior filing period if it is properly completed, including the correct fee, and is received by the **commissioner**~~[executive director]~~ on or before the expiration date;
- (d) Amendments to a notice filing are effective upon receipt by the **commissioner**~~[executive director]~~. Termination of a notice filing is effective upon receipt by the **commissioner**~~[executive director]~~ of notice of the termination; and
- (e) Notwithstanding the provisions of paragraphs (a) to (d) of this subsection, for the period ended October 10, 1999, the **commissioner**~~[executive director]~~ may require the registration of a covered security issued by any issuer for which a fee has not been properly paid and the improper payment has not been remedied within ten (10) business days following receipt of written notification from the

commissioner~~[executive director]~~ to the issuer of the nonpayment or underpayment of the fee, as required by this chapter.

- (2) The ***commissioner***~~[executive director]~~ shall require the filing of, with respect to any security that is a covered security under Section 18(b)(4)(D) of the Securities Act of 1933, a notice on SEC Form D, a two hundred fifty dollar (\$250) filing fee, and a consent to service of process signed by the issuer no later than fifteen (15) days after the first sale of such covered security in this state.
- (3) The ***commissioner***~~[executive director]~~ may require the filing of any document filed with the United States Securities and Exchange Commission under the Securities Act of 1933 with respect to a covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a filing fee in the amount of two hundred fifty dollars (\$250).
- (4) The ***commissioner***~~[executive director]~~ may issue a stop order suspending the offer and sale of a covered security, except a covered security under Section 18(b)(1) of the Securities Act of 1933, upon finding that:
 - (a) The order is necessary or appropriate in the public interest or for the protection of investors; and
 - (b) There is a failure to comply with any condition established under this section.
- (5) The ***commissioner***~~[executive director]~~ may waive any or all of the provisions of this section upon finding that they are not necessary or appropriate in the public interest or for the protection of investors.

➔Section 862. KRS 292.330 is amended to read as follows:

- (1) It is unlawful for any person to transact business in this state as a broker-dealer or agent, unless the person is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:
 - (a) The person is so registered under this chapter;
 - (b) The person is registered as a broker-dealer under this chapter; or
 - (c) The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256.
- (2) It is unlawful for any covered adviser to transact business in this state unless:
 - (a) The person has made a notice filing with the ***commissioner***~~[executive director]~~ consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the ***commissioner***~~[executive director]~~ by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;
 - (b) The person is registered as a broker-dealer under this chapter;
 - (c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or
 - (d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j).

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

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

revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.

- (b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.
- (c) The registration application shall contain whatever information the **commissioner**~~executive director~~ requires concerning such matters as:
 - 1. The applicant's form and place of organization;
 - 2. The applicant's proposed method of doing business;
 - 3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;
 - 4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and
 - 5. The applicant's financial condition and history.
- (4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:
 - (a) The **commissioner**~~executive director~~ may specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.
 - (b) The **commissioner**~~executive director~~ may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application; but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.
 - (c) The thirtieth day effective day is tolled if, before 5 p.m. **eastern time**~~EST~~ of the thirtieth day, the **commissioner**~~executive director~~ notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.
- (5) The **commissioner**~~executive director~~ may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.
- (6) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the **commissioner**~~executive director~~ may by rule require the existence and maintenance of a minimum liquid net capital for registered broker-dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.
- (7) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the **commissioner**~~executive director~~ may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.

- (8) Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the ***commissioner***~~{executive director}~~ may by rule require registered broker-dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker-dealers to furnish satisfactory evidence that they have such bonds.
- (9) Every registration of a broker-dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the ***commissioner***~~{executive director}~~ by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The ***commissioner***~~{executive director}~~ may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.
- (a) The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application or a notice filed with the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee. When an agent begins or terminates a connection with an issuer or registered broker-dealer, the agent and the issuer or broker-dealer shall promptly notify the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee.
- (b) The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee.
- (10) Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee prior to the expiration thereof an application containing the information the ***commissioner***~~{executive director}~~ may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, agent, investment adviser, or investment adviser representative filed with the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A notice filing by a covered adviser may be renewed by filing with the ***commissioner***~~{executive director}~~ or the ***commissioner's***~~{executive director's}~~ designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the ***commissioner***~~{executive director}~~ may require by rule or order. A registered broker-dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.
- (11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker-dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.
- (b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.
- (12) (a) Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the ***commissioner***~~{executive director}~~ by rule prescribes. All records required shall be preserved for three (3) years unless the ***commissioner***~~{executive director}~~ by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the ***commissioner***~~{executive director}~~, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker-dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker-dealer to

maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.

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

respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

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

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

- (b) The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:
1. The **commissioner**~~[executive director]~~ may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than the broker-dealer himself if he is an individual or an agent of the broker-dealer;
 2. The **commissioner**~~[executive director]~~ may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;
 3. The **commissioner**~~[executive director]~~ may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;
 4. The **commissioner**~~[executive director]~~ shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer;
 5. The **commissioner**~~[executive director]~~ shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;
 6. The **commissioner**~~[executive director]~~ may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- (c) The **commissioner**~~[executive director]~~ may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the **commissioner**~~[executive director]~~ that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the **commissioner**~~[executive director]~~ shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the **commissioner**~~[executive director]~~, the order will remain in effect until it is modified or vacated by the **commissioner**~~[executive director]~~. If a hearing is requested or ordered, the **commissioner**~~[executive director]~~, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.
- (d) If the **commissioner**~~[executive director]~~ finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the **commissioner**~~[executive director]~~ may by order cancel the registration or application.
- (e) Withdrawal from registration as a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the **commissioner**~~[executive director]~~ may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is

filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the ***commissioner***~~[executive director]~~ by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the ***commissioner***~~[executive director]~~ may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the ***commissioner***~~[executive director]~~; the withdrawal or termination is effective upon receipt by the ***commissioner***~~[executive director]~~ of the notice.

- (f) No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.
- (14) Notwithstanding subsection (1) of this section, any broker-dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the ***commissioner***~~[executive director]~~ expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The ***commissioner***~~[executive director]~~ may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the ***commissioner***~~[executive director]~~ deems necessary and appropriate in the public interest or for the protection of investors and the ***commissioner***~~[executive director]~~ may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration.

➔Section 863. KRS 292.350 is amended to read as follows:

- (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under KRS 292.360:
 - (a) Any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:
 - 1. There has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and
 - 2. The issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which equal at least five percent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured by the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;
 - (b) Any security registered for nonissuer distribution if any security of the same class has ever been registered under this chapter or a predecessor law, or the security being registered was originally issued pursuant to an exemption under this chapter or a predecessor law or, if previously publicly offered and sold, was not offered and sold within this state.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) A statement demonstrating eligibility for registration by notification;

- (b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business;
 - (c) With respect to any person on whose behalf any part of the offering is to be made, if such person is an officer, director, partner, or any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the issuer, his name and address; the amount of securities held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;
 - (d) A description of the securities being registered;
 - (e) Total amount of securities to be offered and amount of securities to be offered in this state;
 - (f) The price at which the securities are to be offered for sale to the public, if other than at the market price thereof; any known variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value, if any);
 - (g) Names and addresses of the managing underwriters, if any, and a description of the plan of distribution, if any, of any securities which are to be offered otherwise than through an underwriter;
 - (h) Description of any security options outstanding or to be created in connection with the offering;
 - (i) Any adverse order, judgment, or decree previously entered in connection with the securities being registered by any court or securities and exchange commission;
 - (j) A copy of any offering circular or prospectus, if any, intended, or ordered by the **commissioner**~~executive director~~, to be used in connection with the offering;
 - (k) In the case of any registration under paragraph (b) of subsection (1) which does not also satisfy the conditions of paragraph (a) of subsection (1), a certified balance sheet of the issuer as of its last fiscal year ended and a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement and a statement of income for each of the two (2) fiscal years preceding the date of the certified balance sheet, the last of which is to be certified, and for any period between the close of the last fiscal year and the date of the last balance sheet or for the period of the issuer's and any predecessor's existence if less than two (2) years; and
 - (l) Such additional information as the **commissioner**~~executive director~~ may by rule or order require.
- (3) If no stop order is in effect and no proceeding is pending under KRS 292.390, a registration statement under this section automatically becomes effective at three o'clock eastern standard time in the afternoon (3:00 p.m.) of the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the **commissioner**~~executive director~~ determines.

➔Section 864. KRS 292.360 is amended to read as follows:

- (1) Any security for which a registration statement under the Securities Act of 1933 or an offering statement under Regulation A of the Securities Act of 1933 has been filed with the Securities and Exchange Commission in connection with the same offering may be registered by coordination.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380, and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:
 - (a) One (1) copy of the latest form of prospectus or offering circular filed under the Securities Act of 1933 or Regulation A promulgated under that Act together with all amendments thereto;
 - (b) The amount of securities to be offered in this state;
 - (c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
 - (d) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;

- (e) If the ***commissioner***~~[executive director]~~ by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalents) of the issuer currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;
 - (f) If the ***commissioner***~~[executive director]~~ requests, any other information, or copies of any other documents, filed under the Securities Act of 1933 or Regulation A promulgated under that Act; and
 - (g) An undertaking to forward promptly to the ***commissioner***~~[executive director]~~ all amendments to the federal registration statement or offering statement, other than an amendment which merely delays the effective date.
- (3) A registration statement under this section automatically becomes effective with the ***commissioner***~~[executive director]~~ at the moment the federal registration statement or offering statement becomes effective or is qualified, if all the following conditions are satisfied:
- (a) No stop order is in effect and no proceeding is pending under KRS 292.390;
 - (b) The registration statement has been on file with the ***commissioner***~~[executive director]~~ for at least ten (10) days; and
 - (c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the ***commissioner***~~[executive director]~~ permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the ***commissioner***~~[executive director]~~ by telephone, telegram, or other electronic means of the date and time when the federal registration statement or offering statement became effective or was qualified and the content of the price amendment, if any, and shall promptly file a post-effective amendment, containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.
- (4) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the ***commissioner***~~[executive director]~~ may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subsection (3) of this section, if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of subsection (3) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The ***commissioner***~~[executive director]~~ may by rule or otherwise waive either or both of the conditions specified in paragraphs (b) and (c) of subsection (3) of this section. If the federal registration statement or offering statement becomes effective or is qualified before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective with the ***commissioner***~~[executive director]~~ as soon as all the conditions are satisfied. If the registrant advises the ***commissioner***~~[executive director]~~ of the date when the federal registration statement or offering statement is expected to become effective or to be qualified, the ***commissioner***~~[executive director]~~ shall promptly advise the registrant by telephone, telegram, or other electronic means, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under KRS 292.390; but this advice by the ***commissioner***~~[executive director]~~ does not preclude the institution of such a proceeding at any time.
- (5) Notwithstanding subsection (3) of this section, a registration statement under the Securities Act of 1933 that becomes effective immediately upon filing with the Securities and Exchange Commission shall become effective under this section automatically at the time the registration statement, in the form filed with the Securities and Exchange Commission, is properly filed, along with the appropriate fee, with the ***commissioner***~~[executive director]~~.

➔Section 865. KRS 292.370 is amended to read as follows:

- (1) Any security may be registered by qualification.
- (2) A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in KRS 292.380 and, if required under KRS 292.430, a consent to service of process meeting the requirements of that section:

- (a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any material transaction with the issuer or any subsidiary effected within the past three (3) years or proposed to be effected by him or any of his associates as defined in the rules promulgated under the Securities Exchange Act of 1934;
- (c) With respect to persons covered in paragraph (b): the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents, and subsidiaries), and the amount paid and to be paid to each of those who received or are to receive more than fifteen thousand dollars (\$15,000);
- (d) With respect to any person not named in paragraph (b), owning of record, or beneficially, if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in paragraphs (b) and (c) other than his occupation;
- (e) With respect to every promoter, not named in paragraphs (b) and (d), if the issuer was organized within the past three (3) years: the information specified in paragraphs (b) and (c), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment;
- (f) The capitalization and long-term debt (on both a current and pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, good will, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities;
- (g) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price or the method by which it is to be computed; and any variation therefrom at which any portion of the offering is to be made to any persons or class of persons, other than the underwriters, with a specification of such person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees (including separately, cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering); the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- (h) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including good will) otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the cost basis or book value of the assets in the hands of the vendors (if they are officers, directors, partners, or controlling shareholders of the issuer), the names of any persons who have received commissions in connection with the acquisition and the amounts of any such commissions and any other expenses in connection with the acquisition (including the cost of borrowing money to finance the acquisition);
- (i) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person

required to be named in paragraph (b), (c), (d), (e), (g), or (h) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options;

- (j) The dates of, parties to, and general effect, concisely stated, of every management, employment, or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two (2) years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer or any of its significant subsidiaries is a party and which may materially affect its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities);
- (k) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed;
- (l) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the Securities and Exchange Commission;
- (m) A copy of any prospectus or circular intended as of the effective date to be used in connection with the offering;
- (n) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- (o) A signed or conformed copy of an opinion of counsel, as to the legality of the security being registered (with an English translation if it is in a foreign language), which shall state, in addition to such matters as the ~~commissioner~~~~executive director~~ may request whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer, and whether or not the offering, as contemplated in the registration statement will comply with the requirements of any claimed exemption from the registration provisions of the Securities Act of 1933;
- (p) Financial statements of the issuer that meet the following requirements:
 - 1. If the maximum proceeds to be received from the offering do not exceed two million dollars (\$2,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income for the last fiscal year preceding the date of the most recent balance sheet filed and for the period, if any, between the close of such fiscal year and the date of the most recent balance sheet filed. The balance sheet and income statement for the most recent fiscal year shall be audited if the financial statements have previously been audited for other purposes. Otherwise, all financial statements may be unaudited;
 - 2. If the maximum proceeds to be received from the offering do not exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the two (2) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;
 - 3. If the maximum proceeds to be received from the offering exceed five million dollars (\$5,000,000), a balance sheet as of the end of the most recent fiscal year and, if the date of the most recent fiscal year end is more than four (4) months prior to the date of filing, a balance sheet as of a date within four (4) months prior to the filing of the registration statement; and statements of income, cash flows, and changes in stockholders equity for each of the three (3) fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of the fiscal years and the date of the most recent balance sheet filed. The balance sheet and statements of income, cash flows, and changes in stockholders equity for the most recent fiscal year shall be audited; all other financial statements may be unaudited;

4. Notwithstanding the provisions of this paragraph, if the issuer has been in existence for less than one (1) fiscal year, the balance sheet shall be as of a date not more than four (4) months prior to the date of filing of the registration statement, and the statements of income, cash flows, and changes in stockholders equity shall be for the period from inception through the date of the balance sheet filed;
 5. If any part of the proceeds of the offering is to be applied to the purchase of any business whose annual sales or revenues for its most recent fiscal year are in excess of twenty percent (20%) of the issuer's sales or revenues for its most recent fiscal year or involves the acquisition of assets in excess of twenty percent (20%) of the issuer's assets as of its most recent fiscal year end, except as specifically exempted by the **commissioner**~~[executive director]~~, the same financial statements which would be required if that business were the issuer shall be filed;
 6. The **commissioner**~~[executive director]~~, where necessary or appropriate in the public interest or for the protection of investors, may permit the omission of one (1) or more of the financial statements or the substitution of appropriate statements of comparable character, and may waive the requirement that the financial statements be audited; and
 7. The financial statements required by this subsection shall be prepared as to form and content in accordance with generally accepted accounting principles;
- (q) The written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement; and
- (r) Such additional information as the **commissioner**~~[executive director]~~ requires by rule or order.

➔Section 866. KRS 292.380 is amended to read as follows:

- (1) Except as otherwise expressly provided in this chapter, a registration statement under this chapter becomes effective when the **commissioner**~~[executive director]~~ so orders. The **commissioner**~~[executive director]~~ may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with:
 - (a) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
 - (b) The confirmation of any sale made by or for the account of any such person;
 - (c) Payment pursuant to any such sale; or
 - (d) Delivery of the security pursuant to any such sale, whichever first occurs; but the **commissioner**~~[executive director]~~ shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933 or regulations thereunder.
- (2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The **commissioner**~~[executive director]~~ may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (3) The **commissioner**~~[executive director]~~ may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The **commissioner**~~[executive director]~~ may by rule or order determine the conditions of any escrow or impounding required hereunder. The **commissioner**~~[executive director]~~ shall not reject a depository solely because of location in another state. All securities delivered in

escrow to the **commissioner**~~[executive director]~~ or some other depository satisfactory to him prior to January 1, 1968, which have not previously been released shall be released from escrow and all securities delivered in escrow to the **commissioner**~~[executive director]~~ or some other depository satisfactory to him subsequent to January 1, 1968 which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.

- (4) The **commissioner**~~[executive director]~~ may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five (5) years or until the securities become exempt securities under KRS 292.400 or become covered securities, and that the issuer forward to its security holders audited annual financial statements during the period for which the shares are registered. The **commissioner**~~[executive director]~~ may by rule or order impose other undertakings.
- (5) For the registration of securities by notification, coordination, or qualification, there shall be paid to the **commissioner**~~[executive director]~~ an examination fee of one hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the **commissioner**~~[executive director]~~ shall retain the examination fee. For a registration by notification for market-making purposes only the examination fee need be paid.
- (6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one (1) year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under KRS 292.390. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction:
 - (a) So long as the registration statement is effective; and
 - (b) Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one (1) year from its effective date if any securities of the same class are outstanding.

A registration statement may be withdrawn otherwise only in the discretion of the **commissioner**~~[director]~~.

➔Section 867. KRS 292.390 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:
 - (a) The registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under KRS 292.380(5) as of its effective date, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;
 - (b) Any provision of this chapter or any rule, order, or condition lawfully imposed under this chapter has been willfully violated, in connection with the offering by:
 1. The person filing the registration statement;
 2. The issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or
 3. Any underwriter;
 - (c) The security registered or sought to be registered is the subject of an administrative stop order or a similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but:

1. The ***commissioner***~~[executive director]~~ may not institute a proceeding against an effective registration statement under this paragraph more than one (1) year from the date of the order or injunction relied on; and
 2. He may not enter an order under this paragraph on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;
- (d) The issuer's enterprise or method of business includes or would include activities which are illegal where performed;
 - (e) The offering has worked or tended to work a fraud upon purchasers or would so operate;
 - (f) The offering has been, or would be, made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensations, or promoters' profits or participation, or unreasonable amounts or kinds of options;
 - (g) When a security is sought to be registered by notification it is not eligible for such registration;
 - (h) When a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by KRS 292.360(2)(g);
 - (i) The applicant or registrant has failed to pay the proper registration fee; but the ***commissioner***~~[executive director]~~ may enter only a denial order under this paragraph and he shall vacate any such order when the deficiency has been corrected;
 - (j) Commissions, compensation, and selling and other transaction expenses greater than twenty percent (20%) in the aggregate, or such other amount specified in the guidelines adopted by the North American Securities Administrators Association, would be paid directly or indirectly, in consideration for the sale of securities sought to be registered.
- (2) The ***commissioner***~~[executive director]~~ may not enter a stop order against an effective registration statement on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next thirty (30) days.
 - (3) The ***commissioner***~~[executive director]~~ may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of any proceeding under this section. Upon the entry of a stop order under any part of this section, the ***commissioner***~~[executive director]~~ shall promptly notify the issuer of the securities, the applicant or registrant, and the person on whose behalf the securities are to be or have been offered that the order has been entered and of the reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the ***commissioner***~~[executive director]~~, the ***commissioner***~~[executive director]~~ shall enter his written findings of fact and conclusions of law and the order will remain in effect until it is modified or vacated by the ***commissioner***~~[executive director]~~. If a hearing is requested or ordered, the ***commissioner***~~[executive director]~~, after notice of and opportunity for hearing to the issuer and to the applicant or registrant, shall enter his written finding of fact and conclusions of law and may modify or vacate the order. The ***commissioner***~~[executive director]~~ may modify or vacate a stop order if he finds that the conditions which prompted its entry have changed or that it is otherwise in the public interest to do so.

➔Section 868. KRS 292.400 is amended to read as follows:

KRS 292.340 to 292.390 shall not apply to any of the following:

- (1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;
- (5) Securities issued by corporations formed under KRS Chapter 279;
- (6) Any security issued or guaranteed by any federal credit union or any credit union;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
 - (a) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;
 - (b) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or
 - (c) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
- (8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board Options Exchange, or any other stock exchange approved by the **commissioner**~~executive director~~; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. This exemption is available only for securities listed on Tier I of those exchanges having more than one (1) tier;
- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidence an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any security issued in connection with an employee stock purchase, stock option, savings, pension, profit-sharing, or similar benefit plan, including any underlying security. For those plans that do not qualify under Section 401 of the Internal Revenue Code and that provide for contribution by employees, the securities are exempt if a notice specifying the terms of the plan is filed with the **commissioner**~~executive director~~ before the securities are issued or before December 31, 1998, and the **commissioner**~~executive director~~ does not disallow the exemption within the next five (5) business days. The **commissioner**~~executive director~~ may, by rule, modify any requirement for a specific class of issuers or impose additional requirements for this exemption or waive any requirement;
- (12) Securities issued by corporations formed under or which have adopted the provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they in the form of stock, book equities, letters of credit, or letters of advice issued by any agricultural cooperative association which are the result of distributable earnings or savings;
- (13) Memberships and voting stock issued by cooperative corporations formed under or which have adopted the provisions of KRS 272.020 to 272.050, and patronage refunds issued by cooperative corporations which are the result of distributable earnings or savings;
- (14) Any security for which the **commissioner**~~executive director~~ expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors; or
- (15) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state.

➔Section 869. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 shall not apply to any of the following transactions:
- (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
 - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
 - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the **commissioner**~~executive director~~ may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
 - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;
 - (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
 - (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
 - (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
 - (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:
 - 1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
 - a. Solicitation of indications of interest in accordance with the terms and conditions as the **commissioner**~~executive director~~ may adopt by rule; or
 - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;
 - 2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
 - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
 - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
 - 3. The transaction satisfies one (1) of the following conditions:
 - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;

- b. There are not more than fifteen (15) purchasers in Kentucky described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors" as defined by Rule 501 of the Securities Act of 1933; or
- c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed one million dollars (\$1,000,000), the total number of purchasers who are not accredited investors, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security or is an accredited investor or a purchaser described in subdivision a. of this subparagraph;
- 4. Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this subsection are not relieved of compliance with KRS 292.330;
- 5. The **commissioner**~~executive director~~ may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
- 6. The **commissioner**~~executive director~~ may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the **commissioner**~~executive director~~ determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the **commissioner**~~executive director~~ before any sale in reliance on the requested increase and shall be accompanied by the following:
 - a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
 - b. A copy of any offering circular or other written materials being distributed to prospective purchasers;
 - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
 - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
 - 1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 - 2. The number of subscribers does not exceed twenty-five (25); and
 - 3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state;
- (l) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

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

➔Section 870. KRS 292.415 is amended to read as follows:

- (1) Before any security may be issued as an exempt security under KRS 292.400(9) or (12), a claim of exemption must first be filed with the **commissioner**~~[executive director]~~ and the **commissioner**~~[executive director]~~ by order shall not have determined that the exemption is unavailable within the next ten (10) full business days. A claim of exemption filed under this section shall be in such form and contain such information as the **commissioner**~~[executive director]~~ by rule or order requires and each offering shall be effective for a maximum of twelve (12) consecutive months unless the **commissioner**~~[executive director]~~ by rule or order extends such period of time, not to exceed five (5) years.
- (2) The issuer may make offers, but not sales, before and during the ten (10) business day period required by subsection (1) of this section, if:
 - (a) Each prospective purchaser is advised in writing that the offer is preliminary and subject to material change; and

- (b) No enforceable offer to purchase the securities may be made by a prospective purchaser, and no consideration in any form may be accepted or received, directly or indirectly, from a prospective purchaser, before the termination of the ten (10) business day period and any order disallowing the exemption has been vacated.

The ~~commissioner~~~~[executive director]~~ may, by rule or order, prohibit offers by a particular class of issuers before the expiration of the ten (10) business day period required by subsection (1) of this section, or may require issuers to comply with additional conditions and requirements prior to making offers before the expiration of the period, if appropriate in furtherance of the intent of this chapter.

- (3) The ~~commissioner~~~~[executive director]~~ may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of an exemption, if ~~the commissioner~~~~[he]~~ finds that the order is in the public interest and that any security has been or is about to be offered or sold in violation of this section. If the ~~commissioner~~~~[executive director]~~ finds it appropriate in the public interest or necessary for the protection of investors, the ~~commissioner~~~~[executive director]~~ may order any issuer in violation of this section to make an offer of rescission.
- (4) Failure by any person to file a claim of exemption under this section shall not give rise to a private right of action under KRS 292.330(1), 292.340, or 292.480 which would not otherwise be available under the provisions of this chapter.
- (5) Any person who fails to file a claim of exemption under this section, unless he *or she* does so intentionally, shall not be subject to KRS 292.991.

➔Section 871. KRS 292.420 is amended to read as follows:

- (1) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.
- (2) The ~~commissioner~~~~[executive director]~~ may require any person, who is selling or offering for sale or who is about to sell or offer for sale or who has sold or offered for sale any security within this state, to file a statement of the claim of exemption, if any, upon which such person is relying, and if any time, in the opinion of the ~~commissioner~~~~[executive director]~~, the information contained in such statement filed is misleading, incorrect, inadequate, or fails to establish the right of exemption, ~~the commissioner~~~~[he]~~ may require such person, agent, or investment adviser to file such information as may in his opinion be necessary to establish the claimed exemption. The refusal to furnish information as required by order of the ~~commissioner~~~~[executive director]~~ pursuant to the provisions of this subsection, within a reasonable time to be fixed by the ~~commissioner~~~~[executive director]~~, shall be proper ground for the entry of an order by the ~~commissioner~~~~[executive director]~~ suspending and/or canceling the registration of the broker-dealer, agent or investment adviser.
- (3) The ~~commissioner~~~~[executive director]~~ shall have authority at all times to consider and determine whether any proposed sale, transaction, issue, or security is entitled to an exemption or an exception from the definition accorded by this chapter, provided, however, that the ~~commissioner~~~~[executive director]~~ in his *or her* discretion may decline to exercise such authority as to any proposed sale, transaction, issue, or security. Any interested party desiring the ~~commissioner~~~~[executive director]~~ to exercise such authority shall submit to the ~~commissioner~~~~[executive director]~~ a verified statement of all material facts relating to the proposed sale, transaction, issue, or security, which verified statement shall be accompanied by a request for a ruling as to the particular exemption or exception from definition, together with a filing fee of two hundred fifty dollars (\$250). After such notice to interested parties as the ~~commissioner~~~~[executive director]~~ shall deem proper and after a hearing, if any, the ~~commissioner~~~~[executive director]~~ may enter an order finding the proposed sale, transaction, issue, or security entitled or not entitled to the exemption or the exception from definition as claimed. An order so entered, unless an appeal be taken therefrom in the manner prescribed in this chapter, shall be binding upon the ~~commissioner~~~~[executive director]~~, provided that the proposed sale, transaction, issue, or security when consummated or issued conforms in every relevant and material particular with the facts as set forth in the verified statement as submitted.

➔Section 872. KRS 292.430 is amended to read as follows:

- (1) Every applicant for registration as a broker-dealer, agent, investment adviser, or investment adviser representative under this chapter and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the ~~commissioner~~~~[executive director]~~, in such form as ~~the commissioner~~~~[he]~~ by rule prescribes, an irrevocable consent appointing the

~~commissioner~~^[executive director] or ~~the commissioner's~~^[his] successor in office to be ~~the applicant's~~^[his] attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against ~~the applicant~~^[him] or ~~the applicant's~~^[his] successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the ~~commissioner~~^[executive director], but it is not effective unless:

- (a) The plaintiff, who may be the ~~commissioner~~^[executive director] in a suit, action, or proceeding instituted by ~~the commissioner~~^[him], forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his ~~or her~~ last address on file with the ~~commissioner~~^[executive director]; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
- (2) Every issuer of a covered security and every covered adviser who makes a notice filing with Kentucky under this chapter shall file with the ~~commissioner~~^[executive director], in the form as prescribed by administrative regulation, an irrevocable consent appointing the ~~commissioner~~^[executive director] or ~~the commissioner's~~^[his] successor in office to be his ~~or her~~ attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him ~~or her~~ or his ~~or her~~ successor, executor, or administrator that arises under this chapter or under any rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed a consent in connection with a previous notice filing need not file another. Service may be made by leaving a copy of the process in the office of the ~~commissioner~~^[executive director], but it is not effective unless:
- (a) The plaintiff, who may be the ~~commissioner~~^[executive director] in a suit, action, or proceeding instituted by ~~the commissioner~~^[him], sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his ~~or her~~ last address on file with the ~~commissioner~~^[executive director]; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within the time as the court allows.
- (3) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and ~~the person~~^[he] has not filed a consent to service of process under subsection (1) or (2) of this section and personal jurisdiction over him ~~or her~~ cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his ~~or her~~ appointment of the ~~commissioner~~^[executive director] or ~~the commissioner's~~^[his] successor in office to be ~~the person's~~^[his] attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against ~~the person~~^[him] or ~~the person's~~^[his] successor executor or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on ~~the person~~^[him] personally. Service may be made by leaving a copy of the process in the office of the ~~commissioner~~^[executive director], and it is not effective unless:
- (a) The plaintiff, who may be the ~~commissioner~~^[executive director], in a suit, action, or proceeding instituted by ~~the commissioner~~^[him], forthwith sends notice of the service and a copy of the process by certified mail, return receipt requested, or by registered mail to the defendant or respondent at his ~~or her~~ last known address or takes other steps which are reasonably calculated to give actual notice; and
 - (b) The plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

➔Section 873. KRS 292.440 is amended to read as follows:

It is unlawful for any person to make or cause to be made, in any document filed with the ~~commissioner~~^[executive director] or the ~~commissioner's~~^[executive director's] designee or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

➔Section 874. KRS 292.450 is amended to read as follows:

- (1) Neither the fact that an application for registration under KRS 292.330 or a registration statement under KRS 292.350, 292.360, or 292.370 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the **commissioner**~~[executive director]~~ that any document filed under this chapter is true, complete, and not misleading.
- (2) Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the **commissioner**~~[executive director]~~ has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.
- (3) Neither the fact that a notice filing for a covered security or for a covered adviser has been filed, nor the fact that the person, security, or transaction is registered or exempt from registration, constitutes a finding by the **commissioner**~~[executive director]~~ that any document filed under this chapter is true, complete, and not misleading or that the person, security, or transaction is entitled to claim an exemption.
- (4) It is unlawful to make or cause to be made to any prospective purchaser, customer, or client any representation inconsistent with this section.

➔Section 875. KRS 292.460 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ in his **or her** discretion:
 - (a) May make such public or private investigations within or outside of this state as he deems necessary to determine whether any registration should be granted, denied, or revoked, or whether any person has violated or is about to violate any provision of this chapter or any rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;
 - (b) May require or permit any person to file a statement in writing, under oath or otherwise as the **commissioner**~~[executive director]~~ may determine, as to all the facts and circumstances concerning the matter to be investigated; or
 - (c) May publish information concerning any violation of this chapter or any rule or order hereunder.
- (2) For the purpose of any investigation or proceeding under this chapter, the **commissioner**~~[executive director]~~ or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the **commissioner**~~[executive director]~~ deems relevant or material to the inquiry.
- (3) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the **commissioner**~~[executive director]~~, may issue to that person an order requiring him to appear before the **commissioner**~~[executive director]~~, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.
- (4) No person is excused from attending and testifying or from producing any document or record before the **commissioner**~~[executive director]~~, or in obedience to the subpoena of the **commissioner**~~[executive director]~~ or any officer designated by him, or in any proceeding instituted by the **commissioner**~~[executive director]~~, on the ground that the testimony or evidence (documentary or otherwise) required of **the person**~~[him]~~ may tend to incriminate **the person**~~[him]~~ or subject **the person**~~[him]~~ to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming **the**~~his~~ privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

➔Section 876. KRS 292.470 is amended to read as follows:

Whenever it appears to the **commissioner**~~[executive director]~~ that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this chapter or any rule or order under this chapter, **the commissioner**~~[he]~~ may in his **or her** discretion bring any or all of the following remedies:

- (1) Issue a cease and desist order, with or without a prior hearing, appealable to Franklin Circuit Court, against the person or persons engaged in the prohibited activities directing that person or persons to cease and desist from illegal activity. In order to issue an order without a prior hearing, the **commissioner**~~[executive director]~~ must find that the delay in issuing a final cease and desist order will cause harm to the public;

- (2) An action in the Franklin Circuit Court or any other court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this chapter or any rule or order under this chapter. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. Upon a proper showing by the **commissioner**~~{executive-director}~~, the court may enter an order of rescission, restitution, or disgorgement directed to any person who has engaged in any act constituting a violation of this chapter or any rule or order under this chapter. The **commissioner**~~{executive-director}~~ may not be required to post a bond; or
- (3) Issue a final order, after notice and an opportunity for a hearing, containing findings of fact and conclusions of law, directing any person or persons found to have engaged in, or about to be engaged in, activity that constitutes a violation of this chapter or any rule or order under this chapter:
 - (a) To cease and desist from the activity;
 - (b) To perform any other reasonable mandates directed by the **commissioner**~~{executive-director}~~ pursuant to an appropriate remedy fashioned by the **commissioner**~~{executive-director}~~ and reasonably calculated to carry out the provisions of this chapter; or
 - (c) To pay fines assessed under KRS 292.500(14) and costs assessed under KRS 292.500(15).

➔Section 877. KRS 292.490 is amended to read as follows:

Any person aggrieved by a final order of the **commissioner**~~{executive-director}~~ may obtain a review of the order by filing in accordance with KRS Chapter 13B in the Franklin Circuit Court, within thirty (30) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the **commissioner**~~{executive-director}~~, and thereupon the **commissioner**~~{executive-director}~~ shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. No objection to the order may be considered by the court unless it was urged before the **commissioner**~~{executive-director}~~ or there were reasonable grounds for failure to do so. The findings of the **commissioner**~~{executive-director}~~ as to the facts, if supported by substantial evidence, are conclusive. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the **commissioner**~~{executive-director}~~, the court may order the additional evidence to be taken before the **commissioner**~~{executive-director}~~ and to be adduced upon the hearing in such manner and upon such conditions as the court may consider proper. The **commissioner**~~{executive-director}~~ may modify his *or her* findings as to the facts, by reason of the additional evidence so taken; and *the commissioner*~~{he}~~ shall file any modified or new findings, which if supported by substantial evidence shall be conclusive, and any recommendation for the modification or setting aside of the original order. The commencement of proceedings under this section does not, unless specifically ordered by the court, operate as a stay of the **commissioner's**~~{executive-director's}~~ order. An appeal may be taken from the judgment of the Franklin Circuit Court on any such appeal to the Court of Appeals on the same terms and conditions as an appeal is taken in civil actions.

➔Section 878. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the **Department**~~{Office}~~ of Financial Institutions.
- (2) It is unlawful for the **commissioner**~~{executive-director}~~ or any of his *or her* officers or employees to use for personal benefit any information which is filed with or obtained by the **commissioner**~~{executive-director}~~ and which is not made public. Except as provided in subsection (18) of this section, no provision of this chapter authorizes the **commissioner**~~{executive-director}~~ or any of *the department's*~~{his}~~ officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the **commissioner**~~{executive-director}~~ or any of *the department's*~~{his}~~ officers or employees.
- (3) The **commissioner**~~{executive-director}~~ may from time to time promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports

and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the ***commissioner***~~[executive director]~~ may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the ***commissioner***~~[executive director]~~ finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the ***commissioner***~~[executive director]~~ may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.
- (5) The ***commissioner***~~[executive director]~~ may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally-accepted accounting standards.
- (6) All administrative regulations and forms of the ***commissioner***~~[executive director]~~ shall be published.
- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the ***commissioner***~~[executive director]~~, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the ***commissioner***~~[executive director]~~ or when the ***commissioner***~~[executive director]~~ receives confirmation that a document has been filed pursuant to KRS 292.327, 292.330, 292.360, and 292.370.
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the ***commissioner***~~[executive director]~~ in his *or her* discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The ***commissioner***~~[executive director]~~ shall keep a register of all applications for registration and registration statements and notice filings which are or have ever been effective under this chapter and all denial, suspension, or revocation final orders which have ever been entered under this chapter. The register shall be open for public inspection.
- (11) The information contained in or filed with any registration statement, application, notice filings, or report may be made available to the public under administrative regulations as the ***commissioner***~~[executive director]~~ may promulgate.
- (12) Upon request and at reasonable charges as *the commissioner*~~he~~ prescribes, the ***commissioner***~~[executive director]~~ shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The ***commissioner***~~[executive director]~~ in his *or her* discretion may honor requests from interested persons for interpretative opinions.
- (14) The ***commissioner***~~[executive director]~~ may assess civil fines against any person who violates any provision of this chapter or any rule or order under this chapter.
- (15) In addition to any fines levied under subsection (14) of this section, the ***commissioner***~~[executive director]~~ may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be assessed if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only.
- (16) If fines or costs assessed under this section are not paid, the ***commissioner***~~[executive director]~~ may notify the Attorney General who shall promptly institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court for the recovery of the fines or costs.

- (17) The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the ***commissioner***~~[executive director]~~ from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. Accordingly, the ***commissioner***~~[executive director]~~ may, at any time and in his *or her* sole discretion, share or cause to be shared by any employee of the ***department***~~[office]~~ any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the ***commissioner***~~[executive director]~~, in his *or her* sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the ***department***~~[office]~~ or other agency in carrying out its regulatory responsibilities.
- (18) The following materials, documentation, and other information are deemed to have been confidentially disclosed to the ***department***~~[office]~~ and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:
- (a) Any materials, documentation, or other information provided to or otherwise obtained by the ***department***~~[office]~~ during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative; and
 - (b) Any materials, documentation, or other information provided to or otherwise obtained by the ***department***~~[office]~~ from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.

➔Section 879. KRS 292.991 is amended to read as follows:

- (1) Any person who willfully violates any provision of this chapter except KRS 292.440, or who willfully violates KRS 292.440 knowing the statement made to be false or misleading in any material respect, shall be guilty of a Class D felony.
- (2) Any person who willfully violates any rule or order of the ***commissioner***~~[executive director]~~, authorized under this chapter, shall be guilty of a Class A misdemeanor; but no person may be imprisoned for violation of any rule or order of which that person did not have actual knowledge.
- (3) The ***commissioner***~~[executive director]~~ may refer such evidence as may be available concerning violations of this chapter or of any rule or order hereunder to the Attorney General or the proper prosecuting authority, who may in his *or her* discretion, with or without such a reference, institute the appropriate criminal proceedings under this chapter.
- (4) Nothing in this chapter limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

➔Section 880. KRS 299.010 is amended to read as follows:

- (1) The provisions of this chapter do not apply to secret or fraternal societies, lodges, or councils that are under the supervision of a grand or supreme body and secure members through the lodge system exclusively, and pay no commissions and employ no agents except in the organization and supervision of the work of local subordinate lodges or councils, nor do they apply to companies, societies or associations organized under the authority and patronage of any church or religious denomination for the exclusive purpose of insuring the property of churches or religious denominations and the personal property of the pastors and ministers thereof against loss or damage by fire, lightning or storm.
- (2) As used in this chapter, unless the context requires otherwise:
 - (a) "***Commissioner***~~[Executive director]~~" means the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance;
 - (b) "Policy" means any policy, certificate of membership, or contract of insurance;

- (3) "Company," as used in KRS 299.020 to 299.300, means any corporation, association or society transacting in this state a life or casualty insurance business, or both, upon the cooperative or assessment plan, as defined in KRS 299.020;
- (4) "Company," as used in KRS 299.310 to 299.470, means any corporation organized under KRS 299.310 and 299.320 for the purpose of transacting, and any company heretofore organized under any similar law of this state or under the general corporation laws of this state that is transacting, the business of insurance against physical loss or damage of property by such hazard or hazards as it may provide in its policies, upon the cooperative or assessment plan.

➔Section 881. KRS 299.019 is amended to read as follows:

- (1) Every company licensed under this chapter shall provide to the **commissioner**~~[executive director]~~ a list of its officers and directors, their names, addresses, principal business activities, and occupations or employment.
- (2) Every company licensed under this chapter shall file with the **commissioner**~~[executive director]~~ a copy of any management contract, third-party administrator contract, agency contract, or any other agreement, contract, or document whereby rights or duties of the company are assigned or delegated to another entity. No agreement shall be effective until approved by the **commissioner**~~[executive director]~~. An agreement may be disapproved if, after a hearing under KRS Chapter 13B, the **commissioner**~~[executive director]~~ finds that the agreement does not comply with the following conditions:
 - (a) The agreement shall be the result of an arms length transaction between the company and any other party;
 - (b) The terms of the agreement shall be fair and reasonable to the parties, and the charges or fees for all services provided shall be reasonable;
 - (c) The books, accounts, and records of each party to the agreement shall be maintained to clearly and accurately disclose the precise nature and details of the transaction; and
 - (d) The agreement shall be made for the benefit of the policyholders of the company.

➔Section 882. KRS 299.030 is amended to read as follows:

- (1) Persons desiring to form an organization for the purpose of transacting the business of life or casualty insurance, or both, upon the assessment or cooperative plan, may associate together and effect an organization as prescribed in this section.
- (2) Any number of persons not less than thirteen (13) may associate to establish such an insurance company.
- (3) In addition to the general requirements for all corporations, the articles of incorporation shall specify the class of insurance the company proposes to transact; and on what business plan or principle; the number and amount of agreements for insurance, if any; and such other facts as may be necessary to explain and make manifest the object and purposes of the corporation. The words "insurance company" shall be a part of the title of every such corporation, and also the word "mutual."
- (4) In addition to complying with the provisions of KRS Chapter 271B, the incorporators shall file a certified copy of the articles of incorporation in the office of the **commissioner**~~[executive director]~~.

➔Section 883. KRS 299.040 is amended to read as follows:

Upon filing in the office of the **commissioner**~~[executive director]~~ the required articles of incorporation, together with a sworn statement by three (3) of the incorporators that at least two hundred (200) persons, eligible under the proposed laws of the company to membership therein, have in good faith made application in writing for membership, the articles shall be referred to and examined by the Attorney General. If the articles are found by him to be conformable to and not inconsistent with the laws of the state, he shall certify accordingly and return them, with his certificate of conformity, to the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall cause the articles, with the certificate of the Attorney General, to be recorded in a book to be kept for the purpose, and shall deliver to the company a certified copy of the papers so filed and recorded in his **or her** office, and of the certificate of the Attorney General, together with the license of the **commissioner**~~[executive director]~~ to the company to engage in the business proposed in the articles. Upon the certified copy and license being filed in the office of the clerk of the county where the company is to be located, the incorporators and those that may thereafter become associated with them, or their successors, shall constitute a body-politic and corporate, but may not commence business until at least two hundred (200) persons have subscribed, in writing, to be insured therein in the aggregate amount of at least

\$200,000, and the company has established a guaranty fund of \$100,000 for the protection of its policyholders or members, and the **commissioner**~~{executive director}~~ has certified that it has complied with the provisions of law and is authorized to transact business.

➔Section 884. KRS 299.100 is amended to read as follows:

- (1) Every company shall hold, within the county in which its principal office is located in this state, a stated annual meeting of its members or policyholders, or representatives of local boards or subordinate bodies, in the manner and subject to the regulations, restrictions and provisions that its constitution and bylaws provide.
- (2) Every company authorized to do business in this state may, at any stated annual meeting of its members or policyholders, adopt or amend its bylaws, rules and regulations. If the board of directors determines that an emergency has arisen requiring the adoption or amendment of any bylaw, rule or regulation before the next ensuing stated annual meeting, the board shall mail a copy of the bylaw, rule or regulation to the members and directors of the company, together with a notice of the time and place when the same will be considered, which notice shall be the same as required for a stated meeting. The bylaws, rules, regulations and amendments thereto adopted from time to time at the stated annual meeting, or at any meeting made necessary by an emergency, shall be binding on all members and policyholders of the company, whether or not personally present at the meeting when the same were adopted.
- (3) The books and papers of each company shall at all times be open for examination by the **commissioner**~~{executive director}~~, and shall be open for examination by a committee of members or policyholders duly selected, authorized and empowered for that purpose by a writing signed by a majority of the members or policyholders of the company, which written authority shall be presented to and filed with the company before any examination is made by the committee.

➔Section 885. KRS 299.120 is amended to read as follows:

Every company shall, by March 1 of each year, make and file with the **commissioner**~~{executive director}~~ a report of its affairs and operations during the year ending on December 31 immediately preceding. The report shall be upon blank forms provided by the **commissioner**~~{executive director}~~, and shall be verified under oath by the duly authorized officers of the company, and the **commissioner**~~{executive director}~~ shall publish it, or its substance, in his annual report. This annual report shall contain the following information: The number of policies issued or members admitted during the year; the amount of indemnity effected thereby; the number of death losses; the number of death losses paid; the amount received from each assessment in each class for the year; the total amount paid policyholders, beneficiaries, legal representatives or heirs; the number of death claims for which assessments have been made; the number of death claims compromised or resisted, and a brief statement of the reason; whether the company charges annual dues, and if so, how much on each one thousand dollars (\$1,000) annually, or per capita, as the case may be; the total amount received and the disposition thereof; whether the company uses money received for payment of death claims to pay expenses, in whole or in part, and if so, the amount so used; the total amount of salaries paid to officers; whether the company guarantees a fixed amount to be paid regardless of the amount realized from assessments, dues, admission fees and donations, and if so, the amount guaranteed and the security for such guarantee; whether the company has a reserve fund, and if so, how the reserve fund is created and for what purpose, the amount thereof and how invested; whether the company has more than one (1) class, and if so, how many, the amount of indemnity in each class, and the number of members in each class; if organized under the laws of this state, under what law and at what time; the number of policies or memberships lapsed during the year; the number of policies or memberships in force at the beginning and end of the year in each class; the aggregate maximum, minimum and average age of membership in each class; the assets applicable to life or casualty insurance, other than reserve fund, and how invested; and the amount received from all sources for life or casualty insurance and the disposition thereof.

➔Section 886. KRS 299.190 is amended to read as follows:

When the **commissioner**~~{executive director}~~ has given the notice required by KRS 299.180, he *or she* shall proceed without delay to investigate the condition of the company, and shall have full power, in person or by deputy, to examine its books, papers and accounts, and to examine, under oath, its officers, agents, clerks and policyholders, and other persons having knowledge of its business. If it appears to the **commissioner**~~{executive director}~~ that the liabilities of the company exceed its resources, and that it cannot within a reasonable time, not more than three (3) months from the date of the original default, pay its accrued indebtedness in full, **the commissioner**~~{he}~~ shall report the facts to the Attorney General, who shall, upon the **commissioner's**~~{executive director's}~~ report, apply to the Judge of the Franklin Circuit Court, or to the Judge of the Circuit Court of the county in which the company is located, for an order closing the business of the company and appointing a receiver for the distribution of its assets among

creditors. No such final order shall be made until the company has had ten (10) days' notice of the application and an opportunity to be heard. Upon hearing the matter, the court may make any order that the interests of the company and the public require.

➔Section 887. KRS 299.210 is amended to read as follows:

- (1) An assessment or cooperative life insurance company, including such companies as are organized under the provisions of KRS Chapter 303 and KRS 304.32-010 to 304.32-270, may be wholly reinsured in, and its assets to the extent required to establish adequate reserves transferred to, and its liabilities assumed by a mutual or stock insurer pursuant to an agreement of reinsurance approved by the **commissioner**~~[executive director]~~ of insurance after such hearing as the **commissioner**~~[executive director]~~ may require, and approved by two-thirds (2/3) of the members of such company who are present at a meeting of such members duly called for such purpose, and vote thereon.
- (2) Any such reinsurance agreement shall determine the amount of surplus, if any, of such cooperative or assessment company and shall make adequate provision for paying to the members of such company their respective shares of such surplus determined in such manner as may be approved by the **commissioner**~~[executive director]~~.
- (3) If the transfer or reinsurance is approved, every policyholder of the company who files with its secretary, within ten (10) days after the meeting, written notice of his preference to be transferred to some other company than that named in the contract, shall be accorded all the rights and privileges, if any, in aid of the transfer, that would have been accorded under the terms of the contract had he been transferred to the company named therein.
- (4) No domestic company shall transfer its risks or any part thereof to, or reinsure its risks or any part thereof in, any insurance company of another state or country that is not at the time of the transfer or reinsurance authorized to do insurance business in this state.

➔Section 888. KRS 299.215 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall collect and pay into the State Treasury the following fees relative to assessment or cooperative life or casualty insurance companies:
 - (a) For filing a copy of articles of incorporation of the company, \$10; and
 - (b) For filing annual statement of the company, \$10.
- (2) No other charges than those provided in this section shall be made against assessment or cooperative life or casualty insurance companies by the **Department**~~[Office]~~ of Insurance unless agreed to by the respective companies.

➔Section 889. KRS 299.250 is amended to read as follows:

The reorganized company may not do any business as a stock company until the amount of stock determined as provided in KRS 299.240, and as authorized by law, has been subscribed and paid for, at not less than par, and the provisions of the law concerning stock companies have been complied with, and the proceeds of the capital stock to the amount of at least \$100,000 have been invested in securities such as those in which insurance companies are permitted by law to make investments, and such securities to the amount of at least \$100,000 have been deposited with the custodian of insurance securities to guarantee the payment of policies issued by the company, and until the **commissioner**~~[executive director]~~ has, upon request, valued the assets of the company and its outstanding policies and has given his certificate that the admitted assets of the company, including its capital stock, are sufficient to provide reserve upon all outstanding assessment policies, valued as provided in KRS 299.280, over and above all other bona fide debts of the company and claims against it, and that the company has complied with all of the laws regarding life insurance companies upon the stock or mutual plan, as the case may be.

➔Section 890. KRS 299.270 is amended to read as follows:

Upon the receipt of the certificate from the **commissioner**~~[executive director]~~ authorizing the reorganized company to do business upon the stock or mutual plan, the stockholders may elect from among themselves directors, in accordance with the articles of incorporation and bylaws of the company and the laws of this state, to hold office until the ensuing annual meeting and until their successors have been duly elected and qualified. The directors so elected shall have all the rights and powers proper to be exercised by the directors of life insurance companies upon the mutual or stock plan.

➔Section 891. KRS 299.300 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~, upon request and the payment to him of the usual fees, shall ascertain and certify the proportionate interest, in the assets of the cooperative or assessment company before its reorganization, of each of the policyholders of the cooperative or assessment company who refuse, within six (6) months after notice, to assent to the change into a stock or mutual company. The interest of a member so dissenting shall not be valued at more than his proportionate part of the accumulated emergency fund, to be determined by the ***commissioner***~~[executive director]~~ as of the date of the reorganization.
- (2) The amount of the interest of each such dissenting policyholder shall be paid over to ***the commissioner***~~[him]~~ on demand within thirty (30) days after ascertainment, and upon the payment or tender of the amount of interest so ascertained and certified the membership of the dissenting policyholder shall cease.
- (3) Out of the remainder of the assets in excess of the sum required for the compensation of dissenting policyholders, there shall be deposited with the custodian of insurance securities, under the laws providing for the deposit of legal reserve, a sum equal to such reserve, as computed by the ***commissioner***~~[executive director]~~, in addition to the deposit of \$100,000 provided for by KRS 299.250.

➔Section 892. KRS 299.310 is amended to read as follows:

- (1) Twenty-five (25) or more persons residing in any one or more adjoining municipalities, or in any county, or in not more than ten (10) adjoining counties, who collectively own property of the value of fifty thousand dollars (\$50,000) or more, may organize a company for the purpose of cooperative or assessment insurance against:
 - (a) Loss of or damage to real or personal property of every kind and interest therein, from any or all hazards or causes, and against loss consequential upon such loss or damage; and
 - (b) Legal liability for the death, injury, or disability of any human being, or for damage to property; and medical, hospital, surgical, and funeral expenses of persons injured, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance.

Such persons shall make and acknowledge a certificate setting forth their intention to form such a company, the counties or municipalities in which it intends to do business, its corporate name, and the place where its principal office is to be located. Every person insured in such a company who signs an application for insurance as required by the certificate of incorporation or by the bylaws of the company shall thereby become a member. Provided, however, that no such company shall insure against any of the hazards set forth in paragraph (b) of this subsection unless it has a net surplus of two million dollars (\$2,000,000) or more or is fully reinsured as to all such hazards by a contract or contracts filed with and approved by the ***commissioner***~~[executive director]~~.

- (2) No money shall be collected by any person on behalf of the company until two (2) of the members or organizers have given joint bond to the ***commissioner***~~[executive director]~~ in the sum of ten thousand dollars (\$10,000), conditioned that all money so collected will be used as directed by law, and that the affairs of the company will be conducted according to law. The bond shall be held by the ***commissioner***~~[executive director]~~ for the benefit of the members of the company until the company has become legally incorporated and its affairs have been examined by an expert accountant, appointed by the ***commissioner***~~[executive director]~~, and found to be in due and regular form, and immediately thereafter the bond shall be canceled.
- (3) No company shall be formed under KRS 299.310 to 299.470 for the purpose of transacting any business of insurance other than as prescribed in those sections, and no company shall insure against any loss other than the ones permitted by those sections. Any company operating under the provisions of KRS 299.310 to 299.470 as of June 1, 1960, shall be authorized to write all types of insurance allowed under subsection (1) of this section without amendment of its charter or articles of incorporation.
- (4) Insurers organized under the provisions of this section are subject to the provisions of subtitle 36 of KRS Chapter 304 to the extent applicable and not in conflict with the expressed provisions of this chapter.

➔Section 893. KRS 299.320 is amended to read as follows:

Upon filing the required articles in the office of the ***commissioner***~~[executive director]~~, together with a sworn statement by three (3) of the incorporators that bona fide agreements have been entered into for the insurance of property of an amount not less than \$100,000 within the territory in which it proposes to do business, the articles shall be referred to and examined by the Attorney General. If the articles are found by ***the Attorney General***~~[him]~~ to be

conformable to, and not inconsistent with, the laws of this state, *the Attorney General*~~[he]~~ shall certify accordingly, and return them, with ~~a~~^{his} certificate of conformity, to the *commissioner*~~[executive director]~~. The *commissioner*~~[executive director]~~ shall cause the articles, with the certificate of the Attorney General, to be recorded in a book kept for that purpose, and shall deliver to the company a certified copy of the papers as filed and recorded in his office, and of the certificate of the Attorney General, together with the license of the *commissioner*~~[executive director]~~ to the company to engage in the business proposed in the articles. Upon the certified copy and license being filed in the office of the clerk of the county in which the principal office of the company is to be located, the incorporators and those that may thereafter become associated with them, and their successors, shall constitute a body politic and corporate, and be lawfully entitled to begin business.

➔Section 894. KRS 299.330 is amended to read as follows:

- (1) No company shall insure any property located outside the limits of the territory comprised in its certificate of incorporation, except that when a member lives on or near the boundary line and has property both within and without the prescribed boundary, his property without the boundary may be insured.
- (2) Any company, by a majority vote of its membership, or by a majority vote of its board of directors at any meeting where there is a legal quorum of directors in session, may change the territory in which it is incorporated to do business to as few or as many counties in this state as it may see fit to include in its territory. The change of territory shall be effective upon the members of the board of directors filing a proper certificate of such action with the *commissioner*~~[executive director]~~.
- (3) The board of directors may, by resolution duly passed at any regular meeting, remove the office of the company to any municipality in which it is authorized to do business. The removal shall not be made until after the expiration of five (5) days from the passage of the resolution and the filing of a copy in the office of the *commissioner*~~[executive director]~~.

➔Section 895. KRS 299.450 is amended to read as follows:

The president and secretary of each company shall, on or before March 1 of each year, make a sworn statement to the *commissioner*~~[executive director]~~ showing the condition of the company as of the preceding December 31. The statement shall contain the following information: The amount and kind of property insured; the number of policies issued from the time of organization of the company up to the time of making the statement; the number insured during the year last past; the amount of insurance accepted and the amount withdrawn, expired and canceled during the year; the whole amount of insurance in force on December 31; the amount of money received during the year; the amount of disbursements, specifying the amount paid for fees, salaries and commissions; and all other matters of interest to the company or members that the *commissioner*~~[executive director]~~ may require.

➔Section 896. KRS 299.460 is amended to read as follows:

The *commissioner*~~[executive director]~~ shall examine into the management of any company whenever he deems it prudent for the protection of policyholders in this state, but not less frequently than once in every four (4) years. He shall also examine into the management of a company upon the application of ten (10) of its members, or twenty-five percent (25%) of its board of directors, or its president or secretary. The company shall pay all expenses of the examination which shall promptly be deposited in the State Treasury "Examination Expense Revolving Fund" established in KRS 304.2-300. If the *commissioner*~~[executive director]~~ finds that the company or any director, agent, adjuster, employee, administrator, or officer has been or is violating the provisions of KRS 299.310 to 299.450, or the bylaws of the company, he shall proceed in like manner as with other insurers guilty of like violations. The *commissioner*~~[executive director]~~ may issue orders, conduct investigations, hold hearings, issue subpoenas, assess penalties, and take other reasonable and necessary actions as with other insurers.

➔Section 897. KRS 299.470 is amended to read as follows:

All the provisions of KRS 299.310 to 299.460 shall apply to companies doing business of the kind and upon the plan described in subsection (4) of KRS 299.010 and organized by special charter granted by this state, where those provisions do not conflict with some vested right granted in the special charter. Any such company may become subject to all the provisions of KRS 299.310 to 299.460 by filing a certified statement with the *commissioner*~~[executive director]~~ that a majority of its directors have voted to so subject the company.

➔Section 898. KRS 299.480 is amended to read as follows:

Three (3) or more domestic mutual or cooperative and assessment fire insurance companies may organize a reinsurance company to reinsure their risks by certifying to the *commissioner*~~[executive director]~~ their intention and filing with him certificates properly acknowledged showing the vote of the directors of the companies authorizing

them to become members of the reinsurance company. The name of the reinsurance company shall be contained in the certificate to the **commissioner**~~{executive director}~~ and shall be approved by **the commissioner**~~{him}~~. Such reinsurance company shall be a distinct corporation.

➔Section 899. KRS 299.490 is amended to read as follows:

- (1) Any domestic mutual or assessment and cooperative fire insurance company may, with the consent of the directors of the reinsurance company, become a member thereof by filing with the **commissioner**~~{executive director}~~ a certificate of its intention and a certificate showing the vote of its directors authorizing it to become a member of the reinsurance company.
- (2) Any member company may, by paying its proportion of the liabilities of the reinsurance company then existing, withdraw its membership from a reinsurance company. The member company shall certify to the **commissioner**~~{executive director}~~ its intention to withdraw its membership, and give written notice to the secretary of the reinsurance company of its intention to withdraw thirty (30) days in advance. Upon withdrawal of any member company the reinsurance company shall at once cancel all policies of insurance held by and through the company withdrawing.

➔Section 900. KRS 299.520 is amended to read as follows:

- (1) Complete copies of treaties and contracts for reinsurance, excluding policies for reinsurance, shall be filed with and approved by the **commissioner**~~{executive director}~~.
- (2) These copies of treaties of reinsurance shall be open at all times for inspection in the **Department**~~{Office}~~ of Insurance, on application of any citizen of this state asking the name of the reinsuring company, and the **Department**~~{Office}~~ of Insurance on application shall furnish the name of the reinsuring company.

➔Section 901. KRS 299.540 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall collect and pay into the State Treasury the following fees relative to assessment or cooperative fire insurance companies:
 - (a) For filing a copy of articles of incorporation of the company, \$10;
 - (b) For filing annual statement of the company, \$10; and
 - (c) For filing papers and keeping records on change of territory, \$5.
- (2) No other charges than those provided in this section shall be made against assessment or cooperative fire insurance companies by the **Department**~~{Office}~~ of Insurance unless agreed to by the respective companies.

➔Section 902. KRS 299.550 is amended to read as follows:

Any company operating under the provisions of KRS 299.310 et seq. may become a mutual insurer as defined in Chapter 304 of the Kentucky Revised Statutes upon the approval of such change by two-thirds (2/3) of the authorized vote of the membership of the company, such authorized vote to be determined by the provisions of KRS 299.350; and such vote to be at a regular annual meeting of the membership of the company, notice of which meeting shall have been given to the membership in writing at least thirty (30) days in advance, setting forth the fact that a vote upon such conversion shall be taken at said meeting. In the event of such conversion of a company, the effective date of the conversion shall be fixed by resolution of the membership, and all policies in force as of the effective date of conversion shall remain in force unless sooner canceled until the next regular assessment thereon or until one (1) year after the effective date of conversion, whichever is earlier. All policies written after the effective date of conversion in all respects shall be in conformity with the provisions of Chapter 304 of the Kentucky Revised Statutes. The plan of conversion must be submitted to and approved by the **commissioner**~~{executive director}~~ before it becomes effective.

➔Section 903. KRS 303.100 is amended to read as follows:

A burial association desiring to do business in this state shall file with the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance a power of attorney as is required of insurance companies, designating the **commissioner**~~{executive director}~~ as the proper person upon whom process may be served.

➔Section 904. KRS 303.122 is amended to read as follows:

- (1) Any person, firm, corporation, partnership or undertaking concern, duly and regularly licensed to engage in the undertaking business in the Commonwealth of Kentucky who may desire to perform the provisions of any

agreement, policy, contract, bond, assurance or guarantee issued by any burial association or association of a similar nature authorized to do business in the Commonwealth of Kentucky shall file with the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance of the Commonwealth of Kentucky a bond in an amount that is reasonable to be fixed by the **commissioner**~~{executive director}~~ of insurance of the Commonwealth of Kentucky, which bond shall be conditioned upon the faithful performance of the agreement, policy, contract, bond, assurance or guarantee issued by any burial association or association of a similar nature authorized to do business in the Commonwealth of Kentucky to its members as approved by the **commissioner**~~{executive director}~~ of insurance of the Commonwealth of Kentucky.

- (2) The **commissioner**~~{executive director}~~ of insurance shall adopt appropriate forms for the filing of the bond provided for herein and shall, upon request, furnish said forms to any person, firm, corporation, partnership or undertaking concern, duly and regularly licensed to engage in the undertaking business in the Commonwealth of Kentucky, who may desire to qualify under the terms of this section.

➔Section 905. KRS 303.130 is amended to read as follows:

Each burial association shall deposit with the custodian of insurance securities securities to the amount of not less than \$100,000, to be held for the benefit of its policyholders. These securities shall be of the kind in which domestic life insurance companies are allowed by law to invest their capital. Associations shall have, at all times, on approval of the **commissioner**~~{executive director}~~, the right to exchange any part of the securities for other of like amount or character.

➔Section 906. KRS 303.140 is amended to read as follows:

- (1) All burial associations shall, by March 1 of each year, make and file with the **commissioner**~~{executive director}~~ a report of its affairs and operations during the year ending December 31 immediately preceding. This report shall be upon blank forms furnished by the **commissioner**~~{executive director}~~ and shall be verified under oath by the authorized officers of the associations. It shall show the number of outstanding policies, the number of matured policies, and all other information connected with their business as the **commissioner**~~{executive director}~~ requires. This report, or the substance thereof, shall be published in the annual report of the **commissioner**~~{executive director}~~.
- (2) The **commissioner**~~{executive director}~~ may make any examination of the books or affairs of associations as he may make of insurance companies in this state.

➔Section 907. KRS 303.150 is amended to read as follows:

- (1) If, upon examination of a burial association by the **commissioner**~~{executive director}~~ or any person designated by him to make the examination, it appears that the liabilities of the association exceed its resources, and it cannot in a reasonable time, not more than three (3) months from the date of the original default, pay its accrued indebtedness in full, he shall report the facts to the Attorney General. The Attorney General shall, upon the **commissioner's**~~{executive director's}~~ report, apply to the Judge of the Franklin Circuit Court or to the Judge of the Circuit Court of the county wherein the association is located for an order closing the business of the association, and appointing a receiver for the distribution of its assets among creditors. No final order shall be made until the association has had ten (10) days' notice of the application and an opportunity to be heard. Upon hearing the matter, the court may make any order which the interest of the association and the public may require.
- (2) When any burial association discontinues business, or when for any cause a dissolution is decreed, or when for sixty (60) days any judgment remains unsatisfied, the Circuit Judge in any county in which the association has transacted business may appoint a receiver to distribute its assets among its policyholders for any persons having claims against the association. The assets shall be applied first, on accrued or natural claims or policies; second, on claims of any other kind or character; third, in payment to policyholders of all dues paid in by them; and, if a balance remains after payment of the above named claims, then that sum shall be returned to the burial association.

➔Section 908. KRS 304.1-050 is amended to read as follows:

- (1) "**Commissioner**~~{Executive director}~~" means the **commissioner** ~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance of this state.
- (2) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of Insurance of this state, unless context otherwise requires.

➔Section 909. KRS 304.1-100 is amended to read as follows:

- (1) An "authorized" insurer is one duly authorized by a subsisting certificate of authority issued by the **commissioner**~~[executive director]~~ to transact insurance in this state.
- (2) An "unauthorized" insurer is one not so authorized.

➔Section 910. KRS 304.1-110 is amended to read as follows:

- (1) A "certificate of authority" is one issued by the **commissioner**~~[executive director]~~ evidencing the authority of an insurer to transact insurance in this state.
- (2) A "license" is authority granted by the **commissioner**~~[executive director]~~ pursuant to this code authorizing the licensee to engage in a business or operation of insurance in this state other than as an insurer, and the certificate by which such authority is evidenced.

➔Section 911. KRS 304.1-170 is amended to read as follows:

Every form of insurance document and every rate or other filing lawfully in use on or lawfully filed by June 18, 1970, may continue to be so used or be effective, until the **commissioner**~~[executive director]~~ otherwise prescribes pursuant to this code; except that neither this code nor the **commissioner**~~[executive director]~~ shall prohibit the use of any such document before expiration of one (1) year from and after June 18, 1970.

➔Section 912. KRS 304.1-180 is amended to read as follows:

No action taken by the **commissioner**~~[executive director]~~ nor proceeding commenced, nor right accrued, nor violation of law existing under any act repealed by this chapter, is affected by the repeal, but all procedure hereafter taken in reference thereto shall conform to this code as far as possible.

➔Section 913. KRS 304.2-010 is amended to read as follows:

There is continued within the Public Protection Cabinet a department to be known as the Department of Insurance~~[There is continued within the Environmental and Public Protection Cabinet, Department of Public Protection, an office known as the Office of Insurance].~~

➔Section 914. KRS 304.2-020 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ is the head of the **Department**~~[Office]~~ of Insurance.
- (2) The **commissioner**~~[executive director]~~ shall be appointed by the Governor with the consent of the Senate, for a term not to exceed four (4) years on the basis of his *or her* merit and fitness to perform the duties of the office as provided in KRS 12.040. If the Senate is not in session when a term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Nothing contained in this subsection shall prohibit the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Insurance from being reappointed.
- (3) The following divisions are established within the **department**~~[Office]~~ of Insurance and shall be headed by directors appointed by the secretary of the ~~[Environmental and]~~ Public Protection Cabinet with the approval of the Governor in accordance with KRS 12.050:
 - (a) Property and Casualty Division;
 - (b) **Health and Life** Division~~[of Life Insurance]~~;
 - (c) Division of Financial Standards and Examination;
 - (d) ~~[Division of State Risk and Insurance Services]~~;
 - ~~(e) — [Division of Agent Licensing]~~;
 - ~~(e) [(f)]~~ Division of Insurance Fraud Investigation;
 - ~~(f) [(g)]~~ ~~[Division of]~~ Consumer Protection **Division**~~[and Education]~~;
 - ~~(h) — Division of Health Insurance Policy and Managed Care]~~; and
 - ~~(g) [(i)]~~ Division of Kentucky Access.

➔Section 915. KRS 304.2-030 is amended to read as follows:

- (1) Within thirty (30) days from the time of notice of his *or her* appointment and before entering upon his *or her* duties, the **commissioner**~~{executive director}~~ shall take the oath of office as required by KRS 62.010.
- (2) Within the same period the **commissioner**~~{executive director}~~ shall execute and deliver a surety bond, in favor of the Commonwealth of Kentucky, in the penal sum fixed by the Governor, but not less than fifty thousand dollars (\$50,000) as required by KRS 62.160.

➔Section 916. KRS 304.2-040 is amended to read as follows:

- (1) The **Department**~~{Office}~~ of Insurance shall have an official seal, in the form and design as so in use and on file in the office of the Secretary of State immediately prior to June 18, 1970.
- (2) Every certificate or license issued by the **commissioner**~~{executive director}~~ shall bear the seal of the **department**~~{office}~~.

➔Section 917. KRS 304.2-050 is amended to read as follows:

Every certificate, assignment or conveyance executed by the **commissioner**~~{executive director}~~, relating to the business of insurance or an insurer, in pursuance of authority conferred by law, and sealed with the seal, shall be received as evidence, and may be recorded in the same manner and with the same effect as a deed regularly acknowledged or proved before an officer authorized by law to take the proof or acknowledgment of deeds.

➔Section 918. KRS 304.2-060 is amended to read as follows:

The **commissioner**~~{executive director}~~ may appoint ~~this own~~ deputies with the prior written approval of the Governor as provided in KRS 12.050.

➔Section 919. KRS 304.2-063 is amended to read as follows:

There is created within the~~{office of}~~ Consumer Protection~~{and Education}~~ Division *the position*~~{, which shall include an office}~~ of ombudsman.

➔Section 920. KRS 304.2-065 is amended to read as follows:

- (1) There is created within the **Department**~~{Office}~~ of Insurance the position of early warning analyst.
- (2) The **commissioner**~~{executive director}~~ shall appoint a qualified person to serve as early warning analyst.
- (3) The early warning analyst shall detect domiciled companies and companies doing a significant amount of business in the Commonwealth that are in a hazardous or potentially hazardous financial condition.
- (4) The early warning analyst shall be part of the Financial Standards and Examination Division.
- (5) The early warning analyst shall:
 - (a) Take advantage of the information available through the Insurance Regulatory Information System and use the information to monitor insurers;
 - (b) Seek information from other states' detection programs;
 - (c) Work with other **Department**~~{Office}~~ of Insurance employees representing key regulatory areas of the **department**~~{office}~~;
 - (d) Coordinate and develop the use of an indicator list to determine if an insurer is in a hazardous condition. The indicator list shall include but is not limited to the following indicators:
 1. An insurer fails to file a timely financial statement as established in KRS Chapter 304;
 2. An insurer files financial information which is false or misleading;
 3. An insurer overstates its surplus by twenty-five percent (25%) or more;
 4. An insurer fails to grant authorization to amend its financial statement when requested;
 5. An insurer's financial ratios are outside of the usual range established by the National Association of Insurance Commissioners in the Insurance Regulatory Information System;
 6. A projection by the **department**~~{office}~~ of an insurer's current financial condition indicates that the sum of its paid-in capital, paid-in surplus, and contributed surplus will be reduced within the next twelve (12) months;

7. An insurer's aggregate net retained risk, direct or assumed, under any one (1) insurance policy or certificate of insurance under a group policy is more than ten percent (10%) of the insurer's surplus, except where otherwise permitted by law;
 8. An insurer's reserves for losses and loss adjustment expenses are discounted more than ten percent (10%) of the surplus;
 9. An affiliate or subsidiary of an insurer is unable to pay its obligations as the obligations become due and payable;
 10. A life, accident, and health insurer has premium writings that result in the surplus being less than five percent (5%) of the aggregate general account reserves for the life insurance in force plus twenty-five percent (25%) of the new annualized accident and health premium writing;
 11. An insurer has reinsurance reserve credits, recoverable or receivable, that are disputed by the reinsurer, or are due and payable and remain unpaid, and the reinsurance credits, recoverables, and receivables are more than ten percent (10%) of an insurer's surplus;
 12. An insurer consistently issues subordinate premium or surplus debentures to finance its operations;
 13. An insurer fails to adequately maintain books and records in a manner that permits examiners to determine the financial condition of the insurer;
 14. An insurer has reinsurance agreements affecting twenty percent (20%) or more of the insurer's gross written premiums, direct or assumed, and the assuming insurers are not licensed to do insurance business in the Commonwealth of Kentucky;
 15. An insurer's management does not have the experience, competence, or trustworthiness to operate the insurer in a safe and sound manner;
 16. An insurer's management engages in unlawful transactions;
 17. An insurer fails to have an appraisal made on real estate upon which the insurer has made a mortgage loan;
 18. An insurer fails to comply with the terms of an agreement with an affiliate;
 19. An insurer has a pattern of refusing to settle valid claims within a reasonable time after due proof of the loss has been received;
 20. An insurer fails to follow a policy on rating and underwriting standards appropriate to the risk;
 21. An insurer violates KRS Chapter 304;
 22. A final administrative or judicial order, initiated by an insurance regulatory agency of another state, is issued against an insurer; and
 23. An insurer is in any condition that the **commissioner**~~executive director~~ finds is a hazard to policyholders, creditors, or the general public;
- (e) Recommend regulatory action and provide status reports to the **commissioner**~~executive director~~; and
- (f) Appear before the Interim Joint Committee on Banking and Insurance or the Standing Committees on Banking and Insurance annually to report on the status of domestic insurance companies and insurance companies doing a substantial amount of business in the Commonwealth of Kentucky.

➔Section 921. KRS 304.2-070 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ may from time to time contract for and procure, on a fee or independent contract basis, such additional actuarial, examination, rating, and other technical and professional services as he **or she** may require for the discharge of his **or her** duties, subject to any other applicable laws of this state.
- (2) None of the individuals rendering such services shall be in the classified services of the state.

➔Section 922. KRS 304.2-080 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ or any deputy, examiner, actuary, assistant or employee of the ***department***~~[office]~~, shall not be connected with the management of, or be financially interested, directly or indirectly, in any insurer, insurance agency or broker, or insurance transaction except as policyholder or claimant under a policy; except, that as to matters wherein a conflict of interest does not exist on the part of any such individual, the ***commissioner***~~[executive director]~~ may employ or retain from time to time insurance actuaries, examiners, accountants, attorneys, or other technicians who are independently practicing their profession even though from time to time similarly employed or retained by insurers or others.
- (2) No person shall directly or indirectly give or pay to the ***commissioner***~~[executive director]~~ or any deputy, examiner, actuary, assistant, employee or technician retained by the ***department***~~[office]~~; and the ***commissioner***~~[executive director]~~, or any deputy, examiner, actuary, assistant, employee or technician retained by the ***department***~~[office]~~, shall not directly or indirectly receive or accept any fee, compensation, loan, gift or other thing of value in addition to the compensation and expense allowance provided by law, or by contract with the ***commissioner***~~[executive director]~~, for any service rendered or to be rendered, as such ***commissioner***~~[executive director]~~, deputy, examiner, actuary, assistant, employee or technician, or in connection therewith.
- (3) Subsection (1) of this section shall not be deemed to prohibit receipt by any such person of commissions or retirement benefits to which entitled by reason of services performed prior to becoming ***commissioner***~~[executive director]~~ or prior to employment by the ***commissioner***~~[executive director]~~.

➔Section 923. KRS 304.2-090 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may delegate to any deputy, assistant, counsel, actuary, examiner or employee of the ***department***~~[office]~~, the exercise or discharge in the ***commissioner's***~~[executive director's]~~ name of any power, duty or function, whether ministerial, discretionary or of whatever character, vested in or imposed upon the ***commissioner***~~[executive director]~~ under this code.
- (2) The official act of any such person so acting in the ***commissioner's***~~[executive director's]~~ name and by his ***or her*** authority shall be deemed to be an official act of the ***commissioner***~~[executive director]~~.

➔Section 924. KRS 304.2-100 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall personally supervise the operations of the ***department***~~[office]~~.
- (2) The ***commissioner***~~[executive director]~~ shall examine and inquire into violations of this code, shall enforce the provisions of this code with impartiality and shall execute the duties imposed upon him ***or her*** by this code.
- (3) The ***commissioner***~~[executive director]~~ shall have the powers and authority expressly conferred upon him ***or her*** by or reasonably implied from the provisions of this code.
- (4) The ***commissioner***~~[executive director]~~ may conduct such examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as ***the commissioner***~~[he]~~ may deem proper upon reasonable and probable cause to determine whether any person has violated any provisions of this code or to secure information useful in the lawful administration of any such provision. The cost of such additional examinations and investigations shall be borne by the state.
- (5) The ***commissioner***~~[executive director]~~ may establish and maintain such branch offices in this state as may be reasonably required for the efficient administration of this code.
- (6) The ***commissioner***~~[executive director]~~ shall have such additional powers and duties as may be provided by other laws of this state.

➔Section 925. KRS 304.2-105 is amended to read as follows:

Notwithstanding any other provision of law, to the extent authorized by the ***commissioner***~~[executive director]~~ by administrative regulation, a licensed agent, producer, broker, or insurer has the power to engage in any insurance activity that financial institutions chartered by or otherwise subject to the jurisdiction of the federal government are authorized to engage in according to federal law or regulation or by a court of competent jurisdiction.

➔Section 926. KRS 304.2-110 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of this code. No such rule or regulation shall extend, modify, or conflict with any law of this state or the reasonable implications thereof.

- (2) No penalty shall apply to any act done or omitted in good faith in conformity with any such rule or regulation, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

➔Section 927. KRS 304.2-120 is amended to read as follows:

- (1) In general, orders and notices of the ***commissioner***~~[executive director]~~ shall be issued in accordance with this chapter. Notices, recommended orders, and final orders issued as a result of an administrative hearing shall be issued in accordance with KRS Chapter 13B.
- (2) Orders and notices of the ***commissioner***~~[executive director]~~ shall be effective only when in writing signed by the ***commissioner***~~[executive director]~~ or by the ***commissioner's***~~[executive director's]~~ authority.
- (3) Every order of the ***commissioner***~~[executive director]~~ shall state its effective date and shall concisely state:
 - (a) Its intent or purpose;
 - (b) The grounds on which it is based;
 - (c) The provisions of this code under which action is taken or proposed to be taken; and
 - (d) All other matters required by law.
- (4) All persons holding licenses or certificates of authority from the ***commissioner***~~[executive director]~~ shall maintain current residence, business, home office, and administrative addresses, as applicable, on file with the ***commissioner***~~[executive director]~~. Licensees shall inform the ***commissioner***~~[executive director]~~ in writing in a format acceptable to the ***commissioner***~~[executive director]~~ of any change in addresses or legal name within thirty (30) days of the change. As a condition to holding a license or certificate of authority from the ***commissioner***~~[executive director]~~, persons holding licenses or certificate of authority are deemed to have consented to service of notices and orders of the ***commissioner***~~[executive director]~~ at their addresses on file with the ***commissioner***~~[executive director]~~ and any notice or order of the ***commissioner***~~[executive director]~~ mailed or delivered to the address on file with the ***commissioner***~~[executive director]~~ constitutes valid service of notice or order.

➔Section 928. KRS 304.2-130 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may invoke the aid of the courts through injunction or other proper process, mandatory or otherwise, to enjoin any existing or threatened violation of any provision of this code, or to enforce any proper order made by him ***or her*** or action taken by him ***or her***.
- (2) If the ***commissioner***~~[executive director]~~ has reason to believe that any person has violated any provision of this code, or other law applicable to insurance operations, for which criminal prosecution is provided and in his ***or her*** opinion would be in order, ***the commissioner***~~[he]~~ shall give the information relative thereto to the appropriate Commonwealth attorney or to the Attorney General. The Commonwealth attorney or Attorney General shall promptly institute such action or proceedings against such person as in his ***or her*** opinion the information may require or justify.
- (3) Whenever the ***commissioner***~~[executive director]~~ may deem it necessary, he ***or she*** may employ counsel, or call upon the Attorney General of this state for legal counsel and such assistance as may be necessary.
- (4) The Attorney General upon request of the ***commissioner***~~[executive director]~~ is authorized to proceed in the courts of any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the ***commissioner***~~[executive director]~~.

➔Section 929. KRS 304.2-140 is amended to read as follows:

Any person who willfully violates any rule, regulation, subpoena, or order of the ***commissioner***~~[executive director]~~ or any provision of this code shall be subject to suspension or revocation of certificate of authority or license, or administrative fine or both.

➔Section 930. KRS 304.2-150 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall carefully preserve in the ***department***~~[office]~~ and in permanent form, a correct account of all his ***or her*** transactions and of all fees and moneys received by him ***or her*** by virtue of his ***or her*** office, together with all financial statements, examination reports, correspondence, filings,

and documents duly received by the ~~department~~^{office}. The ~~commissioner~~^{executive director} shall hand the same over to his *or her* successor in office.

- (2) The ~~commissioner~~^{executive director} shall keep a suitable record of all insurer certificates of authority and of all licenses issued under this code, together with all applicable suspensions and revocations and of the causes thereof.
- (3) Unless otherwise provided by law, records of the ~~department~~^{office} shall be open to the extent provided by the Kentucky Open Records Act, KRS 61.872 to 61.884:
 - (a) The following records shall be open:
 1. Rate and form filings and information filed in support thereof;
 2. Other records as provided by law; and
 3. All information filed by the ~~department~~^{office} with the National Association of Insurance Commissioners, which that association makes available;
 - (b) The following records shall be closed:
 1. All information received in confidence from insurance supervisory officials of other states or countries, or the National Association of Insurance Commissioners, including, but not limited to, information from the insurance regulatory information system. However, records described in this paragraph may be used by the ~~commissioner~~^{executive director} in enforcement prosecutions and proceedings for disciplinary action, and may be disclosed to other law enforcement authorities; and
 2. Other records as provided by law; and
 - (c) When inspection of ~~department~~^{office} records is denied, any person challenging the denial shall follow the procedures set forth in the Kentucky Open Records Act, KRS 61.872 to 61.884.
- (4) After five (5) years, the ~~commissioner~~^{executive director} may destroy unneeded or obsolete records and filings in the ~~department~~^{office}.
- (5) The ~~department~~^{office} shall not charge a fee inconsistent with fees charged by other state agencies for copies of records requested by the public pursuant to this section.

➔Section 931. KRS 304.2-160 is amended to read as follows:

Each written and signed complaint received by the ~~Department~~^{Office} of Insurance shall be recorded by the ~~department~~^{office}, including the subsequent disposition thereof, and maintained for a period of not less than five (5) years. The records of such complaints shall be indexed whenever applicable both by the name of the insurer and by the name of the licensee, including agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, life settlement broker or provider, or consultant involved. The ~~commissioner~~^{executive director} shall consider such complaints before issuing or renewing any certificate of authority or license.

➔Section 932. KRS 304.2-165 is amended to read as follows:

- (1) The ~~commissioner~~^{executive director} shall review, and investigate where applicable, all written complaints involving entities or individuals engaged in the business of insurance in Kentucky.
- (2) The ~~commissioner~~^{executive director} shall send a copy of the complaint to the entity or individual and the entity or individual shall send a written or electronic message response to the ~~commissioner~~^{executive director} within fifteen (15) calendar days from the date of the ~~commissioner's~~^{executive director's} letter.
- (3) Upon review of a complaint, the ~~commissioner~~^{executive director} shall make a finding to the entity or individual and the complainant.
- (4) This section shall not limit the power of the ~~commissioner~~^{executive director} to exercise any other authority under this code as to an insurance dispute.

➔Section 933. KRS 304.2-170 is amended to read as follows:

- (1) Upon the request of any person and payment of the applicable fee, the ***commissioner***~~[executive director]~~ shall furnish a certified copy of any record or document in the ***department***~~[office]~~ which is then subject to public inspection, as provided in subsection (3) of KRS 304.2-150.
- (2) Reproductions of records or documents on file in the ***department***~~[office]~~, when duly certified by the ***commissioner***~~[executive director]~~, shall be received in evidence in all proceedings and courts equally and in like manner as if they were the originals, and shall have the same effect and force as such originals, as in other cases provided by law or rule of court.

➔Section 934. KRS 304.2-190 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may have the directory of authorized insurers, of licensed insurance representatives, license examination material, insurance laws and related laws and regulations under his ***or her*** administration published in pamphlet form from time to time, and may fix a price for each copy not to exceed one hundred twenty-five percent (125%) of cost.
- (2) The ***commissioner***~~[executive director]~~ shall account for and deposit all moneys so received in the manner provided under KRS 304.4-020.

➔Section 935. KRS 304.2-195 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may enter into interstate compacts for issuing certificates of authority to insurers if the ***commissioner***~~[executive director]~~ determines that:
 - (a) Each state participating in the compact has requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle; or
 - (b) The interstate compact contains requirements for issuing certificates of authority that provide protections substantially similar to or greater than the requirements of this subtitle.
- (2) In lieu of the documents required in KRS 304.3-150 to be filed with an application for certificate of authority, the ***commissioner***~~[executive director]~~ may accept documentation in accordance with the terms of the interstate compact.
- (3) The ***commissioner***~~[executive director]~~ may issue certificates of authority to insurers in accordance with the terms of the interstate compact.

➔Section 936. KRS 304.2-200 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may furnish on request of the insurance supervisory official of any state, province or country any information which it is ***the commissioner's***~~[his]~~ duty by law to ascertain respecting authorized insurers.
- (2) The ***commissioner***~~[executive director]~~ may be a member of the National Association of Insurance Commissioners or any successor organization, and may participate in and support other cooperative activities of public officers having supervision of the business of insurance.

➔Section 937. KRS 304.2-205 is amended to read as follows:

- (1) The provisions of this section apply to all domestic, foreign, and alien insurers fraternal benefit societies, health maintenance organizations, and nonprofit hospital, medical-surgical, dental, and health service corporations authorized to transact business pursuant to this chapter.
- (2) (a) Each domestic, foreign, and alien insurer and fraternal benefit society, health maintenance organization, and nonprofit hospital, medical-surgical, dental, and health service corporation authorized to transact business pursuant to this chapter shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners a copy of its annual statement convention blank, along with additional filings as prescribed by the ***commissioner***~~[executive director]~~, for the preceding year. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the ***commissioner***~~[executive director]~~ and shall include the signed jurat page and the life and health actuarial certification. Any amendments or additions to the annual statement filing subsequently filed with the ***commissioner***~~[executive director]~~ shall also be filed with the National Association of Insurance Commissioners;

- (b) Foreign insurers, health maintenance organizations, and fraternal benefit societies that are domiciled in states which have laws substantially similar to paragraph (a) of this subsection shall be deemed in compliance with this section; and
 - (c) Nothing contained in this section shall be deemed to require anyone filing documents with the National Association of Insurance Commissioners to pay any filing fee for a filing.
- (3) Members of the National Association of Insurance Commissioners, their duly authorized committees, subcommittees, and task forces, their delegates, National Association of Insurance Commissioners employees, and all others charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from the filing of the annual statement convention blanks shall not be subject to civil liability for defamation or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from the filings required by this section while acting in good faith.

➔Section 938. KRS 304.2-210 is amended to read as follows:

- (1) As used in KRS 304.2-210 to 304.2-300, unless the context requires otherwise, "examination workpaper" means a written or recorded document, note, memorandum, critique, comment, recommendation, or other information copied, established, created, or retained by the **commissioner**~~[executive director]~~ or his designee for the purpose of conducting an examination or drafting an examination report.
- (2) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with law, the **commissioner**~~[executive director]~~ shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every three (3) years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the **commissioner**~~[executive director]~~ otherwise requires.
- (3) In scheduling and determining the nature, scope, and frequency of the examinations, the **commissioner**~~[executive director]~~ shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the Examiner's Handbook adopted by the National Association of Insurance Commissioners.
- (4) For purposes of completing an examination of an insurer, the **commissioner**~~[executive director]~~ may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the **commissioner**~~[executive director]~~, necessary and material to the examination of the insurer.
- (5) The **commissioner**~~[executive director]~~ shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.
- (6) In lieu of making his own examination, the **commissioner**~~[executive director]~~ may, in his discretion, accept a full report of the most recently completed examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state. Reports shall only be accepted if:
 - (a) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or
 - (b) The examination is performed under the supervision of an accredited insurance department or with the participation of one (1) or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.
- (7) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof, the **commissioner**~~[executive director]~~ may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

➔Section 939. KRS 304.2-220 is amended to read as follows:

For the purpose of ascertaining compliance with law, or relationships and transactions between any person and any insurer or proposed insurer, the **commissioner**~~{executive director}~~ may as often as reasonably necessary examine the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs or proposed insurance affairs and transactions of:

- (1) Any insurance holding company; or person holding the shares of voting stock or policyholder proxies of an insurer as voting trustee or otherwise, for the purpose of controlling the management thereof;
- (2) Any insurance agent, surplus lines broker, adjuster, consultant, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, or any person holding himself *or herself* out as any of the foregoing;
- (3) Any person having a contract under which he *or she* enjoys by terms or in fact the exclusive or dominant right to manage or control the insurer, as voting trustee, or otherwise; and
- (4) Any person in this state engaged in, or proposing to be engaged in this state in, or holding himself *or herself* out in this state as so engaging or proposing, or in this state assisting in the promotion, formation or financing of an insurer or insurance holding corporation, or corporation or other group to finance an insurer or the production of its business.

➔Section 940. KRS 304.2-230 is amended to read as follows:

- (1) Whenever the **commissioner**~~{executive director}~~ determines to examine the affairs of any person, he shall designate one or more examiners and instruct them as to the scope of the examination. The examiner shall, upon demand, exhibit his official credentials to the person under examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The **commissioner**~~{executive director}~~ may also employ other guidelines or procedures as the **commissioner**~~{executive director}~~ deems appropriate.
- (2) (a) An examiner may not be appointed by the **commissioner**~~{executive director}~~ if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination. This subsection shall not be construed to automatically preclude an examiner from being:
 1. A policyholder or claimant under an insurance policy;
 2. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
 3. An investment owner in shares of regulated diversified investment companies; or
 4. A settler or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.
- (b) Notwithstanding the requirements of paragraph (a) of this subsection, the **commissioner**~~{executive director}~~ may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions even though these persons may from time to time be similarly employed or retained by persons subject to examination.
- (3) Any person performing an examination of an insurer on behalf of, and as called by, the **commissioner**~~{executive director}~~ shall have official immunity and shall be immune from suit and liability, both personally and in their official capacities, for any claim for damage to, or loss of property, or personal injury, or other civil liability caused by or resulting from any alleged act, error, or omission of the examiner or any assistant or contractor arising out of, or by reason of, their duties or employment. Nothing in this subsection shall be construed to hold the examiner or any assistant or contractor immune from suit and liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the examiner, any assistant, or contractor.
- (4) The **commissioner**~~{executive director}~~ shall conduct such examination in an expeditious, fair and impartial manner.
- (5) Upon any such examination the **commissioner**~~{executive director}~~, or the examiner if specifically so authorized in writing by the **commissioner**~~{executive director}~~, shall have power to issue subpoenas, administer oaths, and

to examine under oath any individual as to any matter relevant to the affairs under examination or relevant to the examination.

- (6) Every person being examined, its officers, attorneys, employees, agents and representatives shall make freely available to the **commissioner**~~{executive director}~~ or his examiners the accounts, records, documents, files, information, assets and matters of such person in his possession or control relating to the subject of the examination and shall facilitate the examination.
- (7) Neither the **commissioner**~~{executive director}~~ nor any examiner shall remove any record, account, document, file or other property of the person being examined from the offices or place of such person except with the written consent of such person in advance of such removal or pursuant to an order of court duly obtained. This provision shall not be deemed to affect the making and removal of copies or abstracts of any such record, account, document or file.
- (8) Any individual who refuses without just cause to be examined under oath or who willfully obstructs or interferes with the examiners in the exercise of their authority pursuant to this section is guilty of a violation of this code.
- (9) The **commissioner**~~{executive director}~~ may terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action. The **commissioner**~~{executive director}~~ may use and, if appropriate, may make public any final or preliminary examination report, any examiner's workpapers or other documents, or any other information discovered or developed during the course of the examination in the furtherance of any legal or regulatory action that the **commissioner**~~{executive director}~~ may, in his sole discretion, deem appropriate. Nothing in this subsection shall be binding upon the court in making determinations about relevancy and admissibility in any civil action pertaining to any such documents.

➔Section 941. KRS 304.2-240 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ deems it necessary to value any asset involved in such an examination, he *or she* may make written request of the person being examined to appoint one or more appraisers who by reason of education, experience or special training and disinterest, are competent to appraise the asset. Selection of any such appraiser shall be subject to the written approval of the **commissioner**~~{executive director}~~. If no such appointment is made within twenty (20) days after the request therefor was delivered to such person, the **commissioner**~~{executive director}~~ may appoint the appraiser or appraisers.
- (2) Any such appraisal shall be expeditiously made, and a copy thereof furnished to the **commissioner**~~{executive director}~~ and to the person being examined.
- (3) The reasonable expense of the appraisal shall be borne by the person being examined.

➔Section 942. KRS 304.2-250 is amended to read as follows:

- (1) Upon completion of an examination, the examiner in charge shall make a true report thereof which shall comprise only facts appearing upon the books, records or other documents of the person examined, or as ascertained from the sworn testimony of its officers or agents or other individuals examined concerning its affairs, and such conclusions and recommendations as may reasonably be warranted from such facts.
- (2) The report of examination of an insurer shall be prima facie evidence in any action or proceeding for the receivership, conservation or liquidation of the insurer brought in the name of the state against the insurer, its officers or agents upon the facts stated therein, and whether or not the report has then been filed in the **department**~~{office}~~ as provided in KRS 304.2-260.
- (3) Except as provided in KRS 304.2-260 and 304.2-270, documents, materials, or other information, including examination workpapers, in the possession or control of the **commissioner**~~{executive director}~~ that are created, produced, or obtained by or disclosed to the **commissioner**~~{executive director}~~ or any other person in the course of an examination made under this subtitle, or in the course of an examination made under KRS 304.2-210 to 304.2-300, or in the course of analysis by the **commissioner**~~{executive director}~~ of the financial condition, or market conduct of an insurer shall be confidential by law and privileged but may be used, received, and shared in accordance with KRS 304.2-210.

➔Section 943. KRS 304.2-260 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall deliver a copy of the examination report to the person examined, together with a notice affording the person twenty (20) days or additional reasonable period as the ***commissioner***~~[executive director]~~ for good cause may allow within which to review the report and recommend changes therein.
- (2) If so requested by the person examined, within the period allowed under subsection (1) of this section, or if deemed advisable by the ***commissioner***~~[executive director]~~ without a request, the ***commissioner***~~[executive director]~~ shall hold a hearing relative to the report and shall not file the report in the ***department***~~[office]~~ for public inspection until after the hearing and his order thereon, except that the ***commissioner***~~[executive director]~~ may furnish a copy of the report to the Governor or Attorney General of the state pending final decision thereon.
- (3) If no hearing has been requested or held, the ***commissioner***~~[executive director]~~ shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers and enter an order within sixty (60) days of the end of the period allowed under subsection (1) of this section. The order of the ***commissioner***~~[executive director]~~ shall:
 - (a) Adopt the examination report as filed or with modifications or corrections. If the examination report reveals that the person is operating in violation of or has violated any law, administrative regulation, or prior order of the ***commissioner***~~[executive director]~~, the ***commissioner***~~[executive director]~~ may order the person to take action to cure the violations and impose penalties as the ***commissioner***~~[executive director]~~ considers necessary and appropriate; or
 - (b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information, and refiling as provided in KRS 304.2-250; or
 - (c) Call for a hearing for purposes of obtaining additional documentation, data, information, and testimony.
- (4) Upon entry of the ***commissioner's***~~[executive director's]~~ order, the examination report, with modifications, if any, thereof as the ***commissioner***~~[executive director]~~ deems proper, shall be filed in the ***department***~~[office]~~ for public inspection, except that the ***commissioner***~~[executive director]~~ may withhold from public inspection any examination report for so long as he deems the withholding to be necessary for the protection of the person examined against unwarranted injury or to be in the public interest and except that the ***commissioner***~~[executive director]~~ shall withhold from public inspection any examination report of a domestic insurer as provided in KRS 304.2-270.
- (5) An examination workpaper shall be deemed confidential information and shall not be available for public inspection, except that the ***commissioner***~~[executive director]~~ may in the ***commissioner's***~~[director's]~~ discretion disclose an examination workpaper, the content of a preliminary examination report, examination results, or any other matter resulting to an examination report to the department of insurance of any other state or country, or to the National Association of Insurance Commissioners, or to law enforcement officials of this or any other state, or to an agency of this state or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold the information confidential and in a manner consistent with this section.
- (6) The ***commissioner***~~[executive director]~~ shall forward to the person examined a copy of the examination report as filed for public inspection, together with the order of the ***commissioner***~~[executive director]~~.
- (7) If the report concerns the examination of a domestic insurer, a copy of the report, when filed for public inspection, or if withheld from public inspection in accordance with KRS 304.2-270 or subsection (4) of this section, together with the order of the ***commissioner***~~[executive director]~~, shall be presented by the insurer's chief executive officer to the insurer's board of directors or similar governing body at a meeting thereof which shall be held within ninety (90) days next following receipt of the report and order. A copy of the report and order shall also be furnished by the secretary of the insurer, if incorporated, or by the attorney-in-fact if a reciprocal insurer, or Lloyd's plan insurer, to each member of the insurer's board of directors or board of governors, if a reciprocal insurer, or Lloyd's plan insurer, and the certificate of the secretary or attorney-in-fact, which shall be filed promptly with the ***department***~~[office]~~, that a copy of the examination report and order, has been so furnished shall be deemed to constitute knowledge of the contents of the report and order by each member.

- (8) The report when so filed in the ~~department~~~~{office}~~ shall be admissible in evidence in any action or proceeding brought by the ~~commissioner~~~~{executive director}~~ against the person examined, or against its officers, employees, or agents. In any action or proceeding brought by the ~~commissioner~~~~{executive director}~~, the ~~commissioner~~~~{executive director}~~ or his examiners may, however, at any time testify and offer proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the ~~department~~~~{office}~~.
- (9) If the ~~commissioner~~~~{executive director}~~ determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.

➔Section 944. KRS 304.2-270 is amended to read as follows:

The report of examination of a domestic insurer, although filed in the ~~department~~~~{office}~~ as provided in KRS 304.2-260, shall nevertheless not be for public inspection except as to those portions of the report showing the insurer's current financial condition. The examination workpapers shall be deemed confidential information and shall not be available for public inspection, except that the ~~commissioner~~~~{executive director}~~ may in his discretion disclose the content of an examination report, preliminary examination report, examination results, or any other matter relating to an examination report, to the ~~department~~~~{office}~~ of insurance of any other state or country, or to law enforcement officials of this or any other state, or to an agency of this or any other state or the federal government at any time, if the agency or office receiving the report or matters relating to the report agrees in writing to hold it confidential and in a manner consistent with this section and KRS 304.2-260.

➔Section 945. KRS 304.2-280 is amended to read as follows:

For the conduct of or assistance in examinations under this chapter the ~~commissioner~~~~{executive director}~~ shall appoint as examiners only individuals who by reason of education, experience, or special training are competent to perform the duties and fulfill the responsibilities of an insurance examiner. In the selection of examiners the ~~commissioner~~~~{executive director}~~ shall give due consideration to standards and qualifications therefor recommended by the National Association of Insurance Commissioners or any successor organization thereto.

➔Section 946. KRS 304.2-290 is amended to read as follows:

- (1) The expense of examination shall be borne by the person examined. Such expense shall include only the reasonable and proper lodgings, meals and travel expenses of the ~~commissioner~~~~{executive director}~~ and ~~the commissioner's~~~~{his}~~ examiners and assistants, including expert assistance, reasonable compensation as to such examiners and assistants and incidental expense as necessarily incurred in the examination. As to expense and compensation involved in any such examination the ~~commissioner~~~~{executive director}~~ may give due consideration to scales and limitations recommended by the National Association of Insurance Commissioners and outlined in the examination manual sponsored by that association.
- (2) Such person examined shall promptly pay to the ~~commissioner~~~~{executive director}~~ the expenses of the examination upon presentation by ~~the commissioner~~~~{him}~~ of a reasonably detailed written statement thereof.

➔Section 947. KRS 304.2-300 is amended to read as follows:

- (1) There is created in the State Treasury the "Examination Expense Revolving Fund" for the use of the ~~department~~~~{office}~~. The ~~commissioner~~~~{executive director}~~ shall promptly deposit all funds received under a statute requiring examination expenses to be paid by the party examined and deposited with the State Treasurer to the credit of the fund.
- (2) Moneys for travel, per diem, compensation and other necessary and authorized expenses incurred by an examiner or other ~~department~~~~{office}~~ representative in the examination of any person required to pay, and making payment of, the expense of examination pursuant to KRS 304.2-290 shall be paid out of the examination expense revolving fund, upon approval of the ~~commissioner~~~~{executive director}~~.
- (3) Moneys for travel and other necessary expenses assessed pursuant to KRS 304.8-190 shall be paid out of the examination expense revolving fund upon approval of the ~~commissioner~~~~{executive director}~~.
- (4) If any amount in the revolving fund remains unexpended at the end of any fiscal year, that amount shall not lapse, but shall remain credited to the account and may be used during the succeeding year or years.

➔Section 948. KRS 304.2-310 is amended to read as follows:

- (1) The ~~commissioner~~~~{executive director}~~ may hold a hearing, without request by others, for any purpose within the scope of this code.

- (2) The **commissioner**~~{executive director}~~ shall hold a hearing:
- (a) If required by any other provision of this code; or
 - (b) Upon written application for a hearing by a person aggrieved by any act, threatened act, or failure of the **commissioner**~~{executive director}~~ to act, or by any report, administrative regulation, or order of the **commissioner**~~{executive director}~~ (other than an order for the holding of a hearing, or a final order entered after a hearing, of which hearing the person had notice). Any application for a hearing shall be filed in the **department**~~{office}~~ within sixty (60) days after the person knew or reasonably should have known, of the act, threatened act, failure, report, administrative regulation, or order, unless a different period is provided for by other laws applicable to the particular matter, in which case the other law shall govern.
- (3) Any application for a hearing shall briefly state the respects in which the applicant is so aggrieved, together with the grounds to be relied upon as a basis for the relief to be sought at the hearing.
- (4) If the **commissioner**~~{executive director}~~ finds that the application is made in good faith, that the applicant would be so aggrieved if his **or her** grounds are established, **the commissioner**~~{he}~~ shall hold the hearing in accordance with KRS Chapter 13B.
- (5) Pending the hearing and the issuance of the final order resulting from the hearing, the **commissioner**~~{executive director}~~ shall suspend or postpone the effective date of **the**~~{his}~~ previous action.

➔Section 949. KRS 304.2-320 is amended to read as follows:

- (1) Notice of hearings shall be given in accordance with the provision of this chapter and KRS Chapter 13B. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the **commissioner**~~{executive director}~~ shall give notice to all persons whose pecuniary interest, to the **commissioner's**~~{executive director's}~~ knowledge or belief, are to be directly and immediately affected by the hearing.
- (2) If any hearing is to be held for consideration of matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the **commissioner**~~{executive director}~~ may give notice of the hearing by publication pursuant to KRS Chapter 424; but the **commissioner**~~{executive director}~~ shall mail this notice to all persons who had requested the same in writing in advance and have paid to the **commissioner**~~{executive director}~~ the reasonable amount fixed by him **or her** to cover the cost thereof.

➔Section 950. KRS 304.2-340 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ or **an**~~{his}~~ authorized designee conducting a hearing, examination, or investigation by his **or her** authority shall have power to subpoena witnesses, compel their attendance, administer oaths, examine any person under oath relative to the subject of the hearing, examination, or investigation, and to compel any person to subscribe to his **or her** testimony after it has been correctly reduced to writing, and, in connection therewith, to require the production of any books, papers, records, correspondence, or other documents which **the commissioner**~~{he}~~ deems relevant to the inquiry.
- (2) A subpoena issued pursuant to this section shall have the same force and effect as if issued from a court of record.
- (3) A subpoena issued pursuant to this section shall be served in the same manner as if issued from a court of record, except a subpoena may be served upon any person holding a license or a certificate of authority from the **commissioner**~~{executive director}~~ or upon the employee of the person or entity in the same manner as other orders and notices are served, as provided in KRS 304.2-120.
- (4) If any individual or licensee refuses to comply with a subpoena or to testify as to any matter concerning which **the individual or licensee**~~{he}~~ may be lawfully interrogated:
 - (a) The Circuit Court of the county wherein the examination, investigation, or hearing is being conducted or of the county wherein the individual or licensee resides, on the **commissioner's**~~{executive director's}~~ application may, after summary hearing, issue an order requiring the individual or licensee to comply with the subpoena and to testify; and failure to obey an order may be punished by the court as a contempt thereof; and

- (b) The ***commissioner***~~[executive director]~~ may suspend or revoke the certificate of authority or license of any licensee or impose an administrative fine, or both, for failure of the licensee or the employee of any licensee to comply.
- (5) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a Circuit Court, but no officer, director, agent or employee of an insurer or person being examined or investigated shall be entitled to witness or mileage fees.
- (6) Any individual willfully testifying falsely under oath as to any material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury.

➔Section 951. KRS 304.2-350 is amended to read as follows:

- (1) If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the ***commissioner***~~[executive director]~~, his ***or her*** deputy or examiner, or in any proceeding or action before any court upon a charge of violation of this code, on the ground that the testimony or evidence required of ***the person***~~[him]~~ may tend to incriminate ***the person***~~[him]~~ or subject ***the person***~~[him]~~ to a penalty or forfeiture, and shall notwithstanding be directed to give testimony or produce evidence, ***the person***~~[he]~~ must, if so directed by the ***commissioner***~~[executive director]~~ and the Attorney General, nonetheless comply with the direction; but ***the person***~~[he]~~ shall not thereafter be prosecuted or subjected to any criminal penalty or forfeiture for or on account of any transaction, matter, or thing concerning which ***the person***~~[he]~~ may have so testified or produced evidence, and no testimony so given or evidence produced shall be received against ***the person***~~[him]~~ upon any criminal action, investigation, or proceeding; except, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by ***the person***~~[him]~~ in giving testimony, and the testimony or evidence so given or produced shall be admissible against ***the person***~~[him]~~ upon any criminal action, investigation, or proceeding concerning perjury.
- (2) Any individual may execute, acknowledge, and file in the ***department***~~[office]~~ a statement expressly waiving immunity or privilege in respect to any transaction, matter, or thing specified in a statement, and thereupon the testimony of the individual or the evidence in relation to the transaction, matter, or thing may be received or produced before any judge, court, tribunal, grand jury, or otherwise, and if so received or produced the individual shall not be entitled to any immunity or privileges on account of any testimony he ***or she*** may so give or evidence so produced.

➔Section 952. KRS 304.2-360 is amended to read as follows:

- (1) In the conduct of hearings under this code and making a final order thereon, the ***commissioner***~~[executive director]~~ shall act in a quasijudicial capacity and in accordance with the provisions of this chapter and KRS Chapter 13B.
- (2) With respect to hearings held concerning merger, consolidation, bulk reinsurance, conversion, affiliation, or change of control of a domestic insurer as provided in Subtitle 24, or in Subtitle 37 of this chapter, where notice of the hearing was given to all stockholders and policyholders or to all stockholders of an insurer involved, the ***commissioner***~~[executive director]~~ is required to give a copy of the order on hearing to the corporation and insurer parties, to intervening parties, to a reasonable number of stockholders or policyholders as representative of the class, and to other parties only upon written request of such parties.
- (3) A final order may require that restitution be made to any person aggrieved by a violation of any provisions of this chapter, any statute administered by the ***commissioner***~~[executive director]~~, or any regulation of the ***commissioner***~~[executive director]~~.
- (4) An order prepared by the ***commissioner's***~~[executive director's]~~ designee and approved in writing by the ***commissioner***~~[executive director]~~ shall be considered the ***commissioner's***~~[executive director's]~~ order.

➔Section 953. KRS 304.2-370 is amended to read as follows:

- (1) An appeal from the ***commissioner***~~[executive director]~~ shall be taken only from a final order on hearing and in accordance with KRS Chapter 13B.
- (2) The appeal shall be granted as a matter of right, and shall be taken to the Franklin Circuit Court.

➔Section 954. KRS 304.2-400 is amended to read as follows:

- (1) There is created in the State Treasury a trust fund designated the "Insurance Regulatory Trust Fund" to which shall be credited all payments received under KRS 304.4-010.
- (2) The moneys so received and deposited in the insurance regulatory trust fund shall be appropriated for use only by the ~~department~~~~office~~ to defray the expenses of the ~~department~~~~office~~ in discharge of its administrative and regulatory powers and duties as prescribed by law subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The ~~department~~~~office~~ shall be responsible for the proper expenditure of these moneys as provided by law.

➔Section 955. KRS 304.2-410 is amended to read as follows:

- (1) It is the responsibility of the ~~department~~~~office~~, which is charged with the administration of the insurance regulatory trust fund, to make such moneys available for investment as fully as is consistent with the cash requirements of the fund and to authorize investment of such moneys by the agency or agencies of the Commonwealth of Kentucky authorized to make investments and reinvestments for and on behalf of any agency of the Commonwealth of Kentucky.
- (2) Monthly, and more often as circumstances require, the ~~department~~~~office~~ shall notify the investing authority of the amount available for investment, and the moneys shall be invested by the investing authority according to the laws relating to state investments. Such notification shall include the name and number of the fund for which the investments are to be made and the life of the investment if the principal sum is to be required for meeting obligations.

➔Section 956. KRS 304.2-430 is amended to read as follows:

Nothing in KRS 304.2-400 to 304.2-420 shall prevent continuing the practice of paying any of the direct or indirect expenses incurred by the ~~department~~~~office~~, including, but not limited to, those involving salaries, retirement, and Social Security of officers, employees, or representatives of the ~~department~~~~office~~, or any other expenses by appropriations from the general fund. However, the general fund shall be reimbursed for any such payments made on or after July 15, 1986, as well as any money transferred to the insurance regulatory trust fund in connection with the initial funding of the insurance regulatory trust fund, and shall be repaid by transfer from the insurance regulatory trust fund to the general fund no later than the end of the next biennium.

➔Section 957. KRS 304.2-440 is amended to read as follows:

- (1) As used in this section, "insurer" means assessment or cooperative insurers, insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, and prepaid dental plan organizations.
- (2) If the ~~commissioner~~~~executive director~~ finds that there are insufficient funds for operations of the ~~department~~~~office~~, the ~~commissioner~~~~he~~ may make an assessment on all insurers not to exceed .000235 of net direct written premium from Kentucky as reported in insurers' annual statements for the immediately preceding calendar year. In making each assessment, the ~~commissioner~~~~executive director~~ may establish a minimum assessment. Assessments made pursuant to this section shall be in addition to all other taxes, assessments, and fees.
- (3) Overdue payment of any assessments shall bear interest at the tax interest rate as set forth in KRS 131.010(6) from the date due until paid. Any unpaid assessment may be recovered in an action brought thereon in the name of the ~~department~~~~office~~ in the Franklin Circuit Court or in any other court of appropriate jurisdiction. Such interest penalty is separate from other penalties applicable to violations of KRS Chapter 299 and this chapter and such an action is separate from any other means of collecting an assessment under KRS Chapter 299 or this chapter.
- (4) All funds derived from assessments made pursuant to this section shall be deposited in the insurance regulatory trust fund. However, funds derived from assessments made pursuant to this section shall not lapse to the general fund, but shall at all times be available to defray expenses of the ~~department~~~~office~~ in discharge of its administrative and regulatory powers.

➔Section 958. KRS 304.3-070 is amended to read as follows:

- (1) To qualify for and hold authority to transact insurance in this state, an insurer must be otherwise in compliance with this code and with its charter powers, and must be an incorporated stock or mutual insurer, or a combined

stock and mutual life insurer, or a reciprocal insurer, or Lloyd's plan insurer, of the same general type as may be formed as a domestic insurer under this code, except that:

- (a) No foreign insurer shall be authorized to transact insurance in this state which does not maintain reserves as required by Subtitle 6 as applicable to the kind or kinds of insurance transacted by such insurer, wherever transacted in the United States; or which transacts business anywhere in the United States on the assessment plan, or stipulated premium plan, or any similar plan.
 - (b) No insurer shall be authorized to transact a kind of insurance in this state unless duly authorized or qualified to transact such insurance in the state or country of its domicile.
 - (c) No insurer shall be authorized to transact in this state any kind of insurance which is not within the definition as set forth in Subtitle 5.
 - (d) No such authority shall be granted or continued as to any insurer while in arrears to the state for fees, licenses, taxes, assessments, fines or penalties accrued on business previously transacted in this state.
 - (e) A combined stock and mutual life insurer must maintain separate accounting for income, expenses, assets, liabilities and surplus funds allocated between the "mutual" branch and the "stock" branch, in a manner as provided by a regulation to be promulgated by the **commissioner**~~[executive director]~~. The "mutual" branch shall not invest any moneys in equity securities of the "stock" branch, nor shall it loan any moneys to the "stock" branch. The "stock" branch shall not loan any moneys to the "mutual" branch.
 - (f) A life insurer in forming the "stock" branch or the "mutual" branch of a combined stock and mutual life insurer, must possess the capital funds required pursuant to KRS 304.3-120 for the stock branch, and must possess the surplus funds required under KRS 304.24-100 for the mutual branch. The **commissioner**~~[executive director of insurance]~~ shall not grant a certificate of authority to any life insurer to conduct its business as a combination stock and mutual life insurer, unless the aforesaid capitalization requirements are fulfilled.
- (2) In determining the solvency of or impairment to any foreign or alien insurer which is requesting the issuance or continuance of any certificate of authority to do business in this state, the **commissioner**~~[executive director]~~ may admit as assets only those items which would qualify as admitted assets for a domestic insurer similarly situated.

➔Section 959. KRS 304.3-080 is amended to read as follows:

- (1) No certificate of authority or license to transact any kind of insurance business in this state shall be issued, renewed or continued in effect to any domestic, foreign, or alien insurance company or other insurance entity which is owned, or financially controlled in whole or in part by any state of the United States, or by a foreign government or by any political subdivision of either, or which is an agency of such state, government or political subdivision, unless such company or entity was so owned, controlled or constituted prior to January 1, 1957, and was authorized to do business in this state on or prior to January 1, 1957.
- (2) The **commissioner**~~[executive director]~~ shall not grant or continue authority to transact insurance in this state to any insurer or proposed insurer after a hearing held thereon, if it appears that:
 - (a) Any director, officer or other individual materially part of the management is found by **the commissioner**~~[him]~~ after investigation or upon reliable information to be incompetent, or dishonest, or untrustworthy, or of unfavorable business repute; or
 - (b) The managers are so lacking in insurance company managerial experience in operations of the kind proposed in this state as to make such operation, currently or prospectively, hazardous to or contrary to the best interests of the insurance-buying or investing public of this state; or
 - (c) **The commissioner**~~[He]~~ has good reason to believe it is affiliated directly or indirectly through ownership, control, management, reinsurance transactions or other business relations with any person or persons of unfavorable business repute; or
 - (d) Its business operations are or have been marked, to the injury of insurers, stockholders, policyholders, creditors or the public, by illegality, or by manipulation of assets, or of accounts, or of reinsurance, or by bad faith.

➔Section 960. KRS 304.3-090 is amended to read as follows:

No foreign insurer shall be authorized to transact insurance in Kentucky, which has not been issuing its own policies as an authorized insurer for at least three (3) years in its state or country of domicile, unless the insurer is otherwise qualified for a certificate of authority under this code and is:

- (1) The wholly owned subsidiary as defined in KRS 304.37-010(6) of an insurer which is already an authorized insurer in Kentucky; or
- (2) The successor in interest through statutory merger or statutory consolidation, or through bulk reinsurance of substantially all of the insurance risks in this state, of an authorized insurer; or
- (3) An insurer organized solely for the purpose of insuring against earthquake, flood, nuclear radiation, war or other special hazards to property or liability for which, in the opinion of the **commissioner**~~[executive director]~~, adequate provision is not made by insurers already authorized in this state.

➔Section 961. KRS 304.3-100 is amended to read as follows:

- (1) No insurer shall be formed or authorized to transact insurance in this state which has or uses a name which is the same as or deceptively similar to that of another insurer already so authorized, without the written consent of such other insurer.
- (2) No life insurer shall be so authorized which has or uses a name deceptively similar to that of another insurer authorized to transact insurance in this state within the preceding ten (10) years if life insurance policies originally issued by such other insurer are still outstanding in this state, without the written consent of such insurer.
- (3) No insurer shall be formed or authorized to transact insurance in this state which has or uses a name the same as or deceptively similar to the name of any foreign insurer not so authorized if such foreign insurer has within the next preceding twelve (12) months signified its intention to secure an incorporation in this state under such name, or to do business as a foreign insurer in this state under such name, by filing notice of such intention with the **commissioner**~~[executive director]~~, unless the written consent to the use of such name or deceptively similar name has been given by such foreign insurer.
- (4) No foreign insurer seeking admission to this state shall be authorized to transact insurance in this state which has or uses a name the same as or deceptively similar to that of a domestic corporation which has been incorporated as an insurer but has not yet secured a certificate of authority, until the expiration of three (3) years from the date of incorporation of such domestic corporation.
- (5) No insurer shall be so authorized which has or uses a name which tends to deceive or mislead as to the type of organization of the insurer.
- (6) In case of conflict of names between two (2) insurers, or a conflict otherwise prohibited under this section, the **commissioner**~~[executive director]~~ may, after notice to the other insurer, permit (or may require as a condition to the issuance of an original certificate of authority to an applicant insurer) the insurer to use in this state such supplementation or modification of its name or such business name as may reasonably be necessary to avoid the conflict.
- (7) Except as provided in subsection (6) of this section, an insurer shall conduct its business in the name under which the certificate of authority was issued.

➔Section 962. KRS 304.3-110 is amended to read as follows:

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

- (1) A life insurer may grant annuities and may be authorized to transact in addition only health insurance; except, that the **commissioner**~~[executive director]~~ may, if the insurer otherwise qualifies therefor, continue so to authorize any life insurer which immediately prior to June 18, 1970, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and health and annuities. Only an insurer with a certificate of authority authorized to sell life insurance may grant and issue annuity contracts.
- (2) A reciprocal or Lloyd's insurer shall not transact life insurance.
- (3) A title insurer shall be a stock insurer, and shall not transact any other kind of insurance.
- (4) A mortgage guaranty insurer shall be a stock insurer, and shall not transact any other kind of insurance.

➔Section 963. KRS 304.3-120 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, to qualify for authority to transact insurance (as defined in Subtitle 5), an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual, reciprocal, or Lloyd's insurer), and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

Stock Insurers		Foreign Mutual, Reciprocal, and Lloyd's Insurers	
Minimum Required Capital Stock	Initial Free Surplus	Minimum Required Basic Surplus	Initial Free Surplus
\$1,000,000	\$2,000,000	\$1,000,000	\$2,000,000

- (2) An insurer holding a valid certificate of authority to transact insurance in this state immediately prior to July 15, 1982, may, if otherwise qualified therefor, continue to be so authorized while possessing paid-in capital stock (if a stock insurer) or surplus (if a mutual, reciprocal, or Lloyd's insurer) as required for such authority immediately prior to July 15, 1982. The **commissioner**~~executive director~~ shall not authorize such an insurer to transact any other kinds of insurance unless it then complies with the requirements as to capital and surplus. Notwithstanding the other provisions hereof, the exception provided in this subsection (2) shall cease to apply to any such insurer from and after the date upon which it has accumulated surplus in an amount equal to two hundred percent (200%) of the initial free surplus (if a stock or foreign mutual, reciprocal, or Lloyd's insurer) or the surplus (if a domestic mutual insurer) required under other provisions of this code to qualify for authority to transact the kind or kinds of insurance being transacted by it.
- (3) Each insurer shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000). Insurers holding a valid certificate of authority to transact insurance in this state immediately prior to July 13, 1984, may, if otherwise qualified therefor, continue to be so authorized while possessing additional surplus as required for such authority immediately prior to July 13, 1984. The **commissioner**~~executive director~~ shall not authorize such an insurer to transact any other kinds of insurance unless it complies with this subsection. The exception provided in this subsection shall cease to apply to any insurer from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (4) As to surplus required for authority to transact one (1) or more kinds of insurance and thereafter to be maintained, domestic mutual legal reserve insurers hereafter formed shall be governed by Subtitle 24 of this chapter.

➔Section 964. KRS 304.3-125 is amended to read as follows:

The **commissioner**~~executive director~~ is hereby granted authority to adopt administrative regulations, up to the standards prescribed by the National Association of Insurance Commissioners, covering requirements for additional capital and surplus based on the kind, type, volume, and nature of insurance business transacted, if and when any regulations are promulgated and adopted by the National Association of Insurance Commissioners as its model regulation on the subject and as a requirement for departmental certification by the association.

➔Section 965. KRS 304.3-140 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall not authorize an insurer to transact insurance in this state, other than an alien insurer or a title insurer, unless it makes and thereafter continuously maintains on deposit in this state, through the **commissioner**~~executive director~~, cash or securities eligible for such deposit under the laws of this state, of a fair market value not less than its minimum required capital stock (if a stock insurer) or minimum required basic surplus (if a mutual, reciprocal, or Lloyd's plan insurer), for the protection of the insurer's policyholders or its policyholders and creditors.
- (2) The **commissioner**~~executive director~~ shall not so authorize a title insurer unless it so deposits and maintains such cash or securities of a fair market value not less than its minimum required capital stock as a guaranty

fund which shall be held as security for the faithful performance by the insurer of all its undertakings and liabilities under its title policies or other guarantees of title to property.

- (3) The ~~commissioner~~~~[executive director]~~ shall not authorize an alien insurer unless it so makes and thereafter continuously maintains such a deposit, representing funds in excess of all the insurer's liabilities under insurance contracts in force in the United States of a fair market value of not less than that required under subsection (1) of this section, as to a like foreign insurer. The deposit shall be held in trust for the protection of the insurer's policyholders, or its policyholders and creditors, in the United States.
- (4) In lieu of such a deposit made or maintained in this state, the ~~commissioner~~~~[executive director]~~ may, in his *or her* discretion, accept the certificate in proper form of the public officer having general supervision of insurers in any other state to the effect that a deposit of like quality and amount, or part thereof, by such insurer is being maintained for like purposes in public custody or control pursuant to the laws of such state.
- (5) All such deposits in this state are subject to the applicable provisions of Subtitle 8.

➔Section 966. KRS 304.3-150 is amended to read as follows:

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

- (1) If a corporation, a copy of its charter, together with all amendments thereto, or as restated and amended under the laws of its state or country of incorporation, currently certified by the public official with whom the originals are on file in a state or country.
- (2) A copy of its bylaws, certified by the insurer's secretary.
- (3) If a reciprocal insurer, a copy of the power of attorney of its attorney-in-fact, and copy of its subscribers agreement, if any, both certified by the attorney-in-fact; and if a domestic reciprocal insurer, the declaration provided for in KRS 304.27-060.
- (4) If a Lloyd's plan insurer, the names and addresses of all of the underwriters proposing to engage in the business, along with the number of underwriters which shall not be less than twenty-five (25), and that each underwriter is worth in his *or her* own right not less than twenty thousand dollars (\$20,000) over and above all his *or her* liabilities, along with a statement showing a list of all cash and invested assets owned by the associated underwriters and their value, certified and sworn to by their duly authorized attorney-in-fact.
- (5) A complete copy of its financial statement as of not earlier than the December 31 next preceding in form as customarily used in the United States by like insurers, sworn to by at least two (2) executive officers of the insurer or certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (6) A copy of the report of last examination of the insurer prior to the filing of the application, certified by the public insurance supervisory official of the insurer's state or country of domicile.
- (7) If a foreign or alien insurer, the name and address of the person to whom the Secretary of State shall forward lawful process served upon him *or her*. If a domestic reciprocal insurer, the name and address of the attorney designated pursuant to paragraph (e) of subsection (2) of KRS 304.27-060 shall be deemed to be the person to whom the Secretary of State shall forward lawful process served upon him *or her*. Any judgment against a domestic reciprocal so served shall be binding upon each of the insurer's subscribers as their respective contingent liabilities.
- (8) If a foreign or alien insurer, a certificate of the public insurance supervisory official of its state or country of domicile showing that it is authorized or qualified for authority to transact in a state or country the kinds of insurance proposed to be transacted in this state.
- (9) If an alien insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140, and a copy of the trust deed, if any, pertaining to a deposit, certified by the trustee.
- (10) If a foreign insurer, a certificate as to deposit, if to be tendered pursuant to subsection (4) of KRS 304.3-140.

- (11) If an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records.
- (12) Designation by the insurer of its officers or representatives authorized to appoint and remove its agents in this state.
- (13) If to transact surety insurance, the names and addresses of all its attorneys in fact within this state together with the scope of authority of each attorney-in-fact.

➔Section 967. KRS 304.3-160 is amended to read as follows:

- (1) If upon completion of its application the **commissioner**~~[executive director]~~ finds that the insurer has met the requirements therefor under this code, including KRS 304.3-080, the **commissioner**~~[executive director]~~ may, if he *or she* deems it advisable, issue to the insurer a certificate of authority; otherwise, the **commissioner**~~[executive director]~~ shall issue ~~an~~^{his} order refusing such certificate.
- (2) The certificate of authority, if issued, shall state the insurer's name, the address of its principal office, the state or country of its organization, and the kinds of insurance the insurer is authorized to transact in this state. At the insurer's request, the **commissioner**~~[executive director]~~ may issue a certificate of authority limited to particular types of insurance or coverages within a kind of insurance as defined in Subtitle 5.
- (3) Although issued and delivered to the insurer, the certificate of authority at all times shall be the property of the State of Kentucky. Upon any expiration, suspension, or termination thereof the insurer shall promptly deliver the certificate to the **commissioner**~~[executive director]~~.

➔Section 968. KRS 304.3-170 is amended to read as follows:

Upon written application therefor by the insurer and due cause shown, the **commissioner**~~[executive director]~~ may amend the certificate of authority of an insurer as required by change of name or to show any change in the kinds of insurance the insurer may thereafter transact and is qualified to transact in this state. The insurer shall accompany such request with the fee for amendment as specified in Subtitle 4.

➔Section 969. KRS 304.3-180 is amended to read as follows:

- (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the **commissioner**~~[executive director]~~ or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:
 - (a) Payment of the continuation fee provided in Subtitle 4 by March 1, or, if paid by mail, postmarked no later than March 1;
 - (b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;
 - (c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and
 - (d) Due filing by domestic companies of quarterly statements as approved by the National Association of Insurance Commissioners.
- (2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The **commissioner**~~[executive director]~~ shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.
- (3) The **commissioner**~~[executive director]~~ may, in his *or her* discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
- (4) An insurer shall not use the same accountant or partner of an accounting firm responsible for preparing the audited financial statement for more than seven (7) consecutive years.

➔Section 970. KRS 304.3-190 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall refuse to continue or shall suspend or revoke an insurer's certificate of authority:

- (a) If the action is required by any provision of this code; or
 - (b) If a foreign or alien insurer and it no longer meets the requirements for a certificate of authority, as required for domestic insurers, on account of deficiency of capital or surplus or otherwise; or
 - (c) If a domestic insurer and it has failed to cure an impairment of capital, if a stock insurer, or minimum required surplus, if other than a stock insurer, within the time allowed therefor by the **commissioner**~~executive director~~ under this code or is otherwise no longer qualified for the certificate of authority; or
 - (d) If the insurer's certificate of authority to transact insurance therein is suspended or revoked by its state or country of domicile.
- (2) Except in case of insolvency or impairment of required capital or surplus, or suspension or revocation by another state or country as referred to in paragraph (d) of subsection (1) of this section, the **commissioner**~~executive director~~ shall give the insurer at least twenty (20) days notice in advance of any refusal, suspension, or revocation under this section, and of the particulars of the reasons therefor. If the insurer requests a hearing thereon within the twenty (20) days, a hearing shall be conducted in accordance with KRS Chapter 13B, and the request shall automatically stay the **commissioner's**~~executive director's~~ proposed action until his *or her* final order is made on the hearing.

➔Section 971. KRS 304.3-200 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ may, in his *or her* discretion, refuse to continue or may suspend or revoke an insurer's certificate of authority if he *or she* finds after a hearing thereon, or upon waiver of hearing by the insurer, that the insurer has:
- (a) Willfully violated or willfully failed to comply with any lawful order of the **commissioner**~~executive director~~; or
 - (b) Willfully violated or willfully failed to comply with any lawful regulation of the **commissioner**~~executive director~~; or
 - (c) Willfully violated any provision of this code other than those for violation of which suspension or revocation is mandatory; or
 - (d) Failed to pay taxes on its premiums as required by law; or
 - (e) Has committed any unfair claims settlement practice as defined in Subtitle 12 or regulations promulgated thereunder.

In lieu of or in addition to such suspension or revocation, the **commissioner**~~executive director~~ may, in his *or her* discretion, reprimand the insurer, which shall be made a part of the insurer's record, or may levy upon the insurer, and the insurer shall pay forthwith, an administrative fine as specified in KRS 304.99-020.

- (2) The **commissioner**~~executive director~~ shall suspend or revoke an insurer's certificate of authority on any of the following grounds, if he *or she* finds after a hearing thereon that the insurer:
- (a) Is in unsound condition, or is being fraudulently conducted, or is in such condition or using such methods and practices in the conduct of its business as to render its further transaction of insurance in this state currently or prospectively hazardous or injurious to policyholders or to the public.
 - (b) With such frequency as to indicate its general business practice in this state:
 1. Has without just cause failed to pay, or delayed payment of, claims arising under its policies, whether the claim is in favor of an insured or is in favor of a third person with respect to the liability of an insured to such third person; or
 2. Without just cause compels insureds or claimants to accept less than the amount due them or to employ attorneys or to bring suit against the insurer or such an insured to secure full payment or settlement of such claims.
 - (c) Refuses to be examined, or if its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records and files for examination by the

commissioner~~{executive director}~~ when required, or refuse to perform any legal obligation relative to the examination.

- (d) Has failed to pay any final judgment rendered against it in this state upon any policy, bond, recognizance or undertaking as issued or guaranteed by it, within thirty (30) days after the judgment became final or within thirty (30) days after dismissal of an appeal before final determination, whichever date is the later.
 - (e) Has actual knowledge by the chief executive officer or person in charge of Kentucky operations that an agent employed by the insurer has engaged or is engaging in conduct in violation of this code and the insurer has failed to report such conduct to the **department**~~{office}~~.
 - (f) No insurer, its agents, servants, or employees shall incur any liability in connection with or as a result of any disclosure made to the **commissioner**~~{executive director}~~ of insurance pursuant to the provisions of this section.
- (3) The **commissioner**~~{executive director}~~ may, in his *or her* discretion and without advance notice or a hearing thereon, immediately suspend the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation or other delinquency proceedings have been commenced in any state by the public insurance supervisory officer of such state.

➔Section 972. KRS 304.3-210 is amended to read as follows:

- (1) All suspensions or revocations of, or refusal to continue, an insurer's certificate of authority shall be by the **commissioner's**~~{executive director's}~~ order given to the insurer.
- (2) Upon issuance of the order, the **commissioner**~~{executive director}~~ shall forthwith give notice thereof to the insurer's agents in this state of record in the **department**~~{office}~~, and shall likewise suspend or revoke the authority of such agents to represent the insurer.
- (3) In his *or her* discretion, the **commissioner**~~{executive director}~~ may likewise publish notice of such suspension, revocation or refusal in one (1) or more newspapers of general circulation in the state.

➔Section 973. KRS 304.3-220 is amended to read as follows:

- (1) Suspension of an insurer's certificate of authority shall be for such period as the **commissioner**~~{executive director}~~ specifies in the order of suspension, but not to exceed one (1) year. During the suspension the **commissioner**~~{executive director}~~ may rescind or shorten the suspension by his *or her* further order.
- (2) During the suspension period the insurer shall not solicit or write any new business in this state, but shall file its annual statement, pay fees, licenses, and taxes as required, and may service its business already in force in this state, as if the certificate of authority had continued in full force.
- (3) Upon expiration of the suspension period, if within such period the certificate of authority has not terminated, the insurer's certificate of authority shall be automatically reinstated unless the **commissioner**~~{executive director}~~ finds that the causes of the suspension have not terminated, or that the insurer is otherwise not in compliance with the requirements of this code, and of which the **commissioner**~~{executive director}~~ shall give the insurer notice not less than thirty (30) days in advance of the expiration of the suspension period. If not so automatically reinstated the certificate of authority shall be deemed to have terminated as of the end of the suspension period.
- (4) Upon reinstatement of the insurer's certificate of authority, the authority of its agents in this state to represent the insurer shall likewise be reinstated. The **commissioner**~~{executive director}~~ shall promptly notify the insurer and its agents in this state of record in the **department**~~{office}~~, of such reinstatement. If pursuant to subsection (3) of KRS 304.3-210, the **commissioner**~~{executive director}~~ has published notice of such suspension he *or she* shall in like manner publish notice of the reinstatement.

➔Section 974. KRS 304.3-240 is amended to read as follows:

- (1) Each authorized insurer shall annually file with the **commissioner**~~{executive director}~~ a true statement of its financial condition, transactions, and affairs as of December 31 preceding. The statement shall be on forms prescribed by the National Association of Insurance Commissioners and shall be completed according to the instructions of the National Association of Insurance Commissioners, and shall be verified by the oaths of at least two (2) of the insurer's principal officers. The annual statement of a reciprocal insurer shall be made and verified by its attorney-in-fact. The annual statement shall be filed by March 1 of each year, or, if filed by mail,

postmarked no later than March 1. The annual statement of a foreign or alien insurer may be executed or verified by facsimile or reproduced signature; however, the annual statement of a domestic insurer shall contain original signatures.

- (2) The statement forms shall be in general form and context as approved by the National Association of Insurance Commissioners for the kinds of insurance to be reported upon, and as supplemented for additional information required by the **commissioner**~~{executive director}~~.
- (3) The annual statement of an alien insurer shall relate only to its assets, transactions, and affairs in the United States unless the **commissioner**~~{executive director}~~ requires otherwise. The statement shall be verified by the insurer's United States manager or by its officers duly authorized.
- (4) The **commissioner**~~{executive director}~~ may suspend or revoke the authority of any insurer failing to file its annual and quarterly statement when due or failing so to file during any extension of time therefor which the **commissioner**~~{executive director}~~, for good cause, may grant.
- (5) Notwithstanding the provisions of this section or any other law of this Commonwealth, an authorized insurer may, subject to the requirements of regulations adopted by the **commissioner**~~{executive director}~~, publish financial statements or information based on financial statements prepared on a basis which is in accordance with requirements of a competent authority and which differs from the basis of the statements which have been filed with the **commissioner**~~{executive director}~~ in compliance with this section. Such differing financial statements or information based on the financial statements shall not be made the basis for the application of any provision of this chapter not relating solely to the publication of financial information unless the provision specifically so requires.

➔Section 975. KRS 304.3-242 is amended to read as follows:

- (1) As used in this section, a "qualified loss reserve specialist" means a person who is not a director, principal, or direct or indirect owner of an insurer and is a member in good standing of the Casualty Actuarial Society, and the American Academy of Actuaries, and who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or has other experience acceptable to the **commissioner**~~{executive director}~~ to assure a professional opinion on the adequacy of loss and loss adjustment expense reserves.
- (2) The board of directors of every insurer authorized to transact property or casualty insurance and required to file an annual statement with the **commissioner**~~{executive director}~~ pursuant to KRS 304.3-240 shall engage a qualified loss reserve specialist to certify the adequacy of the insurer's loss and loss adjustment expense reserves. The report shall be filed with the annual statement required by KRS 304.3-240.
- (3) The statement of opinion required by this section shall consist of at least the following information:
 - (a) Identification of the qualified loss reserve specialist;
 - (b) Identification of the subjects on which the opinion is to be expressed and a description of the scope of the qualified loss reserve specialist's work;
 - (c) An expression of the qualified loss reserve specialist's opinion with respect to the subjects required to be described in paragraph (b) of this subsection; and
 - (d) Additional information which the qualified loss reserve specialist considers necessary to state a qualification of opinion or to explain any aspect of the annual statement which is not already sufficiently explained in the annual statement.
- (4) It shall not be necessary to file the report required by this section in the following instances:
 - (a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;
 - (b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;

- (c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or
- (d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of:
 - 1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or
 - 2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.

➔Section 976. KRS 304.3-270 is amended to read as follows:

- (1) The purpose of this section is to aid in the protection of insurers formed under the laws of Kentucky and transacting insurance in other states or countries against discriminatory or onerous requirements under the laws of such states or countries or the administration thereof.
- (2) When by or pursuant to the laws of any other state or foreign country or province any taxes, licenses and other fees, in the aggregate, and any fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be imposed upon Kentucky insurers, or upon the agents or representatives of such insurers, which are in excess of such taxes, licenses and other fees, in the aggregate, or which are in excess of the fines, penalties, deposit requirements or other obligations, prohibitions, or restrictions directly imposed upon similar insurers, or upon the agents or representatives of such insurers, of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses and other fees, in the aggregate, or fines, penalties, or deposit requirements or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the **commissioner**~~executive director~~ upon the insurers, or upon the agents or representatives of such insurers, of such other state or country doing business or seeking to do business in Kentucky. Any tax, license or other fee or other obligation imposed by any city, county, or other political subdivision or agency of such other state or country on Kentucky insurers or their agents or representatives shall be deemed to be imposed by such state or country within the meaning of this section.
- (3) This section shall not apply as to personal income taxes, nor as to ad valorem taxes on real or personal property, nor as to special purpose obligations or assessments imposed by another state in connection with particular kinds of insurance other than property insurance; except that deductions, from premium taxes or other taxes otherwise payable, allowed on account of real estate or personal property taxes paid shall be taken into consideration by the **commissioner**~~executive director~~ in determining the propriety and extent of retaliatory action under this section.
- (4) For the purposes of this section the domicile of an alien insurer, other than insurers formed under the laws of Canada, or a province thereof, shall be that state designated by the insurer in writing filed with the **commissioner**~~executive director~~ at time of admission to this state or within six (6) months after the effective date of this code, whichever date is the later, and may be any one (1) of the following states:
 - (a) That in which the insurer was first authorized to transact insurance;
 - (b) That in which is located the insurer's principal office;
 - (c) That in which is held the largest deposit of trusteed assets of the insurer for the protection of its policyholders in the United States.

If the insurer makes no such designation its domicile shall be deemed to be that state in which is located its principal office.

- (5) For the purpose of this section assessments by insurance guaranty associations or similar organizations in any other state shall not be considered or used in determining retaliatory taxation to be imposed by the **commissioner**~~executive director~~ upon insurers doing business in this state that are incorporated or organized under the laws of such other state, or upon their agents.

➔Section 977. KRS 304.3-320 is amended to read as follows:

- (1) Foreign insurers currently admitted to do the business of life and health insurance in Kentucky and foreign insurers hereafter admitted to do the business of life and health insurance in Kentucky which are domiciled in

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

- (2) In establishing the amount of the deposit required by subsection (1) of this section for a particular insurer, the **commissioner**~~[executive director]~~ shall consider the following factors:
- (a) The amount of Kentucky writings;
 - (b) The amount of policy reserves and claim reserves pertaining to Kentucky risks;
 - (c) The kind of insurance written in Kentucky;
 - (d) The current financial and operating test results of the insurer provided by the National Association of Insurance Commissioners under its insurance regulatory information system; and
 - (e) Any other relevant financial data.

➔Section 978. KRS 304.3-400 is amended to read as follows:

As used in KRS 304.3-400 to 304.3-430, unless the context requires otherwise:

- (1) "Accredited state" means a state in which the insurance regulatory agency has qualified as meeting the minimum financial regulatory standards promulgated and established from time to time by the National Association of Insurance Commissioners.
- (2) "Control" or "controlled" has the meaning set forth in KRS 304.37-010(8).
- (3) "Controlled insurer" means an authorized insurer which is controlled, directly or indirectly, by a producer.
- (4) "Controlling producer" means a producer who directly or indirectly, controls an insurer.
- (5) "Authorized insurer" or "insurer" means an insurer holding a certificate of authority from the **commissioner**~~[executive director]~~ to transact property or casualty insurance business in Kentucky. The following, among others, are not authorized insurers for the purposes of KRS 304.3-400 to 304.3-430:
 - (a) All risk retention groups as defined in the Superfund Amendments Reauthorization Act of 1986, (P.L. 99-499, 100 Stat. 1613, and the Liability Risk Retention Act, 15 U.S.C. secs. 3901 et seq.) and Subtitle 45 of this chapter;
 - (b) All residual market mechanisms and joint underwriting authorities or associations; and
 - (c) All captive insurers, that is, insurers owned by another organization whose exclusive purpose is to insure risks of the parent organization and affiliated companies or, in the case of groups and associations, insurance organizations owned by the insureds whose exclusive purpose is to insure risks to member organizations or group members and their affiliates.
- (6) "Producer" means a person, firm, association, or corporation, when, for any compensation, commission, or other thing of value, the person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the person, firm, association, or corporation.

➔Section 979. KRS 304.3-410 is amended to read as follows:

- (1) The applicability of this section is as follows:
 - (a) The provisions of this section shall only apply if in any calendar year, the aggregate amount of gross written premium on business placed with a controlled insurer by a controlling producer is equal to or greater than five percent (5%) of the admitted assets of the controlled insurer, as reported in the controlled insurer's quarterly statement filed as of September 30 of the immediate preceding year.
 - (b) Notwithstanding paragraph (a) of this subsection, the provisions of this section shall not apply if:
 - 1. The controlling producer:
 - a. Places insurance only with the controlled insurer, or only with the controlled insurer and a member or members of the controlled insurer's holding company system, or the controlled

- insurer's parent, affiliate, or subsidiary and receives no compensation based upon the amount of premiums written in connection with the insurance; and
- b. Accepts insurance placements only from nonaffiliated subproducers, and not directly from insureds; and
2. The controlled insurer, except for insurance business written through a residual market mechanism, accepts insurance business only from a controlling producer, a producer controlled by the controlled insurer, or a producer that is a subsidiary of the controlled insurer.
- (2) A controlled insurer shall not accept business from a controlling producer and a controlling producer shall not place business with a controlled insurer unless there is a written contract between the controlling producer and the insurer specifying the responsibilities of each party, and the contract has been approved by the board of directors of the insurer and contains the following minimum provisions:
- (a) The controlled insurer may terminate the contract for cause, upon written notice to the controlling producer. The controlled insurer shall suspend the authority of the controlling producer to write business during the pendency of any dispute regarding the cause for termination;
 - (b) The controlling producer shall render accounts to the controlled insurer detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the controlling producer;
 - (c) The controlling producer shall remit all funds due under the terms of the contract to the controlled insurer on at least a monthly basis. The due date shall be fixed so that premiums or installments collected shall be remitted no later than ninety (90) days after the effective date of any policy placed with the controlled insurer under this contract;
 - (d) All funds collected for the controlled insurer's account shall be held by the controlling producer in a fiduciary capacity, in one (1) or more appropriately identified bank accounts in banks that are members of the federal reserve system, in accordance with the provisions of the insurance code, as applicable. Funds of a controlling producer not required to be licensed in this state shall be maintained in compliance with the requirements of the controlling producer's domiciliary jurisdiction;
 - (e) The controlling producer shall maintain separately identifiable records of business written for the controlled insurer;
 - (f) The contract shall not be assigned in whole or in part by the controlling producer;
 - (g) The controlled insurer shall provide the controlling producer with its underwriting standards, rules and procedures, and with manuals stating the rates to be charged and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a producer other than the controlling producer;
 - (h) The rates and terms of the controlling producer's commissions, charges, or other fees and the purposes for those charges or fees. The rates of commissions, charges, and other fees shall be no greater than those applicable to comparable business placed with the controlled insurer by producers other than the controlling producers. For purposes of this paragraph and paragraph (g) of this subsection, examples of "comparable business" include the same lines of insurance, same kinds of insurance, same kinds of risks, similar policy limits, and similar quality of business. This paragraph does not authorize controlling producers to charge fees which the controlling producer is not otherwise permitted to charge under the provisions of the insurance code;
 - (i) If the contract provides that the controlling producer, on insurance business placed with the insurer, is to be compensated contingent upon the insurer's profits on that business, then such compensation shall not be determined and paid until at least five (5) years after the premiums on liability insurance are earned and at least one (1) year after the premiums are earned on any other insurance. In no event shall the commissions be paid until the adequacy of the controlled insurer's reserves on remaining claims has been independently verified pursuant to subsection (3) of this section;
 - (j) A limit on the controlling producer's writings in relation to the controlled insurer's surplus and total writings. The insurer may establish a different limit for each line or subline of business. The controlled

insurer shall notify the controlling producer when the applicable limit is approached and shall not accept business from the controlling producer if the limit is reached. The controlling producer shall not place business with the controlled insurer if it has been notified by the controlled insurer that the limit has been reached; and

- (k) The controlling producer may negotiate, but shall not bind, reinsurance on behalf of the controlled insurer on business the controlling producer places with the controlled insurer, except that the controlling producer may bind facultative reinsurance contracts pursuant to obligatory facultative agreements, if the contract with the controlled insurer contains underwriting guidelines, for both reinsurance assumed and ceded, which include a list of reinsurers with automatic agreements that are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules.
- (3) Every controlled insurer shall have an audit committee of the board of directors composed of independent directors. The audit committee shall annually meet with the management, the insurer's independent certified public accountants, and an independent casualty actuary or other independent loss reserve specialist acceptable to the **commissioner**~~executive director~~ to review the adequacy of the insurer's loss reserves.
- (4) Reporting requirements are as follows:
 - (a) In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the **commissioner**~~executive director~~ an opinion of an independent casualty actuary, or other independent loss reserve specialist acceptable to the **commissioner**~~executive director~~, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of the end of the year, including incurred but not reported losses, on business placed by the producer; and
 - (b) The controlled insurer shall annually report to the **commissioner**~~executive director~~ the amount of commissions paid to the producer, the percentage that amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

➔Section 980. KRS 304.3-420 is amended to read as follows:

- (1) If the **commissioner**~~executive director~~ believes that the controlling producer or any other person has not materially complied with KRS 304.3-400 to 304.3-430, or any administrative regulation or order promulgated under KRS 304.3-400 to 304.3-430, the **commissioner**~~executive director~~ may:
 - (a) Order the controlling producer to cease placing business with the controlled insurer; or
 - (b) If it was found that because of the material noncompliance that the controlled insurer or any policyholder has suffered any loss or damage, the **commissioner**~~executive director~~ may maintain a civil action, intervene in an action brought by or on behalf of the insurer or a policyholder for recovery of compensatory damages for the benefit of the insurer or policyholder, or seek other appropriate relief.
- (2) Appeals from orders issued under subsection (1) of this section shall be taken as provided in Subtitle 2 of this chapter.
- (3) If an order for liquidation or rehabilitation of the controlled insurer has been entered pursuant to Subtitle 33 of this chapter, and the receiver appointed under that order believes that the controlling producer or any other person has not materially complied with KRS 304.3-400 to 304.3-430, or any administrative regulation or order promulgated under KRS 304.3-400 to 304.3-430, and the insurer suffered any loss or damage, the receiver may maintain a civil action for recovery of the damages or seek other appropriate sanctions for the benefit of the insurer.
- (4) Nothing contained in this section shall affect the right of the **commissioner**~~executive director~~ to exercise any other authority granted to him *or her* by law.
- (5) Nothing contained in this section is intended to or shall in any manner alter or affect the rights of policyholders, claimants, creditors, or other third parties.

➔Section 981. KRS 304.3-500 is amended to read as follows:

As used in KRS 304.3-500 to 304.3-570, unless the context requires otherwise:

- (1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;
- (2) "Insurer" means any person duly authorized as an insurer by the **commissioner**~~{executive director}~~;
- (3) "Controlling agent" means any person who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acts as an agent for the insurer whether known as a controlling agent or other name, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one (1) quarter or year, and who also adjusts or pays claims in excess of an amount determined by the **commissioner**~~{executive director}~~, or negotiates reinsurance on behalf of the insurer. The following persons shall not be considered controlling agents:
 - (a) An employee of the insurer;
 - (b) A United States manager of the United States branch of an alien insurer;
 - (c) An underwriting manager which, pursuant to contract, manages all the insurance operations of the insurer, is under common control with the insurer, subject to Subtitle 37 of this chapter, and whose compensation is not based on the volume of premiums written; and
 - (d) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer, Lloyd's plan insurer, or interinsurance exchange under powers of attorney.
- (4) "Underwrite" means the authority to accept or reject risks on behalf of the insurer.

➔Section 982. KRS 304.3-510 is amended to read as follows:

- (1) A person shall not be, act as, or hold himself **or herself** out as a controlling agent with respect to risks located in Kentucky for an insurer authorized in Kentucky unless the person is licensed as agent by Kentucky.
- (2) A person shall not be, act as, or hold himself **or herself** out as a controlling agent representing an insurer domiciled in Kentucky with respect to risks located outside Kentucky unless the person is licensed as an agent by Kentucky.
- (3) The **commissioner**~~{executive director}~~ may require a controlling agent to provide evidence of financial responsibility in the form and amount acceptable to the **commissioner**~~{executive director}~~ for the protection of the insurer, policyholders, and claimants.

➔Section 983. KRS 304.3-520 is amended to read as follows:

A person acting in the capacity of controlling agent shall not place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and, where both parties share responsibility for a particular function, specifies the division of these responsibilities, and which contains the following minimum provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the controlling agent. The insurer may suspend the underwriting authority of the controlling agent during the pendency of any dispute regarding the termination;
- (2) The controlling agent shall render account to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of the insurer shall be held by the controlling agent in a fiduciary capacity in a bank which is a member of the federal reserve system. This account shall be used for all payments on behalf of the insurer. The controlling agent may retain no more than three (3) months estimated claims payments and allocated loss adjustment expenses;
- (4) Separate records of business written by the controlling agent shall be maintained. The insurer shall have access to and the right to copy all accounts and records related to its business in a form usable by the insurer, and the **commissioner**~~{executive director}~~ shall have access to all books, bank accounts, and records of the controlling agent in a form usable to the **commissioner**~~{executive director}~~. These records shall be retained according to KRS 304.2-220 and the **commissioner's**~~{executive director's}~~ administrative regulations;
- (5) The contract shall not be assigned in whole or in part by the controlling agent;

- (6) Appropriate underwriting guidelines, including:
- (a) The maximum annual premium volume;
 - (b) The basis of the rates to be charged;
 - (c) The types of risks which may be written;
 - (d) Maximum limits of liability;
 - (e) Applicable exclusions;
 - (f) Territorial limitations;
 - (g) Policy cancellation provisions, including a statement that the insurer shall have the right to cancel or nonrenew any policy of insurance subject to applicable laws concerning the cancellation and nonrenewal of insurance policies; and
 - (h) The maximum policy period.
- (7) If the contract permits the controlling agent to settle claims on behalf of the insurer;
- (a) All claims shall be reported to the insurer in a timely manner;
 - (b) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 - 1. Has the potential to exceed an amount determined by the **commissioner**~~{executive director}~~ or exceeds the limit set by the insurer, whichever is less;
 - 2. Involves a coverage dispute;
 - 3. May exceed the controlling agent's claims settlement authority;
 - 4. Is open for more than six (6) months; or
 - 5. Is closed by payment of an amount set by the **commissioner**~~{executive director}~~ or an amount set by the insurer, whichever is less;
 - (c) All claim files shall be the joint property of the insurer and the controlling agent. However, upon an order of liquidation of the insurer the claim files shall become the sole property of the insurer or its estate. The controlling agent shall have reasonable access to and the right to copy the files; and
 - (d) Any settlement authority granted to the controlling agent may be terminated for cause upon the insurer's written notice to the controlling agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.
- (8) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (9) If the contract provides for a sharing of interim profits by the controlling agent, and the controlling agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the controlling agent until one (1) year after they are earned for property insurance business and five (5) years after they are earned on casualty business, and not until the profits have been verified pursuant to KRS 304.3-530;
- (10) The controlling agent shall not:
- (a) Bind reinsurance or retrocessions on behalf of the insurer, except that the controlling agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines, including, for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements are in effect the coverages and amounts or percentages that may be reinsured, and commission schedules;
 - (b) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (c) Appoint any person producing business without assuring that the person is lawfully licensed to transact the type of insurance for which **the person**~~{he}~~ is appointed;

- (d) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder surplus as of December 31 of the last completed calendar year;
- (e) Collect any payment for a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
- (f) Permit its subproducer to serve on the insurer's board of directors;
- (g) Jointly employ an individual who is employed with the insurer; or
- (h) Appoint a subcontrolling agent.

➔Section 984. KRS 304.3-530 is amended to read as follows:

- (1) The insurer shall have on file an independent financial examination, in a form acceptable to the **commissioner**~~executive director~~, of each controlling agent with which it has done business.
- (2) If a controlling agent establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the controlling agent. This is in addition to any other required loss reserve certification.
- (3) The insurer shall at least semiannually conduct an on-site review of underwriting and claims processing operations of the controlling agent.
- (4) Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the controlling agent.
- (5) Within thirty (30) days of entering into or termination of a contract with a controlling agent, the insurer shall provide written notification of the appointment or termination to the **commissioner**~~executive director~~. Notices of appointment of a controlling agent shall include a statement of the duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is authorized to act, and any other information the **commissioner**~~executive director~~ may request.
- (6) An insurer shall review its books and records each quarter to determine if any person producing business has become a controlling agent as defined in KRS 304.3-500(3). If the insurer determines that a person producing business has become a controlling agent, the insurer shall promptly notify the person producing business and the **commissioner**~~executive director~~ of this determination and the insurer and the person producing business must fully comply with the provisions of KRS 304.3-500 to 304.3-570 within thirty (30) days.
- (7) An insurer shall not appoint to its board of directors an officer, director, employee, subproducer, or controlling shareholder of any of its controlling agents. This subsection shall not apply to relationships governed by Subtitle 37 of this chapter or any provisions of this subtitle pertaining to business transacted with a producer controlled property or casualty insurer.

➔Section 985. KRS 304.3-540 is amended to read as follows:

The acts of controlling agents are considered to be the acts of the insurer on whose behalf the controlling agents are acting. A controlling agent may be examined by the **commissioner**~~executive director~~ as if it were the insurer.

➔Section 986. KRS 304.3-550 is amended to read as follows:

- (1) If the **commissioner**~~executive director~~ finds that any person has violated any provision of KRS 304.3-500 to 304.3-570 or KRS 304.9-440, the **commissioner**~~executive director~~ may order:
 - (a) For each separate violation, a civil penalty in the amounts set forth in KRS 304.99-020;
 - (b) Conditions upon, or revocation, or suspension of a license;
 - (c) The controlling agent to reimburse the insurer, the rehabilitator, or the liquidator of the insurer for any losses incurred by the insurer caused by a violation of KRS 304.3-500 to 304.3-570 or KRS 304.9-440 committed by the controlling agent; or
 - (d) Any combination of paragraphs (a), (b), or (c) of this subsection.
- (2) Appeals from orders issued under subsection (1) of this section shall be taken as provided in Subtitle 2 of this chapter.

- (3) Nothing contained in this section shall affect the right of the ***commissioner***~~[executive director]~~ to impose any other penalties or corrective action provided for under laws administered by the ***commissioner***~~[executive director]~~.
- (4) Nothing contained in KRS 304.3-500 to 304.3-570 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, and auditors.

➔Section 987. KRS 304.3-560 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may promulgate administrative regulations for the implementation and administration of the provisions of KRS 304.3-500 to 304.3-570.
- (2) An insurer shall not continue to utilize the services of a controlling agent on and after the effective date of KRS 304.3-500 to 304.3-570 unless utilization is in compliance with KRS 304.3-500 to 304.3-570.

➔Section 988. KRS 304.4-010 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall by regulation prescribe the fees charged by the ***commissioner***~~[executive director]~~ and the services for which fees shall be charged, including the following fees:
 - (a) For copies of any document on file with the ***commissioner***~~[executive director]~~, per page, thirty cents (\$0.30); and
 - (b) For copies of annual statements, per page, one dollar (\$1).
- (2) All fees shall be collected in advance.
- (3) Notwithstanding subsection (2) of this section, an insurer submitting applications, appointments, or filings through the electronic system adopted by the ***department***~~[office]~~ shall remit the applicable fees to the ***department***~~[office]~~ within fifteen (15) calendar days of the electronic submission.

➔Section 989. KRS 304.4-020 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall promptly pay into the State Treasury all fees, licenses, and charges collected ~~by him~~ under the provisions of KRS 304.4-010.

➔Section 990. KRS 304.4-040 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may revoke the certificate of authority of any insurer which fails to pay when due any taxes, fees, licenses, and other charges owing to this state. The ***commissioner***~~[executive director]~~ may likewise revoke the license of any agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, life settlement broker or provider, or consultant, as to whom any tax or fee required under this code has not been paid when due.

➔Section 991. KRS 304.5-070 is amended to read as follows:

- (1) "Casualty insurance" includes:
 - (a) Vehicle insurance. Insurance against loss of or damage to any land vehicles or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom, from any hazard or cause, and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal; together with insurance against accidental injury to individuals, irrespective of legal liability of the insured, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if the insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;
 - (b) Liability insurance. Insurance against legal liability for the death, injury, or disability of any human being, or for damage to property; and provision of medical, hospital, surgical, disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

- (c) Workers' compensation and employer's liability. Insurance of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;
- (d) Burglary and theft. Insurance against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt at any of the foregoing; including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;
- (e) Personal property floater. Insurance upon personal effects against loss or damage from any cause;
- (f) Glass. Insurance against loss or damage to glass, including its lettering, ornamentation, and fittings;
- (g) Boiler and machinery. Insurance against any liability and loss or damage to property or interest resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus, and the inspection of and issuance of certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;
- (h) Leakage and fire extinguishing equipment. Insurance against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps and other fire extinguishing equipment or apparatus, water pipes or containers, or by water entering through leaks or openings in buildings, and insurance against loss or damage to sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;
- (i) Credit. Insurance, other than mortgage guaranty insurance, against loss or damage resulting from failure of debtors to pay their obligations to the insured;
- (j) Malpractice. Insurance against legal liability of the insured, and against loss, damage, or expense incidental to a claim of such liability, and including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person, or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;
- (k) Elevator. Insurance against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire, and the inspection of and issuance of certificates of inspection upon, elevators;
- (l) Congenital defects. Insurance against congenital defects in human beings;
- (m) Livestock. Insurance against loss of or damage to livestock from any cause;
- (n) Entertainments. Insurance indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;
- (o) Failure of certain institutions to record documents. Insurance indemnifying against loss from failure or omission to record as public records, liens of any kind upon personal property, given, held, delivered, or possessed as security or collateral for loans, advances, debts, or obligations of all kinds;
- (p) Automobile guaranty. Insurance of the mechanical condition or freedom from defective or worn parts of motor vehicles, other than as provided by manufacturer's warranty. Provided, however, the making of a contract covering only defects in material and workmanship in exchange for a separately stated charge where it is merely incidental to the business of selling or leasing motor vehicles, shall not be deemed insurance, provided, that the maker of the contract has an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 to assure the performance of the duties of the maker created by each on all of the contracts made by the maker. In the event that the maker of the contract is unable to perform the duties imposed thereby, the purchaser of the contract shall then be considered a policyholder of the insurer. The policy shall include a loss payee endorsement that provides coverage to any lending institution as its interest may appear. In addition, the contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against that insurer upon the failure of the maker to pay any claim within

sixty (60) days after proof of loss has been filed with the maker. The requirements that the maker of the contract have an insurance policy with an authorized motor vehicle insurer as defined in KRS 304.1-100 shall not apply where the maker is a manufacturer, distributor, or importer of motor vehicles. As used in this paragraph, the term "maker" shall include a warranty service company which issues automobile guaranties through a motor vehicle dealer, in which the motor vehicle dealer is not an obligor under the contract. The ~~commissioner~~~~[executive director]~~ is authorized to promulgate regulations to interpret this paragraph; and

- (q) Miscellaneous. Insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this subtitle, if the insurance is not disapproved by the ~~commissioner~~~~[executive director]~~ as being contrary to law or public policy. A service contract to repair, replace, or maintain consumer products shall not be insurance, if the maker of the service contract registers with the ~~commissioner~~~~[executive director]~~ and provides:
 1. Evidence of a sufficient net worth, as determined by the ~~commissioner~~~~[executive director]~~, to assure the performance of the duties of the maker created by all of the contracts made by the maker; or
 2. Evidence of an insurance policy or performance bond with an authorized insurer as defined in KRS 304.1-100, to assure the performance of the duties of the maker created by all of the service contracts made by the maker.

As set forth in subparagraph 2. of this paragraph, if the maker of the service contract is unable to perform the duties imposed thereby, the purchaser of the service contract shall then be considered a policyholder of the insurer. The service contract shall conspicuously state the name and address of the licensed underwriting insurer and contain a statement that the holder shall be entitled to make a direct claim against the insurer upon the failure of the maker to pay any claim within sixty (60) days after the claim has been filed with the maker. The requirements of this paragraph shall not apply where the maker is a manufacturer of consumer products. If the maker of the service contract registers with the ~~commissioner~~~~[executive director]~~ and subsequently determines that the information submitted pursuant to subparagraph 1. of this paragraph no longer reflects a sufficient net worth as determined by the ~~commissioner~~~~[executive director]~~, to assure the performance of the duties of the maker created by all of the contracts made by the maker, the maker shall notify the ~~commissioner~~~~[executive director]~~ of the change in circumstances. Each registration filing with the ~~commissioner~~~~[executive director]~~ shall be filed within thirty (30) calendar days in advance of the selling of service contracts to repair, replace, or maintain consumer goods. The ~~commissioner~~~~[executive director]~~ is authorized to promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate this paragraph.

- (2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under paragraphs (a) (vehicle), (b) (liability), (d) (burglary), (g) (boiler machinery), (j) (malpractice), and (k) (elevator) of subsection (1) of this section shall for all purposes be deemed to be the same kind of insurance to which it is so incidental, and shall not be subject to provisions of this code applicable to life and health insurances.

➔Section 992. KRS 304.5-120 is amended to read as follows:

- (1) No insurer shall retain any risk on any one (1) subject of insurance, whether located or to be performed in this state or elsewhere, in an amount exceeding ten percent (10%) of its surplus to policyholders.
- (2) A "subject" of insurance for the purposes of this section, as to insurance against fire and hazards other than windstorm, earthquake and other catastrophic hazards, includes all properties insured by the same insurer which are customarily considered by underwriters to be subject to loss or damage from the same fire or the same occurrence of any other hazard insured against.
- (3) Reinsurance ceded, as authorized by KRS 304.5-140, shall be deducted in determining risk retained. As to surety risks, deduction shall be made of the amount assumed by any authorized co-surety and the value of any security deposited, pledged, or held subject to the surety's consent and for the surety's protection.
- (4) As to alien insurers, this section shall relate only to risks and surplus to policyholders of the insurer's United States branch.

- (5) "Surplus to policyholders" for the purposes of this section, in addition to the insurer's capital and surplus, shall be deemed to include any voluntary reserves which are not required pursuant to law, and shall be determined from the last sworn statement of the insurer on file with the **commissioner**~~executive director~~, or by the last report of examination of the insurer, whichever is the more recent at time of assumption of risk.
- (6) This section shall not apply to life or health insurance, annuities, title insurance, insurance of wet marine and transportation risks, workers' compensation insurance, employers' liability coverages, nor to any policy or type of coverage as to which the maximum possible loss to the insurer is not readily ascertainable on issuance of the policy.
- (7) Limits of risk as to newly formed domestic mutual insurers shall be as provided in KRS 304.24-100.
- (8) Limits of risk as to mortgage guaranty insurers shall be as provided in KRS 304.23-030.

➔Section 993. KRS 304.5-140 is amended to read as follows:

- (1) (a) For the purposes of subsection (3)(c) of this section, a "qualified United States financial institution" means an institution that:
 - 1. Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
 - 2. Is regulated, supervised, and examined by the United States federal or state authorities having regulatory authority over banks and trust companies; and
 - 3. Has been determined by the **commissioner**~~executive director~~, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the **commissioner**~~executive director~~.
- (b) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:
 - 1. Is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and
 - 2. Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.
- (2) Credit for reinsurance shall be allowed a ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of paragraphs (a), (b), (c), (d), or (e) of this subsection. If meeting the requirements of paragraphs (c) or (d) of this subsection, the requirements of paragraph (f) of this subsection shall also be met.
 - (a) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is authorized to transact insurance or reinsurance in Kentucky.
 - (b) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is accredited as a reinsurer in Kentucky. An accredited reinsurer is one which:
 - 1. Files with the **commissioner**~~executive director~~ evidence of its submission to Kentucky's jurisdiction;
 - 2. Submits to Kentucky's authority to examine its books and records;
 - 3. Is licensed to transact insurance or reinsurance in at least one (1) state, or in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one (1) state;
 - 4. Files annually with the **commissioner**~~executive director~~ a copy of its annual statement filed with the insurance regulatory official of its state of domicile and a copy of its most recent audited financial statement, and either:
 - a. Maintains a surplus as regards policyholders in an amount which is not less than twenty million dollars (\$20,000,000) and whose accreditation has not been denied by the **commissioner**~~executive director~~ within ninety (90) days of its submission; or

- b. Maintains a surplus as regards policyholders in an amount less than twenty million dollars (\$20,000,000) and whose accreditation has been approved by the **commissioner**~~{executive director}~~.
- 5. Credit shall not be allowed a ceding insurer under this paragraph if the assuming insurer's accreditation has been revoked by the **commissioner**~~{executive director}~~ after notice and hearing.
- (c) Credit shall be allowed when the reinsurance is ceded to an assuming insurer which is domiciled and licensed in or, in the case of a United States branch of an alien assuming insurer, is entered through a state which employs standards regarding credit for reinsurance substantially similar to those applicable under this section and the assuming insurer or United States branch of an alien insurer:
 - 1. Maintains a surplus as regards policyholders in an amount not less than twenty million dollars (\$20,000,000); and
 - 2. Submits to the authority of the **commissioner**~~{executive director}~~ to examine its books and records.

However, subparagraph 1. of this paragraph shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

- (d) 1. Credit shall be allowed when the reinsurance is ceded to an assuming insurer which maintains a trust fund in a qualified United States financial institution for the payment of valid claims of its United States policyholders and ceding insurers, their assigns, and successors in interest. The assuming insurer shall report annually to the **commissioner**~~{executive director}~~ information substantially the same as that required to be reported on the National Association of Insurance Commissioners annual statement form by authorized insurers to enable the **commissioner**~~{executive director}~~ to determine the sufficiency of the trust fund. In the case of a single assuming insurer, the trust fund shall consist of a trustee account representing the assuming insurer's liabilities attributable to business written in the United States and, in addition, the assuming insurer shall maintain a trustee surplus of not less than twenty million dollars (\$20,000,000). In the case of a group including incorporated and individual unincorporated underwriters, the trust shall consist of a trustee account representing the group's liabilities attributable to business written in the United States; and, in addition, the group shall maintain a trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, the incorporated members of which group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members; and the group shall make available to the **commissioner**~~{executive director}~~ an annual certification of the solvency of each underwriter by the group's domiciliary insurance regulatory official and its independent public accountants.
- 2. In the case of a group of incorporated insurers under common administration which complies with the filing requirements contained in subparagraph 1. of this paragraph, and which is under the supervision of the Department of Trade and Industry of the United Kingdom and submits to the **commissioner's**~~{executive director's}~~ authority to examine its books and records and bears the expense of the estimation, and which has aggregate policyholders' surplus of ten billion dollars (\$10,000,000,000), the trust shall be in an amount equal to the group's several liabilities attributable to business written in the United States plus the group shall maintain a joint trustee surplus of which one hundred million dollars (\$100,000,000) shall be held jointly for the benefit of United States ceding insurers of any member of the group, and each member of the group shall make available to the **commissioner**~~{executive director}~~ an annual certification of the member's solvency by the member's domiciliary insurance regulatory official and its independent public accountant.
- 3. The trust shall be established in a form approved by the **commissioner**~~{executive director}~~. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer shall be subject to examination as determined by the **commissioner**~~{executive director}~~. The trust shall remain in

effect for as long as the assuming insurer shall have outstanding obligations due under the reinsurance agreements subject to the trust.

4. No later than February 28 of each year, the trustees of the trust shall report to the **commissioner**~~executive director~~ in writing setting forth the balance of the trust and listing the trust's investments at the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.
- (e) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements of paragraphs (a), (b), (c), or (d) of this subsection, but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by applicable law or regulation of that jurisdiction or reinsurance ceded to a residual market mechanism reinsurance association, or the members thereof, created pursuant to law or which has been voluntarily created as such by its members with the approval of the **commissioner**~~executive director~~.
- (f) If the assuming insurer is not authorized or accredited to transact insurance or reinsurance in Kentucky, the credit permitted by paragraphs (c) and (d) of this subsection shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:
 1. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, shall comply with all requirements necessary to give the court jurisdiction, and shall abide by the final decision of the court or of any appellate court in the event of an appeal; and
 2. To designate the Secretary of State or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

- (3) A reduction from liability for the reinsurance ceded by an insurer to an assuming insurer not meeting the requirements of subsection (2) of this section shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer and the reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of:
 - (a) Cash;
 - (b) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets;
 - (c) Clean, irrevocable, unconditional letters of credit issued or confirmed by a qualified United States financial institution no later than December 31 in respect of the year for which filing is being made, and in the possession of the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance, or confirmation, shall, notwithstanding the issuing, or confirming, institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or
 - (d) Any other form of security acceptable to the **commissioner**~~executive director~~.
- (4) Cession of bulk reinsurance by a domestic insurer is subject to KRS 304.24-420.
- (5) (a) Credit shall be allowed as an asset or as a deduction from liability, to any ceding insurer for reinsurance ceded to an assuming insurer qualified therefor under subsections (2), (3), or (4) of this section, except that no such credit shall be allowed unless the reinsurance contract provides, in substance, that in the event of the insolvency of the ceding insurer, the reinsurance shall be payable under a contract reinsured by the assuming insurer on the basis of reported claims allowed by the liquidation court, without diminution because of the insolvency of the ceding insurer. Such payments shall be made directly to the ceding insurer or to its domiciliary liquidator except:

1. Where the contract or other written agreement specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer; or
 2. Where the assuming insurer, with the consent of the direct insured, has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.
- (b) The reinsurance agreement may provide that the domiciliary liquidator of an insolvent ceding insurer shall give written notice to the assuming insurer of the pendency of a claim against such ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defenses which it deems available to the ceding insurer or its liquidator. Such expense may be filed as a claim against the insolvent ceding insurer to the extent of a proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two (2) or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to such claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer.
- (6) Upon request of the **commissioner**~~[executive director]~~ an insurer shall promptly inform the **commissioner**~~[executive director]~~ in writing of the cancellation or any other material change of any of its reinsurance treaties or arrangements.
- (7) Subsections (1) to (3) of this section shall apply to all cessions after July 14, 1992, under reinsurance agreements which have had an inception, anniversary, or renewal date not less than six (6) months after July 14, 1992.

➔Section 994. KRS 304.5-150 is amended to read as follows:

Complete copies of reinsurance treaties and contracts shall, at his request, be filed with and approved by the **commissioner**~~[executive director]~~.

➔Section 995. KRS 304.6-010 is amended to read as follows:

- (1) In any determination of the financial condition of an insurer, there shall be allowed as assets only such assets as are owned by the insurer and which consist of:
- (a) Cash in the possession of the insurer, or in transit under its control, and including the true balance of any deposit in a solvent bank or trust company.
 - (b) Investments, securities, properties and loans acquired or held in accordance with this code and in connection therewith the following items:
 1. Interest due or accrued on any bond or evidence of indebtedness which is not in default and which is not valued on a basis including accrued interest.
 2. Declared and unpaid dividends on stocks and shares, unless such amount has otherwise been allowed as an asset.
 3. Interest due or accrued upon a collateral loan in an amount not to exceed one (1) year's interest thereon.
 4. Interest due or accrued on deposits in solvent banks and trust companies, and interest due or accrued on other assets, if such interest is in the judgment of the **commissioner**~~[executive director]~~ a collectible asset.
 5. Interest due or accrued on a mortgage loan, in an amount not exceeding in any event the amount, if any, of the excess of the value of the property less delinquent taxes thereon over the unpaid principal. Collectible interest one hundred eighty (180) days past due on a mortgage loan in default is a nonadmitted asset.
 6. Rent due or accrued on real property if such rent is not in arrears for more than three (3) months, and rent more than three (3) months in arrears if the payment of such rent be adequately secured by property held in the name of the tenant and conveyed to the insurer as collateral.

- (c) Premium notes, policy loans, and other policy assets and liens on policies of life insurance and annuity contracts and accrued interest thereon, in an amount not exceeding the policy reserves or cash surrender value.
- (d) The net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer, corresponding to the basis on which reserves are held.
- (e) Premiums in the course of collection, other than for life insurance, not more than three (3) months past due, less commissions payable thereon. To the extent that there is no related unearned premium, any uncollected premium balances which are over ninety (90) days due shall be nonadmitted. The uncollected agent's receivable on a policy basis which is over ninety (90) days due shall be nonadmitted regardless of any unearned premium.
- (f) Installment premiums other than life insurance premiums to the extent of the policy reserve carried on the policy to which premiums apply. If an installment premium is past due, the amount over ninety (90) days due plus all future installments that have been recorded on that policy shall be nonadmitted.
- (g) Bills receivable for premiums other than life insurance premiums, on policies permitted to be issued on such basis, to the extent of the policy reserve carried thereon. Bills receivable shall be nonadmitted if either of the following conditions are present:
 - 1. If an installment premium is over ninety (90) days due, the entire bill's receivable balance from that policy shall be nonadmitted; or
 - 2. If the bill's receivable balance due exceeds the policy's unearned premium, the amount in excess of the unearned premium is nonadmitted.
- (h) The full amount of reinsurance recoverable on paid losses and loss adjustment expense by a ceding insurer from a solvent reinsurer and which reinsurance is authorized under KRS 304.5-140.
- (i) Funds held or deposited with reinsured companies, whether premiums withheld as security for unearned premium and outstanding loss reserves or advances for loss payments, are admitted assets provided they do not exceed the liabilities they secure and provided the reinsured is solvent. Any funds in excess of the liabilities, and any funds held by an insolvent reinsured, shall be nonadmitted.
- (j) Deposits or equities recoverable from underwriting associations, syndicates and reinsurance funds, or from any suspended banking institution, to the extent deemed by the **commissioner**~~executive director~~ available for the payment of losses and claims and at values to be determined by the **commissioner**~~executive director~~.
- (k) As to a title insurer, its title plant and equipment reasonably necessary for conduct of its abstract or title insurance business, at not to exceed the cost thereof.
- (l) Electronic data processing equipment and operating software are admitted assets to the extent they conform to the requirements of SSAP No. 4. Electronic data processing equipment and software shall be depreciated for a period not to exceed three (3) years using methods detailed in SSAP No. 19. The aggregate value of admitted electronic data processing equipment and operating system software (net of accumulated depreciation) shall be limited to three percent (3%) of the reporting entity's capital and surplus on the statutory balance sheet for its most recently filed statement with its domiciliary state commissioner, adjusted to exclude electronic data processing equipment and operating system software, net deferred tax assets, and net positive goodwill.
- (m) A collateral loan or unconditional obligation for the payment of money secured by the pledge of an investment to the extent it conforms to the requirements of SSAP No. 4. The outstanding principal balance on the loan and any related accrued interest shall be recorded as an admitted asset subject to the following limitations:
 - 1. A collateral loan determined to be impaired shall be an admitted asset equal to the fair market value of the collateral less estimated costs to obtain and sell the collateral. The difference between the net fair value of the collateral and the amount of the collateral loan shall be written off in accordance with SSAP No. 5.
 - 2. A collateral loan secured by an asset that does not qualify as an investment shall be nonadmitted.

3. A collateral loan that exceeds the fair market value of the collateral shall be an admitted asset equal to the fair market value of the collateral. The excess shall be classified as a nonadmitted asset.
- (n) Deferred tax assets as defined in SSAP No. 10.
- (o) Receivable for securities as defined in SSAP No. 21.
- (p) Guaranteed investment contracts as defined in SSAP No. 21.
- (q) Cash value of life insurance where the reporting entity is owner and beneficiary as defined in SSAP No. 21.
- (r) Other amounts receivable under reinsurance contracts as defined in SSAP No. 21.
- (s) State guarantee association promissory notes.
- (t) All assets as may be allowed pursuant to the accounting practices and procedures manual.
- (u) Other assets, not inconsistent with the provisions of this section, deemed by the **commissioner**~~{executive director}~~ to be available for the payment of losses and claims, at values to be determined by the **commissioner**~~{executive director}~~.
- (2) Admitted assets may be allowed as deductions from corresponding liabilities, and liabilities may be charged as deductions from assets, and deductions from assets may be charged as liabilities, in accordance with the form of annual statement applicable to such insurer as prescribed by the **commissioner**~~{executive director}~~, or otherwise in his *or her* discretion. The **commissioner**~~{executive director}~~ may make official regulations prescribing the application of the provisions of this section.

➔Section 996. KRS 304.6-030 is amended to read as follows:

- (1) Any member, officer, director, employee, or attorney in fact of any company, association, or exchange licensed to do an insurance business in this state, who on behalf of such company, association, or exchange, borrows, rents, hires, leases, or otherwise engages the use of stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness owned or issued by any other corporation, company, association, or individual, or of any government, political subdivision, or agency thereof, with intent to injure or defraud any other company, body politic, or corporation, or person, or to deceive the **commissioner**~~{executive director}~~ or other person legally authorized to examine the affairs of any such company, association, or exchange, is guilty of a Class D felony.
- (2) Any individual that aids and abets such insurance company, association, or exchange in borrowing, renting, hiring, leasing, or engaging the use of such stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness, is guilty of a Class D felony.
- (3) If any insurance company, association, or exchange is found in possession of stocks, bonds, debentures, notes, investment certificates, securities, or other obligations or evidences of indebtedness acquired in violation of subsection (1) of this section, or if any of its officers, directors, members, or attorneys in fact have been convicted under subsection (1) of this section, the company, association, or exchange may be subject to suspension of its certificate of authority by the **commissioner**~~{executive director}~~. Nothing in this section shall be construed to prevent the **commissioner**~~{executive director}~~ from commencing delinquency proceedings under this code.

➔Section 997. KRS 304.6-040 is amended to read as follows:

In any determination of the financial condition of an insurer, capital stock and liabilities to be charged against its assets shall include:

- (1) The amount of its capital stock outstanding, if any, less the amount of shares held by the insurer as treasury stock as provided in subsection (3) of KRS 304.6-020.
- (2) The amount, estimated consistent with the provisions of Subtitle 6, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expenses of adjustment or settlement thereof.

- (3) With reference to life insurance policies and annuity contracts, and disability and accidental death benefits in or supplemental thereto:
 - (a) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to KRS 304.6-130 to 304.6-180, inclusive.
 - (b) Reserves for disability benefits, for both active and disabled lives required by paragraph (e) of subsection (2) of KRS 304.6-140.
 - (c) Reserves for accidental death benefits, required by paragraph (f) of subsection (2) of KRS 304.6-140.
 - (d) Any additional reserves which may be required by the **commissioner**~~[executive director]~~ consistent with applicable customary and general practice in insurance accounting as set forth in regulations promulgated by the **commissioner**~~[executive director]~~ but no such additional reserve shall be required of any company solely for contingent liabilities which may arise under any agreement, filed with and approved by the **commissioner**~~[executive director]~~, for the assumption of liability by the company growing out of the acts of its exclusive agents within the course and scope of their representation.
- (4) Reserves for health insurance required by KRS 304.6-070.
- (5) With reference to insurance other than specified in subsections (3) and (4) of this section, and other than title insurance, the amount of the policy reserves computed in accordance with Subtitle 6.
- (6) Taxes, expenses and other obligations due or accrued at the date of the statement.
- (7) Deferred tax liabilities as defined in SSAP No. 10.

➔Section 998. KRS 304.6-060 is amended to read as follows:

As to marine and transportation insurance, the entire amount of premiums on trip risks not terminated shall be deemed unearned; and the **commissioner**~~[executive director]~~ shall require the insurer to carry a reserve equal to one hundred percent (100%) of premiums on trip risks written during the month ended as of the date of statement.

➔Section 999. KRS 304.6-070 is amended to read as follows:

For all health insurance policies the insurer shall maintain an active life reserve and an actuarially determined claim reserve for unaccrued benefits which shall place a sound value on its liabilities under such policies and be not less than the reserve according to appropriate standards set forth in regulations issued by the **commissioner**~~[executive director]~~ and in no event less in the aggregate than the pro rata gross unearned premiums for such policies.

➔Section 1000. KRS 304.6-090 is amended to read as follows:

For the protection of the policyholders against loss during periods of extreme economic contraction, each mortgage guaranty insurer shall maintain a liability referred to as a statutory contingency reserve. The statutory contingency reserve shall be a separate fund, in addition to the mortgage guaranty insurer's unearned premium reserve. The insurer shall annually contribute fifty percent (50%) of the earned premiums from mortgage guaranty insurance contracts to this liability, which shall be maintained for ten (10) years regardless of the coverage period for which premiums were paid. Subject to the approval of the **commissioner**~~[executive director]~~, the contingency reserve may be released in any year in which actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums. Any reductions shall be made on a first-in, first-out basis. Changes in the reserve shall be recorded directly to unassigned funds.

➔Section 1001. KRS 304.6-100 is amended to read as follows:

- (1) As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable, and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the **commissioner**~~[executive director]~~, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.
- (2) Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the **commissioner**~~[executive director]~~ may require the insurer to maintain additional reserves.

- (3) The ***commissioner***~~[executive director]~~ may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

➔Section 1002. KRS 304.6-130 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall annually value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance policies and annuity and pure endowment contracts of every life insurer transacting business in this state, except that in the case of an alien insurer, such valuation shall be limited to its United States business; and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods, net leveled premium method or other, used in the calculation of such reserves. In calculating such reserves, ***the commissioner***~~[he]~~ may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required of any foreign or alien insurer, ***the commissioner***~~[he]~~ may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard herein provided and if the official of such state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the ***commissioner***~~[executive director]~~ when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by law of that state or jurisdiction. Where any such valuation is made by the ***commissioner***~~[executive director]~~, ***the commissioner***~~[he]~~ may use the actuary of the ***department***~~[office]~~ or employ an actuary for the purpose, and the reasonable compensation and expenses of the actuary, at a rate approved by the ***commissioner***~~[executive director]~~, upon demand by the ***commissioner***~~[executive director]~~ supported by an itemized statement of such compensation and expenses, shall be paid by the insurer. When a domestic insurer furnishes the ***commissioner***~~[executive director]~~ with a valuation of its outstanding policies as computed by its own actuary or by an actuary deemed satisfactory for the purpose by the ***commissioner***~~[executive director]~~, the valuation shall be verified by the actuary of the ***department***~~[office]~~ without cost to the insurer.
- (2) Any such insurer which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the ***commissioner***~~[executive director]~~, adopt any lower standard of valuation, but not lower than the minimum herein provided.

➔Section 1003. KRS 304.6-140 is amended to read as follows:

- (1) This subsection applies only to policies and contracts issued prior to January 1, 1948, or such earlier date after June 13, 1944, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law. Except as otherwise provided in paragraph (b) of subsection (2) of this section, the minimum standard for the valuation of all such policies and contracts shall be that provided by the laws in effect immediately prior to such date, except that the minimum standard for the valuation of annuities and pure endowments purchased under group annuity and pure endowment contracts issued prior to such effective date shall be that provided by the laws in effect immediately prior to such date but replacing the interest rates specified in such laws by an interest rate of five percent (5%) per annum. Reserves for all such policies and contracts may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by this subsection.
- (2) This subsection applies only to policies and contracts issued on and after January 1, 1948, or such earlier date after June 13, 1944, as shall have been elected by an insurer as the date on and after which it would comply with the standard nonforfeiture law, except as otherwise provided in paragraph (b) of this subsection for group annuity and pure endowment contracts issued prior to such date.
- (a) Except as otherwise provided in paragraph (b) of this subsection and in KRS 304.6-145, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation methods defined in KRS 304.6-150, 304.6-155, and 304.6-180, five and one-half percent (5.5%) interest for single premium life insurance policies, five percent (5%) interest for group annuity and pure endowment contracts, four percent (4%) interest for all other such policies and contracts issued prior to June 17, 1978, four and one-half percent (4-1/2%) interest for such policies and contracts, other than annuity and pure endowment contracts, issued on or after June 17, 1978, and the following tables:
1. Standard ordinary mortality table. For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, -- the

commissioners 1941 standard ordinary mortality table; provided, however, that the commissioners 1958 standard ordinary mortality table shall be the table for such minimum standard for such policies issued on and after January 1, 1966, or such earlier date after June 16, 1960, as shall have been elected by an insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law and prior to the effective date of KRS 304.15-342; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in KRS 304.6-130 to 304.6-180, inclusive, may be calculated according to an age not more than six (6) years younger than the actual age of the insured; and for such policies issued on or after the effective date of KRS 304.15-342 the commissioners 1980 standard ordinary mortality table, or at the election of the company for any one (1) or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors, or any ordinary mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~executive director~~ for use in determining the minimum standard of valuation for such policies.

2. Standard industrial mortality table. For all industrial life insurance policies issued on the standard basis, excluding any disability and accidental death benefits in such policies, -- the 1941 standard industrial mortality table; provided, however, that the commissioners 1961 standard industrial mortality table shall be the table for such minimum standard for such policies issued on and after January 1, 1968, or such earlier date after June 14, 1962, as shall have been elected by the insurer as the date on and after which it would use such table as the basis for minimum cash surrender values and nonforfeiture benefits under the standard nonforfeiture law or any industrial mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~executive director~~ for use in determining the minimum standard of valuation for such policies.
3. Individual annuity mortality table or annuity mortality table. For individual annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies -- the 1937 standard annuity mortality table or, at the option of the insurer, the annuity mortality table for 1949, ultimate, or any modification of either of these tables approved by the **commissioner**~~executive director~~.
4. Group annuity mortality table. For group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such policies -- the group annuity mortality table for 1951, any modification of such table approved by the **commissioner**~~executive director~~, or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts.
5. Disability table. For total and permanent disability benefits in or supplementary to ordinary policies or contracts on active and disabled lives -- for policies or contracts issued on or after January 1, 1966, the tables of period 2 disablement rates and the 1930 to 1950 termination rates of the 1952 disability study of the society of actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the **commissioner**~~executive director~~ for use in determining the minimum standard of valuation for such policies; for policies or contracts issued on or after January 1, 1961 and prior to January 1, 1966, either such tables or, at the option of the insurer, the class (3) disability table (1926), and for policies issued prior to January 1, 1961, the class (3) disability table (1926). In addition, any such table shall, for active lives, be combined with a mortality table permitted for calculating the reserves for life insurance policies.
6. Accidental death mortality table. For accidental death benefits in or supplementary to policies -- for policies issued on or after January 1, 1966, the 1959 accidental death benefits table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the **commissioner**~~executive director~~ for use in determining the minimum standard of valuation for such policies; for policies issued on or after January 1, 1961 and prior to January 1, 1966, either such table or, at the option of the insurer, the inter-company double indemnity mortality table; and for policies issued prior

to January 1, 1961, the inter-company double indemnity mortality table. Any such table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies.

7. Group life and other tables. For group life insurance, life insurance issued on the substandard basis and other special benefits -- such tables as may be approved by the *commissioner*~~[executive director]~~.
- (b) Except as provided in KRS 304.6-145, the minimum standard for the valuation of all individual annuity and pure endowment contracts issued prior to January 1, 1979, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, six percent (6%) interest for single premium immediate annuity contracts and four percent (4%) interest for all other contracts, and the 1971 individual annuity mortality table, or any modification of this table approved by the *commissioner*~~[executive director]~~.
1. The minimum standard for the valuation of all annuities and pure endowments purchased prior to January 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, six percent (6%) interest, and the 1971 group annuity mortality table, or any modification of this table approved by the *commissioner*~~[executive director]~~.
 2. The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after January 1, 1979, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, seven and one-half percent (7-1/2%) interest for single premium immediate annuity contracts, five and one-half percent (5-1/2%) interest for single premium deferred annuity and pure endowment contracts and four and one-half percent (4-1/2%) interest for all other individual annuity and pure endowment contracts, and the 1971 individual annuity mortality table, or any individual annuity mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the *commissioner*~~[executive director]~~ for use in determining the minimum standards of valuation for such contracts, or any modification of these tables approved by the *commissioner*~~[executive director]~~.
 3. The minimum standard for the valuation of all annuities and pure endowments purchased on or after January 1, 1979 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the commissioners reserve valuation methods defined in KRS 304.6-150 and 304.6-155, seven and one-half percent (7-1/2%) interest, and the 1971 group annuity mortality table, or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by regulation promulgated by the *commissioner*~~[executive director]~~ for use in determining the minimum standards of valuation for such contracts, or any modification of these tables approved by the *commissioner*~~[executive director]~~.
 4. The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after July 1, 1976, and prior to January 1, 1979, and of all annuities and pure endowments purchased on or after July 1, 1976, and prior to January 1, 1979, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the standard specified in this paragraph, or, at the option of the insurer with respect to any such contracts or purchases, the standard specified in paragraph (a) of this subsection.

➔Section 1004. KRS 304.6-145 is amended to read as follows:

- (1) The interest rates used in determining the minimum standard for the valuation of:
 - (a) All life insurance policies issued in a particular calendar year, on or after the effective date of KRS 304.15-342;
 - (b) All individual annuity and pure endowment contracts issued in a particular calendar year on or after January 1, 1983;

- (c) All annuities and pure endowments purchased in a particular calendar year on or after January 1, 1983 under group annuity and pure endowment contracts; and
 - (d) The net increase, if any, in a particular calendar year after January 1, 1983, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation interest rates as defined in this section.
- (2) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one percent (1/4 of 1%):
- (a) For life insurance,

$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$
 - (b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R1 is the lesser of R and .09,
R2 is the greater of R and .09,
R is the reference interest rate defined in this section,
and W is the weighting factor defined in this section,
 - (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in paragraph (b) above, the formula for life insurance stated in paragraph (a) above shall apply to annuities and guaranteed interest contracts, with guarantee durations in excess of ten (10) years and the formula for single premium immediate annuities stated in paragraph (b) above shall apply to annuities and guaranteed interest contracts with guarantee duration of ten (10) years or less;
 - (d) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in paragraph (b) above shall apply;
 - (e) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in paragraph (b) above shall apply.
- However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one percent (1/2 of 1%), the calendar year statutory valuation interest rate for such life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when KRS 304.15-342 becomes effective.

- (3) The weighting factors referred to in the formulas stated above are given in the following tables:

- (a) Weighting Factors for Life Insurance:

Guarantee Duration (Years)	Weighting Factors
10 or less	.50
More than 10, but not more than 20	.45
More than 20	.35

For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy or under options to convert to plans of life insurance with premium rates or nonforfeiture values or both which are guaranteed in the original policy;

- (b) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options:

.80

- (c) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in (b) above, shall be as specified in tables 1., 2., and 3. below, according to the rules and definitions in 4., 5., and 6. below:

1. For annuities and guaranteed interest contracts valued on an issue year basis:

Guarantee Duration (Years)	Weighting Factor for Plan Type		
	A	B	C
5 or less:	.80	.60	.50
More than 5, but not more than 10	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

2. For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in 1. above increased by:

Plan Type		
A	B	C
.15	.25	.05

3. For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one (1) year after issue or purchase and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve (12) months beyond the valuation date, the factors shown in 1. or derived in 2. increased by:

Plan Type		
A	B	C
.05	.05	.05

4. For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty (20) years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence.

5. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five (5) years or more, or as an immediate life annuity, or no withdrawal permitted.

Plan Type B: Before expiration of the interest rate guarantee, policyholder may withdraw funds only with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or without such adjustment but in installments over five (5) years or more, or no withdrawal permitted. At the end of interest rate guarantee, funds may be withdrawn without such adjustment in a single sum or installments over less than five (5) years.

Plan Type C: Policyholder may withdraw funds before expiration of interest rate guarantee in a single sum or installments over less than five (5) years either without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurer, or subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

6. An insurer may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options must be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund.

(4) The reference interest rate referred to in subsection (2) of this section shall be defined as follows:

- (a) For all life insurance, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
- (b) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
- (c) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) above, with guarantee duration in excess of ten (10) years, the lesser of the average over a period of thirty-six (36) months and the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
- (d) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in paragraph (b) above, with guarantee duration of ten (10) years or less, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
- (e) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve (12) months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.
- (f) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in paragraph (b) above, the average over a period of twelve (12) months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average - Monthly Average Corporates, as published by Moody's Investors Service, Inc.

(5) In the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc. is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate, which is adopted by the National

Association of Insurance Commissioners and approved by regulation promulgated by the ***commissioner***~~[executive director]~~, may be substituted.

➔Section 1005. KRS 304.6-170 is amended to read as follows:

- (1) Reserves for any category of policies, contracts, or benefits as established by the ***commissioner***~~[executive director]~~, which are subject to subsection (2) of KRS 304.6-140, may be calculated, at the option of the insurer, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any nonforfeiture benefits provided for therein.
- (2) Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the ***commissioner***~~[executive director]~~, adopt any lower standard of valuation, but not lower than the minimum herein provided; provided, however, that for the purposes of this section, the holding of additional reserves previously determined by a qualified actuary to be necessary to render the opinion requested by KRS 304.6-171 shall not be deemed to be the adoption of a higher standard of valuation.

➔Section 1006. KRS 304.6-171 is amended to read as follows:

- (1) This section shall become operative at the end of the first full calendar year following the year of enactment.
- (2) Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the ***commissioner***~~[executive director]~~ by administrative regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts, and comply with applicable laws of this state. The ***commissioner***~~[executive director]~~ by administrative regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.
- (3)
 - (a) Every life insurance company, except as exempted by or pursuant to administrative regulation, shall also annually include in the opinion required by subsection (2) of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the ***commissioner***~~[executive director]~~ by administrative regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.
 - (b) The ***commissioner***~~[executive director]~~ may provide by administrative regulation for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.
- (4) Each opinion required by subsection (2) of this section shall be governed by the following provisions:
 - (a) A memorandum, in form and substance acceptable to the ***commissioner***~~[executive director]~~ as specified by administrative regulation, shall be prepared to support each actuarial opinion.
 - (b) If the insurance company fails to provide a supporting memorandum at the request of the ***commissioner***~~[executive director]~~ within a period specified by administrative regulation or the ***commissioner***~~[executive director]~~ determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the administrative regulations or is otherwise unacceptable to the ***commissioner***~~[executive director]~~, the ***commissioner***~~[executive director]~~ may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting memorandum as is required by the ***commissioner***~~[executive director]~~.
- (5) Every opinion shall be governed by the following provisions:
 - (a) The opinion shall be submitted with the annual statement reflecting the valuation of reserve liabilities for each year ending on or after December 31, 1996.

- (b) The opinion shall apply to business in force including individual and group health insurance plans, in form and substance acceptable to the **commissioner**~~{executive director}~~ as specified by administrative regulation.
- (c) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the **commissioner**~~{executive director}~~ may by administrative regulation prescribe.
- (d) In the case of an opinion required to be submitted by a foreign or alien company, the **commissioner**~~{executive director}~~ may accept the opinion filed by that company with the insurance supervisory official of another state if the **commissioner**~~{executive director}~~ determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.
- (e) For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in administrative regulations.
- (f) Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the **commissioner**~~{executive director}~~, for any act, error, omission, decision, or conduct with respect to the actuary's opinion.
- (g) Disciplinary action by the **commissioner**~~{executive director}~~ against the company or the qualified actuary shall be defined in administrative regulations by the **commissioner**~~{executive director}~~.
- (h) Any memorandum in support of the opinion, and any other material provided by the company to the **commissioner**~~{executive director}~~ in connection therewith, shall be kept confidential by the **commissioner**~~{executive director}~~ and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by administrative regulations promulgated hereunder. The memorandum or other material may otherwise be released by the **commissioner**~~{executive director}~~ with the written consent of the company or to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the **commissioner**~~{executive director}~~ for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is cited by the company in its marketing, or is cited before any governmental agency other than a state insurance department or office, or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

➔Section 1007. KRS 304.6-190 is amended to read as follows:

- (1) A mortgage loan shall not be made or acquired by a domestic insurer unless an appraisal has been made by a competent appraiser for the purpose of the investment which meets the following requirements:
 - (a) The appraisal shall be made prior to the date that the insurer commits to make the investment;
 - (b) The appraisal shall be written and shall state an opinion of value as of a specific date, supported by presentation and analysis of relevant market material;
 - (c) The appraisal shall provide the current fair market value of the real estate, that is the value of the real estate in an arms-length sale as of the date of the appraisal; and
 - (d) The appraisal shall be reviewed and signed by a principal of the firm. The principal shall be a specific individual having appraisal experience with the property type, and shall be accountable for the conclusions contained in the report.
- (2) Appraisers conducting appraisals pursuant to this section shall not be compensated, directly or indirectly, on the basis of the outcome of the appraisal performed and shall have direct reporting access to the chief investment officer of the insurer.
- (3) The **department**~~{office}~~ may contract with qualified appraisers to conduct appraisals if an insurer fails to have appraisals done pursuant to this section. All costs for the services of an appraiser pursuant to this subsection shall be borne by the insurer.
- (4) All appraisals shall be placed in the appropriate real estate mortgage loan file, and shall be subject to evaluation by the **department**~~{office}~~.

- (5) The ~~department~~~~office~~ shall randomly select a number of appraisals from each domestic insurer with a mortgage loan portfolio and evaluate the quality of the appraisal. The evaluation shall be done annually and the number of appraisals reviewed shall be determined by the ~~department~~~~office~~.

➔Section 1008. KRS 304.7-012 is amended to read as follows:

As used in this subtitle:

- (1) "Acceptable collateral" means:
 - (a) As to securities lending transactions, and for the purpose of calculating counterparty exposure amount, cash, cash equivalents, letter of credit, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, and as to lending foreign securities, sovereign debt rated 1 by the SVO;
 - (b) As to repurchase transactions, cash, cash equivalents, direct obligations of, or securities that are fully guaranteed as to principal and interest by, the government of the United States, any agency of the United States, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation; and
 - (c) As to reverse repurchase transactions, cash and cash equivalents.
- (2) "Acceptable private mortgage insurance" means insurance written by a private insurer protecting a mortgage lender against loss occasioned by a mortgage loan default and issued by a licensed mortgage insurance company, with an SVO 1 designation or a rating issued by a nationally recognized statistical rating organization equivalent to an SVO 1 designation, that covers losses to an eighty percent (80%) loan-to-value ratio.
- (3) "Accident and health insurance" means protection that provides payment of benefits for covered sickness or accidental injury, excluding credit insurance, disability insurance, accidental death and dismemberment insurance, and long-term care insurance.
- (4) "Accident and health insurer" means a licensed life or health insurer or health service corporation whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively.
- (5) "Admitted assets" means assets permitted to be reported as admitted assets in accordance with Subtitle 6 of KRS Chapter 304 on the statutory financial statement of the insurer most recently required to be filed with the ~~commissioner~~~~executive director~~, but excluding assets of separate accounts.
- (6) "Affiliate" means, as to any person, another person that, directly or indirectly through one (1) or more intermediaries, controls, is controlled by, or is under common control with the person.
- (7) "Asset-backed security" means a security or other instrument, excluding a mutual fund, evidencing an interest in, or the right to receive payments from, or payable from distributions on, an asset, a pool of assets, or specifically divisible cash flows that are legally transferred to a trust or another special purpose bankruptcy-remote business entity, on the following conditions:
 - (a) The trust or other business entity is established solely for the purpose of acquiring specific types of assets or rights to cash flows, issuing securities and other instruments representing an interest in or right to receive cash flows from those assets or rights, and engaging in activities required to service the assets or rights and any credit enhancement or support features held by the trust, or other business entity; and
 - (b) The assets of the trust or other business entity consist solely of interest bearing obligations or other contractual obligations representing the right to receive payment from the cash flows from the assets or rights. However, the existence of credit enhancement, such as letters of credit or guarantees, or support features such as swap agreements, shall not cause a security or other instrument to be ineligible as an asset-backed security.
- (8) "Business entity" includes a sole proprietorship, corporation, limited liability company, association, partnership, joint stock company, joint venture, mutual fund, trust, joint tenancy, or other similar form of business organization, whether organized for profit or not-for-profit.

- (9) "Cap" means an agreement obligating the seller to make payments to the buyer, with each payment based on the amount by which a reference price, level, or the performance or value of one (1) or more underlying interests exceeds a predetermined number, sometimes called the strike rate or strike price.
- (10) "Capital and surplus" means the sum of the capital and surplus of the insurer required to be shown on the statutory financial statement of the insurer most recently required to be filed with the ~~commissioner~~~~executive director~~.
- (11) "Cash equivalents" means short-term, highly rated, and highly liquid investments or securities readily convertible to known amounts of cash without penalty and so near maturity that they present insignificant risk of change in value. Cash equivalents include government money market mutual funds and class one money market mutual funds. For purposes of this definition:
- (a) "Short-term" means investments with a remaining term to maturity of ninety (90) days or less; and
 - (b) "Highly rated" means an investment rated P-1 by Moody's Investors Service, Inc., or A-1 by Standard and Poor's division of The McGraw-Hill Companies, Inc. or its equivalent rating by a nationally recognized statistical rating organization recognized by the SVO.
- (12) "Class one bond mutual fund" means a mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.
- (13) "Class one money market mutual fund" means a money market mutual fund that at all times qualifies for investment using the bond class one reserve factor under the Purposes and Procedures of the Securities Valuation Office, or any successor publication.
- (14) "Code" means KRS Chapter 304 and all administrative regulations promulgated as authorized.
- (15) "Collar" means an agreement to receive payments as the buyer of an option, cap, or floor and to make payment as the seller of a different option, cap, or floor.
- (16) "Commercial mortgage loan" means a loan secured by a mortgage, other than a residential mortgage loan.
- (17) "Construction loan" means a loan of less than three (3) years in term, made for financing the cost of construction of a building or other improvement to real estate, that is secured by the real estate.
- (18) "Control" means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of another person. This presumption may be rebutted by a showing that control does not exist in fact. The ~~commissioner~~~~executive director~~ may determine, after furnishing all interested persons notice and an opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.
- (19) "Counterparty exposure amount" means:
- (a) The net amount of credit risk attributable to a derivative instrument entered into with a business entity other than through a qualified exchange, qualified foreign exchange, or cleared through a qualified clearinghouse ("over-the-counter derivative instrument"). The amount of credit risk equals:
 - 1. The market value of the over-the-counter derivative instrument if the liquidation of the derivative instrument would result in a final cash payment to the insurer; or
 - 2. Zero (0) if the liquidation of the derivative instrument would not result in a final cash payment to the insurer.
 - (b) If over-the-counter derivative instruments are entered into under a written master agreement that provides for netting of payments owed by the respective parties, and the domiciliary jurisdiction of the counterparty is either within the United States or if not within the United States, within a foreign jurisdiction listed in the Purposes and Procedures of the Securities Valuation Office as eligible for netting, the net amount of credit risk shall be the greater of zero (0) or the net sum of:

1. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment to the insurer; and
 2. The market value of the over-the-counter derivative instruments entered into under the agreement, the liquidation of which would result in a final cash payment by the insurer to the business entity.
- (c) For open transactions, market value shall be determined at the end of the most recent quarter of the insurer's fiscal year and shall be reduced by the market value of acceptable collateral held by the insurer or placed in escrow by one (1) or both parties.
- (20) "Covered" means that an insurer owns or can immediately acquire, through the exercise of options, warrants, or conversion rights already owned, the underlying interest in order to fulfill or secure its obligations under a call option, cap, or floor it has written, or has set aside under a custodial or escrow agreement, cash, or cash equivalents with a market value equal to the amount required to fulfill its obligations under a put option it has written, in an income generation transaction.
- (21) "Credit tenant loan" means a mortgage loan that is made primarily in reliance on the credit standing of a major tenant, structured with an assignment of the rental payments to the lender with real estate pledged as collateral in the form of a first lien.
- (22) (a) "Derivative instrument" means an agreement, option, instrument, a series, or combination thereof:
1. To make or take delivery of, or assume or relinquish, a specified amount of one (1) or more underlying interests, or to make a cash settlement in lieu thereof; or
 2. That has a price, performance, value, or cash flow based primarily upon the actual or expected price, level, performance, value, or cash flow of one (1) or more underlying interests.
- (b) Derivative instruments include options, warrants used in a hedging transaction and not attached to another financial instrument, caps, floors, collars, swaps, forwards, futures, any other agreements, options, or instruments substantially similar thereto, or any series or combination thereof, and any agreements, options, or instruments permitted under administrative regulations promulgated under KRS 304.7-367. Derivative instruments shall not include an investment authorized by KRS 304.7-365, 304.7-367, 304.7-401, 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, 304.7-417, 304.7-421, 304.7-459, 304.7-461, 304.7-463, 304.7-465, 304.7-467, and 304.7-469.
- (23) "Derivative transaction" means a transaction involving the use of one (1) or more derivative instruments.
- (24) "Direct" or "directly", when used in connection with an obligation, means that the designated obligor is primarily liable on the instrument representing the obligation.
- (25) "Dollar roll transaction" means two (2) simultaneous transactions with different settlement dates no more than ninety-six (96) days apart, so that in the transaction with the earlier settlement date, an insurer sells to a business entity, and in the other transaction the insurer is obligated to purchase from the same business entity, substantially similar securities of the following types:
- (a) Asset-backed securities issued, assumed, or guaranteed by the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or their respective successors; and
 - (b) Other asset-back securities referred to in Section 106 of Title I of the Secondary Mortgage Market Enhancement Act of 1984 (15 U.S.C. sec. 77r-1), as amended.
- (26) "Domestic jurisdiction" means the United States, Canada, any state, any province of Canada, or any political subdivision of any of the foregoing.
- (27) "Equity interest" means any of the following that are not rated credit instruments:
- (a) Common stock;
 - (b) Preferred stock;
 - (c) Trust certificate;

- (d) Equity investment in an investment company other than a money market mutual fund or a class one bond mutual fund;
 - (e) Investment in a common trust fund of a bank regulated by a federal or state agency;
 - (f) An ownership interest in mineral, oil, or gas, the rights to which have been separated from the underlying fee interest in the real estate where the mineral, oil, or gas are located;
 - (g) Instruments that are mandatorily, or at the option of the issuer, convertible to equity;
 - (h) Limited partnership interests and those general partnership interests authorized under KRS 304.7-363(4);
 - (i) Member interests in limited liability companies;
 - (j) Warrants or other rights to acquire equity interests that are created by the person that owns or would issue the equity to be acquired; or
 - (k) Instruments that would be rated credit instruments except for the provisions of subsection (70)(b) of this section.
- (28) "Equivalent securities" means:
- (a) In a securities lending transaction, securities that are identical to the loaned securities in all features including the amount of the loaned securities, except as to certificate number if held in physical form, but if any different security shall be exchanged for a loaned security by recapitalization, merger, consolidation, or other corporate action, the different security shall be deemed to be the loaned security;
 - (b) In a repurchase transaction, securities that are identical to the purchased securities in all features including the amount of the purchased securities, except as to the certificate number if held in physical form; or
 - (c) In a reverse repurchase transaction, securities that are identical to the sold securities in all features including the amount of the sold securities, except as to the certificate number if held in physical form.
- (29) "Floor" means an agreement obligating the seller to make payments to the buyer in which each payment is based on the amount by which a predetermined number, sometimes called the floor rate or price, exceeds a reference price, level, performance, or value of one (1) or more underlying interests.
- (30) "Foreign currency" means a currency other than that of a domestic jurisdiction.
- (31) (a) "Foreign investment" means an investment in a foreign jurisdiction, or an investment in a person, real estate, or asset domiciled in a foreign jurisdiction, that is substantially of the same type as those eligible for investment under this subtitle, other than KRS 304.7-417 and 304.7-469. An investment shall not be deemed to be foreign if the issuing person, qualified primary credit source, or qualified guarantor is a domestic jurisdiction or a person domiciled in a domestic jurisdiction, unless:
- 1. The issuing person is a shell business entity; and
 - 2. The investment is not assumed, accepted, guaranteed, insured, or otherwise backed by a domestic jurisdiction or a person that is not a shell business entity, domiciled in a domestic jurisdiction.
- (b) For purposes of this definition:
- 1. "Shell business entity" means a business entity having no economic substance, except as a vehicle for owning interests in assets issued, owned, or previously owned by a person domiciled in a foreign jurisdiction;
 - 2. "Qualified guarantor" means a guarantor against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction; and
 - 3. "Qualified primary credit source" means the credit source to which an insurer looks for payment as in an investment and against which an insurer has a direct claim for full and timely payment, evidenced by a contractual right for which an enforcement action can be brought in a domestic jurisdiction.
- (32) "Foreign jurisdiction" means a jurisdiction other than a domestic jurisdiction.

- (33) "Forward" means an agreement other than a future, to make, take delivery of, or effect a cash settlement based on the actuarial or expected price, level, performance, or value of one (1) or more underlying interests.
- (34) "Future" means an agreement, traded on a qualified exchange or qualified foreign exchange, to make, take delivery of, or effect a cash settlement based on the actual or expected price, level, performance, or value of one (1) or more underlying interest.
- (35) "Government money market mutual fund" means a money market mutual fund that at all times:
 - (a) Invests only in obligations issued, guaranteed, or insured by the federal government of the United States or collateralized repurchase agreements composed of these obligations; and
 - (b) Qualifies for investment without a reserve under the Purposes and Procedures of the Securities Valuation Office or any successor publication.
- (36) "Government sponsored enterprise" means a:
 - (a) Governmental agency; or
 - (b) Corporation, limited liability company, association, partnership, joint stock company, joint venture, trust, or other entity or instrumentality organized under the laws of any domestic jurisdiction to accomplish a public policy or other governmental purpose.
- (37) "Guaranteed or insured", when used in connection with an obligation acquired under this subtitle, means that the guarantor or insurer has agreed to:
 - (a) Perform or insure the obligation of the obligor or purchase the obligation; or
 - (b) Be unconditionally obligated until the obligation is repaid to maintain in the obligor a minimum net worth, fixed charge coverage, stockholders' equity, or sufficient liquidity to enable the obligor to pay the obligation in full.
- (38) "Hedging transaction" means a derivative transaction that is entered into and maintained to reduce:
 - (a) The risk of a change in the value, yield, price, cash flow, or quantity of assets or liabilities that the insurer has acquired or incurred or anticipates acquiring or incurring; or
 - (b) The currency exchange rate risk or the degree of exposure as to assets or liabilities that an insurer has acquired or incurred or anticipates acquiring or incurring.
- (39) "High grade investment" means a rated credit instrument rated 1 or 2 by the SVO.
- (40) "Income" means, as to a security, interest, accrual of discount, dividends, or other distributions, such as rights, tax or assessment, or assessment credits, warrants, and distributions in kind.
- (41) "Income generation transaction" means a derivative transaction involving the writing of covered call options, covered put options, covered caps, or covered floors that is intended to generate income or enhance return.
- (42) "Initial margin" means that amount of cash, securities, or other consideration initially required to be deposited to establish a futures position.
- (43) "Insurance future" means a future relating to an index or pool that is based on insurance-related items.
- (44) "Insurance futures option" means an option on an insurance future.
- (45) "Investment company" means an investment company as defined in Section 3(a) of the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended, and a person described in Section 3(c) of that Act.
- (46) "Investment company series" means an investment portfolio of an investment company that is organized as a series company and to which assets of the investment company have been specifically allocated.
- (47) "Investment practices" means transactions of the types described in KRS 304.7-415, 304.7-419, 304.7-467, and 304.7-471.
- (48) "Investment subsidiary" means a subsidiary of an insurer engaged or organized to engage exclusively in the ownership and management of assets authorized as investment for the insurer if each subsidiary agrees to limit its investment in any asset so that its investments will not cause the amount of the total investment of the

insurer to exceed any of the investment limitations or avoid any other provisions of this subtitle applicable to the insurer. As used in this subsection, the total investment of the insurer shall include:

- (a) Direct investment by the insurer in an asset; and
 - (b) The insurer's proportionate share of an investment in an asset by an investment subsidiary of the insurer, that shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the insurer's ownership interest in the subsidiary.
- (49) "Investment strategy" means the techniques and methods used by an insurer to meet its investment objectives, such as active bond portfolio management, passive bond portfolio management, interest rate anticipation, growth investing, and value investing.
- (50) "Letter of credit" means a clean, irrevocable, and unconditional letter of credit issued or confirmed by, and payable and presentable at, a financial institution on the list of financial institutions meeting the standards for issuing letters of credit under the Purposes and Procedures of the Securities Valuation Office or any successor publication. To constitute acceptable collateral for the purposes of KRS 304.7-415 and 304.7-467, a letter of credit shall have an expiration date beyond the term of the subject transaction.
- (51) "Limited liability company" means a business organization, excluding partnerships and ordinary business corporations, organized or operating under the laws of the United States or any state thereof that limits the personal liability of investors to the equity investment of the investor in the business entity.
- (52) "Lower grade investment" means a rated credit instrument rated 4, 5, or 6 by the SVO.
- (53) "Market value" means:
- (a) As to cash and letters of credit, the amounts thereof; and
 - (b) As to security as of any date, the price for the security on that date obtained from a generally recognized source or the most recent quotation from such a source or, to the extent no generally recognized source exists, the price for the security as determined in good faith by the parties to a transaction, plus accrued but unpaid income thereon to the extent not included in the price as of that date.
- (54) "Medium grade investment" means a rated credit instrument rated 3 by the SVO.
- (55) "Money market mutual fund" means a mutual fund that meets the conditions of 17 Code of Federal Regulations Par. 270.2a-7, under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or renumbered.
- (56) "Mortgage loan" means an obligation secured by a mortgage, deed of trust, trust deed, or other consensual lien on real estate.
- (57) "Multilateral development bank" means an international development organization of which the United States is a member.
- (58) "Mutual fund" means an investment company or, in the case of an investment company that is organized as a series company, an investment company series, that, in either case, is registered with the United States Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.
- (59) "NAIC" means the National Association of Insurance Commissioners.
- (60) "Obligation" means a bond, note, debenture, or a trust certificate including an equipment certificate, production payment, negotiable bank certificate of deposit, bankers' acceptance, credit tenant loan, loan secured by financing net leases, and other evidence of indebtedness for the payment of money or participations, certificates, or other evidences of an interest in any of the foregoing, whether constituting a general obligation of the issuer or payable only out of certain revenues or certain funds pledged or otherwise dedicated for payment.
- (61) "Option" means an agreement giving the buyer the right to buy or receive (a "call option"), sell or deliver (a "put option"), enter into, extend, terminate, or effect a cash settlement based on the actual or expected price level, performance or value of one (1) or more underlying interests.
- (62) "Person" means an individual, a business entity, a multilateral development bank, or a government or quasi-governmental body, such as a political subdivision or a government sponsored enterprise.

- (63) "Potential exposure" means the amount determined in accordance with the NAIC Annual Statement Instructions.
- (64) "Preferred stock" means preferred, preference, or guaranteed stock of a business entity authorized to issue the stock, that has a preference in liquidation over the common stock of the business entity.
- (65) "Qualified bank" means:
- (a) A national bank, state bank, or trust company that at all times is no less than adequately capitalized as determined by standards adopted by the United States banking regulators and that is either regulated by state banking laws, or is a member of the Federal Reserve Bank of New York; or
 - (b) A bank or trust company incorporated or organized under the laws of a country other than the United States that is regulated as a bank or trust company by that country's government or an agency thereof and that at all times is no less than adequately capitalized as determined by the standards adopted by international banking authorities.
- (66) "Qualified business entity" means a business entity that is:
- (a) An issuer of obligations or preferred stock that are rated 1 or 2 by SVO or an issuer of obligations, preferred stock, or derivative instruments that are rated the equivalent of 1 or 2 by the SVO or by a nationally recognized statistical rating organization recognized by the SVO; or
 - (b) A primary dealer in United States government securities, recognized by the Federal Reserve Bank of New York.
- (67) "Qualified clearinghouse" means a clearinghouse for, and subject to the rules of, a qualified exchange or a qualified foreign exchange, that provides clearing service, including acting as a counterparty to each of the parties to a transaction such that the parties no longer have credit risks as to each other.
- (68) "Qualified exchange" means:
- (a) A securities exchange registered as a national securities exchange, or a securities market regulated under the Securities Exchange Act of 1934 (15 U.S.C. sec. 78 et seq.), as amended;
 - (b) A board of trade or commodities exchange designated as a contract market by the Commodity Futures Trading Commission or any successor thereof;
 - (c) Private Offerings, Resales, and Trading through Automated Linkages (PORTAL);
 - (d) A designated offshore securities market as defined in Securities Exchange Commission Regulation S, 17 C.F.R. Part 230, as amended; or
 - (e) A qualified foreign exchange.
- (69) "Qualified foreign exchange" means a foreign exchange, board of trade, or contract market located outside the United States, its territories, or possessions:
- (a) That has received regulatory comparability relief under Commodity Futures Trading Commission (CFTC) Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30;
 - (b) That is, or its members are, subject to the jurisdiction of a foreign futures authority that has received regulatory comparability relief under CFTC Rule 30.10, as set forth in Appendix C to Part 30 of the CFTC's Regulations, 17 C.F.R. Part 30, as to futures transactions in the jurisdiction where the exchange, board of trade, or contract market is located; or
 - (c) Upon which foreign stock index futures contracts are listed that are the subject of no-action relief issued by the CFTC's Office of General Counsel, provided that an exchange, board of trade, or contract market that qualifies as a qualified foreign exchange only under this subsection shall only be a qualified foreign exchange as to foreign stock index futures contracts that are the subject of no-action relief.
- (70) (a) "Rated credit instrument" means a contractual right to receive cash or another rated credit instrument from another entity that:
- 1. Is rated or required to be rated by the SVO;

2. In the case of an instrument with a maturity of three hundred ninety-seven (397) days or less, is issued, guaranteed, or insured by an entity that is rated by, or another obligation of the entity is rated by, the SVO or by a nationally recognized statistical rating organization recognized by the SVO;
 3. In the case of an instrument with a maturity of ninety (90) days or less is issued by a qualified bank;
 4. Is a share of a class one bond mutual fund; or
 5. Is a share of a money market mutual fund.
- (b) However, "rated credit instrument" does not mean:
1. An instrument that is mandatorily, or at the option of the issuer, convertible to an equity interest; or
 2. A security that has a par value and whose terms provide that the issuer's net obligation to repay all or part of the security's par value is determined by reference to the performance of an equity, a commodity, a foreign currency, or an index of equities, commodities, foreign currencies, or combinations thereof.
- (71) "Real estate" means:
- (a)
 1. Real property;
 2. Interests in real property, such as leaseholds, minerals, oil, and gas that have not been separated from the underlying fee interest;
 3. Improvements and fixtures located on or in real property; and
 4. The seller's equity in a contract providing for a deed of real estate.
 - (b) As to a mortgage on a leasehold estate, real estate shall include the leasehold estate only if it has an unexpired term, including renewal options exercisable at the option of the lessee, extending beyond the scheduled maturity date of the obligation that is secured by a mortgage on the leasehold estate by a period equal to at least twenty percent (20%) of the original term of the obligation or ten (10) years, whichever is greater.
- (72) "Replication transaction" means a derivative transaction that is intended to replicate the performance of one (1) or more assets that an insurer is authorized to acquire under this subtitle. A derivative transaction that is entered into as a hedging transaction shall not be considered a replication transaction.
- (73) "Repurchase transaction" means a transaction in which an insurer purchases securities from a business entity that is obligated to repurchase the purchased securities or equivalent securities from the insurer at a specified price, either within a specified period of time or upon demand.
- (74) "Required liabilities" means total liabilities required to be reported on the statutory financial statement of the insurer most recently required to be filed with the ~~commissioner~~~~executive director~~.
- (75) "Residential mortgage loan" means a loan primarily secured by a mortgage on real estate improved with a one (1) to four (4) family residence.
- (76) "Reverse repurchase transaction" means a transaction in which an insurer sells securities to a business entity and is obligated to repurchase the sold securities or equivalent securities from the business entity at a specified price, either within a specified period of time or upon demand.
- (77) "Secured location" means the contiguous real estate owned by one (1) person.
- (78) "Securities lending transaction" means a transaction in which securities are loaned by an insurer to a business entity that is obligated to return the loaned securities or equivalent securities to the insurer, either within a specified period of time or upon demand.
- (79) "Series company" means an investment company that is organized as a series company, as defined in Rule 18f-2(a) adopted under the Investment Company Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended.
- (80) "Sinking fund stock" means preferred stock that:

- (a) Is subject to a mandatory sinking fund or similar arrangement that will provide for the redemption or open market purchase of the entire issue over a period not longer than forty (40) years from the date of acquisition; and
 - (b) Provides for mandatory sinking fund installments or open market purchases commencing not more than ten and one-half (10 1/2) years from the date of issue, with the sinking fund installments providing for the purchase or redemption, on a cumulative basis commencing ten (10) years from the date of issue, of at least two and one-half percent (2.5%) per year of the original number of shares of that issue of preferred stock.
- (81) "Special rated credit instrument" means a rated credit instrument that is:
- (a) An instrument that is structured so that, if it is held until retired by or on behalf of the issuer, its rate of return, based on its purchase cost and any cash flow stream possible under the structure of the transaction, may become negative due to reasons other than the credit risk associated with the issuer of the instrument; however, a rated credit instrument shall not be a special rated credit instrument under this subsection if it is:
 - 1. A share in a class one bond mutual fund;
 - 2. An instrument, other than an asset-backed security, with payments of par value fixed as to amount and timing, or callable but in any event payable only at par or greater, and interest or dividend cash flows that are based on either a fixed or variable rate determined by reference to a specified rate or index;
 - 3. An instrument, other than an asset-backed security, that has a par value and is purchased at a price not greater than one hundred ten percent (110%) of par;
 - 4. An instrument, including an asset-backed security, whose rate of return would become negative only as a result of a prepayment due to casualty, condemnation, or economic obsolescence of collateral or change of law;
 - 5. An asset-backed security that relies on collateral that meets the requirements of subparagraph 2. of this paragraph, the par value of which collateral:
 - a. Is not permitted to be paid sooner than one-half (1/2) of the remaining term to maturity from the date of acquisition;
 - b. Is permitted to be paid prior to maturity only at a premium sufficient to provide a yield to maturity for the investment, considering the amount prepaid and reinvestment rates at the time of early repayment, at least equal to the yield to maturity of the initial investment; or
 - c. Is permitted to be paid prior to maturity at a premium at least equal to the yield of a Treasury issue of comparable remaining life; or
 - 6. An asset-backed security that relies on cash flows from assets that are not prepayable at any time at par, but is not otherwise governed by subparagraph 5. of this paragraph, if the asset-backed security has a par value reflecting principal payments to be received if held until retired by or on behalf of the issuer and is purchased at a price no greater than one hundred five percent (105%) of the par amount.
 - (b) An asset-backed security that:
 - 1. Relies on cash flows from assets that are prepayable at par at any time;
 - 2. Does not make payments of par that are fixed as to amount and timing; and
 - 3. Has a negative rate of return at the time of acquisition if a prepayment threshold assumption is used with the prepayment threshold assumption defined as either:
 - a. Two (2) times the prepayment expectation reported by a recognized, publicly available source as being the median of expectations contributed by broker dealers or other entities, except insurers, engaged in the business of selling or evaluating the securities or assets. The prepayment expectation used in this calculation shall be, at the insurer's election, the prepayment expectation for pass-through securities of the Federal National Mortgage

Association, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or for other assets of the same type as the assets that underlie the asset-backed security, in either case with a gross weighted average coupon comparable to the gross weighted average coupon of the assets that underlie the asset-backed security; or

- b. Another prepayment threshold assumption specified by the ~~commissioner~~~~executive director~~ by administrative regulation promulgated under KRS 304.7-367.
- (c) For purposes of paragraph (b) of this subsection, if the asset-backed security is purchased in combination with one (1) or more other asset-backed securities that are supported by identical underlying collateral, the insurer may calculate the rate of return for these specific combined asset-backed securities in combination. The insurer shall maintain documentation demonstrating that the securities were acquired and are continuing to be held in combination.
- (82) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (83) "Substantially similar securities" means securities that meet all criteria for substantially similar securities specified in the NAIC Accounting Practices and Procedures manual, as amended, and in an amount that constitutes good delivery form as determined from time to time by the Public Securities Administration.
- (84) "SVO" means the Securities Valuation Office of the NAIC or any successor office established by the NAIC.
- (85) "Swap" means an agreement to exchange or to net payments at one (1) or more times based on the actual or expected price, level, performance, or value of one (1) or more underlying interests.
- (86) "Underlying interest" means the assets, liabilities, other interests, or a combination thereof underlying a derivative instrument, such as any one (1) or more securities, currencies, rates, indices, commodities, or derivative instruments.
- (87) "Unrestricted surplus" means the amount by which total admitted assets exceed one hundred twenty-five percent (125%) of the insurer's required liabilities.
- (88) "Warrant" means an instrument that gives the holder the right to purchase an underlying financial instrument at a given price and time or at a series of prices and times outlined in the warrant agreement. Warrants may be issued alone or in connection with the sale of other securities, for example, as part of a merger, recapitalization agreement, or to facilitate divestiture of the securities of another business entity.

➔Section 1009. KRS 304.7-014 is amended to read as follows:

- (1) (a) Insurers may acquire, hold, or invest investments or engage in investment practices as set forth in this subtitle. Investments not conforming to this subtitle or otherwise expressly allowed in this chapter shall not be admitted assets.
- (b) This subtitle shall apply to investments and investment practices of domestic insurers and United States branches of alien insurers entered through this state. This subtitle shall not apply to separate accounts of an insurer except to the extent that the provisions of KRS 304.7-240 so provide.
- (2) Subject to subsection (3) of this section, an insurer shall not acquire or hold an investment as an admitted asset unless at the time of acquisition it is:
 - (a) Eligible for the payment or accrual of interest or discount, whether in cash or other securities, eligible to receive dividends or other distributions, or is otherwise income producing; or
 - (b) Acquired under KRS 304.7-413(3), 304.7-415, 304.7-419, 304.7-423, 304.7-465(3), 304.7-467, 304.7-471, or 304.7-473, or under the authority of sections of the code other than in this subtitle.
- (3) An insurer may acquire or hold as admitted assets investments that do not otherwise qualify under this subtitle if the insurer has not acquired them for the purpose of circumventing any limitations contained in this subtitle, if the insurer acquires the investments in the following circumstances and the insurer complies with the provisions of KRS 304.7-363 as to the investments:
 - (a) As payment on account of existing indebtedness or in connection with the refinancing, restructuring, or workout of existing indebtedness, if taken to protect the insurer's interest in that investment;
 - (b) As realization on collateral for an obligation;

- (c) In connection with an otherwise qualified investment or investment practice, as interest on a dividend, other distribution related to the investment, investment practice, or in connection with the refinancing of the investment, in each case for no additional or only nominal consideration;
 - (d) Under a lawful and bona fide agreement of recapitalization, voluntary, or involuntary reorganization in connection with an investment held by the insurer; or
 - (e) Under a bulk reinsurance, merger, or consolidation transaction approved by the **commissioner**~~executive director~~ if the assets constitute admissible investments for the ceding, merged, or consolidated companies.
- (4) A foreign insurer that becomes a domestic insurer in accordance with KRS 304.24-500 may hold as admitted assets investments that do not otherwise qualify under this subtitle if the investments were qualified as admitted assets in the insurer's former state of domicile immediately prior to the insurer's becoming a Kentucky domestic insurer, if the insurer has not acquired the investments for the purpose of circumventing any limitations contained in this subtitle and if the insurer complies with the provisions of KRS 304.7-363 as to the investments.
- (5) An investment or portion of an investment acquired by an insurer under subsections (3) or (4) of this section shall become a nonadmitted asset three (3) years, or five (5) years in the case of mortgage loans and real estate, from the date of its acquisition, unless within that period the investment has become a qualified investment under this subtitle other than subsections (3) or (4) of this section, but an investment acquired under an agreement of bulk reinsurance, merger, or consolidation may be qualified for a longer period if so provided in the plan for reinsurance, merger, or consolidation as approved by the **commissioner**~~executive director~~. Upon application by the insurer and a showing that the nonadmission of an asset held under subsections (3) or (4) of this section would materially injure the interests of the insurer, the **commissioner**~~executive director~~ may extend the period for admissibility for an additional reasonable period of time.
- (6) Except as provided in subsections (7) and (9) of this section, an investment shall qualify under this subtitle if, on the date the insurer committed to acquire the investment or on the date of its acquisition, it would have qualified under this subtitle. For the purposes of determining limitations contained in this subtitle, an insurer shall give appropriate recognition to any commitments to acquire investments.
- (7) (a) An investment held as an admitted asset by an insurer on July 14, 2000 that qualified under this subtitle shall remain qualified as an admitted asset under this subtitle.
- (b) Each specific transaction constituting an investment practice of the type described in this subtitle that was lawfully entered into by an insurer and was in effect on July 14, 2000 shall continue to be permitted under this subtitle until its expiration or termination under its terms.
- (8) Unless otherwise specified, an investment limitation computed on the basis of an insurer's admitted assets or capital and surplus shall relate to the amount required to be shown on the statutory balance sheet of the insurer most recently required to be filed with the **commissioner**~~executive director~~. For purposes of computing any limitation based upon admitted assets, the insurer shall deduct from the amount of its admitted assets the amount of the liability recorded on its statutory balance sheet for:
- (a) The return of acceptable collateral received in a reverse repurchase transaction or a securities lending transaction;
 - (b) Cash received in a dollar roll transaction; and
 - (c) The amount reported as borrowed money in the most recently filed financial statement to the extent not included in paragraphs (a) and (b) of this subsection.
- (9) An investment qualified, in whole or in part, for acquisition or holding as an admitted asset may be qualified or requalified at the time of acquisition or a later date, in whole or in part, under any other section of this subtitle, if the relevant conditions contained in the other section of this subtitle are satisfied at the time of qualification or requalification.
- (10) An insurer shall maintain documentation demonstrating that investments were acquired in accordance with this subtitle, and specifying the section of this subtitle under which they were acquired.

- (11) An insurer shall not enter into an agreement to purchase securities in advance of their issuance for resale to the public as part of a distribution of the securities by the issuer, or otherwise guarantee the distribution, except that an insurer may acquire privately placed securities with registration rights.
- (12) Notwithstanding the provisions of this subtitle, the **commissioner**~~executive director~~, for good cause, may order under the state's administrative regulations, an insurer to nonadmit, limit, dispose of, withdraw from or discontinue an investment or investment practice. The authority of the **commissioner**~~executive director~~ under this subsection is in addition to any other authority of the **commissioner**~~executive director~~.
- (13) Insurance futures and insurance futures options are not considered investments or investment practices for the purposes of this subtitle.

➔Section 1010. KRS 304.7-240 is amended to read as follows:

- (1) The amounts allocated to each separate account established by the insurer in connection with a pension, retirement or profit-sharing plan, life insurance or an annuity pursuant to KRS 304.15-390 together with accumulations thereon, may be invested and reinvested in any class of investments which may be authorized in the written contract or agreement without regard to any requirements or limitations prescribed by this subtitle; except, that to the extent that the insurer's reserve liability with regards to:
 - (a) Benefits guaranteed as to amount and duration; and
 - (b) Funds guaranteed as to principal amount or stated rate of interest, is maintained in any separate account, a portion of the assets of such separate account at least equal to such reserve liability shall be invested in accordance with the applicable provisions of this subtitle.

The investments in such separate account or accounts shall not be taken into account in applying the investment limitations applicable to other investments of the insurer.

- (2) On application by an insurer, the **commissioner**~~executive director~~ may approve different investment limitations and restrictions for specified separate accounts of the insurer. The **commissioner**~~executive director~~ shall only approve the insurer's proposed limitations and restrictions if he *or she* finds that the requested investment limitations and restrictions adequately protect the interests of the insured protected by the separate account and the solvency of the insurer.

➔Section 1011. KRS 304.7-350 is amended to read as follows:

- (1) All obligations having a fixed term, rate, and face value held by an insurer authorized to do business in this state may, if amply secured and not in default either as to principal or interest, be valued as follows: if acquired at face value, at the face value; if acquired above or below face value, on the basis of the purchase price adjusted annually to bring the value to face value at maturity and so as to yield in each year the effective rate of interest at which the purchase was made. The amortization provided for in this subsection may be calculated with reasonable approximations. The **commissioner**~~executive director~~ shall have the power to determine by rule the eligibility of investments for valuation under this subsection.
- (2)
 - (a) Securities, other than those referred to in subsection (1) of this section, held by an insurer shall be valued, in the discretion of the **commissioner**~~executive director~~, at their fair market value, at their appraised value, or at prices determined by the **commissioner**~~executive director~~ as representing their fair market value.
 - (b) Preferred or guaranteed stock or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the **commissioner**~~executive director~~ and in accordance with the method of computation he *or she* approves.
 - (c) Securities qualifying under KRS 304.7-120, 304.7-423, or 304.7-473 shall be valued at their fair value or net equity value, except that securities of a subsidiary insurance corporation as provided for in KRS 304.7-120 shall be valued either at cost or on a net equity basis, whichever is greater.
- (3)
 - (a) Real property acquired pursuant to a mortgage loan or contract for sale, in the absence of a recent appraisal deemed by the **commissioner**~~executive director~~ to be reliable, shall not be valued at an amount greater than the unpaid principal of the defaulted loan or contract at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, and the cost of improvements thereafter made by the insurer and any amounts thereafter paid by the insurer on assessments levied for improvements in connection with the property.

- (b) Other real property held by an insurer shall not be valued at an amount in excess of fair value as determined by recent appraisal deemed by the ~~commissioner~~~~executive director~~ to be reliable. If valuation is based on an appraisal more than three (3) years old, the ~~commissioner~~~~executive director~~ may, at his *or her* discretion, call for and require a new appraisal in order to determine fair value.
 - (c) Personal property acquired pursuant to chattel mortgages or security agreements shall not be valued at an amount greater than the unpaid principal of the defaulted loan at the date of acquisition, together with any taxes and expenses paid or incurred in connection with acquisition, or the fair value of the property, whichever amount is the lesser.
- (4) However, in all cases securities shall be valued in accordance with the standards promulgated by the National Association of Insurance Commissioners including the Purposes and Procedures of the Securities Valuation Office, the Valuation of Securities Manual, the Accounting Practices and Procedures Manual, the Annual Statement Instructions, or any successor valuation procedures officially adopted by the NAIC.

➔Section 1012. KRS 304.7-360 is amended to read as follows:

- (1) As used in this section:

- (a) "Clearing corporation" shall be defined as provided in KRS 355.8-102(3) except that, with respect to securities issued by institutions organized or existing under the laws of any foreign country or securities used to meet the deposit requirements pursuant to the laws of a foreign country as a condition of doing business therein, "clearing corporation" may include a corporation organized or existing under the laws of any foreign country which is legally qualified under such laws to effect transactions in securities by computerized book entry.
- (b) "Custodian bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System which acts as custodian of all or any part of an insurance company's securities.
- (c) "Direct participant" means a bank, trust company, or other institution which maintains an account in its name in a clearing corporation and through which an insurance company participates in a clearing corporation.
- (d) "Federal reserve book-entry system" means the computerized systems sponsored by the United States Department of the Treasury and certain agencies and instrumentalities of the United States for holding and transferring securities of the United States government and such agencies and instrumentalities, respectively, in federal reserve banks through banks which are members of the Federal Reserve System or which otherwise have access to such computerized systems.
- (e) "Member bank" means a national bank, state bank or trust company which is a member of the Federal Reserve System through which an insurance company participates in the federal reserve book-entry system.
- (f) "Security" means a certificated security or an uncertificated security.
- (g) "Certificated security" means a share, participation or other interest in property or an enterprise of the issuer or an obligation of the issuer which is represented by an instrument issued in bearer or registered form, of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment, and either one (1) of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.
- (h) "Uncertificated security" means a share, participation, or other interest in property or an enterprise of the issuer or an obligation of the issuer which is not represented by an instrument and the transfer of which is registered upon books maintained for that purpose by or on behalf of the issuer, of a type commonly dealt in on securities exchanges or markets; and either one (1) of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations.

- (2) Notwithstanding any other provision of law, an insurance company or its custodian bank may deposit or arrange for the deposit of securities held in or purchased for the general account and the separate accounts of such insurance company in a clearing corporation or the federal reserve book-entry system. When securities are deposited with a clearing corporation, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other securities deposited with such clearing corporation by any person, regardless of the ownership of such

securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of any member bank through which an insurance company holds securities in the federal reserve book-entry system, and the records of any direct participant through which an insurance company holds securities in a clearing corporation, shall at all times show that such securities are held for such insurance company or its custodian bank and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such clearing corporation or in the federal reserve book-entry system without, in either case, physical delivery of certificates representing such securities.

- (3) Notwithstanding any other provision of law, an insurance company may deposit securities held in or purchased for its general account and its separate accounts in a custodial account with a custodian bank approved by, and under a custodial agreement approved by, the ~~commissioner~~~~executive director~~. When securities are deposited in such custodial account, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the custodian bank or its nominee with any other securities held in the custody of the custodian bank or its nominee by any person, regardless of the ownership of such securities, and certificates representing securities of small denominations may be merged into one (1) or more certificates of larger denominations. The records of the custodian bank which holds securities for an insurance company in a custodial account shall at all times show that such securities are held for such insurance company and for which accounts thereof. Ownership of, and other interests in, such securities may be transferred by bookkeeping entry on the books of such custodian bank without physical delivery of certificates representing such securities.
- (4) The same bank or trust company may act as direct participant, member bank, and custodian bank for an insurance company.
- (5) The ~~commissioner~~~~executive director~~ of insurance shall promulgate rules and regulations governing the deposit by insurance companies of securities with clearing corporations and in the federal reserve book-entry system and with custodian banks.

➔Section 1013. KRS 304.7-363 is amended to read as follows:

An insurer shall not, directly or indirectly:

- (1) Invest in an obligation or security or make a guarantee for the benefit of or in favor of an officer or director of the insurer, except as provided in KRS 304.7-365;
- (2) Invest in an obligation or security, make a guarantee for the benefit of or in favor of, or make other investments in a business entity of which ten percent (10%) or more of the voting securities or equity interests are owned directly or indirectly by or for the benefit of one (1) or more officers or directors of the insurer, except as authorized in KRS 304.37-110, or provided in KRS 304.7-365;
- (3) Engage on its own behalf or through one (1) or more affiliates in a transaction or series of transactions designed to evade the prohibitions of this subtitle;
- (4)
 - (a) Invest in a partnership as a general partner, except that an insurer may make an investment as a general partner;
 1. If all other partners in the partnership are subsidiaries of the insurer;
 2. For the purpose of:
 - a. Meeting cash calls committed to prior to July 14, 2000;
 - b. Completing those specific projects or activities of the partnership in which the insurer was a general partner as of July 14, 2000 that had been undertaken as of that date; or
 - c. Making capital improvements to property owned by the partnership on July 14, 2000 if the insurer was a general partner as of that date; or
 3. In accordance with KRS 304.7-014(3);
 - (b) This subsection shall not prohibit a subsidiary or other affiliate of the insurer from becoming a general partner; or
- (5) Invest in or lend its funds upon the security of shares of its own stock, except that an insurer may acquire shares of its own stock for the following purposes, but the shares shall not be admitted assets of the insurer;

- (a) Conversion of a stock insurer into a mutual or reciprocal insurer or a mutual or reciprocal insurer into a stock insurer;
- (b) Issuance to the insurer's officers, employees, or agents in connection with a plan approved by the **commissioner**~~[executive director]~~ for converting a publicly held insurer into a privately held insurer or in connection with other stock option and employee benefit plans; or
- (c) In accordance with any other plan approved by the **commissioner**~~[executive director]~~.

➔Section 1014. KRS 304.7-365 is amended to read as follows:

- (1) (a) Except as provided in subsection (2) of this section, an insurer shall not, without the prior written approval of the **commissioner**~~[executive director]~~, directly or indirectly:
 - 1. Make a loan to or invest in an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest;
 - 2. Make a guarantee for the benefit of or in favor of an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest; or
 - 3. Enter into an agreement for the purchase or sale of property from or to an officer or director of the insurer or a person in which the officer or director has any direct or indirect financial interest.
- (b) For purposes of this section, an officer or director shall not be deemed to have a financial interest by reason of an interest that is held directly or indirectly through the ownership of equity interests representing less than two percent (2%) of all outstanding equity interests issued by a person that is a party to the transaction, or solely by reason of that individual's position as a director or officer of a person that is a party to the transaction.
- (c) This subsection does not permit an investment that is prohibited by KRS 304.7-363.
- (d) This subsection does not apply to a transaction between an insurer and any of its subsidiaries or affiliates that is entered into in compliance with Subtitle 37 of KRS Chapter 304, other than a transaction between an insurer and its officer or director.
- (2) An insurer may make, without the prior written approval of the **commissioner**~~[executive director]~~;
 - (a) Policy loans in accordance with the terms of the policy or contract and KRS 304.7-401;
 - (b) Advances to officers or directors for expenses reasonably expected to be incurred in the ordinary course of the insurer's business or guarantees associated with credit or charge cards issued or credit extended for the purpose of financing these expenses;
 - (c) Loans secured by the principal residence of an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans comply with the requirements of KRS 304.7-413 or 304.7-465, and the terms and conditions otherwise are the same as those generally available from unaffiliated third parties;
 - (d) Secured loans to an existing or new officer of the insurer made in connection with the officer's relocation at the insurer's request, if the loans:
 - 1. Do not have a term exceeding two (2) years;
 - 2. Are required to finance mortgage loans outstanding at the same time on the prior and new residences of the officer;
 - 3. Do not exceed an amount equal to the equity of the officer in the prior residence; and
 - 4. Are required to be fully repaid upon the earlier of the end of the two (2) year period or the sale of the prior residence; and
 - (e) Loans and advances to officers or directors made in compliance with state or federal law specifically related to the loans and advances by a regulated noninsurance subsidiary or affiliate of the insurer in the ordinary course of business and on terms no more favorable than available to other customers of the entity.

➔Section 1015. KRS 304.7-367 is amended to read as follows:

The ~~commissioner~~~~executive director~~ may promulgate administrative regulations implementing the provisions of this subtitle.

➔Section 1016. KRS 304.7-407 is amended to read as follows:

- (1) An insurer may acquire investments in investment pools that:
 - (a) Invest only in:
 1. Obligations that are rated 1 or 2 by SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 or equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:
 - a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or
 - b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper) and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;
 2. Government money market mutual funds or class one money market mutual funds; or
 3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of KRS 304.7-415, except the quantitative limitations of KRS 304.7-415(4); or
 - (b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.
- (2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:
 - (a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;
 - (b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of KRS 304.7-415, except the quantitative limitations of KRS 304.7-415(4); or
 - (c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.
- (3) The limitations of KRS 304.7-403(1) shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investment then held by the insurer under this section:
 - (a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;
 - (b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five (25%) of its admitted assets; or
 - (c) In all investment pools would exceed thirty-five percent (35%) of its admitted assets.
- (4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:
 - (a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
 - (b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;

- (c) Compile and maintain detailed accounting records setting forth:
 - 1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 - 2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and
 - 3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
- (d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 - 1. State and recognize the claims and rights of each participant;
 - 2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investments in the investment pool; and
 - 3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.
- (5) The pooling agreement for each investment pool shall be in writing and shall provide that:
 - (a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall at all times, hold one hundred percent (100%) of the interest in the investment pool;
 - (b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
 - (c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 - 1. Each participant owns an undivided interest in the underlying assets of the investment pool; and
 - 2. The underlying assets of the investment pool are held solely for the benefit of each participant;
 - (d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;
 - (e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
 - 1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 - 2. In kind, a pro rata share of each underlying asset; or
 - 3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and
 - (f) The pool manager shall make the records of the investment pool available for inspection by the ~~commissioner~~~~executive director~~.

➔Section 1017. KRS 304.7-413 is amended to read as follows:

- (1) (a) Subject to the limitations of KRS 304.7-403, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall

not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:

1. Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
 2. Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payment in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall be no greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or
 3. Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of subparagraph 1. or 2. of this paragraph.
- (b) For purposes of paragraph (a) of this subsection, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.
- (c) A mortgage loan that is held by an insurer under KRS 304.7-014(7) or acquired under this section and is restructured in a manner that meets the requirements of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.
- (d) Subject to the limitations of KRS 304.7-403, credit lease transactions that do not qualify for investment under KRS 304.7-405 with the following characteristics shall be exempt from the provisions of paragraph (a) of this subsection:
1. The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;
 2. The lease payments cover or exceed the total debt service over the life of the loan;
 3. A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;
 4. The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;
 5. The expenses of the real estate are passed through to the tenant, excluding exterior, structural, parking, and heating, ventilation, and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and
 6. There is a perfected assignment of the rents due in accordance with the lease to or for the benefit of the insurer.
- (2) (a) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program in which case the real estate shall be deemed to be income producing.

- (b) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (4)(b) and (c) of this section.
- (3) (a) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations:
 - 1. Real estate acquired under this subsection may include excess space for rent to others, if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsection (2) of this section and is so qualified by the insurer;
 - 2. The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with paragraph (d) of subsection (4) of this section; and
 - 3. For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an accident and health insurer or its insured. An insurer may acquire real estate used for these purposes under subsection (2) of this section.
- (4) (a) An insurer shall not acquire an investment under subsection (1) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsection (1) of this section would exceed:
 - 1. One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;
 - 2. One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or
 - 3. Two percent (2%) of its admitted assets in construction loans in the aggregate.
- (b) An insurer shall not acquire an investment under subsection (2) of this section if, as a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsection (2) of this section plus the guarantees then outstanding would exceed:
 - 1. One percent (1%) of its admitted assets in one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an accident and health insurer for its insureds, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or
 - 2. Fifteen percent (15%) of its admitted assets in the aggregate, but not more than five percent (5%) of its admitted assets as to properties that are to be improved or developed.
- (c) An insurer shall not acquire an investment under subsection (1) or (2) of this section if, as a result of and after giving effect to the investment and any guarantees made by the insurer in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) and (2) of this section plus the guarantees then outstanding would exceed forty-five percent (45%) of its admitted assets. However, an insurer may exceed this limitation by no more than thirty percent (30%) of its admitted assets if:
 - 1. This increased amount is invested only in residential mortgage loans;
 - 2. The insurer has no more than ten percent (10%) of its admitted assets invested in mortgage loans other than residential mortgage loans;
 - 3. The loan-to-value ratio of each residential mortgage loan does not exceed sixty percent (60%) at the time the mortgage loan is qualified under this increased authority, and the fair market value is supported by an appraisal no more than two (2) years old, prepared by an independent appraiser;

4. A single mortgage loan qualified under this increased authority shall not exceed one-half of one percent (0.5%) of its admitted assets;
 5. The insurer files with the ***commissioner***~~[executive director]~~, and receives approval from the ***commissioner***~~[executive director]~~ for, a plan that is designed to result in a portfolio of residential mortgage loans that is sufficiently geographically diversified; and
 6. The insurer agrees to file annually with the ***commissioner***~~[executive director]~~ records that demonstrate that its portfolio of residential mortgage loans is geographically diversified in accordance with the plan.
- (d) The limitations of KRS 304.7-403 shall not apply to an insurer's acquisition of real estate under subsection (3) of this section. An insurer shall not acquire real estate under subsection (3) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of real estate then held by the insurer under subsection (3) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the ***commissioner***~~[executive director]~~, additional amounts of real estate may be acquired under subsection (3) of this section.

➔Section 1018. KRS 304.7-415 is amended to read as follows:

An insurer may enter into securities lending, repurchase, reverse repurchase, and dollar roll transactions with business entities, subject to the following requirements:

- (1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in KRS 304.7-361 that specifies guidelines and objectives to be followed, such as:
 - (a) A description of how cash received will be invested or used for general corporate purposes of the insurer;
 - (b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transactions; and
 - (c) The extent to which the insurer may engage in these transactions.
- (2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:
 - (a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - (b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.
- (3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or its custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the ***commissioner***~~[executive director]~~:
 - (a) Possession of the acceptable collateral;
 - (b) A perfected security interest in the acceptable collateral; or
 - (c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
- (4) The limitations of KRS 304.7-403 and 304.7-417 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:

- (a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - (b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets.
- (5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.
- (6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.
- (7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
- (8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

➔Section 1019. KRS 304.7-419 is amended to read as follows:

An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:

- (1) (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in regulations promulgated by the **commissioner**~~executive director~~; and
- (b) An insurer shall be able to demonstrate to the **commissioner**~~executive director~~ the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of the transactions through cash flow testing or other appropriate analyses.
- (2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:
 - (a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;
 - (b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and
 - (c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.

- (3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call or that generate the cash flows for payments under the caps or floors, plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:
- (a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;
 - (b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call options sold;
 - (c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed or entered into a custodian agreement segregating cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold; or
 - (d) Sales of covered caps or floors, if the insurer holds in its portfolio the investments generating the cash flow to make the required payments under the caps or floors during the complete term that the cap or floor is outstanding.
- (4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of KRS 304.7-403.
- (5) In accordance with administrative regulations promulgated under KRS 304.7-367, the ~~commissioner~~**executive director** may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the ~~commissioner~~**executive director**, but replication transactions shall not be permitted for other than risk management purposes.

➔Section 1020. KRS 304.7-423 is amended to read as follows:

- (1) Solely for the purpose of acquiring investments that exceed the quantitative limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417, an insurer may acquire under this subsection an investment, or engage in investment practices described in KRS 304.7-415, but an insurer shall not acquire an investment, or engage in investment practices described in KRS 304.7-415, under this subsection if, as a result of and after giving effect to the transaction:
- (a) The aggregate amount of investments then held by an insurer under this subsection would exceed three percent (3%) of its admitted assets; or
 - (b) The aggregate amount of investments as to one (1) limitation in KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 then held by the insurer under this subsection would exceed one percent (1%) of its admitted assets.
- (2) (a) In addition to the authority provided under subsection (1) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in KRS 304.7-415, that are not specifically prohibited by this subtitle, without regard to the categories, conditions, standards, or other limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 if, as a result of and after giving effect to the transaction, the aggregate amount of investments then held under this subsection would not exceed the lesser of:
- 1. Ten percent (10%) of its admitted assets; or
 - 2. Seventy-five percent (75%) of its capital and surplus.
- (b) However, an insurer shall not acquire any investment or engage in any investment practice under this subsection if, as a result of and after giving effect to the transaction, the aggregate amount of all investments in any one (1) person then held by the insurer under this subsection would exceed three percent (3%) of its admitted assets.
- (3) In addition to the investments acquired under subsections (1) and (2) of this section, an insurer may acquire under this subsection an investment of any kind, or engage in investment practices described in KRS 304.7-

415, that are not specifically prohibited by this subtitle without regard to any limitations of KRS 304.7-403, 304.7-405, 304.7-407, 304.7-409, 304.7-411, 304.7-413, 304.7-415, and 304.7-417 if:

- (a) The ~~commissioner~~~~[executive director]~~ grants prior approval;
- (b) The insurer demonstrates that its investments are being made in a prudent manner and that the additional amounts will be invested in a prudent manner; and
- (c) As a result of and after giving effect to the transaction, the aggregate amount of investments then held by the insurer under this subsection does not exceed the greater of:
 - 1. Twenty-five percent (25%) of its capital and surplus; or
 - 2. One hundred percent (100%) of capital and surplus less ten percent (10%) of its admitted assets.
- (4) An investment prohibited under KRS 304.7-363, not permitted under KRS 304.7-419, or additional derivative instruments acquired under KRS 304.7-419 shall not be acquired under this section.

➔Section 1021. KRS 304.7-453 is amended to read as follows:

- (1) Subject to all other limitations and requirements of this subtitle, a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall maintain an amount at least equal to one hundred percent (100%) of adjusted loss reserves and loss adjustment expense reserves, one hundred percent (100%) of adjusted unearned premium reserves, and one hundred percent (100%) of statutorily required policy and contract reserves in:
 - (a) Cash and cash equivalents;
 - (b) High and medium grade investments that qualify under KRS 304.7-457 or 304.7-459;
 - (c) Equity interests that qualify under KRS 304.7-461 and that are traded on a qualified exchange;
 - (d) Investments of the type set forth in KRS 304.7-469, if the investments are rated in the highest generic rating category by a nationally recognized statistical rating organization recognized by the SVO for rating foreign jurisdictions and if any foreign currency exposure is effectively hedged through the maturity date of the investments;
 - (e) Qualifying investments of the type set forth in paragraph (b), (c), or (d) of this subsection that are acquired under KRS 304.7-473;
 - (f) Interest and dividends receivable on qualifying investments of the type set forth in paragraphs (a) to (e) of this subsection; or
 - (g) Reinsurance recoverable on paid losses.
- (2) Determination of the reserve requirement amount shall be as follows:
 - (a) For purposes of determining the amount of assets to be maintained under this subsection, the calculation of adjusted loss reserves and loss adjustment expense reserves, adjusted unearned premium reserves, and statutorily required policy and contract reserves shall be based on the amounts reported as of the most recent annual or quarterly statement date;
 - (b) Adjusted loss reserves and loss adjustment expense reserves shall be equal to the sum of the amounts derived from the following calculations:
 - 1. The result of each amount reported by the insurer as losses and loss adjustment expenses unpaid for each accident year for each individual line of business; multiplied by
 - 2. The discount factor that is applicable to the line of business and accident year published by the Internal Revenue Service under Internal Revenue Code Section 846 (26 U.S.C. sec. 846), as amended, for the calendar year that corresponds to the most recent annual statement of the insurer; minus
 - 3. Accrued retrospective premiums discounted by an average discount factor. The discount factor shall be calculated by dividing the losses and loss adjustment expenses unpaid after discounting (the product of subparagraphs 1. and 2. of this paragraph) by loss and loss adjustment expense reserves before discounting subparagraph 1. of this paragraph; and

4. For purposes of these calculations, the losses and loss adjustment expenses unpaid shall be determined net of anticipated salvage and subrogation, and gross of any discount for the time value of money or tabular discount.
- (c) Adjusted unearned premium reserves shall be equal to the result of the following calculation:
 1. The amount reported by the insurer as unearned premium reserves; minus
 2. The admitted asset amounts reported by the insurer as:
 - a. Premiums in and agents' balances in the course of collection, accident and health premiums due and unpaid, and uncollected premiums for accident and health premiums;
 - b. Premiums, agents' balances, and installments booked but deferred and not yet due; and
 - c. Bills receivable, taken for premium.
- (d) Statutorily required policy and contract reserves also shall include, in the case of a title insurer, the amounts required by KRS 304.6-080 and, in the case of a mortgage guaranty insurer, the amounts required by KRS 304.6-090 and, in the case of an accident and health insurer, the amounts required by KRS 304.6-070.
- (3) A property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer shall supplement its annual statement with a reconciliation and summary of its assets and reserve requirements as required in subsection (1) of this section. A reconciliation and summary showing that an insurer's assets as required in subsection (1) of this section are greater than or equal to its undiscounted reserves referred to in subsection (1) of this section shall be sufficient to satisfy this requirement. Upon prior notification, the **commissioner**~~{executive director}~~ may require an insurer to submit a reconciliation and summary with any quarterly statement filed during the calendar year.
- (4) If a property and casualty, financial guaranty, mortgage guaranty, or accident and health insurer's assets and reserves do not comply with subsection (1) of this section, the insurer shall notify the **commissioner**~~{executive director}~~ immediately of the amount by which the reserve requirements exceed the annual statement value of the qualifying assets, explain why the deficiency exists, and within thirty (30) days of the date of the notice propose a plan of action to remedy the deficiency.
- (5) If the **commissioner**~~{executive director}~~ determines that an insurer is not in compliance with subsection (1) of this section, the **commissioner**~~{executive director}~~ shall require the insurer to eliminate the condition causing the noncompliance within a specified time from the date the notice of the **commissioner's**~~{executive director's}~~ requirement is mailed or delivered to the insurer.
- (6) If an insurer fails to comply with the **commissioner's**~~{executive director's}~~ requirement under subsection (5) of this section, the insurer is deemed to be in hazardous financial condition, and the **commissioner**~~{executive director}~~ shall take one (1) or more of the actions authorized by Subtitle 33 of KRS Chapter 304, and KRS 304.3-200.

➔Section 1022. KRS 304.7-459 is amended to read as follows:

- (1) An insurer may acquire investments in investment pools that:
 - (a) Invest only in:
 1. Obligations that are rated 1 or 2 by the SVO or have an equivalent of an SVO 1 or 2 rating or, in the absence of a 1 or 2 rating or equivalent rating, the issuer has outstanding obligations with an SVO 1 or 2 equivalent rating by a nationally recognized statistical rating organization recognized by the SVO and have:
 - a. A remaining maturity of three hundred ninety-seven (397) days or less or a put that entitles the holder to receive the principal amount of the obligation which put may be exercised through maturity at specified intervals not exceeding three hundred ninety-seven (397) days; or
 - b. A remaining maturity of three (3) years or less and a floating interest rate that resets no less frequently than quarterly on the basis of a current short-term index (federal funds, prime rate, treasury bills, London InterBank Offered Rate (LIBOR), or commercial paper)

and is subject to no maximum limit, if the obligations do not have an interest rate that varies inversely to market interest rate changes;

2. Government money market mutual funds or class one money market mutual funds; or
 3. Securities lending, repurchase, and reverse repurchase transactions that meet all the requirements of KRS 304.7-467, except the quantitative limitations of KRS 304.7-467(4); or
- (b) Invest only in investments that an insurer may acquire under this subtitle, if the insurer's proportionate interest in the amount invested in these investments does not exceed the applicable limits of this subtitle.
- (2) For an investment in an investment pool to be qualified under this subtitle, the investment pool shall not:
- (a) Acquire securities issued, assumed, guaranteed, or insured by the insurer or an affiliate of the insurer;
 - (b) Borrow or incur any indebtedness for borrowed money, except for securities lending and reverse repurchase transactions that meet the requirements of KRS 304.7-467, except the quantitative limitations of KRS 304.7-467(4); or
 - (c) Permit the aggregate value of securities then loaned or sold to, purchased from, or invested in any one (1) business entity under this section to exceed ten percent (10%) of the total assets of the investment pool.
- (3) The limitations of KRS 304.7-455(1) to (3) shall not apply to an insurer's investment in an investment pool, however an insurer shall not acquire an investment in an investment pool under this section if, as a result of and after giving effect to the investment, the aggregate amount of investments then held by the insurer under this section:
- (a) In any one (1) investment pool would exceed ten percent (10%) of its admitted assets;
 - (b) In all investment pools investing in investments permitted under paragraph (b) of subsection (1) of this section would exceed twenty-five percent (25%) of its admitted assets; or
 - (c) In all investment pools would exceed forty percent (40%) of its admitted assets.
- (4) For an investment in an investment pool to be qualified under this subtitle, the manager of the investment pool shall:
- (a) Be organized under the laws of the United States or a state and designated as the pool manager in a pooling agreement;
 - (b) Be the insurer, an affiliated insurer or a business entity affiliated with the insurer, a qualified bank, a business entity registered under the Investment Advisors Act of 1940 (15 U.S.C. sec. 80a-1 et seq.), as amended or, in the case of a reciprocal insurer or interinsurance exchange, its attorney-in-fact, or in the case of a United States branch of an alien insurer, its United States manager or affiliates or subsidiaries of its United States manager;
 - (c) Compile and maintain detailed accounting records setting forth:
 1. The cash receipts and disbursements reflecting each participant's proportionate investment in the investment pool;
 2. A complete description of all underlying assets of the investment pool, including amount, interest rate, maturity date if any, and other appropriate designations; and
 3. Other records that, on a daily basis, allow third parties to verify each participant's investment in the investment pool; and
 - (d) Maintain the assets of the investment pool in one (1) or more accounts, in the name of or on behalf of the investment pool, under a custody agreement with a qualified bank. The custody agreement shall:
 1. State and recognize the claims and rights of each participant;
 2. Acknowledge that the underlying assets of the investment pool are held solely for the benefit of each participant in proportion to the aggregate amount of its investment in the investment pool; and

3. Contain an agreement that the underlying assets of the investment pool shall not be commingled with the general assets of the custodian qualified bank or any other person.
- (5) The pooling agreement for each investment pool shall be in writing and shall provide that:
- (a) An insurer and its affiliated insurers or, in the case of an investment pool investing solely in investments permitted under paragraph (a) of subsection (1) of this section, the insurer and its subsidiaries, affiliates, or any pension or profit sharing plan of the insurer, its subsidiaries and affiliates or, in the case of a United States branch of an alien insurer, affiliates or subsidiaries of its United States manager, shall, at all times, hold one hundred percent (100%) of the interests in the investment pool;
 - (b) The underlying assets of the investment pool shall not be commingled with the general assets of the pool manager or any other person;
 - (c) In proportion to the aggregate amount of each pool participant's interest in the investment pool:
 1. Each participant owns an undivided interest in the underlying assets of the investment pool; and
 2. The underlying assets of the investment pool are held solely for the benefit of each participant;
 - (d) A participant, or in the event of the participant's insolvency, bankruptcy, or receivership, its trustee, receiver, or other successor-in-interest, may withdraw all or any portion of its investment from the investment pool under the terms of the pooling agreement;
 - (e) Withdrawals may be made on demand without penalty or other assessment on any business day, but settlement of funds shall occur within a reasonable and customary period thereafter not to exceed five (5) business days. Distributions under this paragraph shall be calculated in each case net of all then applicable fees and expenses of the investment pool. The pooling agreement shall provide that the pool manager shall distribute to a participant, at the discretion of the pool manager:
 1. In cash, the then fair market value of the participant's pro rata share of each underlying asset of the investment pool;
 2. In kind, a pro rata share of each underlying asset; or
 3. In a combination of cash and in-kind distributions, a pro rata share in each underlying asset; and
 - (f) The pool manager shall make the records of the investment pool available for inspection by the ~~commissioner~~~~executive director~~.

➔Section 1023. KRS 304.7-465 is amended to read as follows:

- (1) Subject to the limitations of KRS 304.7-455, an insurer may acquire, either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments, obligations secured by mortgages on real estate situated within a domestic jurisdiction, but a mortgage loan that is secured by other than a first lien shall not be acquired unless the insurer is the holder of the first lien. The obligations held by the insurer and any obligations with an equal lien priority, shall not, at the time of acquisition of the obligation, exceed:
 - (a) Ninety percent (90%) of the fair market value of the real estate, if the mortgage loan is secured by a purchase money mortgage or like security received by the insurer upon disposition of the real estate;
 - (b) Eighty percent (80%) of the fair market value of the real estate, if the mortgage loan requires immediate scheduled payments in periodic installments of principal and interest, has an amortization period of thirty (30) years or less, and periodic payments made no less frequently than annually. Each periodic payment shall be sufficient to assure that at all times the outstanding principal balance of the mortgage loan shall not be greater than the outstanding principal balance that would be outstanding under a mortgage loan with the same original principal balance, with the same interest rate, and requiring equal payments of principal and interest with the same frequency over the same amortization period. Mortgage loans permitted under this subsection are permitted notwithstanding the fact that they provide for a payment of the principal balance prior to the end of the period of amortization of the loan. For residential mortgage loans, the eighty percent (80%) limitation may be increased to ninety-seven percent (97%) if acceptable private mortgage insurance has been obtained; or

- (c) Seventy-five percent (75%) of the fair market value of the real estate for mortgage loans that do not meet the requirements of paragraph (a) or (b) of this subsection.
- (2) For purposes of subsection (1) of this section, the amount of an obligation required to be included in the calculation of the loan-to-value ratio may be reduced to the extent the obligation is insured by the Federal Housing Administration, guaranteed by the Administrator of Veteran Affairs, or their successors.
- (3) A mortgage loan that is held by an insurer under KRS 304.7-014(7) or acquired under this section and is restructured in a manner that meets the requirement of a restructured mortgage loan in accordance with the NAIC Accounting Practices and Procedures Manual or successor publication shall continue to qualify as a mortgage loan under this subtitle.
- (4) Subject to the limitations of KRS 304.7-455, credit lease transactions that do not qualify for investment under KRS 304.7-457 with the following characteristics shall be exempt from the provisions of subsection (1) of this section:
 - (a) The loan amortizes over the initial fixed lease term at least in an amount sufficient so that the loan balance at the end of the lease term does not exceed the original appraised value of the real estate;
 - (b) The lease payments cover or exceed the total debt service over the life of the loan;
 - (c) A tenant or its affiliated entity whose rated credit instruments have a SVO 1 or 2 designation or a comparable rating from a nationally recognized statistical rating organization recognized by the SVO has a full faith and credit obligation to make the lease payments;
 - (d) The insurer holds or is the beneficial holder of a first lien mortgage on the real estate;
 - (e) The expenses of the real estate are passed through to the tenant excluding exterior, structural, parking, and heating, ventilation and air conditioning replacement expenses, unless annual escrow contributions, from cash flows derived from the lease payments, cover the expense shortfall; and
 - (f) There is a perfected assignment of the rents due under the lease to or for the benefit of the insurer.
- (5) An insurer may acquire, manage, and dispose of real estate situated in a domestic jurisdiction either directly or indirectly through limited partnership interests and general partnership interests not otherwise prohibited by KRS 304.7-363(4), joint ventures, stock of an investment subsidiary or membership interests in a limited liability company, trust certificates, or other similar instruments. The real estate shall be income producing or intended for improvement or development for investment purposes under an existing program, in which case the real estate shall be deemed to be income producing.
- (6) The real estate may be subject to mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsections (9) and (10) of this section.
- (7) An insurer may acquire, manage, and dispose of real estate for the convenient accommodation of the insurer's, which may include its affiliates, business operations, including home office, branch office, and field office operations.
 - (a) Real estate acquired under this subsection may include excess space for rent to others if the excess space, valued at its fair market value, would otherwise be a permitted investment under subsections (5) and (6) of this section and is so qualified by the insurer;
 - (b) The real estate acquired under this subsection may be subject to one (1) or more mortgages, liens, or other encumbrances, the amount of which shall, to the extent that the obligations secured by the mortgages, liens, or encumbrances are without recourse to the insurer, be deducted from the amount of the investment of the insurer in the real estate for purposes of determining compliance with subsection (11) of this section; and
 - (c) For purposes of this subsection, "business operations" shall not include that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively. An insurer may acquire real estate used for these purposes under subsections (5) and (6) of this section.

- (8) An insurer shall not acquire an investment under subsections (1) to (4) of this section if, as a result of and after giving effect to the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (4) of this section would exceed:
- (a) One percent (1%) of its admitted assets in mortgage loans covering any one (1) secured location;
 - (b) One-quarter of one percent (0.25%) of its admitted assets in construction loans covering any one (1) secured location; or
 - (c) One percent (1%) of its admitted assets in construction loans in the aggregate.
- (9) An insurer shall not acquire an investment under subsections (5) and (6) of this section if, a result of and after giving effect to the investment and any outstanding guarantees made by the insurer in connection with the investment, the aggregate amount of investments then held by the insurer under subsections (5) and (6) of this section plus the guarantees then outstanding would exceed:
- (a) One percent (1%) of its admitted assets in any one (1) parcel or group of contiguous parcels of real estate, except that this limitation shall not apply to that portion of real estate used for the direct provision of health care services by an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, such as hospitals, medical clinics, medical professional buildings, or other health facilities used for the purpose of providing health services; or
 - (b) The lesser of ten percent (10%) of its admitted assets or forty percent (40%) of its surplus as regards policyholders in the aggregate, except for an insurer whose insurance premiums and required statutory reserves for accident and health insurance constitute at least ninety-five percent (95%) of total premium considerations or total statutory required reserves, respectively, this limitation shall be increased to fifteen percent (15%) of its admitted assets in the aggregate.
- (10) An insurer shall not acquire an investment under subsections (1) to (6) of this section if, as a result of and after giving effect to the investment and any guarantees it has made in connection with the investment, the aggregate amount of all investments then held by the insurer under subsections (1) to (6) of this section plus the guarantees then outstanding would exceed twenty-five percent (25%) of its admitted assets.
- (11) The limitations of KRS 304.7-455 shall not apply to an insurer's acquisition of real estate under subsection (7) of this section. An insurer shall not acquire real estate under subsection (7) of this section if, as a result of and after giving effect to the acquisition, the aggregate amount of all real estate then held by the insurer under subsection (7) of this section would exceed ten percent (10%) of its admitted assets. With the permission of the **commissioner**~~[executive director]~~, additional amounts of real estate may be acquired under subsection (7) of this section.

➔Section 1024. KRS 304.7-467 is amended to read as follows:

An insurer may enter into securities lending, repurchase, reverse repurchase and dollar roll transactions with business entities, subject to the following requirements:

- (1) The insurer's board of directors shall adopt a written plan that is consistent with the requirements of the written plan in KRS 304.7-361(1) that specifies guidelines and objectives to be followed, such as:
 - (a) A description of how cash received will be invested or used for general corporate purposes of the insurer;
 - (b) Operational procedures to manage interest rate risk, counterparty default risk, the conditions under which proceeds from reverse repurchase transactions may be used in the ordinary course of business, and the use of acceptable collateral in a manner that reflects the liquidity needs of the transaction; and
 - (c) The extent to which the insurer may engage in these transactions.
- (2) The insurer shall enter into a written agreement for all transactions authorized in this section other than dollar roll transactions. The written agreement shall require that each transaction terminate not more than one (1) year from its inception or upon the earlier demand of the insurer. The agreement shall be with the business entity counterparty, but for securities lending transactions, the agreement may be with an agent acting on behalf of the insurer, if the agent is a qualified business entity, and if the agreement:

- (a) Requires the agent to enter into separate agreements with each counterparty that are consistent with the requirements of this section; and
 - (b) Prohibits securities lending transactions under the agreement with the agent or its affiliates.
- (3) Cash received in a transaction under this section shall be invested in accordance with this subtitle and in a manner that recognizes the liquidity needs of the transaction or used by the insurer for its general corporate purposes. For so long as the transaction remains outstanding, the insurer, its agent, or custodian shall maintain, as to acceptable collateral received in a transaction under this section, either physically or through the book entry systems of the Federal Reserve, Depository Trust Company, Participants Trust Company, or other securities depositories approved by the **commissioner**~~[executive director]~~:
- (a) Possession of the acceptable collateral;
 - (b) A perfected security interest in the acceptable collateral; or
 - (c) In the case of a jurisdiction outside of the United States, title to, or rights of a secured creditor to, the acceptable collateral.
- (4) The limitations of KRS 304.7-455 and 304.7-469 shall not apply to the business entity counterparty exposure created by transactions under this section. For purposes of calculations made to determine compliance with this subsection, no effect will be given to the insurer's future obligation to resell securities, in the case of a repurchase transaction, or to repurchase securities, in the case of a reverse repurchase transaction. An insurer shall not enter into a transaction under this section if, as a result of and after giving effect to the transaction:
- (a) The aggregate amount of securities then loaned, sold to, or purchased from any one (1) business entity counterparty under this section would exceed five percent (5%) of its admitted assets. In calculating the amount sold to or purchased from a business entity counterparty under repurchase or reverse repurchase transactions, effect may be given to netting provisions under a master written agreement; or
 - (b) The aggregate amount of all securities then loaned, sold to, or purchased from all business entities under this section would exceed forty percent (40%) of its admitted assets, but the limitation of this subsection shall not apply to reverse repurchase transactions for so long as the borrowing is used to meet operational liquidity requirements resulting from an officially declared catastrophe and subject to a plan approved by the **commissioner**~~[executive director]~~.
- (5) In a securities lending transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to one hundred two percent (102%) of the market value of the securities loaned by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than the market value of the loaned securities, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the market value of the loaned securities.
- (6) In a reverse repurchase transaction, other than a dollar roll transaction, the insurer shall receive acceptable collateral having a market value as of the transaction date at least equal to ninety-five percent (95%) of the market value of the securities transferred by the insurer in the transaction as of that date. If at any time the market value of the acceptable collateral is less than ninety-five percent (95%) of the market value of the securities so transferred, the business entity counterparty shall be obligated to deliver additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals ninety-five percent (95%) of the market value of the transferred securities.
- (7) In a dollar roll transaction, the insurer shall receive cash in an amount at least equal to the market value of the securities transferred by the insurer in the transaction as of the transaction date.
- (8) In a repurchase transaction, the insurer shall receive as acceptable collateral transferred securities having a market value at least equal to one hundred two percent (102%) of the purchase price paid by the insurer for the securities. If at any time the market value of the acceptable collateral is less than one hundred percent (100%) of the purchase price paid by the insurer, the business entity counterparty shall be obligated to provide additional acceptable collateral, the market value of which, together with the market value of all acceptable collateral then held in connection with the transaction, at least equals one hundred two percent (102%) of the

purchase price. Securities acquired by an insurer in a repurchase transaction shall not be sold in a reverse repurchase transaction, loaned in a securities lending transaction, or otherwise pledged.

➔Section 1025. KRS 304.7-471 is amended to read as follows:

- (1) An insurer may, directly or indirectly through an investment subsidiary, engage in derivative transactions under this section under the following conditions:
 - (a) An insurer may use derivative instruments under this section to engage in hedging transactions and certain income generation transactions, as these terms may be further defined in administrative regulations promulgated by the **commissioner**~~executive director~~.
 - (b) An insurer shall be able to demonstrate to the **commissioner**~~executive director~~ the intended hedging characteristics and the ongoing effectiveness of the derivative transaction or combination of transactions through cash flow testing or other appropriate analyses.
- (2) An insurer may enter into hedging transactions under this section if, as a result of and after giving effect to the transaction:
 - (a) The aggregate statement value of options, caps, floors, and warrants not attached to another financial instrument purchased and used in hedging transactions does not exceed seven and one-half percent (7.5%) of its admitted assets;
 - (b) The aggregate statement value of options, caps, and floors written in hedging transactions does not exceed three percent (3%) of its admitted assets; and
 - (c) The aggregate potential exposure of collars, swaps, forwards, and futures used in hedging transactions does not exceed six and one-half percent (6.5%) of its admitted assets.
- (3) An insurer may only enter into the following types of income generation transactions if, as a result of and after giving effect to the transactions, the aggregate statement value of the fixed income assets that are subject to call plus the face value of fixed income securities underlying a derivative instrument subject to call, plus the amount of the purchase obligations under the puts, does not exceed ten percent (10%) of its admitted assets:
 - (a) Sales of covered call options on noncallable fixed income securities, callable fixed income securities if the option expires by its terms prior to the end of the noncallable period, or derivative instruments based on fixed income securities;
 - (b) Sales of covered call options on equity securities, if the insurer holds in its portfolio, or can immediately acquire through the exercise of options, warrants, or conversion rights already owned, the equity securities subject to call during the complete term of the call option sold; or
 - (c) Sales of covered puts on investments that the insurer is permitted to acquire under this subtitle, if the insurer has escrowed, or entered into a custodian agreement segregating, cash or cash equivalents with a market value equal to the amount of its purchase obligations under the put during the complete term of the put option sold.
- (4) An insurer shall include all counterparty exposure amounts in determining compliance with the limitations of KRS 304.7-455.
- (5) In accordance with administrative regulations promulgated under KRS 304.7-367, the **commissioner**~~executive director~~ may approve additional transactions involving the use of derivative instruments in excess of the limits of subsection (2) of this section or for other risk management purposes under administrative regulations promulgated by the **commissioner**~~executive director~~, but replication transactions shall not be permitted for other than risk management purposes.

➔Section 1026. KRS 304.8-010 is amended to read as follows:

- (1) All deposits of assets of insurers required or permitted under this code and made in this state shall be made and maintained with the **commissioner**~~executive director~~.
- (2) In addition to deposits required for an insurer's authority to transact insurance in this state, an insurer may deposit and maintain with the **commissioner**~~executive director~~ deposit of assets:
 - (a) Required of an insurer by the laws of other states as prerequisite for authority to transact insurance in such other states.

(b) Required by application of the retaliatory provision, KRS 304.3-270.

(c) In such additional amounts as is permitted by this subtitle, or as expressly required by this code.

➔Section 1027. KRS 304.8-020 is amended to read as follows:

- (1) All deposits shall be held by the **commissioner**~~[executive director]~~ in trust for the benefit and protection of all of the insurer's policyholders and creditors in the United States.
- (2) The deposit of a domestic insurer shall further be security for payment of taxes, assessments, forfeitures, fines, or other charges due and unpaid to this state or any other state in which the insurer has been authorized to transact insurance, and may be applied to the extent as may be necessary for payment.
- (3) Except, that deposits required pursuant to the retaliatory provision, KRS 304.3-270, or required of a domestic insurer pursuant to the laws of another state, may be limited to the uses and purposes as are consistent with the provision or laws. But no deposit so required of a domestic insurer shall be allowed in lieu of or as a credit upon any deposit required of an insurer under this subtitle if the purpose of the deposit so required by another state is materially inconsistent with the purpose stated in subsection (1) of this section.

➔Section 1028. KRS 304.8-040 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may accept the home office real property of a domestic insurer as a part of any deposit of assets required of the insurer under this code. For this purpose the insurer shall convey such real property by deed to the **commissioner**~~[executive director]~~, and the deed shall be duly recorded and deposited with the **commissioner**~~[executive director]~~.
- (2) Real property so deposited shall not be sold or further encumbered by the insurer except upon advance approval of the **commissioner**~~[executive director]~~ after full submission of the purposes and detail of the sale or encumbrance to the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall join in the execution of any deed or other document required to consummate the sale or encumbrance. Upon the sale or encumbrance the insurer shall deposit other assets in lieu of such real property.
- (3) This real property shall be valued at its fair value as determined by the **commissioner**~~[executive director]~~.

➔Section 1029. KRS 304.8-050 is amended to read as follows:

- (1) The insurer's policyholders and creditors in the United States, and this state and other states in which the insurer is authorized to transact insurance, shall have a first lien upon other real property, of which the evidence of the insurer's title is deposited by the insurer. The **commissioner**~~[executive director]~~ shall file proper notice of such lien with the county clerk of the county in which any such property is located.
- (2) Such real property shall not be withdrawn, sold, or further encumbered unless other eligible assets of equal or greater value are deposited by the insurer in lieu thereof. Upon any such withdrawal, sale, or encumbrance the **commissioner**~~[executive director]~~ shall execute a proper release of such property, which release shall be recorded in the office of such county clerk.
- (3) For the purpose of determining the amount of deposit, such real property shall be valued at sixty percent (60%) of its fair value as determined by the **commissioner**~~[executive director]~~.

➔Section 1030. KRS 304.8-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall designate at least one (1) bank or trust company in each county of this state containing a city of the first class or a consolidated local government and such other banks as proposed by the insurer and approved by the **commissioner**~~[executive director]~~ which vaults shall be used as depositories for assets of insurers deposited under this code.
- (2) Any expense associated with depositing assets under this chapter shall be borne by the insurer.

➔Section 1031. KRS 304.8-095 is amended to read as follows:

Notwithstanding any other provision of law, the **commissioner**~~[executive director]~~ may cause any or all deposits of assets of insurers required or permitted under this code and maintained in this state to be made and maintained in trust with depositories designated pursuant to KRS 304.8-090(1) under trust agreements to which depositories, insurers, and the **commissioner**~~[executive director]~~ are parties, for the purpose of this subtitle. These trust agreements shall provide with respect to deposits thereunder provisions, conditions and stipulations corresponding to those applicable

to other deposits under this subtitle and shall require depositories to perform the same duties with respect to deposits thereunder as the **commissioner**~~{executive director}~~ is required to perform with respect to other deposits under the subtitle. Insurers who have made deposits under these trust agreements shall be relieved of all other obligations under this subtitle with respect to the assets deposited thereunder.

➔Section 1032. KRS 304.8-100 is amended to read as follows:

As to each insurer making or having a deposit the **commissioner**~~{executive director}~~ shall keep a complete record thereof showing:

- (1) The particular assets so deposited.
- (2) The face value, if any, of any asset, and the value thereof as determined by the **commissioner**~~{executive director}~~.
- (3) Date of deposit, and place thereof.
- (4) Assets withdrawn, date thereof, value of assets so withdrawn, and the name and address of any person to whom the assets were delivered.
- (5) All other information as the **commissioner**~~{executive director}~~ deems necessary.

➔Section 1033. KRS 304.8-110 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may at any time inventory assets on deposit as to any insurer. Upon request of the insurer the **commissioner**~~{executive director}~~ shall make an inventory at the insurer's expense, and shall furnish the insurer a copy thereof. All inventories shall be made in the presence of the **commissioner**~~{executive director}~~ and two (2) representatives of the insurer designated for the purpose by its board of directors.
- (2) Upon request, the **commissioner**~~{executive director}~~ shall give to any insurer depositing assets a certificate thereof describing the assets and setting forth their par value, if any, and their value, which valuation shall be determined by the **commissioner**~~{executive director}~~.

➔Section 1034. KRS 304.8-120 is amended to read as follows:

- (1) All assets deposited shall be valued by the **commissioner**~~{executive director}~~ when deposited, such valuation to be determined in accordance with the applicable provisions of this code.
- (2) If at any time the **commissioner**~~{executive director}~~ finds that the value of assets on deposit by an insurer is less than the amount required for the purposes for which the deposit was made, **the commissioner**~~{he}~~ shall by certified mail, return receipt requested, addressed to the insurer at its home office, notify the insurer of such deficiency and require that the deficiency be cured within thirty (30) days from the date of such mailing. The **commissioner**~~{executive director}~~ may suspend or revoke the certificate of authority of any insurer failing to cure any such deficiency within such thirty (30) days.

➔Section 1035. KRS 304.8-140 is amended to read as follows:

- (1) While solvent and complying with this code an insurer shall be entitled:
 - (a) To collect and receive interest, dividends, and payments accruing upon assets so held on deposit for its account.
 - (b) From time to time, to exchange and substitute for any of such assets, other assets eligible for deposit.
- (2) If the insurer fails to cure a deficiency when required, is insolvent, is subject to delinquency proceedings, or is in default as to taxes or other charges due to this state under law, the **commissioner**~~{executive director}~~ shall collect such interest, dividends, and payments and add them to the insurer's deposit.

➔Section 1036. KRS 304.8-150 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, every domestic life insurer shall, within ninety (90) days after the net cash value of each policy in force has been ascertained as required by law, deposit with the **commissioner**~~{executive director}~~ for the security and benefit of its policyholders, assets in an amount which, together with the sums as may be deposited by it with other states and governments by the requirements of their laws, shall be not less than the ascertained valuation of all policies in force less any sums that it has advanced from its legal reserve to its policyholders on the pledge to it of their policies and any accumulations thereon.

- (2) If the legal reserve or the aggregate ascertained valuation of all policies in force in any domestic life insurer equals \$20,000,000, no further deposit shall be required of the insurer so long as the legal reserve remains at or above \$20,000,000, unless the insurer elects to represent on its policies or otherwise that the legal reserve or cash value of its policies thereafter written is on deposit with this state or one or more of its designated agencies, in which event the insurer shall deposit assets as above set out in an amount equal to the ascertained valuation of all of its policies in force at the time the representation is made.

➔Section 1037. KRS 304.8-160 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no judgment creditor or other claimant of an insurer shall have the right to levy upon any of the assets held in this state as a deposit for the protection of the insurer's policyholders or policyholders and creditors.
- (2) As to deposits made pursuant to the retaliatory provision, KRS 304.3-270, levy thereupon shall be permitted if so provided in the **commissioner's**~~executive director's~~ order under which the deposit is required.

➔Section 1038. KRS 304.8-170 is amended to read as follows:

- (1) Any required deposit shall be released, in addition to circumstances already provided for, in these instances only:
- (a) Upon extinguishment of substantially all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise.
 - (b) If the deposit is no longer required under this code.
 - (c) If the deposit was made pursuant to the retaliatory provision, KRS 304.3-270, it shall be released in whole or in part when no longer so required.
 - (d) Upon proper order of a court of competent jurisdiction the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the insurer.
- (2) No release shall be made except on application to and written order of the **commissioner**~~executive director~~ made upon proof satisfactory to the **commissioner**~~executive director~~ of the existence of one of the grounds therefor. The **commissioner**~~executive director~~ shall not have any personal liability for any such release of any deposit or part thereof so ordered by the **commissioner**~~executive director~~ in good faith.
- (3) All release of deposits or any part thereof shall be made to the person then entitled thereto upon proof of right satisfactory to the **commissioner**~~executive director~~.

➔Section 1039. KRS 304.8-180 is amended to read as follows:

- (1) Assets shall not be removed from the bank or trust company wherein the assets are deposited, except upon the written order of at least two (2) officers authorized for the purpose by the insurer's board of directors or other governing body, which order must have been approved by the **commissioner**~~executive director~~.
- (2) The assets shall be deposited or removed only in the joint presence of the **commissioner**~~executive director~~ and two (2) representatives of the insurer authorized for the purpose by the insurer's board of directors or other governing body.
- (3) Except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the **commissioner**~~executive director~~.

➔Section 1040. KRS 304.8-190 is amended to read as follows:

- (1) Insurers maintaining deposits of assets in this state under this subtitle, shall pay into the examination expense revolving fund as provided in Subtitle 2 of this chapter, moneys sufficient to pay travel and other necessary expenses of the **commissioner**~~executive director~~ related to the maintenance, valuation, protection, or administration of the insurer's deposit.
- (2) The portion of the expense fund to be paid by each such insurer shall be in the same approximate proportion as the amount the insurer had on deposit on December 31 of the preceding year bears to the total such deposits of all insurers as of December 31 of the preceding year. The **commissioner**~~executive director~~ shall assess each insurer for its proportionate share of the expense fund. The minimum charge for each insurer shall be five dollars (\$5).

➔Section 1041. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

- (1) "Agent" means an individual or business entity appointed by an insurer to sell or to solicit applications for insurance or annuity contracts or to negotiate insurance or annuity contracts on its behalf;
- (2) "Appointment" means a notification filed with the insurance ~~department~~~~office~~ that an insurer has established an agency relationship with a producer;
- (3) "Appointment renewal" means continuation of an insurer's existing appointment based on payment of the required fee without submission of an appointment form;
- (4) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity;
- (5) "Crop insurance" means insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;
- (6) "Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state;
- (7) "Insurance producer" means an individual or business entity required to be licensed under the laws of Kentucky to sell, solicit, or negotiate insurance or annuity contracts. Insurance producer includes agent, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, rental vehicle agent and managing employee, specialty credit producer and managing employee, and consultant;
- (8) "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the ~~commissioner~~~~executive director~~ determines should be designated a form of limited line credit insurance;
- (9) "Limited line credit insurance agent" means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;
- (10) "Limited lines insurance" means the lines of insurance defined in subsections (5), (8), (14), and (16) of this section and any other line of insurance that the ~~commissioner~~~~executive director~~ identifies in accordance with KRS 304.9-230(1)(e) or recognizes for the purpose of complying with KRS 304.9-140(5);
- (11) "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract;
- (12) "Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer;
- (13) "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer;
- (14) "Surety" means insurance or bond that covers obligation to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. Surety also includes surety insurance as defined in KRS 304.5-060;
- (15) "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance;
- (16) "Travel insurance" means insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects if limited to a specific trip and sold in connection with transportation provided by a common carrier;
- (17) "Uniform business entity application" means the current version of the National Association of Insurance Commissioners uniform business entity application for resident and nonresident business entities; and

- (18) "Uniform individual application" means the current version of the National Association of Insurance Commissioners uniform individual application for resident and nonresident individuals.

➔Section 1042. KRS 304.9-030 is amended to read as follows:

- (1) Unless denied a license according to KRS 304.9-440, applicants who have met the requirements for the license in accordance with this subtitle, shall be issued the applicable license.
- (2) An insurance agent may receive qualification for a license in one (1) or more of the following applicable lines of authority:
 - (a) Life -- insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income;
 - (b) Health -- insurance coverage for sickness, bodily injury, or accidental death and may include benefits for disability income;
 - (c) Property -- insurance coverage for the direct or consequential loss or damage to property of every kind;
 - (d) Casualty -- insurance coverage against legal liability, including that for death, injury, or disability, or damage to real or personal property;
 - (e) Variable life and variable annuity products -- insurance coverage provided under variable life insurance contracts and variable annuities;
 - (f) Limited line insurance as identified in KRS 304.9-230;
 - (g) Personal lines -- property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; and
 - (h) Any other line of insurance authorized by Kentucky law and deemed by the **commissioner**~~{executive director}~~ appropriate to be issued as a separate line of authority.
- (3) A resident applicant for a variable life and variable annuities line of authority shall hold an active life line of authority.

➔Section 1043. KRS 304.9-052 is amended to read as follows:

- (1) No individual or business entity shall in this state be, act as, or hold himself *or herself* out to be an administrator unless then licensed as an administrator by the **commissioner**~~{executive director}~~.
- (2) For the protection of the people of this state, the **commissioner**~~{executive director}~~ shall not issue, continue, or permit to exist any administrator license for any person unless such person demonstrates to the satisfaction of the **commissioner**~~{executive director}~~ that the following standards are met:
 - (a) If an individual, the applicant has attained the age of twenty-one (21) years;
 - (b) The applicant is competent, trustworthy, reliable, and of good reputation;
 - (c) If an individual, the applicant has attained an educational level acceptable to the **commissioner**~~{executive director}~~;
 - (d) The applicant is financially responsible;
 - (e) The applicant has not had any license issued by the **commissioner**~~{executive director}~~, or application therefor, terminated for cause;
 - (f) The applicant is a resident of Kentucky or is currently licensed and in good standing in his or her home state;
 - (g) The applicant has paid the fee prescribed in KRS 304.4-010;
 - (h) If a business entity, each individual authorized to act for the business entity under its administrator license shall be designated with the **commissioner**~~{executive director}~~ in accordance with KRS 304.9-133; and
 - (i) Administrator licenses shall be renewed in accordance with KRS 304.9-260.

➔Section 1044. KRS 304.9-080 is amended to read as follows:

- (1) An individual or business entity shall not sell, solicit, or negotiate insurance in this state unless duly licensed as the appropriate insurance producer for that line of authority in accordance with this subtitle or Subtitle 10 of this chapter.
- (2) No individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as an adjuster unless then licensed as an adjuster.
- (3) No individual or business entity shall in this state be, act as, or hold himself, herself, or itself out as a consultant unless then licensed as a consultant. No consultant shall act as a consultant with respect to any kind of insurance unless duly licensed as a consultant for that line of authority.
- (4) Except as provided in KRS 304.9-410 and KRS 304.9-270(4), no agent shall place, and no insurer shall accept, any insurance with any insurer as to which the agent does not then hold a license and appointment as agent under this subtitle.
- (5) No rental vehicle agent, rental vehicle managing employee, specialty credit producer, or specialty credit managing employee shall place, and no insurer shall accept, any insurance with any insurer as to which the licensee does not then hold a license and appointment under this subtitle.
- (6) The **commissioner**~~executive director~~ shall prescribe and furnish all forms required under this subtitle as to licenses and appointments.

➔Section 1045. KRS 304.9-085 is amended to read as follows:

- (1) A "managing general agent" is an individual or business entity appointed by an insurer to solicit applications from agents for insurance contracts or to negotiate insurance contracts on behalf of an insurer and, if authorized to do so by an insurer, to effectuate and countersign insurance contracts.
- (2) No individual or business entity shall in this state be, act as, or hold himself,~~or~~ herself, **or itself** out as a managing general agent unless then licensed as a managing general agent. In order to qualify for a managing general agent license, an individual shall:
 - (a) Hold an agent license with property and casualty lines of authority and be appointed by each authorized insurer the licensee holds the contract to represent;
 - (b) If a nonresident, hold a nonresident agent license with property and casualty lines of authority and be appointed by each authorized insurer the licensee holds a contract to represent in Kentucky; and
 - (c) Hold a surplus lines broker license if any unauthorized insurers are represented or used.

In order for a business entity to qualify for a managing general agent license, all individuals acting on behalf of the business entity under its license shall be licensed agents with property and casualty lines of authority and shall be designated with the **commissioner**~~executive director~~ as to the license in accordance with all provisions of KRS 304.9-133 except for subsection (2)(a).

- (3) As used in this chapter, "agent" includes managing general agent unless the context requires otherwise.
- (4) A managing general agent is a representative of the insurers which the managing general agent holds a contract to represent. Each insurer is liable for the acts of the managing general agent in representing that insurer.
- (5) The **commissioner**~~executive director~~ shall renew managing general agent licenses in accordance with KRS 304.9-260.

➔Section 1046. KRS 304.9-100 is amended to read as follows:

- (1) The purpose of a license issued under this subtitle to an insurance producer is to authorize and enable the licensee actively and in good faith to engage in the business of insurance with respect to the general public, and to facilitate the public supervision of such activities in the public interest; and not for the purpose of enabling the licensee to receive a rebate of premium in the form of "commission" or other compensation upon his **or her** own interest or upon those of other persons with whom he **or she** is closely associated in capacities other than as an insurance producer.
- (2) The **commissioner**~~executive director~~ shall not grant, renew, continue, or permit to exist any license of an insurance producer as to any applicant therefor or licensee thereunder if he **or she** finds that the license has been or is being or will probably be used by the applicant or licensee principally for the purpose of writing "controlled business," that is:

- (a) Insurance on his *or her* own interest or those of his *or her* family or of his *or her* employer; or
 - (b) Insurance or annuity contracts covering himself, *herself*, or members of his *or her* family, or the officers, directors, stockholders, partners, employees, or debtors of a partnership, association, or corporation of which he *or she*, or a member of his *or her* family, is an officer, director, stockholder, partner, associate, or employee.
- (3) Such a license shall be deemed to have been, or intended to be, used principally for the purpose of writing controlled business if the ***commissioner***~~[executive director]~~ finds that during any twelve (12) months' period the aggregate premiums accruing or to accrue from controlled business have exceeded or probably will exceed the aggregate premiums accruing or to accrue on other business written or probably to be written by the applicant or licensee during the same period.
- (4) This section shall not apply as to:
- (a) Insurance of the interest of a motor vehicle sales or financing agent in a motor vehicle sold or financed by it;
 - (b) Insurance of the interest of real property mortgagee in the mortgaged property, except title insurance;
 - (c) Limited line credit insurance; and
 - (d) Rental vehicle insurance.

➔Section 1047. KRS 304.9-105 is amended to read as follows:

- (1) An individual applying for an agent license shall make application to the ***commissioner***~~[executive director]~~ on the uniform individual application or other application prescribed by the ***commissioner***~~[executive director]~~. Before approving the application, the ***commissioner***~~[executive director]~~ shall find that the applicant:
- (a) Is at least eighteen (18) years of age;
 - (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;
 - (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the ***commissioner***~~[executive director]~~;
 - (e) Is competent to exercise the license and has:
 - 1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The ***commissioner***~~[executive director]~~ shall promulgate administrative regulations to carry out the purpose of this section;
 - 2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the ***commissioner***~~[executive director]~~ for the lines of authority for which the individual has applied; and
 - 3. Paid the fees set forth in KRS 304.4-010; and
 - (f) Is financially responsible to exercise the license and has:
 - 1. a. Filed with the ***commissioner***~~[executive director]~~ the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the

policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the **commissioner**~~[executive director]~~; or

- b. Deposited with the **commissioner**~~[executive director]~~ cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or
- c. Filed with the **commissioner**~~[executive director]~~ on his or her behalf, by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of twenty thousand dollars (\$20,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the **commissioner**~~[executive director]~~ or at least thirty (30) days' prior written notice will have been given to the **commissioner**~~[executive director]~~, whichever shall first occur; and

- 2. Agreed with the **commissioner**~~[executive director]~~ that if at any time notice is given to the **commissioner**~~[executive director]~~ that any policy filed in accordance with subparagraph 1.a. of this paragraph, or agreement filed in accordance with subparagraph 1.c. of this paragraph, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the **commissioner**~~[executive director]~~, or if any deposit in accordance with subparagraph 1.b. of this paragraph be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by administrative regulations of the **commissioner**~~[executive director]~~, any and all licenses held by the licensee are revoked and shall be promptly surrendered to the **commissioner**~~[executive director]~~ without demand.

- (2) The **commissioner**~~[executive director]~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

➔Section 1048. KRS 304.9-107 is amended to read as follows:

- (1) The following persons shall be exempt from the prelicensing course of study requirements for specific lines of authority of KRS 304.9-105(1)(e)1.:
 - (a) Persons holding a Chartered Life Underwriter (CLU) designation for a life line of authority;
 - (b) Persons holding a Chartered Property and Casualty Underwriter (CPCU) designation for property, personal lines, and casualty lines of authority;
 - (c) Persons holding a Certified Insurance Counselor (CIC) designation for life, health, property, personal lines, and casualty lines of authority;
 - (d) Persons holding a designation as a Certified Employee Benefit Specialist (CEBS), Chartered Financial Consultant (ChFC), Certified Financial Planner (CFP), Fellow of the Life Management Institute (FLMI), or Life Underwriter Training Council Fellow (LUTCF) for a life line of authority;
 - (e) Persons holding a designation as a Registered Health Underwriter (RHU), Certified Employee Benefit Specialist (CEBS), Registered Employee Benefit Consultant (REBC), or Health Insurance Advisor (HIA) for a health line of authority;
 - (f) Persons holding a designation as an Accredited Advisor in Insurance (AAI) or Associate in Risk Management (ARM) for property, personal lines, and casualty lines of authority; and
 - (g) Persons holding an insurance degree from an accredited college or university for all lines of authority.
- (2) The **commissioner**~~[executive director]~~ may promulgate administrative regulations to specify additional designations and degrees for exemption from a prelicensing course of study for specified lines of authority to comply with NAIC uniformity standards.

➔Section 1049. KRS 304.9-120 is amended to read as follows:

- (1) Each applicant for license as a resident licensee shall be qualified to designate and shall designate Kentucky as the applicant's home state at the date of application for the license and shall maintain that eligibility throughout the duration of the license.
- (2) In determining the good faith of an applicant's claim that Kentucky is the applicant's principal place of residence, the **commissioner**~~[executive director]~~ may give due consideration to the following:
 - (a) The amount of time actually spent by the applicant within this state during the claimed residence period;
 - (b) The circumstances of the applicant's residence, that is, whether in a single or multiple family-type dwelling, or leased apartment, or permanent residential type; or in hotel, resort, motel, mobile home, or other temporary or transient type of dwelling or accommodation;
 - (c) The circumstances of the applicant, his or her past history and activities, and the probability that he or she will continue as a resident of this state indefinitely into the future if the license were to be issued; and
 - (d) All other pertinent factors.

➔Section 1050. KRS 304.9-130 is amended to read as follows:

- (1) A business entity acting as an agent is required to obtain an agent license. Application shall be made using the uniform business entity application or other application prescribed by the **commissioner**~~[executive director]~~. Before approving the application of a business entity as a resident or as a nonresident which is not eligible to be issued a license in accordance with KRS 304.9-140, the **commissioner**~~[executive director]~~ shall find that:
 - (a) The business entity has paid the fees set forth in KRS 304.4-010;
 - (b) Each officer, director, and member of the business entity who is acting as an agent has obtained an agent's license;
 - (c) The business entity has disclosed to the **Department**~~[Office]~~ of Insurance the identity of all officers and directors and whether or not they are licensed as agents; and
 - (d) The business entity has designated a licensed agent responsible for the business entity's compliance with the insurance laws and regulations of this state.
- (2) Within thirty (30) days of the change, the licensee shall notify the **commissioner**~~[executive director]~~ of all changes among its members, directors, officers, and other individuals designated in or registered as to the license.
- (3) Each agent authorized to act for the business entity shall be designated with the **commissioner**~~[executive director]~~ as to the license in accordance with KRS 304.9-133.
- (4) The **commissioner**~~[executive director]~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

➔Section 1051. KRS 304.9-133 is amended to read as follows:

- (1) A business entity issued a license in accordance with this subtitle, or issued a life settlement broker or life settlement provider license, shall designate only individuals to act under the business entity license.
- (2) Each designated individual shall:
 - (a) Hold the same kind of license as the business entity;
 - (b) If the business entity license has lines of authority, have one (1) or more of the same lines of authority; and
 - (c) If the individual is designated under an agent license, have at least one (1) appointment with an insurer.
- (3) The licensed business entity shall file with the **commissioner**~~[executive director]~~:
 - (a) Notice of the designation of an individual within thirty (30) days of the designation; and
 - (b) Notice of termination of designation of an individual within thirty (30) days of the termination of designation.

- (4) (a) On or before January 31 of each odd-numbered year, each licensed business entity shall file with the ***commissioner***~~[executive director]~~ an annual report of all designated individuals whose designations were not terminated on or prior to December 31 of the preceding calendar year.
- (b) The report shall include each individual licensee's name, identification number, and lines of authority the individual is designated to exercise on behalf of the business entity.
- (5) The notice and report shall be on a form or in a format prescribed by the ***commissioner***~~[executive director]~~.
- (6) A licensed business entity shall exercise the license only through a designated individual licensee.
 - (a) The business entity shall have for each of its active lines of authority at least one (1) licensed individual with the same line of authority designated with the ***commissioner***~~[executive director]~~. If the business entity fails to have at least one (1) licensed individual designated with the ***commissioner***~~[executive director]~~ for a line of authority, that line of authority shall become inactive; and
 - (b) The business entity shall have at least one (1) licensed individual designated with the ***commissioner***~~[executive director]~~ at all times. If the business entity fails to have at least one (1) individual designated with the ***commissioner***~~[executive director]~~, the business entity license shall terminate and shall be promptly surrendered to the ***commissioner***~~[executive director]~~ without demand.
- (7) An insurer that has appointed the business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license as if the insurer had appointed the individual licensee.

➔Section 1052. KRS 304.9-135 is amended to read as follows:

- (1) As used in this section:
 - (a) "Financial institution" means a bank or bank holding company as defined in the Bank Holding Company Act of 1956, as amended, 12 U.S.C. sec. 1841, a savings bank, savings and loan association, trust company, or any depository institution as defined by the Federal Deposit Insurance Act in 12 U.S.C. sec. 1813(c)(1), and any other individual, corporation, partnership, or association authorized to take deposits and make loans in the Commonwealth, and any affiliate or subsidiary of any of the above;
 - (b) "Insurance agency activities" means any activity relating to insurance other than title insurance, for which a license as agent, reinsurance intermediary broker or manager, specialty credit producer or managing employee, surplus lines broker, or consultant is required under this chapter; and
 - (c) "Insurance information" means any information concerning premiums, terms, and conditions of insurance coverage, including expiration dates and rates, and claims maintained in the records of the financial institution or affiliate.
- (2) A financial institution authorized by law to engage in insurance agency activities in this state shall, in addition to any other applicable requirements, comply with the following requirements:
 - (a) The financial institution or officer, agent, representative, or employee thereof shall qualify for licensure under all applicable provisions of this chapter and abide by all applicable provisions of this chapter and applicable administrative regulations;
 - (b) A financial institution shall provide a written statement to a consumer regarding the consumer's free choice of agent and insurer according to KRS 304.12-150, when the consumer's application for a loan or other extension of credit from the financial institution is pending and when insurance is offered to the consumer, sold to the consumer, or required in connection with the loan or extension of credit by the financial institution or affiliate;
 - (c) A financial institution shall not release a consumer's insurance information to any person or entity for the solicitation or selling of insurance, other than an officer, director, employee, agent, or affiliate of a financial institution, without prior disclosure to the consumer and the opportunity for the consumer to prevent the disclosure;
 - (d) A financial institution shall not release or use health information obtained from the insurance records of a consumer for any purpose, other than activities of a licensed agent, administrator, reinsurance intermediary broker or manager, specialty credit producer or managing employee, surplus lines broker, or consultant, without the written consent of the consumer;
 - (e) A financial institution licensed by the ***department***~~[office]~~ to engage in insurance agency activities shall:

1. Not violate the anti-tying provisions of the Bank Holding Company Act, 12 U.S.C. secs. 1971 et seq., in effect as of December 31, 1997; and
 2. Notify the **department**~~[office]~~ in writing within ten (10) days of any final judgment or any final administrative action, by a federal agency authorized to enforce the anti-tying provision, that finds that the financial institution or any of its employees committed a violation of the Bank Holding Company Act. Any such final and unappealable judgment or final and unappealable administrative action shall be deemed a violation of this chapter;
- (f) Prior to the sale of any policy of insurance to a consumer, a financial institution shall, when practicable, provide to the consumer a written statement that:
1. The insurance offered by the financial institution is not a deposit;
 2. The insurance offered by the financial institution is not insured by the Federal Deposit Insurance Corporation or other government agency that insures deposits;
 3. The insurance offered by the financial institution is not guaranteed by the financial institution or any affiliate;
 4. The insurance may involve investment risk, including potential loss of principal; and
- (g) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations in accordance with KRS Chapter 13A that specify the disclosure forms required by subsections (b), (c), and (f) of this section.
- (3) An officer or employee of a financial institution shall not directly or indirectly delay or impede the completion of a loan transaction or any other transaction with a financial institution for the purpose of influencing a consumer's selection or purchase of any insurance.
 - (4) A financial institution shall not use any advertisement or promotional material causing a reasonable person to mistakenly believe that:
 - (a) The federal government or any state guarantees the insurance sales activities of financial institutions or guarantees the credit of the financial institution; or
 - (b) Any state or federal government guarantees any return on insurance products or is a source of payment on any insurance product sold by the financial institution.
 - (5) A financial institution shall use separate documentation for all credit and insurance transactions when a consumer obtains insurance and credit, other than credit insurance, from a financial institution or any individual or business entity soliciting or selling insurance on the premises of a financial institution.
 - (6) A financial institution shall not include an expense of insurance premiums in a credit transaction when a consumer obtains insurance and credit, other than credit insurance, from a financial institution or any individual or business entity soliciting or selling insurance on the premises of a financial institution, without the written consent of the consumer.
 - (7) A financial institution shall maintain separate and distinct books and records relating to insurance transactions conducted through the financial institution, including files relating to consumer complaints. The books, records, and files shall be made available to the **commissioner**~~[executive director]~~ for inspection in accordance with KRS 304.2-220.

➔Section 1053. KRS 304.9-140 is amended to read as follows:

- (1) Unless denied a license in accordance with KRS 304.9-440, a nonresident individual or business entity shall receive the applicable insurance producer license if:
 - (a) The applicant is currently licensed as a resident and in good standing in his or her home state;
 - (b) The applicant has submitted the proper request for license and has paid the fees required by KRS 304.4-010 and administrative regulations;
 - (c) The applicant has submitted or transmitted to the **commissioner**~~[executive director]~~ the application for a license that the applicant submitted to his or her home state or a completed uniform individual application or uniform business entity application; and

- (d) The applicant's home state awards nonresident licenses to residents of this state on the same basis.
- (2) The **commissioner**~~executive director~~ may verify the applicant's license status through the database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.
- (3) A nonresident licensee who changes his or her home state to a state other than Kentucky shall file a change of address and provide certification from the new home state within thirty (30) days of the change of home state. No fee or license application is required.
- (4) Notwithstanding any other provisions of this chapter, on or after July 1, 2002, an individual licensed as a surplus lines broker in his or her home state shall receive a nonresident surplus lines broker license by meeting the requirements of subsection (1) of this section. Except as to subsection (1) of this section, nothing in this section otherwise amends or supersedes any provision of Subtitle 10 of this chapter.
- (5) Notwithstanding any other provision of this subtitle, an individual licensed as a limited lines agent in his or her home state shall receive a nonresident limited lines agent license in accordance with subsection (1) of this section, granting the same scope of authority as granted under the license issued by the agent's home state.
- (6) The **commissioner**~~executive director~~ shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by subsection (1) of this section, if the applicant's home state awards nonresident licenses to residents of Kentucky on the same basis.
- (7) As a condition to or in connection with the continuation of an insurance producer license issued under this section, the licensee must maintain the applicable license in his or her home state. The insurance producer license issued under this section shall terminate and be surrendered to the **commissioner**~~executive director~~ if and when the licensee's applicable home state license terminates for any reason.

➔Section 1054. KRS 304.9-150 is amended to read as follows:

- (1) Application for a license issued under this subtitle, surplus lines broker license, life settlement broker license, or life settlement provider license shall be made by the applicant. Applications under this subsection shall be certified by the applicant as true, correct, and complete to the best of the applicant's knowledge and belief under penalty of perjury and under penalty of refusal, suspension, or revocation of the license.
- (2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the **commissioner**~~executive director~~ to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) The application shall state the kinds of insurance and any applicable lines of authority proposed to be transacted.
- (4) The application of a resident individual shall show whether the applicant is a citizen of the United States. If the applicant is not a citizen of the United States, the applicant shall attach to the application a copy of his or her legal work authorization document.
- (5) The application shall also show whether the applicant was ever convicted of or is currently charged with committing a crime; whether the applicant was ever involved in an administrative proceeding regarding any professional or occupational license; whether the applicant has a history of not being financially responsible; whether the applicant has any delinquent tax obligation that is not the subject of a repayment agreement; whether the applicant is currently charged with or has ever been found liable of fraud, misappropriation, conversion of funds, misrepresentation, or breach of fiduciary duty; whether the applicant has child support obligations in arrears or is subject to a child support-related subpoena or warrant; and whether the applicant has ever had a business relationship with an insurer terminated for any alleged misconduct, and the facts thereof.
- (6) The **commissioner**~~executive director~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (7) All applications shall be accompanied by:
 - (a) The applicable license fee and examination fee, in the respective amounts stated in KRS 304.4-010:
 - (b) Documentation supporting affirmative answers to the questions posed in the background section;

- (c) If a business entity, certificates issued by the Kentucky Secretary of State demonstrating the business entity is qualified to conduct business in Kentucky; and
- (d) If using an assumed name, copy of any certificate required under KRS 365.015.
- (8) An individual designating Kentucky as his or her home state shall submit to the **commissioner**~~executive director~~ the applicant's criminal background report from the Kentucky Administrative Office of the Courts.
- (9) No applicant for any license shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.
- (10) If the licensee is a business entity, the licensee shall notify the **commissioner**~~executive director~~ of all changes among its members, directors, officers and other individuals designated in or registered as to the license, within thirty (30) days of such change.

➔Section 1055. KRS 304.9-160 is amended to read as follows:

- (1) An individual applying for any license under this subtitle requiring an examination shall pass a written examination unless exempt under KRS 304.9-170. Examinations required by this section shall be developed and conducted in accordance with administrative regulations promulgated by the **commissioner**~~executive director~~.
- (2) The **commissioner**~~executive director~~ may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in KRS 304.4-010.
- (3) Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the **commissioner**~~executive director~~ as set forth in KRS 304.4-010.
- (4) An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

➔Section 1056. KRS 304.9-170 is amended to read as follows:

No preclicensing education or examination shall be required of:

- (1) (a) An individual licensee who allows his or her license to lapse if the license renewal fee is paid within twelve (12) months from the due date of the license renewal fee. However, a penalty in the amount of double the unpaid renewal fee shall be imposed. The **department**~~office~~ shall issue a license with the same lines of authority as the lapsed license.
- (b) Any applicant for license covering any line of authority to which the applicant was licensed under a similar license in Kentucky, other than a temporary license, within the twelve (12) months next preceding date of application. The applicant is not eligible for this exemption if the previous license was revoked or suspended by the **commissioner**~~executive director~~ for reasons other than failure to maintain financial responsibility or to meet continuing education requirements as required by KRS 304.9-105 and 304.9-295.
- (c) A licensed insurance agent operating as a life settlement broker pursuant to KRS 304.15-700(2)(b).
- (2) An individual who applies for an insurance producer license in Kentucky who was previously licensed for the same lines of authority in another state shall not be required to complete any preclicensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.
- (3) An individual licensed as an insurance producer in another state within the last twelve (12) months who moves to Kentucky shall make application within ninety (90) days of establishing legal residence to become a resident licensee in accordance with KRS 304.9-105. No preclicensing education or examination shall be required of that applicant to obtain a license for any line of authority previously held in the prior home state except where the **commissioner**~~executive director~~ determines otherwise by administrative regulation.

- (4) An applicant for an insurance producer's license who is currently licensed in Kentucky as a consultant as to the same line of authority, or has been so licensed within twelve (12) months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the **commissioner**~~executive director~~ for reasons other than failure to maintain financial responsibility as required by KRS 304.9-330.
- (5) Any applicant for license covering the same line of authority as to which that applicant shall have held a valid license issued in accordance with this subtitle or other applicable Kentucky law which was surrendered, in accordance with KRS 304.2-080 or other applicable law, in order to accept employment with the **Department**~~Office~~ of Insurance, provided, however, that the applicant shall apply for relicensing within twelve (12) months of the date of termination of his or her employment with the **Department**~~Office~~ of Insurance.

➔Section 1057. KRS 304.9-180 is amended to read as follows:

- (1) The examination shall test the knowledge or relevant skills and abilities of the individual concerning the lines of authority for which application is made, the duties and responsibilities of a licensee, and the pertinent insurance laws and administrative regulations of this state.
- (2) The **commissioner**~~executive director~~ shall make available to applicants for license, printed information as to the general scope of, and principal subjects to be covered by, the examination for a particular license, together with information as to published books and other reference sources which may be studied by the applicant to prepare for the examination; but the **commissioner**~~executive director~~ shall not furnish lists of examination questions and examination questions shall not be selected from lists known to the **commissioner**~~executive director~~ to have been furnished applicants.

➔Section 1058. KRS 304.9-190 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall provide a reasonable opportunity to all applicants to take the examinations required by this subtitle. Examinations shall be held at least monthly at places in this state designated by the **commissioner**~~executive director~~ reasonably accessible to applicants, and at least weekly at Frankfort.
- (2) The **commissioner**~~executive director~~ shall give, conduct, and grade all examinations in a fair and impartial manner and without unfair discrimination as between individuals examined.
- (3) The **commissioner**~~executive director~~ may require a reasonable waiting period before reexamination of an applicant who has failed to pass a previous examination covering the same line of authority.

➔Section 1059. KRS 304.9-200 is amended to read as follows:

- (1) The license issued under this subtitle or to a surplus lines broker, life settlement broker, or life settlement provider shall contain the licensee's name, city and state of principal place of business address, personal identification number, and the date of issuance, the lines of authority, and any other information the **commissioner**~~executive director~~ deems necessary.
- (2) The licensee shall inform the **commissioner**~~executive director~~ in writing in a format acceptable to the **commissioner**~~executive director~~ of a change of address or change of legal name within thirty (30) days of the change.
- (3) After completion of application for a license, completion of any prelicensing education required under this chapter, payment of applicable fees, and the taking and passing of any examination required under this chapter, the **commissioner**~~executive director~~ shall promptly consider the application. If the **commissioner**~~executive director~~ finds that the applicant has fully met the requirements for licensure, the **commissioner**~~executive director~~ shall promptly issue the license to the applicant; otherwise, the **commissioner**~~executive director~~ shall refuse to issue the license and promptly notify the applicant of the refusal, stating the grounds thereof.
- (4) If a license is refused, the executive director shall promptly refund any appointment fee tendered with the license application. All other fees for application for license or examination shall be deemed earned when paid and shall not be refundable.
- (5) In order to assist in the performance of the **commissioner's**~~executive director's~~ duties, the **commissioner**~~executive director~~ may contract with nongovernmental entities, including the National Association of Insurance Commissioners or its affiliate or subsidiary, to perform ministerial functions, including the collection of fees or data related to licensing.

➔Section 1060. KRS 304.9-230 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may issue, in accordance with KRS 304.9-080, an agent's license with the limited line of authority as follows:
 - (a) Surety;
 - (b) Travel;
 - (c) Limited line credit;
 - (d) Crop; and
 - (e) Other limited lines, as specified by the ***commissioner***~~[executive director]~~ through the promulgation of administrative regulations.
- (2) The ***commissioner***~~[executive director]~~ shall promulgate administrative regulations to establish the requirements, if any, for prelicensing courses of instruction and examination for each limited line of authority.
- (3) On and after July 15, 2002, the ***commissioner***~~[executive director]~~ shall not issue an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance. However, an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance in effect on July 15, 2002, shall continue in effect until surrendered or otherwise terminated in accordance with this subtitle.

➔Section 1061. KRS 304.9-240 is amended to read as follows:

- (1) A licensed agent may solicit for and issue personal travel accident insurance policies by means of mechanical vending machines supervised by the agent and placed at airports and similar places of convenience to the traveling public, if the ***commissioner***~~[executive director]~~ finds that:
 - (a) The policy provides reasonable coverage and benefits, is suitable for sale and issuance by vending machine, and that use of such a machine in a proposed location would be of material convenience to the public;
 - (b) The type of machine proposed to be used is reasonably suitable for the purpose;
 - (c) Reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;
 - (d) Reasonable means are provided for the refund of money inserted in defective machines and for which insurance so paid for is not received; and
 - (e) The cost of maintaining such a machine at a particular location is reasonable in amount.
- (2) For each machine to be used, the ***commissioner***~~[executive director]~~ shall issue to the agent upon his *or her* application a special vending machine license. The license shall specify the name and address of the insurer and agent, the name of the policy to be sold, the serial number and operating location of the machine. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The ***commissioner***~~[executive director]~~ shall also revoke the license of any machine as to which he *or she* finds that the license qualifications no longer exist. The license fee shall be the same as specified in KRS 304.4-010, for an agent, for each license year or part thereof for each respective machine. Proof of the existence of a subsisting license shall be displayed on or about each machine in use, in such manner as the ***commissioner***~~[executive director]~~ reasonably requires.

➔Section 1062. KRS 304.9-260 is amended to read as follows:

- (1) Each license issued under this subtitle, surplus lines broker license, life settlement broker license, and life settlement provider license shall continue in force until expired, suspended, revoked, or otherwise terminated. License renewal fees shall be received on or before the applicable due date for the license as stated in KRS 304.4-010. Beginning January 1, 2003, request for renewal shall be on a form or in a format prescribed by the ***commissioner***~~[executive director]~~ and made as follows:
 - (a) At least thirty (30) days before the renewal request and fees are due from the licensee, the office shall make available to each respective licensee a list of his or her licenses to be renewed during that calendar year. With the licensee's written consent, an insurer or the licensee's employer may request that the

~~department~~~~office~~ send the renewal list to the insurer or to the employer. The ~~department~~~~office~~ may distribute the renewal list to the requesting insurer or employer instead of to the licensee;

- (b) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an even-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the ~~commissioner~~~~executive director~~ by the last day of the licensee's birth month in the next even-numbered year after the date the license is issued, and each subsequent even-numbered year thereafter;
 - (c) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an odd-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the ~~commissioner~~~~executive director~~ by the last day of the licensee's birth month in the next odd-numbered year after the date the license is issued, and each subsequent odd-numbered year thereafter;
 - (d) A business entity that is issued a license in an even-numbered year shall submit the renewal request and fees to the ~~commissioner~~~~executive director~~ by March 31 of the next even-numbered year, and each subsequent even-numbered year thereafter; and
 - (e) A business entity that is issued a license in an odd-numbered year shall submit the renewal request and fees to the ~~commissioner~~~~executive director~~ by March 31 of the next odd-numbered year, and each subsequent odd-numbered year thereafter.
- (2) (a) Any license referred to in subsection (1) of this section for which the request for renewal, any required continuing education course completion documentation, if applicable, and fee are not received by the ~~commissioner~~~~executive director~~ shall be deemed to have expired at midnight on the last day of the birth month for individuals and on March 31 for business entities;
- (b) Any renewal request and fees received by the ~~commissioner~~~~executive director~~ within thirty (30) days after the expiration date may be accepted with no penalty or interruption in license;
- (c) Any renewal request and fees received by the ~~commissioner~~~~executive director~~ after thirty (30) days from the date of expiration, but within sixty (60) days after the date of expiration, may be accepted with no interruption in license if accompanied by a penalty as provided in Subtitle 99 of this chapter; and
- (d) Completion of the required continuing education course, if applicable, shall be on or before the expiration date, which is deemed as the last day of the birth month of the licensee during the applicable odd or even year on a biennial basis. Proof of compliance shall be received by the ~~commissioner~~~~executive director~~ within sixty (60) days after the expiration date.
- (3) A licensee who is unable to comply with license renewal procedures due to military service, long-term medical disability, or some other extenuating circumstance may make a written request for a waiver of those procedures. The licensee may also make a written request for a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with these renewal procedures.
- (4) As a condition to or in connection with the continuation of any insurance producer license, the ~~commissioner~~~~executive director~~ may require the licensee to file with him or her information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
- (5) As a condition to or in connection with the continuation of any license, the ~~commissioner~~~~executive director~~ shall require continuous demonstration of continuing education course completion to sustain the license, and any license shall terminate and be surrendered to the ~~commissioner~~~~executive director~~ if and when the demonstration becomes impaired.
- (6) This section does not apply to temporary licenses issued under KRS 304.9-300, and licensees not licensed for one (1) full year prior to the end of the applicable biennial renewal year.

➔Section 1063. KRS 304.9-270 is amended to read as follows:

- (1) Each insurer appointing an agent, including managing general agent, rental vehicle agent, rental vehicle managing employee, specialty credit producer, and specialty credit managing employee, in this state shall obtain approval of the appointment from the ***commissioner***~~[executive director]~~ by filing with the ***commissioner***~~[executive director]~~ the notice of appointment, specifying the lines of authority to be transacted by the agent for the insurer, and submit the appointment fee, as specified in KRS 304.4-010. Each insurer shall notify the ***commissioner***~~[executive director]~~ of additional lines of authority for which a licensee is deemed authorized to transact business, after the initial appointment, in a format prescribed by the ***commissioner***~~[executive director]~~.
- (2) Prior to appointment, the insurer shall satisfy itself through investigation that the named applicant has not been convicted of any felony offense involving dishonesty or a breach of trust and has not been convicted of a fraudulent insurance act under Subtitle 47 of this chapter, unless the named applicant has received written consent from the ***commissioner***~~[executive director]~~ that specifically refers to KRS 304.47-025(3).
- (3) No agent shall claim to be an agent or representative of, or in any way imply a contractual relationship with, a particular insurer, or place applications for insurance with an insurer unless the agent becomes an appointed agent of the insurer and the agent's appointment has been approved by the ***commissioner***~~[executive director]~~.
- (4) An agent may act as a representative of and place insurance with an insurer without first obtaining approval of the appointment by the ***commissioner***~~[executive director]~~ for a period of fifteen (15) days from the date the first insurance application is executed by the agent. If the agent does not obtain confirmation that the agent's appointment has been approved by the ***commissioner***~~[executive director]~~ within fifteen (15) days from the date the first insurance application is executed, the agent shall immediately discontinue acting as an agent on behalf of the insurer until confirmation is received.
- (5)
 - (a) The insurer shall, no later than fifteen (15) days from the date the agent contract is executed or the first insurance application is submitted by an agent, whichever is earlier, file with the ***commissioner***~~[executive director]~~ a notice of appointment on a form or in a format prescribed by the ***commissioner***~~[executive director]~~.
 - (b) If there is no executed agent contract, the insurer shall also mail to the agent, within the same fifteen (15) day period specified in paragraph (a) of this subsection, a copy of the notice of appointment form filed with the ***commissioner***~~[executive director]~~.
- (6) Within fifteen (15) days of receipt of the notice of appointment, the ***commissioner***~~[executive director]~~ shall determine and notify the insurer whether the agent is eligible for appointment. If the agent's license is in good standing and no other grounds exist to deny the appointment, the ***commissioner***~~[executive director]~~ shall approve the appointment.
- (7) Subject to renewal by the insurer as provided in subsection (8) of this section, each appointment shall remain in effect until the earliest of the following:
 - (a) The ***commissioner***~~[executive director]~~ revokes or otherwise terminates the insurance producer's license;
 - (b) The ***commissioner***~~[executive director]~~ suspends, revokes, or otherwise terminates the appointment; or
 - (c) The insurer terminates the appointment as provided in KRS 304.9-280.
- (8) Biennially, before January 31, the ***department***~~[office]~~ shall distribute to each insurer a listing of the names and individual identification numbers of that insurer's agents whose appointments were in effect during the preceding calendar year and who were not terminated on or prior to December 31 of that calendar year. Any appointment not expressly terminated shall remain in effect as to the lines of authority thereof for which the respective agents are currently appointed, and subject to the fees specified under KRS 304.4-010. On or before March 31, each insurer shall submit the renewal of appointment fee as specified in KRS 304.4-010 for each appointment not terminated on or prior to December 31 of the preceding calendar year.
- (9) Any appointment as to which the request for renewal and fees are not received by the ***commissioner***~~[executive director]~~ by March 31 shall be deemed to have expired at midnight on March 31. Any appointment renewal request and fees received by the ***commissioner***~~[executive director]~~ after March 31 and prior to the next following June 30 may be accepted by the ***commissioner***~~[executive director]~~, in his or her discretion, and the expired appointment may be reinstated as of March 31 if the late request and fees are accompanied by a penalty as provided in KRS 304.99-100.

➔Section 1064. KRS 304.9-280 is amended to read as follows:

- (1) Subject to the agent contract rights of a rental vehicle agent, rental vehicle managing employee, specialty credit producer, specialty credit managing employee, managing general agent, or agent, if any, an insurer may terminate an appointment at any time. However, if any appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.
- (2) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the **commissioner**~~{executive director}~~ within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the **commissioner**~~{executive director}~~, if the reason for termination is one (1) of the reasons set forth in KRS 304.9-440 or if the insurer has knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in KRS 304.9-440. Termination under this subsection shall be deemed termination for cause. Upon the written request of the **commissioner**~~{executive director}~~ the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.
- (3) An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the **commissioner**~~{executive director}~~ within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the **commissioner**~~{executive director}~~. Termination under this subsection shall be deemed termination for cause. Upon written request of the **commissioner**~~{executive director}~~, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
- (4) The insurer or the authorized representative of the insurer shall promptly notify the **commissioner**~~{executive director}~~ in a form or a format acceptable to the **commissioner**~~{executive director}~~ if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the **commissioner**~~{executive director}~~ in accordance with subsection (2) of this section had the insurer known of its existence.
- (5)
 - (a) Within fifteen (15) days after making the notification required for termination without cause, the insurer shall mail a notice of the termination to the licensee at his or her last known address by first-class mail. The notice of termination shall include and indicate the reasons for termination provided to the **commissioner**~~{executive director}~~.
 - (b) Within fifteen (15) days after making the notification required for termination for cause, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.
 - (c) Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the **commissioner**~~{executive director}~~. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the **commissioner's**~~{executive director's}~~ file and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.
- (6)
 - (a)
 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the **commissioner**~~{executive director}~~, or their respective representatives or employees, or an organization of which the **commissioner**~~{executive director}~~ is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these individuals, entities, or their respective representatives or employees as a result of:
 - a. Any statement or information required by or provided in accordance with this section;
 - b. Any information relating to any statement that may be requested in writing from an insurer or licensee by the **commissioner**~~{executive director}~~; or
 - c. A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the **commissioner**~~{executive director}~~.

2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.
 - (b) In any action brought against an individual, business entity, or organization that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the **commissioner**~~executive director~~, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.
 - (c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.
- (7) (a) 1. Any document, material, or other information in the control or possession of the **department**~~office~~ that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the **commissioner**~~executive director~~ in an investigation in accordance with this section:
- a. Shall be confidential by law and privileged;
 - b. Shall not be subject to subpoena; or
 - c. Shall not be subject to discovery or admissible in evidence in any private civil action.
- Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the **commissioner**~~executive director~~ in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.
2. However, the **commissioner**~~executive director~~ is authorized to use the documents, materials, or other information referred to in paragraph (a)1. of this subsection in the furtherance of any regulatory or legal action brought to carry out the **commissioner's**~~executive director's~~ duties.
- (b) Neither the **commissioner**~~executive director~~ nor any individual who received documents, materials, or other information while acting under the authority of the **commissioner**~~executive director~~, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.
- (c) In order to assist in the performance of the **commissioner's**~~executive director's~~ duties, the **commissioner**~~executive director~~:
 1. May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 2. May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and
 3. May enter into agreements governing sharing and use of information consistent with this subsection.

- (d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the **commissioner**~~{executive director}~~ or of sharing as authorized in this subsection.
- (e) The **commissioner**~~{executive director}~~ shall release only final, adjudicated actions including for-cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.
- (f) As part of the nonresident license certification process, the **department**~~{office}~~ shall release only final adjudicated actions on licensees identified in subsection (1) of this section.

➔Section 1065. KRS 304.9-295 is amended to read as follows:

- (1) This section shall apply to individuals who hold licenses or lines of authority requiring continuing education each biennium.
- (2) Beginning January 31, 2006, the continuing education biennial compliance date for an individual resident licensee shall be as follows:
 - (a) A licensee whose birth date is in an even-numbered year shall satisfy continuing education requirements on or before the last day of the licensee's birth month in the even-numbered year. A licensee shall show proof of compliance to the **commissioner**~~{executive director}~~ within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next even-numbered year and each subsequent even-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same;
 - (b) A licensee whose birth date is in an odd-numbered year shall satisfy continuing education requirements and show proof of compliance to the **commissioner**~~{executive director}~~ on or before the last day of the licensee's birth month in the odd-numbered year. A licensee shall show proof of compliance to the **commissioner**~~{executive director}~~ within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next odd-numbered year and each subsequent odd-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same.
- (3) This section shall not apply to:
 - (a) Limited lines of authority under agent licenses, as exempted by the **commissioner**~~{executive director}~~ in accordance with KRS 304.9-230;
 - (b) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium;
 - (c) Licensees holding nonresident licenses who have met the continuing education requirements of their home state and whose home state gives credit to Kentucky resident licensees on the same basis; or
 - (d) Licensees maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the **department**~~{office}~~ with a supporting affidavit.
- (4) A licensee, who holds an agent license and who is not exempt under subsection (3) of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which twelve (12) shall be classroom hours and three (3) hours shall have a course concentration in ethics, during each continuing education biennium.
- (5) Only continuing education courses approved by the **commissioner**~~{executive director}~~ shall be used to satisfy the continuing education requirement of subsection (4) of this section and any other continuing education requirement of this chapter.
 - (a) The continuing education courses which meet the **commissioner's**~~{executive director's}~~ standards for continuing education requirements are:
 - 1. Any part of the Life Underwriter Training Council life course curriculum;
 - 2. Any part of the Life Underwriter Training Council health course curriculum;

3. Any part of the American College Chartered Life Underwriter diploma curriculum;
 4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
 5. Any part of the Insurance Institute of America's programs;
 6. Any part of the certified insurance counselor program;
 7. Any insurance related course taught at an accredited college or university, if the course is approved by the **commissioner**~~[executive director]~~;
 8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the **commissioner**~~[executive director]~~;
 9. Any correspondence course approved by the **commissioner**~~[executive director]~~; and
 10. Any course in accordance with provisions of reciprocal agreements the **commissioner**~~[executive director]~~ enters with other states.
- (b) The **commissioner**~~[executive director]~~ shall prescribe the number of hours of continuing education credit for each continuing education course approved in accordance with this subsection. Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.
 - (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to licensees who do not successfully complete the written examination.
 - (d) The fee for filing continuing education courses for approval by the **commissioner**~~[executive director]~~ shall be as specified in Subtitle 4 of KRS Chapter 304.
 - (e) For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.
- (6) An individual teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a licensee taking and satisfactorily completing the course.
 - (7) Excess credit hours accumulated during any continuing education biennium may be carried forward. The **commissioner**~~[executive director]~~ may, by regulation, limit the number of hours carried forward.
 - (8) For good cause shown, the **commissioner**~~[executive director]~~ may grant an extension of time during which the continuing education requirement of subsection (3) of this section may be completed, but the extension of time shall not exceed two (2) years. What constitutes good cause for the extension of time rests within the discretion of the **commissioner**~~[executive director]~~.
 - (9) Every licensee subject to this section shall furnish to the **commissioner**~~[executive director]~~ written certification as to the continuing education courses satisfactorily completed by the licensee. The certification shall be signed by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form prescribed by the **commissioner**~~[executive director]~~.
 - (10) The provider shall furnish to the **commissioner**~~[executive director]~~ certification as to the continuing education courses satisfactorily completed by each licensee. The certification shall be signed or authenticated by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form or in a format prescribed by the **commissioner**~~[executive director]~~.
 - (11) The license or line of authority requiring continuing education shall terminate if the individual holding the license or line of authority fails to comply with the continuing education requirement and has not been granted an extension of time to comply in accordance with subsection (8) of this section. If the license has terminated, the license shall be promptly surrendered to the **commissioner**~~[executive director]~~ without demand. If the line of authority has terminated but another line of authority not requiring continuing education is still in effect, the license shall be promptly delivered to the **commissioner**~~[executive director]~~ for reissuance as to the line of authority still in effect.

- (12) The license of any individual subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS 304.9-440, if the individual submits to the **commissioner**~~[executive director]~~ a false or fraudulent certificate of compliance with the continuing education requirement.
- (13) (a) The **commissioner**~~[executive director]~~ may withdraw approval of a continuing education provider, course, or instructor for good and just cause.
- (b) In addition to or in lieu of withdrawal of approval, the **commissioner**~~[executive director]~~ may impose a civil penalty of not more than one thousand dollars (\$1,000) per violation of this chapter by a provider or an instructor.

➔Section 1066. KRS 304.9-300 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may issue a temporary license for a period not to exceed one hundred eighty (180) days without requiring an examination or prelicensing course of study if the **commissioner**~~[executive director]~~ deems that a temporary license is necessary for the servicing of an insurance business in the following cases:
- (a) To the surviving spouse or court-appointed personal representative of a licensed agent who dies or becomes mentally or physically disabled, to allow adequate time for the:
1. Sale of the insurance business owned by the agent;
 2. Recovery or return of the agent to the business; or
 3. Training and licensing of new personnel to operate the agent's business.
- (b) To a member or employee of a business entity licensed as an agent, upon the death or disability of the sole individual designated in the business entity application or the license.
- (c) To the designee of a licensed agent entering upon active service in the Armed Forces of the United States.
- (d) In any other circumstance where the **commissioner**~~[executive director]~~ deems that the public interest will best be served by the issuance of this license.
- (2) In addition to the restrictions on temporary licenses set forth in KRS 304.9-310, the **commissioner**~~[executive director]~~ may, by order, limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The **commissioner**~~[executive director]~~ may require the temporary licensee to have a suitable sponsor who is a licensed agent or insurer and who assumes responsibility for all acts of the temporary licensee, and may impose other similar requirements designed to protect insureds and the public. The **commissioner**~~[executive director]~~ may, by order, revoke a temporary license if the interests of insureds or the public are endangered. A temporary license shall not continue after the owner or the personal representative disposes of the business.
- (3) Application for a temporary license shall be filed with the **commissioner**~~[executive director]~~ in the form and containing the information as the **commissioner**~~[executive director]~~ may reasonably require, and be accompanied by the application fee as specified in KRS 304.4-010.

➔Section 1067. KRS 304.9-320 is amended to read as follows:

For the protection of the people of this Commonwealth the **commissioner**~~[executive director]~~ shall not issue, continue, or permit to exist any license as consultant except in compliance with this subtitle, or as to any person not qualified therefor as follows:

- (1) If an individual, the applicant:
- (a) Must be eighteen (18) or more years of age;
 - (b) Must have had not less than five (5) years of actual experience as a licensed agent with respect to the kinds of insurance and contracts to be covered by the license, or other special experience, education or training, all of sufficient content and duration reasonably necessary for competence in fulfilling the responsibilities of a consultant;
 - (c) Must have a thorough knowledge of insurance and annuity contracts of the kinds proposed to be covered under the license;

- (d) Must satisfy the **commissioner**~~[executive director]~~ by written examination;
 - (e) Must be competent, trustworthy under highest fiduciary standards, financially responsible, and of good personal and business reputation; and
 - (f) Must have filed the bond required by KRS 304.9-330.
- (2) If a business entity, the applicant:
- (a) Must complete and submit a National Association of Insurance Commissioners uniform license application;
 - (b) Must pay applicable fees as set forth in KRS 304.4-010;
 - (c) Must be competent, trustworthy under the highest fiduciary standards, financially responsible, and of good business reputation; and
 - (d) Must designate each individual authorized to act for the business entity under its consultant license in accordance with KRS 304.9-133.
- (3) A consultant license shall cover either or both of the following categories, as selected by the licensee:
- (a) Property and casualty; or
 - (b) Life and health.

A consultant licensed in both categories shall qualify separately for, and be licensed in, each category.

➔Section 1068. KRS 304.9-330 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, every applicant for license as a consultant shall file with the **commissioner**~~[executive director]~~ with his **or her** application for license, and shall maintain in effect while so licensed:
- (a) The certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the consultant a policy of insurance covering the legal liability of the consultant as the result of erroneous acts or failure to act in his **or her** capacity as an insurance consultant, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days prior written notice will have been given to the **commissioner**~~[executive director]~~; or
 - (b) A deposit with the **commissioner**~~[executive director]~~ of cash, or a cash surety bond executed by an insurer authorized to write this business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000) which shall be subject to lawful levy of execution by any party to whom the consultant has been found to be legally liable as the result of erroneous acts or failure to act in his **or her** capacity as a consultant.
- (2) The bond shall indemnify any person damaged by any fraudulent or unlawful act or conduct of the licensee in transactions under the license, and shall likewise be conditioned upon faithful accounting and application of all moneys coming into the licensee's possession in connection with his **or her** activities as the licensee.
- (3) The bond shall remain in force until released by the **commissioner**~~[executive director]~~, or until canceled by the surety. Without prejudice to any liability previously incurred thereunder, the surety may cancel the bond upon thirty (30) days advance written notice to the licensee and the **commissioner**~~[executive director]~~.

➔Section 1069. KRS 304.9-350 is amended to read as follows:

- (1) A consultant who is also licensed as an agent shall not, directly or indirectly, receive or share in both a fee and other compensation paid, directly or indirectly, from an insured or any insurer with respect to any insurance or annuity contract procured, renewed, continued, modified, terminated, or otherwise disposed of pursuant to any recommendation given or transaction engaged in by the licensee under this license or any license issued under this code.

- (2)
 - (a) If the licensee has received or is to receive any fee, commission, or compensation from the insured or proposed insured, or from any other person other than the insurer, directly or indirectly, with respect to any insurance transaction or proposed insurance transaction, or with respect to any insurance or annuity contract existing or proposed, it shall conclusively be presumed that the licensee was acting as a consultant with respect to such transaction or contract.
 - (b) An individual or business entity dually licensed as a consultant and an agent shall not sell, solicit, or negotiate insurance, or otherwise act as an agent, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a written consulting contract required by subsection (4) of this section:
 - 1. During the term of the written consulting contract; or
 - 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
 - (c) An agent who has a financial or business ownership interest or affiliation with the consultant acting as such pursuant to a written consulting contract required by subsection (4) of this section shall not sell, solicit, or negotiate insurance, either directly or indirectly, with respect to the insurance risk of the insured or prospective insured that was the subject of a consulting contract:
 - 1. During the term of the written consulting contract; or
 - 2. Within twelve (12) months after the expiration of the consulting contract, but no less than twenty-four (24) months from the inception of the contract.
 - (d) Consulting fees paid to a consultant pursuant to a written contract in compliance with subsection (4) of this section may be shared between a business entity licensed as a consultant and an individual who is licensed as a consultant and is an owner, officer, partner, member, or employee of the business entity.
- (3) No person licensed as a consultant under this section may receive any fee, commission or thing of value for examining, appraising, reviewing or evaluating any insurance policy, bond, annuity or pension or profit-sharing contract, plan or program or for making recommendation or giving advice with regard to any of the above, unless such compensation is based upon a prior written contract as provided in subsection (4) of this section.
- (4) Prior to the provision of consultant's services, a person licensed as a consultant under this section shall disclose the following in a written contract signed by the party to be charged:
 - (a) The services to be provided by the consultant to the insured and prospective insured;
 - (b) The beginning and ending date of the agreement;
 - (c) Any insurance to which the contract for consultant's services applies;
 - (d) The arrangement for compensation of the consultant, whether by a flat rate, hourly rate, or otherwise;
 - (e) Whether the consultant is dually licensed as an agent; and
 - (f) Whether the consultant has a financial or business ownership interest in or affiliation with, or controls in whole or in part, any business entity or insurer.

A copy of every contract shall be retained by the consultant for not less than five (5) years after expiration of the contract.
- (5) No person licensed as a consultant may receive any compensation, direct or indirect, as a result of:
 - (a) The sale of insurance or annuities to; or
 - (b) The use of securities or trusts in connection with pensions for any person to whom any such licensee has performed any related consulting service for which he has received a fee or contracted to receive a fee within the preceding twelve (12) months unless such compensation is provided for in the written contract required by subsection (4) of this section.
- (6) No person licensed as an insurance consultant under this section may be an executive in, or employee of, or own stock which gives him a majority interest, direct or indirect, in any authorized insurer. No consultant may recommend or encourage the purchase of insurance, annuities, or securities from any authorized insurer in which any member of his immediate family holds an executive position or holds a majority interest.

- (7) A person dually licensed as a consultant and an agent shall not act as both a consultant and an agent with regards to any risk which is the subject of a contract required by subsection (4) of this section.
- (8) Nothing in this section shall prohibit an agent who holds some form of formal financial planning certification or designation recognized in administrative regulation promulgated by the ~~department~~~~office~~ from receiving a fee for services provided under that certification or designation and from receiving a commission for the sale, solicitation, or negotiation of life insurance or annuities if:
 - (a) Prior to providing financial planning services, the agent discloses the following in a written contract signed by the party to be charged:
 1. The financial planning services for which the fee is to be charged;
 2. The amount of the fee to be charged, including a description of how the fee will be determined or calculated; and
 3. That the party to be charged is under no obligation to purchase any insurance product through the agent; and
 - (b) Prior to the execution of the written agreement provided for in paragraph (a) of this subsection, or solicitation of the sale of a product or service, the agent discloses that:
 1. He or she is an agent; and
 2. A commission for the sale, solicitation, or negotiation of insurance will be received in addition to a fee for financial planning, if applicable.

➔Section 1070. KRS 304.9-373 is amended to read as follows:

Every administrator shall maintain at its administrative office, for the duration of the written agreement referred to in KRS 304.9-371 and at least five (5) years thereafter, adequate books and records of all transactions between it, insurers, and insureds. Such books and records shall be maintained in accordance with prudent standards of insurance industry recordkeeping. The ~~commissioner~~~~executive director~~ shall have access to such books and records for the purpose of examination, audit, and inspection. Any trade secrets contained therein, including but not limited to the identity and addresses of insureds, shall be confidential except the ~~commissioner~~~~executive director~~ may use such information in any proceedings instituted against the administrator. An insurer shall retain the right to continuing access to such books and records of the administrator sufficient to permit the insurer to fulfill all of its contractual obligations to insureds subject to any restrictions in the written agreement between the insurer and administrator on the proprietary rights of the parties in such books and records. Any examination or any part of the examination of any administrator shall be made by the ~~commissioner~~~~executive director~~ or by examiners designated by ~~the commissioner~~~~him~~ and shall be at the expense of the administrator examined as specified in Subtitle 2 of this chapter.

➔Section 1071. KRS 304.9-390 is amended to read as follows:

- (1) Every individual and business entity issued a license with Kentucky as its home state shall have and maintain in this state a place of business accessible to the public, and wherein the licensee principally conducts transactions under his or her license. This provision shall not be deemed to prohibit maintenance of this place of business in the office of an insurer, office of the employer, or in the residence of the licensee.
- (2) The licenses of the licensee shall be conspicuously displayed in each of the places of business in a part customarily open to the public.
- (3) The licensee shall keep at his or her place of business complete records of transactions under the license.
 - (a) The records shall be kept available for inspection by the ~~commissioner~~~~executive director~~ for a period of at least five (5) years after completion of the respective transactions.
 - (b) For an insurance producer, the record shall show, as to each insurance policy or contract placed by or through the licensee, the names of the insurer and insured, the number and expiration date of, and premium payable as to, the policy or contract, and any other information as the ~~commissioner~~~~executive director~~ may reasonably require.

➔Section 1072. KRS 304.9-410 is amended to read as follows:

- (1) An agent with a line of authority for property, casualty, or limited line surety insurance may:
 - (a) Occasionally place an insurance coverage with an insurer as to which he or she is not then appointed as an agent, and such insurer may accept such business only when placed through an appointed agent of the insurer. Both agents involved in this exchange of business must be then licensed as to all of the kinds of insurance represented by the coverage; and
 - (b) Without limitation, place insurance coverage with an insurer as to which he *or she* is not then appointed as agent, and such insurer may accept such business only if placed through a licensed managing general agent.
- (2) An agent with a line of authority for life or health insurance may, occasionally, place with another insurer as to which he or she is not appointed as agent, a particular risk or portion thereof which has been rejected by the insurers as to which the agent is appointed or is known to the agent to be unacceptable to such insurers, and without then being appointed as to the other insurer.
- (3) The **commissioner**~~{executive director}~~ shall, by regulation, establish the amount or volume of business that constitutes the occasional placement of business permitted by subsections (1) and (2) of this section. Such regulations may be based on a percentage or ratio of the agent's business or any other appropriate standard.

➔Section 1073. KRS 304.9-430 is amended to read as follows:

- (1) No individual or business entity shall in this state act as or hold himself or herself out to be an adjuster unless then licensed by the Kentucky **Department**~~{Office}~~ of Insurance as an adjuster. Application for license shall be made to the **commissioner**~~{executive director}~~ according to forms as prescribed and furnished by him or her. The **commissioner**~~{executive director}~~ shall issue the license as to applicants qualified upon payment of the license application fee stated in KRS 304.4-010.
- (2) To be licensed as an adjuster the applicant shall:
 - (a) Be an individual twenty-one (21) years or more of age;
 - (b) Be a resident of Kentucky, or resident of another state which will permit residents of Kentucky to act as adjusters in the other state;
 - (c) Be an employee of an insurer, a full-time salaried employee of a licensed adjuster or a graduate of a recognized law school, or have experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him or her reasonably competent to fulfill the responsibilities of an adjuster;
 - (d) Be trustworthy and of good reputation;
 - (e) Have and maintain an office accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of the office in the office of an insurer, of the employer, or in the home of the licensee;
 - (f) Have successfully passed a written examination prescribed by the **commissioner**~~{executive director}~~, except if the applicant has successfully passed a written examination in a state which permits residents of Kentucky to act as adjusters in the other state; and
 - (g) Be financially responsible to exercise the license.
- (3) A business entity, whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is designated with the **commissioner**~~{executive director}~~ as to the license in accordance with KRS 304.9-133.
- (4) The **commissioner**~~{executive director}~~ may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (5) Notwithstanding the provisions of this section, no adjuster's license or qualifications shall be required as to any adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all losses.

➔Section 1074. KRS 304.9-440 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, life settlement broker, or life settlement provider license, or may levy a civil penalty in accordance with KRS 304.99-020, or any combination of actions for any one (1) or more of the following causes:
- (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the ***commissioner***~~[executive director]~~ or of another state's insurance ***commissioner***~~[executive director]~~;
 - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance or the business of life settlements;
 - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, life settlement contract, or application for insurance;
 - (f) Having been convicted of or having pled guilty or nolo contendere to any felony;
 - (g) Having admitted or been found to have committed any unfair insurance trade practice, insurance fraud, or fraudulent life settlement act;
 - (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
 - (i) Having an insurance license, life settlement license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
 - (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;
 - (k) Forging another's name to an application for insurance, to any other document related to an insurance transaction, or to any document related to the business of life settlements;
 - (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
 - (m) Knowingly accepting insurance or life settlement business from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;
 - (n) Failing to comply with an administrative or court order imposing a child support obligation;
 - (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
 - (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude;
 - (q) Failing to no longer meet the requirements for initial licensure;
 - (r) If a life settlement provider, demonstrating a pattern of unreasonable payments to owners or failing to honor contractual obligations set out in a life settlement contract;
 - (s) Entering into any life settlement contract or using any form that has not been approved pursuant to Subtitle 15 of this chapter;
 - (t) If a licensee, having assigned, transferred, or pledged a policy subject to a life settlement contract to a person other than a life settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

- (u) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the **commissioner**~~[executive director]~~.
- (2) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the **commissioner**~~[executive director]~~ finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the **Department**~~[Office]~~ of Insurance nor corrective action taken.
- (3) The applicant or licensee may make written request for a hearing in accordance with KRS 304.2-310.
- (4) The **commissioner**~~[executive director]~~ shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law.
- (5) The **commissioner**~~[executive director]~~ may suspend, revoke, or refuse to renew the license of a licensed insurance agent operating as a life settlement broker, pursuant to KRS 304.15-700, if the **commissioner**~~[executive director]~~ finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.
- (6) If the **commissioner**~~[executive director]~~ denies a license application or suspends, revokes, or refuses to renew the license of a life settlement provider or life settlement broker, or suspends, revokes, or refuses to renew the license of a licensed life insurance agent operating as a life settlement broker pursuant to KRS 304.15-700, the **commissioner**~~[executive director]~~ shall comply with the provisions of this section and KRS Chapter 13B.

➔Section 1075. KRS 304.9-450 is amended to read as follows:

- (1) Upon suspension or revocation of any license the **commissioner**~~[executive director]~~ shall notify the licensee either in person or by mail addressed to the licensee at his or her address last of record with the **commissioner**~~[executive director]~~. Notice by mail shall be deemed effectuated when so mailed. The **commissioner**~~[executive director]~~ shall give like notice to the insurer represented by the agent, in the case of an agent's license.
- (2) The **commissioner**~~[executive director]~~ shall not again issue a license under this code to or as to any individual or business entity whose license has been revoked, until after expiration of one (1) year and thereafter not until the individual or business entity again qualifies in accordance with the applicable provisions of this code. An individual or business entity whose license has been revoked twice shall not again be eligible for any license under this code.
- (3) If the license of a business entity is suspended or revoked, no member, officer, or director of the business entity shall be licensed or be designated in or as to any license to exercise the powers thereof during the period of the suspension or revocation, unless the **commissioner**~~[executive director]~~ determines upon substantial evidence that the member, officer, or director was not personally at fault and did not acquiesce in the matter on account of which the license was suspended or revoked.
- (4) In the event that the action by the **commissioner**~~[executive director]~~ is to nonrenew or to deny an application for a license, the **commissioner**~~[executive director]~~ shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the **commissioner**~~[executive director]~~ in accordance with KRS 304.2-310.

➔Section 1076. KRS 304.9-460 is amended to read as follows:

- (1) All licenses issued under this code, although issued and delivered to the licensee or his **or her** employer, shall at all times be the property of the Commonwealth of Kentucky. Upon any expiration, termination, suspension, or revocation of the license, the licensee or other person having possession or custody of the license shall forthwith deliver it to the **commissioner**~~[executive director]~~ either by personal delivery or by mail.
- (2) As to any license lost, stolen, or destroyed while in the possession of any such licensee or person, the **commissioner**~~[executive director]~~ may accept in lieu of return of the license, the affidavit of the licensee or other person responsible for or involved in the safekeeping of such license, concerning the facts of such loss, theft, or destruction.

➔Section 1077. KRS 304.9-465 is amended to read as follows:

- (1) For the protection of the people of Kentucky, the **commissioner**~~[executive director]~~ may by order deny, suspend, or place conditions upon any license subject to the provisions of this subtitle.
- (2) An order denying a license or appointment shall be based upon the application and any other information pertaining to the applicant available to the **department**~~[office]~~.
- (3) One (1) or more of the following circumstances shall be considered for an order suspending a license:
 - (a) The licensee's indictment for crime involving dishonesty, breach of trust, a violation of Subtitle 47 of this chapter, or a violation of 18 U.S.C. sec. 1033;
 - (b) Sworn complaints to the **department**~~[office]~~ against the licensee showing clear and convincing evidence of a violation of KRS 304.9-400 totaling in the aggregate three hundred dollars (\$300) or more;
 - (c) The suspension or revocation of any other professional license held by the licensee in Kentucky or any other jurisdiction.
- (4) The **commissioner**~~[executive director]~~ may place conditions upon any license for any reason set forth in subsection (3) of this section.
- (5) Any person aggrieved by an order of the **commissioner**~~[executive director]~~ under this section may file an application for an emergency hearing pursuant to KRS 13B.125 within sixty (60) days of the date of the order. The **department**~~[office]~~ shall conduct the hearing within ten (10) working days of the request for a hearing, and within five (5) working days of the completion of the hearing the agency or hearing officer shall render a written decision affirming, modifying, or revoking the emergency order. The emergency order shall be affirmed if there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare. The **commissioner**~~[executive director]~~ shall participate in an expedited hearing at the applicant's written request.

➔Section 1078. KRS 304.9-467 is amended to read as follows:

- (1) An individual or business entity holding a license issued under this subtitle or holding a license as a surplus lines broker, life settlement broker, or life settlement provider shall notify the **commissioner**~~[executive director]~~ in writing immediately if the licensee's license to conduct insurance, securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance is denied.
- (2) A licensee shall report to the **commissioner**~~[executive director]~~ any administrative action taken against the licensee in another jurisdiction or by another governmental agency in Kentucky within thirty (30) days of the final disposition of the matter. This report shall include:
 - (a) A written statement identifying the type of license and explaining the circumstances of each incident;
 - (b) A copy of the notice of hearing or other document that states the charges and allegations; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (3) Within thirty (30) days of service upon the licensee of any criminal complaint, information, or indictment in any jurisdiction, the licensee shall submit to the **commissioner**~~[executive director]~~ the following:
 - (a) A written statement explaining the circumstances of each incident;
 - (b) A copy of the charging document; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (4) If the charges alleged in the criminal complaint, information, or indictment have not been finally resolved within the thirty (30) day period following service of the criminal complaint, information, or indictment, the licensee shall, within thirty (30) days following the resolution of the charges, submit to the **commissioner**~~[executive director]~~ a copy of the official document which demonstrates the resolution of the charges or any final judgment.

➔Section 1079. KRS 304.9-485 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may issue to an applicant qualified under this section a license to act as a specialty credit insurance producer for the following lines of insurance only:
 - (a) Credit life;
 - (b) Credit health;
 - (c) Credit personal property;
 - (d) Credit involuntary unemployment; and
 - (e) Any other credit-related insurance approved by the ***commissioner***~~[executive director]~~ as promulgated by administrative regulation.
- (2) For a specialty license to be issued under this section, the applicant shall submit to the ***commissioner***~~[executive director]~~ all of the following:
 - (a) A written application, signed by the applicant, on a form prescribed by the ***commissioner***~~[executive director]~~, that contains the information prescribed by the ***commissioner***~~[executive director]~~, including a list of physical locations where activities authorized by the specialty license will be conducted;
 - (b) A certification by an insurer authorized to do business in this state, signed and affirmed as true under penalty of perjury by an officer stating that:
 1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and
 2. The insurer has appointed the managing employee and business entity applicants to act as agents for the type of insurance specified; and
 - (c) The applicable fee set forth in KRS 304.4-010.
- (3) A specialty license issued under this section authorizes an employee or representative of the license holder to participate in any aspect of selling the types of insurance specified in this section, without being licensed, registered, or otherwise individually identified, if all of the following are true:
 - (a) The employee or representative operates with permission from and under the supervision of a managing employee license holder;
 - (b) The employee or representative has been instructed by the managing employee license holder with respect to the disclosures that may be required to be made to consumers in connection with the sale of credit insurance; and
 - (c) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative.
- (4) A specialty license holder may not in any manner advertise, represent, or otherwise hold out the license holder or any employee or representative of the license holder as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.
- (5) Insurance shall not be transacted under this section at any location unless the sale of insurance includes the consumer protection disclosures set forth in Regulation Z of the Federal Truth in Lending Act, 15 U.S.C. sec. 501 et seq.
- (6) If a specialty credit insurance producer violates this chapter, the ***commissioner***~~[executive director]~~ may, after notice and the opportunity for a hearing, impose any penalties set forth in KRS 304.2-360, 304.9-440, and 304.99-020.
- (7) An examination is not required for issuance of a license under this section and continuing education requirements do not apply to a license issued under this section. A business entity shall continuously maintain at least one (1) managing employee licensed under this section, but shall not be required to license any of its officers, directors, or other employees individually.
- (8) A licensee under this section may receive commissions or other compensation for services rendered in connection with the sale of credit insurance under this section.
- (9) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.

- (10) The ***commissioner***~~[executive director]~~ shall establish revenue-neutral license, location, and renewal fees by administration regulation in an amount sufficient to maintain the ***department's***~~[office's]~~ revenues generated by credit-limited license fees for the fiscal year ending June, 2000, indexed annually for inflation.

➔Section 1080. KRS 304.9-503 is amended to read as follows:

- (1) A rental vehicle agent may sell, solicit, or negotiate insurance at the rental vehicle company office as specified in this section for any of the following types of insurance:
- (a) Insurance that covers the risks of travel, including accident and health insurance that provides coverage to renters and other rental vehicle occupants for accidental death or dismemberment and reimbursement for medical expenses that result from the operation or use of the rental vehicle during the rental period;
 - (b) Liability insurance that provides coverage to renters and other authorized drivers of rental vehicles for liability that arises from the operation or use of the rental vehicle, which may include uninsured motorist and underinsured motorist coverage, whether offered separately or in combination with other liability insurance;
 - (c) Personal property insurance that provides coverage to renters and other rental vehicle occupants for the loss of or damage to personal effects that occurs during the rental period;
 - (d) Roadside assistance;
 - (e) Emergency sickness protection programs; and
 - (f) Any other insurance incidental to the rental of a motor vehicle and approved by the ***commissioner***~~[executive director]~~.
- (2) When a renter purchases any of the rental vehicle insurance coverages listed in subsection (1) of this section, the coverages shall be primary over any other coverages which may be available to the renter or authorized driver covering the same loss.

➔Section 1081. KRS 304.9-505 is amended to read as follows:

- (1) A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of KRS 304.9-507.
- (2) A business entity licensee shall register with the ***commissioner***~~[executive director]~~ each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.
- (3) The ***commissioner***~~[executive director]~~ may issue to an applicant qualified under this section a license to act as a rental vehicle agent.
- (4) For a license to be issued under this section, the applicant shall submit to the ***commissioner***~~[executive director]~~ all of the following:
- (a) A written application, signed by the applicant, on a form prescribed by the ***commissioner***~~[executive director]~~, that contains the information prescribed by the ***commissioner***~~[executive director]~~;
 - (b) A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:
 - 1. The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and
 - 2. The insurer has appointed the applicant to act as agent for the type of insurance specified;
 - (c) The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010 and KRS 304.9-501 to 304.9-513;
 - (d) A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted;
 - (e) A business entity applicant shall certify that each proposed licensed managing employee has successfully completed education and training programs, successfully passed course examinations, and

will receive continuing education all approved by the **commissioner**~~[executive director]~~ in accordance with KRS 304.9-513; and

- (f) A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the **commissioner**~~[executive director]~~ in accordance with KRS 304.9-513 for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.
- (5) The **commissioner**~~[executive director]~~ may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (4) of this section.

➔Section 1082. KRS 304.9-507 is amended to read as follows:

- (1) A license issued to a business entity under KRS 304.9-505 shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:
 - (a) The employee, representative, or managing employee operates with permission from the business entity licensee;
 - (b) The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees or representatives;
 - (c) The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the **commissioner**~~[executive director]~~ during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the **commissioner**~~[executive director]~~;
 - (d) The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;
 - (e) The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under KRS 304.9-509 prior to the sale of the rental vehicle insurance;
 - (f) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and
 - (g) The business location is registered with the **commissioner**~~[executive director]~~.
- (2) A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.

➔Section 1083. KRS 304.9-513 is amended to read as follows:

- (1) If a licensee violates a provision of this chapter, the **commissioner**~~[executive director]~~ may take administrative action and impose penalties in accordance with this chapter.
- (2) A licensed business entity under KRS 304.9-505 shall provide to the **commissioner**~~[executive director]~~ its courses of instruction, course examinations for managing employees, employee training, and continuing education material for all employees subject to the **commissioner's**~~[executive director's]~~ approval prior to issuance of a license under this section.
- (3) A licensee under KRS 304.9-505 may receive commissions or other compensation for services rendered in connection with the sale of rental vehicle insurance.
- (4) Licenses shall be renewed biennially as set forth in KRS 304.9-260 and 304.9-270.
- (5) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations to carry out the purpose of KRS 304.9-501 to 304.9-513.

➔Section 1084. KRS 304.9-700 is amended to read as follows:

As used in KRS 304.9-700 to 304.9-759, unless the context requires otherwise:

- (1) "Actuary" means a person who is a member in good standing of the American Academy of Actuaries;

- (2) "Controlling person" means any person, firm, association, or corporation who directly or indirectly has the power to direct or cause to be directed the management, control, or activities of the reinsurance intermediary;
- (3) "Insurer" means any person, firm, association, or corporation duly authorized by the **commissioner**~~executive director~~ pursuant to the applicable provisions of this chapter as an insurer;
- (4) "Licensed producer" means an agent, surplus lines broker, or reinsurance intermediary licensed pursuant to the applicable provisions of this chapter;
- (5) "Reinsurance intermediary" means a reinsurance intermediary broker or a reinsurance intermediary manager as defined in subsections (6) and (7) of this section;
- (6) "Reinsurance intermediary broker" means any person, other than an officer or employee of the ceding insurer, firm, association, or corporation who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority or power to bind reinsurance on behalf of the insurer;
- (7) "Reinsurance intermediary manager" means any person, firm, association, or corporation who has authority to bind or manages all or part of the assumed reinsurance business of a reinsurer (including the management of a separate division, department, or underwriting office) and acts as an agent for a reinsurer whether known as a reinsurance intermediary manager, manager, or by other similar term. However, the following persons shall not be considered a reinsurance intermediary manager with respect to the reinsurer for the purposes of KRS 304.9-700 to 304.9-759:
 - (a) An employee of the reinsurer;
 - (b) A United States manager of the United States branch of an alien reinsurer;
 - (c) An underwriting manager which, pursuant to contract, manages all the reinsurance operations of the reinsurer, is under common control with the reinsurer, subject to Subtitle 37 of this chapter, and whose compensation is not based on the volume of premiums written; or
 - (d) The manager of a group, association, pool, or organization of insurers which engage in joint underwriting or joint reinsurance and who are subject to examination by the insurance regulatory official of the state in which the manager's principal business office is located;
- (8) "Reinsurer" means any person, firm, association, or corporation duly authorized in Kentucky pursuant to this chapter as an insurer with the authority to assume reinsurance;
- (9) "To be in violation" means that the reinsurance intermediary, insurer, or reinsurer for whom the reinsurance intermediary was acting failed to comply substantially with the provisions of KRS 304.9-700 to 304.9-759; and
- (10) "Qualified United States financial institution" means an institution that:
 - (a) Is organized or, in the case of a United States office of a foreign banking organization, licensed under the laws of the United States or any state thereof;
 - (b) Is regulated, supervised, and examined by the United States government or state authorities having regulatory authority over banks and trust companies; and
 - (c) Has been determined by either the **commissioner**~~executive director~~, or the Securities Valuation Office of the National Association of Insurance Commissioners, to meet the standards of financial condition and standing considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the **commissioner**~~executive director~~.

➔Section 1085. KRS 304.9-705 is amended to read as follows:

- (1) No individual or business entity shall act as a reinsurance intermediary broker in Kentucky if the reinsurance intermediary broker maintains an office either directly or as a director, officer, member, or employee of a business entity:
 - (a) In Kentucky, unless the reinsurance intermediary broker is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license; or
 - (b) In another state, unless the reinsurance intermediary broker is a licensed insurance producer in Kentucky and may sell reinsurance products under that producer license, or is licensed in another state having a

law substantially similar to KRS 304.9-700 to 304.9-759, or the reinsurance intermediary broker is licensed in Kentucky as a nonresident reinsurance intermediary.

- (2) No individual or business entity shall act as a reinsurance intermediary manager:
 - (a) For a reinsurer domiciled in Kentucky, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license;
 - (b) In Kentucky, if the reinsurance intermediary manager maintains an office, either directly or as a director, officer, member, or employee of a business entity in Kentucky, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license; or
 - (c) In another state for a nondomestic insurer, unless the reinsurance intermediary manager is a licensed insurance producer in Kentucky and may sell reinsurance products under that insurance producer license, is licensed in another state having a law substantially similar to KRS 304.9-700 to 304.9-759, or the person is licensed in Kentucky as a nonresident reinsurance intermediary.
- (3) The **~~commissioner~~**~~{executive-director}~~ may issue a reinsurance intermediary license to any individual or business entity who has complied with the requirements of KRS 304.9-700 to 304.9-759 and who is financially responsible to exercise the license. The license issued to a business entity shall be exercised only by individuals designated with the **~~commissioner~~**~~{executive-director}~~ as to the license in accordance with KRS 304.9-133.
- (4) The **~~commissioner~~**~~{executive-director}~~ may refuse to issue a reinsurance intermediary license if, in his *or her* judgment, the applicant, anyone named on the application, or any member, principal, officer, or director of the applicant is not trustworthy or of good reputation, or that any controlling person of the applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing persons have given cause for revocation or suspension of the license, or has failed to comply with any prerequisite for the issuance of the license.
- (5) Licensed attorneys-at-law of Kentucky, when acting in their professional capacity as attorneys, shall be exempt from this section.

➔Section 1086. KRS 304.9-725 is amended to read as follows:

Transactions between a reinsurance intermediary manager and the reinsurer it represents in such capacity shall only be entered into pursuant to a written contract, specifying the responsibilities of each party, which shall be approved by the reinsurer's board of directors. At least thirty (30) days before the reinsurer assumes or cedes business through such producer, a true copy of the contract approved by the reinsurer's board of directors shall be filed with the **~~commissioner~~**~~{executive-director}~~ for approval. The contract shall, at a minimum, contain provisions that:

- (1) The reinsurer may terminate the contract for cause upon written notice to the reinsurance intermediary manager. The reinsurer may suspend the authority of the reinsurance intermediary manager to assume or cede business during the pendency of any dispute regarding the cause for termination;
- (2) The reinsurance intermediary manager shall render accounts to the reinsurer accurately detailing all material transactions, including information necessary to support all commissions, charges, and other fees received by, or owing to, the reinsurance intermediary manager, and remit all funds due under the contract to the reinsurer on not less than a monthly basis;
- (3) All funds collected for the reinsurer's account shall be held by the reinsurance intermediary manager in a fiduciary capacity in a bank which is a qualified United States financial institution. The reinsurance intermediary manager may retain no more than three (3) months estimated claims payment and allocated loss adjustment expenses. The reinsurance intermediary manager shall maintain a separate bank account for each reinsurer that it represents;
- (4) For at least ten (10) years after expiration of each contract of reinsurance transacted by the reinsurance intermediary manager, the reinsurance intermediary manager shall keep a complete record for each transaction showing:
 - (a) The type of contract, limits, underwriting restrictions, classes or risks, and territory;

- (b) Period of coverage, including effective and expiration dates, cancellation provisions and notice required for cancellation; and disposition of outstanding reserves on covered risks;
- (c) Reporting and settlement requirements of balances;
- (d) Rate used to compute the reinsurance premium;
- (e) Names and addresses of reinsurers;
- (f) Rates of all reinsurance commissions, including the commissions on any retrocessions handled by the reinsurance intermediary manager;
- (g) Related correspondence and memoranda;
- (h) Proof of placement;
- (i) Details regarding retrocessions handled by the reinsurance intermediary manager, as permitted by KRS 304.9-735(4), including the identity of retrocessionaires and percentage of each contract assumed or ceded;
- (j) Financial records, including, but not limited to, premium and loss accounts; and
- (k) When the reinsurance intermediary manager places a reinsurance contract on behalf of a ceding insurer:
 - 1. Directly from any assuming reinsurer, written evidence that the assuming reinsurer has agreed to assume the risk; and
 - 2. If placed through a representative of the assuming reinsurer, other than an employee, written evidence that the reinsurer has delegated binding authority to the representative;
- (5) The reinsurer shall have access to and the right to copy all accounts and records maintained by the reinsurance intermediary manager related to its business in a form usable by the reinsurer;
- (6) The contract shall not be assigned in whole or in part by the reinsurance intermediary manager;
- (7) The reinsurance intermediary manager shall comply with the written underwriting and rating standards established by the insurer for the acceptance, rejection, or cession of all risks;
- (8) Set forth the rates, terms, and purposes of commissions, charges, and other fees which the reinsurance intermediary manager may levy against the reinsurer;
- (9) If the contract permits the reinsurance intermediary manager to settle claims on behalf of the reinsurer:
 - (a) All claims shall be reported to the reinsurer in a timely manner;
 - (b) A copy of the claim file shall be sent to the reinsurer at its request or as soon as it becomes known that the claim:
 - 1. Has the potential to exceed the lesser of an amount determined by the ~~commissioner~~~~executive director~~ or the limit set by the reinsurer;
 - 2. Involves a coverage dispute;
 - 3. May exceed the reinsurance intermediary manager's claims settlement authority;
 - 4. Is open for more than six (6) months; or
 - 5. Is closed by payment of the lesser of an amount set by the ~~commissioner~~~~executive director~~ or an amount set by the reinsurer;
 - (c) All claim files shall be the joint property of the reinsurer and the reinsurance intermediary manager. However, upon an order of liquidation of the reinsurer, the files shall become the sole property of the reinsurer or its estate, but the reinsurance intermediary manager shall have reasonable access to and the right to copy the files; and
 - (d) Any settlement authority granted to the reinsurance intermediary manager may be terminated for cause upon the reinsurer's written notice to the reinsurance intermediary manager or upon the termination of the contract. The reinsurer may suspend the settlement authority during the pendency of the dispute regarding the cause of termination;

- (10) If the contract provides for a sharing of interim profits by the reinsurance intermediary manager, that the interim profits shall not be paid until one (1) year after the end of each underwriting period for property business and five (5) years after the end of each underwriting period for casualty business, or a later period set by the **commissioner**~~{executive director}~~ for specified lines of insurance, and not until the adequacy of reserves on remaining claims has been verified pursuant to KRS 304.9-735(3);
- (11) The reinsurance intermediary manager shall annually provide the reinsurer with a statement of its financial condition prepared by an independent certified accountant;
- (12) The reinsurer shall at least semiannually conduct an on-site review of the underwriting and claims processing operations of the reinsurance intermediary manager;
- (13) The reinsurance intermediary manager shall disclose to the reinsurer any relationship it has with any insurer prior to ceding or assuming any business with such reinsurer pursuant to this contract; and
- (14) The acts of the reinsurance intermediary manager shall be deemed to be the acts of the reinsurer on whose behalf it is acting.

➔Section 1087. KRS 304.9-735 is amended to read as follows:

- (1) A reinsurer shall not engage the services of any person, firm, association, or corporation to act as a reinsurance intermediary manager on its behalf unless the person is licensed as required by KRS 304.9-705(2).
- (2) The reinsurer shall annually obtain a copy of statements of the financial condition of each reinsurance intermediary manager which the reinsurer has engaged prepared by an independent certified accountant in a form acceptable to the **commissioner**~~{executive director}~~.
- (3) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the reinsurance intermediary manager. This opinion shall be in addition to any other required loss reserve certification.
- (4) Binding authority for all retrocessional contracts or participation in reinsurance syndicates shall rest with an officer of the reinsurer who shall not be affiliated with the reinsurance intermediary manager.
- (5) Within thirty (30) days of termination of a contract with a reinsurance intermediary manager, the reinsurer shall provide written notification of such termination to the **commissioner**~~{executive director}~~.
- (6) A reinsurer shall not appoint to its board of directors any officer, director, employee, controlling shareholder, or subproducer of its reinsurance intermediary manager. This subsection shall not apply to relationships governed by Subtitle 37 of this chapter or, if applicable, any provisions of Subtitle 3 of this chapter on producer controlled insurers.

➔Section 1088. KRS 304.9-740 is amended to read as follows:

- (1) A reinsurance intermediary shall be subject to examination by the **commissioner**~~{executive director}~~. The **commissioner**~~{executive director}~~ shall have access to all books, bank accounts, and records of the reinsurance intermediary in a form usable to the **commissioner**~~{executive director}~~.
- (2) A reinsurance intermediary manager may be examined as if it were the reinsurer.

➔Section 1089. KRS 304.9-745 is amended to read as follows:

- (1) The license of a reinsurance intermediary may be suspended or revoked, civil penalties imposed in the amount applicable to agents under KRS 304.99-020, conditions imposed on the license, or any combination thereof, on the grounds set forth in KRS 304.9-440.
- (2) If a reinsurance intermediary violates any provision of this chapter or any other statute or administrative regulation administered by the **commissioner**~~{executive director}~~, the reinsurance intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the insurer or reinsurer for net losses incurred by the insurer or reinsurer attributable to the violation.
- (3) Nothing contained in this section shall affect the right of the **commissioner**~~{executive director}~~ to impose any other penalties provided in this chapter.
- (4) Nothing contained in KRS 304.9-700 to 304.9-759 is intended to or shall in any manner limit or restrict the rights of policyholders, claimants, creditors, or third parties.

➔Section 1090. KRS 304.9-750 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may promulgate reasonable administrative regulations for the implementation, interpretation, and administration of the provisions of KRS 304.9-700 to 304.9-759.
- (2) Insurers or reinsurers shall not continue to utilize the services of a reinsurance intermediary on and after July 14, 1992, unless utilization is in compliance with KRS 304.9-700 to 304.9-759.

➔Section 1091. KRS 304.10-050 is amended to read as follows:

At the time of effecting any such surplus lines insurance, the broker shall execute an affidavit in form prescribed or accepted by the ***commissioner***~~[executive director]~~ setting forth facts from which it can be determined whether such insurance was eligible for export under KRS 304.10-040. The broker shall file this affidavit with the ***commissioner***~~[executive director]~~ in the manner and form as prescribed by the ***commissioner***~~[executive director]~~ through administrative regulation.

➔Section 1092. KRS 304.10-060 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may by order declare eligible for export generally and without compliance with the provisions of subsections (2) and (3) of KRS 304.10-040, and 304.10-050, any class or classes of insurance coverage or risk for which he *or she* finds, after a hearing of which notice was given to each insurer authorized to transact such class or classes in this state, that there is not a reasonable or adequate market among authorized insurers either as to acceptance of the risk, contract terms or premium or premium rate. Any such order shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the ***commissioner***~~[executive director]~~.
- (2) The broker shall file with or as directed by the ***commissioner***~~[executive director]~~ a memorandum as to each such coverage placed by *the broker*~~[him]~~ in an unauthorized insurer, in such form and content as the ***commissioner***~~[executive director]~~ may reasonably require for the identification of the coverage and determination of the tax payable to the state relative thereto.
- (3) The broker, or a licensed agent of the authorized insurer may also place with authorized insurers any insurance coverage made eligible for export generally under subsection (1) of this section, and without regard to rate or form filings which may otherwise be applicable as to the authorized insurer. As to coverages so placed in an authorized insurer the premium tax thereon shall be reported and paid by the insurer as required generally under KRS Chapter 136.

➔Section 1093. KRS 304.10-070 is amended to read as follows:

- (1) A broker shall not place surplus lines insurance with an insurer that he or she knows, or in the exercise of reasonable diligence could know:
 - (a) Has a surplus in regard to policyholders of less than six million dollars (\$6,000,000);
 - (b) Has not established satisfactory evidence of good repute and financial integrity;
 - (c) Is unsound financially; or
 - (d) Is ineligible under the Kentucky insurance code.
- (2) A broker may:
 - (a) Place insurance covering certificates of investment with an insurance company or guarantee fund which is financially sound and has capital funds and reserves in excess of fifteen million dollars (\$15,000,000); and
 - (b) Place insurance with a United States insurance exchange which the ***commissioner***~~[executive director]~~, in his or her discretion, may designate for use by surplus lines brokers licensed by the Commonwealth of Kentucky.
- (3) A broker shall not place insurance with an alien insurer that is not recognized by the National Association of Insurance Commissioners and does not maintain in the United States a trust fund for the benefit of United States policyholders of at least five million four hundred thousand dollars (\$5,400,000).

- (4) A broker shall not place insurance with an insurer that has engaged in the insurance business less than three (3) years unless the insurer has deposited with the **commissioner**~~{executive director}~~ publicly-traded securities with a market value of at least six hundred thousand dollars (\$600,000).
- (5) This section shall not apply to surplus lines insurers eligible to do business in Kentucky as of July 15, 1982, except that the **commissioner**~~{executive director}~~ may revoke eligibility, or may order the insurer to comply with this section or may suspend the operation of the insurer in Kentucky.
- (6) The **commissioner**~~{executive director}~~ may declare that a surplus lines insurer is ineligible to transact business in Kentucky. The **commissioner**~~{executive director}~~ shall promptly mail notice of all declarations of ineligibility to each surplus lines broker if at any time the **commissioner**~~{executive director}~~ has reason to believe that a surplus lines insurer:
 - (a) Is in unsound financial condition;
 - (b) Has acted in an untrustworthy manner;
 - (c) No longer meets the standards set forth in this subtitle;
 - (d) Has willfully violated the laws of Kentucky; or
 - (e) Does not conduct a proper claims practice.

➔Section 1094. KRS 304.10-120 is amended to read as follows:

- (1) Any person who:
 - (a) Is a resident of Kentucky or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (b) Holds an agent license with lines of authority for property and casualty; and
 - (c) Is deemed by the **commissioner**~~{executive director}~~ to be competent and trustworthy with respect to the handling of surplus lines;may be licensed as a surplus lines broker.
- (2) Application for the license shall be made to the **commissioner**~~{executive director}~~ on forms as designated and furnished by the **commissioner**~~{executive director}~~.
- (3) The license fee shall be as specified in KRS 304.4-010.
- (4) The license and licensee shall be subject to the applicable provisions of Subtitle 9 of this chapter.
- (5) Notwithstanding subsection (1) of this section, on or after July 1, 2002, an applicant licensed as a surplus lines broker in the applicant's home state may be issued a nonresident surplus lines broker's license in Kentucky if the applicant's home state issues surplus lines broker licenses to Kentucky residents on the same basis.
- (6) If the resident surplus lines broker fails to maintain his or her agent license with lines of authority for property and casualty, the surplus lines broker license shall terminate and shall be promptly surrendered to the **commissioner**~~{executive director}~~ without demand.

➔Section 1095. KRS 304.10-130 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may suspend or revoke any surplus lines broker's license:
 - (a) If the broker fails to file his or her annual statement or to remit the tax as required by this subtitle; or
 - (b) If the broker fails to keep records, or to allow the **commissioner**~~{executive director}~~ to examine his or her records as required by this subtitle; or
 - (c) If the broker knowingly or negligently places a surplus lines coverage in an insurer that is in unsound financial condition in violation of KRS 304.10-070; or
 - (d) For any other applicable cause for which an agent's license may be suspended or revoked.
- (2) The procedures provided by Subtitle 9 of this chapter for suspension or revocation of licenses shall apply to suspension or revocation of a surplus lines broker's license.

- (3) Upon suspending or revoking the broker's surplus lines license the **commissioner**~~[executive director]~~ shall also suspend or revoke all other licenses of or as to the same individual under this code.
- (4) No broker whose license has been suspended or revoked shall again be so licensed until any fines or delinquent taxes owed have been paid, or in case of revocation until after expiration of one (1) year from the date revocation became final.

➔Section 1096. KRS 304.10-140 is amended to read as follows:

- (1) To the extent the Gramm-Leach-Bliley Act, 15 U.S.C. sec. 6751(f), provides that evidence of financial responsibility may be required for licensing, prior to issuance of a license as a surplus lines broker, the applicant shall file with the **commissioner**~~[executive director]~~, and for as long as the license remains in effect shall keep in force:
 - (a) Evidence of financial responsibility in the sum of not less than one million dollars (\$1,000,000) per occurrence, and the sum of two million dollars (\$2,000,000) in the aggregate, for all occurrences within one (1) year, either in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or a combination of a bond issued by an authorized corporate surety and a deposit. The policy, bond, deposit, or combination of a bond or deposit shall not be terminated unless at least thirty (30) days' prior written notice is given to the licensee and the **commissioner**~~[executive director]~~; and
 - (b) A bond in favor of the State of Kentucky in the penal sum of fifty thousand dollars (\$50,000), with an authorized corporate surety guaranteeing that he or she will conduct business under the license in accordance with the provisions of this subtitle and that he or she will promptly remit the taxes required by KRS 304.10-180. The aggregate liability of the surety for any and all claims on any bond shall in no event exceed the penal sum. No bond shall be terminated unless not less than thirty (30) days' prior written notice is given to the licensee and filed with the **commissioner**~~[executive director]~~.
- (2) An insurer issuing coverage under subsection (1)(a) or (b) of this section may offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the surplus lines broker applicant or licensee for the payment of claims. Deductible amounts offered in accordance with this section shall be fully disclosed to the applicant or licensee in writing. If the applicant or licensee chooses a deductible policy, the insurer shall pay the deductible amount initially and the licensee shall be liable to the insurer, at the time and in the manner prescribed in the policy, for the amount of the deductible. If the licensee fails to reimburse the insurer as required by this subsection, his or her surplus lines broker license and all other licenses issued by the **commissioner**~~[executive director]~~ are revoked and shall be promptly surrendered to the **commissioner**~~[executive director]~~ without demand. Nothing contained in this subsection is intended to or shall in any manner alter or affect the rights of the insurer to collect the reimbursement for the deductible from the surplus lines broker.

➔Section 1097. KRS 304.10-160 is amended to read as follows:

- (1) Each broker shall keep in his or her office a full and true record of each surplus lines coverage procured by him or her, including a copy of each daily report, if any, a copy of each certificate of insurance issued by him or her, and of the following items as may be applicable:
 - (a) Amount of the insurance;
 - (b) Gross premium charged;
 - (c) Return premium paid, if any;
 - (d) Rate of premium charged upon the several items of property;
 - (e) Effective date of the contract, and the terms thereof;
 - (f) Name and address of each insurer on the direct risk and the proportion of the entire risk assumed by the insurer if less than the entire risk;
 - (g) Name and address of the insured;
 - (h) Brief general description of the property or risk insured and where located or to be performed; and
 - (i) Other information as may be required by the **commissioner**~~[executive director]~~.

- (2) The record shall be open to examination by the ***commissioner***~~[executive director]~~ at all times within five (5) years after issuance of the coverage to which it relates.

➔Section 1098. KRS 304.10-170 is amended to read as follows:

- (1) Each broker shall, within thirty (30) days of the end of each calendar quarter, file with the ***commissioner***~~[executive director]~~ a verified statement of all surplus lines insurance transacted by him during the preceding calendar quarter.
- (2) The statement shall be on forms as prescribed by the ***commissioner***~~[executive director]~~ and shall show:
- (a) Gross amount of each kind of insurance transacted;
 - (b) Aggregate of gross premiums charged;
 - (c) Aggregate of returned premiums paid insureds;
 - (d) Aggregate of net premiums; and
 - (e) Additional information as required by the ***commissioner***~~[executive director]~~.

➔Section 1099. KRS 304.10-180 is amended to read as follows:

- (1) Each broker shall pay the following taxes:
- (a) A tax at the rate of three percent (3%) on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030, on surplus lines insurance subject to tax transacted by him or her with unauthorized insurers during the preceding calendar quarter as shown by his or her quarterly statement filed with the ***commissioner***~~[executive director]~~ in accordance with KRS 304.10-170. The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the ***commissioner***~~[executive director]~~ within thirty (30) days of the end of each calendar quarter. When collected the tax shall be credited to the insurance regulatory trust fund, as established by KRS 304.2-400;
 - (b) The premium surcharge tax, to be remitted to the Kentucky Department of Revenue, in accordance with KRS 136.392; and
 - (c) The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080. Each broker shall be subject to the provisions of this section and KRS 91A.080 and 91A.0802 to 91A.0808 as an insurance company.
- (2) If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

➔Section 1100. KRS 304.10-210 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall make or may approve and adopt reasonable rules and regulations, consistent with this subtitle, for any and all of the following purposes:

- (1) Effectuation of the Surplus Lines Law; and
- (2) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for export.

➔Section 1101. KRS 304.11-020 is amended to read as follows:

- (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, government entity insureds, and exempt commercial policyholders, nor to any contract of insurance issued to any one (1) or more industrial insureds.
- (2) For the purpose of this section:
- (a) An "industrial insured" is:

1. An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and
 2. An insured whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
 3. An insured having at least twenty-five (25) full-time employees; and
 4. All entities that have qualified as industrial insureds as of July 1, 1999.
- (b) A "government entity insured" is an insured:
1. That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and
 2. That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and
 3. Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars (\$100,000), exclusive of life, health, medical, or annuity premiums; and
 4. That has at least fifty (50) full-time employees; and
 5. That satisfies the criteria the ~~commissioner~~~~executive director~~ promulgates by administrative regulation.
- (c) 1. An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:
- a. Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year; or
 - b. Certifies that it meets all four (4) of the following criteria:
 - i. Possesses a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued;
 - ii. Generated net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year;
 - iii. Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and
 - iv. Paid annual aggregate insurance premiums of more than five hundred thousand dollars (\$500,000) in the preceding fiscal year.
2. As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:
- a. A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or
 - b. A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.
- (d) The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.

- (e) Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."
 - (f) The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.
- (3) Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.
 - (4) All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the **commissioner**~~executive director~~ for their respective insured status every three (3) years, on a form the **commissioner**~~executive director~~ shall promulgate by administrative regulation.
 - (5) KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:
 - (a) Payment of an annual registration fee;
 - (b) Filing a copy of any policy or contract issued to Kentucky residents with the **commissioner**~~executive director~~;
 - (c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the **commissioner**~~executive director~~; and
 - (d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

➔Section 1102. KRS 304.11-030 is amended to read as follows:

- (1) It shall be unlawful for any company to enter into a contract of insurance as an insurer or to transact insurance business in this state, as set forth in subsection (2) of this section without a certificate of authority from the **commissioner**~~executive director~~; provided, that this subsection shall not apply to:
 - (a) The lawful transaction of surplus lines insurance.
 - (b) The lawful transaction of reinsurance by insurers.
 - (c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.
 - (d) Transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid.
 - (e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.
 - (f) Transactions in this state involving group life and group health or blanket health insurance or group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.
 - (g) Transactions in this state involving any policy of insurance issued prior to July 1, 1968.
 - (h) Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.
- (2) Any of the following acts in this state effected by mail or otherwise is defined to be doing an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by

mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

- (a) The making of or proposing to make, as an insurer, an insurance contract.
 - (b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.
 - (c) The taking or receiving of any application for insurance.
 - (d) The receiving or collection of any premiums, commissions, membership fees, assessments, dues or other consideration for any insurance or any part thereof.
 - (e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.
 - (f) Directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of another, any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates or investigation or adjustment of claims or losses, or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of such employer.
 - (g) The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.
 - (h) The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this code.
 - (i) Any other transactions of business in this state by an insurer.
- (3) (a) The failure of a company transacting insurance business in Kentucky to obtain a certificate of authority shall not impair the validity of any act or contract of such company and shall not prevent such company from defending any action at law or suit in equity in any court of this state.
- (b) In event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.
- (4) Whenever the ~~commissioner~~~~executive director~~ believes, from evidence satisfactory to him **or her**, that any company is violating or about to violate the provisions of these sections, the ~~commissioner~~~~executive director~~ may, through the Attorney General of this state, cause a complaint to be filed in the Circuit Court of Franklin County to enjoin and restrain such company from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

➔Section 1103. KRS 304.11-040 is amended to read as follows:

- (1) No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in KRS 304.11-020 to 304.11-050, inclusive, except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in KRS 304.11-020 to 304.11-050, inclusive, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon **the person or insurer**~~him~~, his **or her** executor or administrator, or successor in interest if a corporation, of the Secretary of State or his **or her** successor in office to be the true and lawful attorney upon whom may be served all lawful process in any action, suit, administrative hearing or proceeding in any court arising out of doing an insurance business in this state or instituted by or on behalf of an insured or beneficiary arising out of any such acts of

doing an insurance business. Any act of doing an insurance business by any unauthorized person or insurer shall be signification of its agreement that such service of process is of the same legal force and validity as personal service of process in this state upon such person or insurer.

- (2) Service of process in any action may be made by service upon the Secretary of State as provided in KRS 304.3-230.
- (3) Service of process in any such action, suit, or proceeding shall in addition to the manner as provided in KRS 304.11-020 to 304.11-050, inclusive, be valid if served upon any person within this state who, in this state on behalf of such insurer, is soliciting insurance, making, issuing, or delivering any contract of insurance, or collecting or receiving any premium, membership fee, assessment, or other consideration for insurance, and if:
 - (a) A copy of such process is sent within ten (10) days thereafter by certified mail by the plaintiff or plaintiff's attorney to the defendant at the last known principal place of business of the defendant.
 - (b) The defendant's receipt, or the receipt issued by the post office showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and an affidavit of the plaintiff or plaintiff's attorney showing a compliance herewith are filed with the clerk of the court in which such action is pending on or before the date the defendant is required to appear or within such further time as the court may allow.
- (4) No plaintiff shall be entitled to a judgment by default under KRS 304.11-020 to 304.11-050, inclusive, until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- (5) Nothing in subsections (1) to (5), inclusive, of this section shall limit or abridge the right to serve any process, notice, or demand upon any insurer in any other manner now or hereafter permitted by law.
- (6) The Attorney General upon request of the **commissioner**~~executive director~~ may proceed in the courts of this state or any other state or in any federal court or agency to enforce an order or decision in any court proceeding or in any administrative proceeding before the **commissioner**~~executive director~~.
- (7) Before any unauthorized person or insurer files or causes to be filed in any pleading in any court action, suit or proceeding or in any notice, order, pleading, or process in such administrative proceeding before the **commissioner**~~executive director~~ instituted against such person or insurer, by services made as provided in subsections (1) to (5), inclusive, of this section such person or insurer shall either:
 - (a) Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the **commissioner**~~executive director~~ in administrative proceedings before the **commissioner**~~executive director~~, cash or securities, or file with such clerk or **commissioner**~~executive director~~ a bond with good and sufficient sureties, to be approved by the clerk or **commissioner**~~executive director~~ in an amount to be fixed by the court or **commissioner**~~executive director~~ sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding.
 - (b) Procure a certificate of authority to transact the business of insurance in this state.
- (8) The court in any action, suit, or proceeding in which service is made as provided in subsections (1) to (5), inclusive, of this section may in ~~this or~~ its discretion, order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (7) of this section and to defend such action.
- (9) Nothing in subsection (7) of this section shall be construed to prevent an unauthorized person or foreign or alien insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in subsections (1) to (5), inclusive, of this section on the ground that such unauthorized person or insurer has not done any of the acts enumerated in subsections (1) to (3), inclusive, of KRS 304.11-030.
- (10) In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident thereof or to a corporation authorized to do business therein, if the person or insurer has failed for thirty (30) days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that such refusal was without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include such fee in any judgment that may be rendered in such action. Failure of the person or insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was without reasonable cause.
- (11) Whenever the **commissioner**~~executive director~~ has reason to believe that insurance has been effectuated by or for any person in this state with an unauthorized insurer the **commissioner**~~executive director~~ shall in

writing order such person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the ***commissioner***~~[executive director]~~ the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation, or effectuation of such insurance.

- (12) Every person investigating or adjusting any loss or claim on a subject of insurance in this state shall immediately report to the ***commissioner***~~[executive director]~~ every insurance policy or contract which has been entered into by an insurer not authorized to transact such insurance in this state.

➔Section 1104. KRS 304.11-045 is amended to read as follows:

- (1) The purpose of this section is to give Kentucky jurisdiction over providers of health care benefits; to indicate how each provider of health care benefits may show under what jurisdiction it falls; to allow for examination by Kentucky if the provider of health care benefits is unable to show it is subject to another jurisdiction; to make such a provider of health care benefits subject to the laws of Kentucky if it cannot show that it is subject to another jurisdiction; and to disclose to purchasers of such health care benefits whether or not the plans are fully insured.
- (2) Notwithstanding any other provision of law, and except as provided herein, any person or other entity which provides coverage in this state for medical, surgical, chiropractic, physical therapy, speech pathology, audiology, professional mental health, dental, hospital, or optometric expenses, whether such coverage is by direct payment, reimbursement, or otherwise, shall be presumed to be subject to the jurisdiction of the ***department***~~[office]~~, unless the person or other entity shows that while providing such services it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government.
- (3) If a person or entity wishes to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, such showing shall be made by providing to the ***commissioner***~~[executive director]~~ the appropriate certificate, license, or other document issued by other governmental agency which permits or qualifies it to provide those services.
- (4) Any person or entity which is unable to show under subsection (3) that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall submit to an examination by the ***commissioner***~~[executive director]~~ to determine the organization and solvency of the person or the entity, and to determine whether or not such person or entity complies with the applicable provisions of this chapter.
- (5) Any person or entity unable to show that it is subject to the jurisdiction of another agency of this state, any subdivision thereof, or the federal government, shall be subject to all appropriate provisions of this code regarding the conduct of its business.
- (6) Any production agency or administrator which advertises, sells, transacts, or administers the coverage in this state described in subsection (2) of this section and which is required to submit to an examination by the ***commissioner***~~[executive director]~~ under subsection (4) of this section shall, if said coverage is not fully insured or otherwise fully covered by an authorized life or health insurer, nonprofit hospital, medical-surgical, dental, and health service corporation, health maintenance organization, or prepaid dental plan organization, advise every purchaser, prospective purchaser, and covered person of such lack of insurance or other coverage. Any administrator which advertises or administers the coverage in this state described in subsection (2) of this section which is required to submit to an examination by the ***commissioner***~~[executive director]~~ under subsection (4) of this section shall advise any production agency of the elements of the coverage, including the amount of "stop loss" insurance in effect.

➔Section 1105. KRS 304.12-013 is amended to read as follows:

- (1) The purpose of this section is to prohibit unfair or deceptive practices in the transaction of life and health insurance with respect to the human immunodeficiency virus infection and related matters. This section applies to all life and health insurance contracts which are delivered or issued for delivery in Kentucky on or after July 13, 1990.
- (2) This section shall not prohibit an insurer from contesting the validity of an insurance contract or whether a claim is covered under an insurance contract to the extent allowed by law.
- (3) As used in this section:

- (a) "Human immunodeficiency virus" (HIV) means the causative agent of acquired immunodeficiency syndrome (AIDS) or any other type of immunosuppression caused by the human immunodeficiency virus;
 - (b) "Insurance contract" means a contract issued by an insurer as defined in this section; and
 - (c) "Insurer" means an insurer, a nonprofit hospital, medical-surgical, dental, and health service corporation, a health maintenance organization, or a prepaid dental plan organization.
- (4) (a) In the underwriting of an insurance contract regarding human immunodeficiency virus infection and health conditions derived from such infection, the insurer shall utilize medical tests which are reliable predictors of risk. Only a test which is recommended by the Centers for Disease Control or by the Food and Drug Administration is deemed to be reliable for the purposes of this section. If a specific Centers for Disease Control or Food and Drug Administration-recommended test indicates the existence or possible existence of human immunodeficiency virus infection or a health condition related to the human immunodeficiency virus infection, before relying on a single test to deny issuance of an insurance contract, limit coverage under an insurance contract, or to establish the premium for an insurance contract, the insurer shall follow the applicable Centers for Disease Control or Food and Drug Administration-recommended test protocol and shall utilize any applicable Centers for Disease Control or Food and Drug Administration-recommended follow-up tests or series of tests to confirm the indication.
- (b) Prior to testing, the insurer shall disclose in writing its intent to test the applicant for the human immunodeficiency virus infection or for a specific health condition derived therefrom and shall obtain the applicant's written informed consent to administer the test. Written informed consent shall include a fair explanation of the test, including its purpose, potential uses and limitations, the meaning of its results, and the right to confidential treatment of information. Use of a form prescribed by the ~~department~~~~office~~ shall raise a conclusive presumption of informed consent.
- (c) An applicant shall be notified of a positive test result by a physician designated by the applicant, or, in the absence of such designation, by the Cabinet for Health and Family Services. The notification shall include:
1. Face-to-face post-test counseling on the meaning of the test results, the possible need for additional testing, and the need to eliminate behavior which might spread the disease to others;
 2. The availability in the geographic area of any appropriate health-care services, including mental health care, and appropriate social and support services;
 3. The benefits of locating and counseling any person by whom the infected person may have been exposed to human immunodeficiency virus and any person whom the infected person may have exposed to the virus; and
 4. The availability, if any, of the services of public health authorities with respect to locating and counseling any person described in subparagraph 3. of this paragraph.
- (d) A medical test for human immunodeficiency virus infection or for a health condition derived from the infection shall only be required or given to an applicant for an insurance contract on the basis of the applicant's health condition or health history, on the basis of the amount of insurance applied for, or if the test is required of all applicants.
- (e) An insurer may ask whether an applicant for an insurance contract has been tested positive for human immunodeficiency virus infection or other health conditions derived from such infection. Insurers shall not inquire whether the applicant has been tested for or has received a negative result from a specific test for human immunodeficiency virus infection or for a health condition derived from such infection.
- (f) Insurers shall maintain strict confidentiality of the results of tests for human immunodeficiency virus infection or a specific health condition derived from human immunodeficiency virus infection. Information regarding specific test results shall be disclosed only as required by law or pursuant to a written request or authorization by the applicant. Insurers may disclose results pursuant to a specific written request only to the following persons:
1. The applicant;
 2. A licensed physician or other person designated by the applicant;

3. An insurance medical-information exchange under procedures that are used to assure confidentiality, such as the use of general codes that also cover results of tests for other diseases or conditions not related to human immunodeficiency virus infection;
 4. For the preparation of statistical reports that do not disclose the identity of any particular applicant;
 5. Reinsurers, contractually retained medical personnel, and insurer affiliates if these entities are involved solely in the underwriting process and under procedures that are designed to assure confidentiality;
 6. To insurer personnel who have the responsibility to make underwriting decisions; and
 7. To outside legal counsel who needs the information to represent the insurer effectively in regard to matters concerning the applicant.
- (g) Insurers shall use for the processing of human immunodeficiency virus-related tests only those laboratories that are certified by the United States Department of Health and Human Services under the Clinical Laboratory Improvement Act of 1967, which permit testing of specimens in interstate commerce, and which subject themselves to ongoing proficiency testing by the College of American Pathologists, the American Association of Bioanalysts, or an equivalent program approved by the Centers for Disease Control.
- (5) (a) An insurance contract shall not exclude coverage for human immunodeficiency virus infection. An insurance contract shall not contain benefit provisions, terms, or conditions which apply to human immunodeficiency virus infection in a different manner than those which apply to any other health condition. Insurance contracts which violate this paragraph shall be disapproved by the **commissioner**~~executive director~~ pursuant to KRS 304.14-130(1)(a), 304.32-160, and 304.38-050.
- (b) A health insurance contract shall not be canceled or nonrenewed solely because a person or persons covered by the contract has been diagnosed as having or has been treated for human immunodeficiency virus infection.
- (c) Sexual orientation shall not be used in the underwriting process or in the determination of which applicants shall be tested for exposure to the human immunodeficiency virus infection. Neither the marital status, the living arrangements, the occupation, the gender, the beneficiary designation, nor the zip code or other territorial classification of an applicant's sexual orientation.
- (d) This subsection does not prohibit the issuance of accident only or specified disease insurance contracts.

➔Section 1106. KRS 304.12-030 is amended to read as follows:

- (1) As used in this section:
- (a) "Replacement" means any transaction in which a new life insurance policy or annuity contract is to be purchased and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing life insurance policy or annuity contract has been or is to be:
 1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
 2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
 3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
 4. Reissued with any reduction in cash value; or
 5. Used in a financed purchase;
 - (b) "Existing insurer" means the insurance company whose existing life insurance policy or annuity contract is or will be changed or affected in a manner described within the definition of replacement transaction;

- (c) "Replacing insurer" means the insurance company that issues or proposes to issue a new life insurance policy or annuity contract that replaces an existing policy or contract or is a financed purchase;
 - (d) "Existing life insurance policy or annuity contract" means any individual life insurance policy or annuity in force, including a life insurance policy under a binding or conditional receipt or a life insurance policy or annuity contract that is within an unconditional refund period;
 - (e) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of, an existing policy to pay all or part of any premium due on the new policy. If a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four (4) months before or thirteen (13) months after the effective date of the new policy, it is prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard does not affect the monitoring obligations of the existing insurer; and
 - (f) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individual solely through mails, telephone, the Internet, or mass communication media.
- (2) No replacing insurer shall issue any life insurance policy or annuity contract in a replacement transaction to replace an existing life insurance policy or annuity contract unless the replacing insurer shall agree in writing with the insured that:
- (a) The new life insurance policy or annuity contract issued by the replacing insurer will not be contestable by it in the event of such insured's death to any greater extent than the existing life insurance policy or annuity contract would have been contestable by the existing insurer had such replacement not taken place provided, however, that this paragraph shall not apply to that amount of insurance written and issued which exceeds the amount of the existing life insurance; and
 - (b) The policy or contract owner shall have the right to return the policy or contract within thirty (30) days of the delivery of the policy or contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges, or in the case of a variable or market adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract.
- (3) Unless otherwise specifically included, subsection (2) of this section shall not apply to:
- (a) Credit life insurance;
 - (b) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual. The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations for group life insurance or group annuity certificates marketed through direct response solicitation;
 - (c) Group life insurance and annuities used to fund prearranged funeral contracts;
 - (d) An application to the existing insurer that issued the existing policy or contract when a contractual policy change or conversion privilege is being exercised, or when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the ~~commissioner~~~~executive director~~;
 - (e) Existing life insurance that is a nonconvertible term life insurance policy which will expire in five (5) years or less and cannot be renewed; or
 - (f) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
 - (g) Policies or contracts used to fund:
 - 1. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

2. A plan described by Sections 402(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
3. A governmental or church plan defined in Section 414 of the Internal Revenue Code, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the Internal Revenue Code; or
4. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

Notwithstanding the provisions of this paragraph, subsection (2) of this section shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurer has been notified that plan participants may choose from among two (2) or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this paragraph, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;

- (h) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
 - (i) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this section; or
 - (j) Structured settlements.
- (4) No person shall make or issue, or cause to be made or issued, any written or oral statement of a material fact which is untrue or omit to state a material fact necessary in order to make the statements made, in the light of circumstances under which they were made, not misleading with respect to comparisons as to the terms, conditions, or benefits contained in any policy for the purpose of inducing or attempting or tending to induce the policyholder to lapse, forfeit, borrow against, surrender, retain, exchange, modify, convert, or otherwise affect or dispose of any insurance policy.

➔Section 1107. KRS 304.12-040 is amended to read as follows:

- (1) No person shall file with any public official or make or disseminate any false statement of financial condition of any insurer with intent to deceive.
- (2) No person shall make any false entry in any record, report or statement of any insurer or other person required to have records under this code, with intent to deceive the **commissioner**~~executive director~~ or any examiner lawfully appointed to examine into its affairs, or with like intent willfully omit to make a true entry of any material fact pertaining to its business.

➔Section 1108. KRS 304.12-090 is amended to read as follows:

- (1) No insurer or employee or representative thereof shall knowingly charge, demand, or receive a premium for any insurance policy except in accordance with the applicable filing on file with the **commissioner**~~executive director~~. No such insurer, employee, or representative shall pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducements whatever, or give, sell, or purchase, or offer to give, sell, or purchase anything of value whatsoever not specified in the policy, except to the extent provided for in such applicable filing.
- (2) No insured named in a policy, nor any employee or representative thereof shall knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement or reduction of premium, or any special favor or advantage or valuable consideration or inducement.
- (3) Subsection (1) and (2) of this section shall not apply as to life insurance and health insurance. Except as expressly provided by law no insurer, employee, or representative shall knowingly permit or offer to make or make any contract of life insurance, life annuity or health insurance, or agreement as to such contract other than

as plainly expressed in the contract issued thereon, or pay or allow, or give or offer to pay, allow or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not expressed in the contract.

➔Section 1109. KRS 304.12-120 is amended to read as follows:

- (1) If, after a hearing conducted in accordance with KRS Chapter 13B, the **commissioner**~~{executive director}~~ finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this subtitle, the **commissioner**~~{executive director}~~ shall order the person to desist from the act or practice.
- (2) A desist order shall become final upon expiration of the time allowed for appeals from the **commissioner's**~~{executive director's}~~ final order, if no appeal is taken, or, in the event of an appeal, upon final decision of the court if the court affirms the **commissioner's**~~{executive director's}~~ final order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in subsection (3) of KRS 304.12-130.
- (3) In an appeal, to the extent that the **commissioner's**~~{executive director's}~~ final order is affirmed, the court shall issue its own order commanding obedience to the terms of the **commissioner's**~~{executive director's}~~ final order.
- (4) No final order of the **commissioner**~~{executive director}~~ pursuant to this section or order of court to enforce it shall in any way relieve or absolve any person affected by the order from any other liability, penalty, or forfeiture under law.

➔Section 1110. KRS 304.12-130 is amended to read as follows:

- (1) If the **commissioner**~~{executive director}~~ believes that any person engaged in the insurance business is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in this subtitle but that such method of competition is unfair, deceptive, or not in the public interest, or that such act or practice is unfair or deceptive and that a proceeding by **the commissioner**~~{him}~~ in respect thereto would be in the public interest, **the commissioner**~~{he}~~ shall, after a hearing of which notice of the hearing and of the charges against **the person**~~{him}~~ are given such person, make a written report of his **or her** findings of fact relative to such charges and serve a copy thereof upon such person and any intervenor at the hearing.
- (2) If such report charges a violation of this subtitle and if such method of competition, act or practice has not been discontinued, the **commissioner**~~{executive director}~~ may, or through the Attorney General, at any time after the service of such report, cause an action to be instituted to enjoin and restrain such person from engaging in such method, act, or practice. In such action the court may grant a restraining order or injunction upon such terms as may be just; but the people of this Commonwealth shall not be required to give security before the issuance of any such order or injunction. If a stenographic record of the proceedings in the hearing before the **commissioner**~~{executive director}~~ was made, a certified transcript thereof including all evidence taken and the report and findings shall be received in evidence in such action.
- (3) If the **commissioner's**~~{executive director's}~~ report made pursuant to subsection (1) of this section or order on hearing made pursuant to KRS 304.12-120 does not charge a violation of this subtitle, then any intervenor in the proceedings may appeal therefrom within the time and in the manner provided in this code for appeals from the **commissioner**~~{executive director}~~ generally.

➔Section 1111. KRS 304.12-150 is amended to read as follows:

Every debtor, borrower, or purchaser of property with respect to which insurance of any kind is required in connection with a debt or loan on the property shall be informed by the creditor or lender of his **or her** right of free choice in the selection of the agent and insurer through or by which such insurance is to be placed. There shall be no interference either directly or indirectly with the borrower's, debtor's, or purchaser's free choice of an agent and of an insurer, the creditor or lender shall not collect a separate charge for the handling of insurance required in connection with a loan or extension of credit based on the consumer's choice of agent or insurer, and the creditor or lender shall not refuse an adequate policy so tendered by the borrower, debtor, or purchaser. Upon notice of any refusal of an adequate policy, the **commissioner**~~{executive director}~~ shall order the creditor or lender to accept the tendered policy, if he **or she** determines that such refusal is not in accordance with the requirements set out in subsection (2) of KRS 304.12-140. Failure to comply with the order of the **commissioner**~~{executive director}~~ shall be deemed a violation of this section.

➔Section 1112. KRS 304.12-240 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Preneed funeral contract or prearrangement" means an agreement by or for an individual before that individual's death relating to the purchase or provision of specific funeral or cemetery merchandise or services; and
 - (b) "Agent" has the meaning provided in KRS 367.932.
- (2) The **~~commissioner~~**~~[executive director]~~ shall adopt regulations requiring life insurers to provide disclosure to consumers when life insurance or annuities are used to fund preneed funeral contracts or prearrangements.
- (3) Life insurance and annuity benefits used to fund preneed funeral contracts or prearrangements shall not be paid by a life insurer until the agent has proven the death of the person for whose service the premiums were paid by furnishing the life insurer with a verified or certified copy of a record verifying the death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076.

➔Section 1113. KRS 304.12-257 is amended to read as follows:

The **~~commissioner~~**~~[executive director]~~ shall have the authority to promulgate regulations to protect service members of the United States Armed Forces from dishonest and predatory insurance sales practices by declaring certain identified practices to be false, misleading, deceptive, or unfair in accordance with the Military Personnel Financial Services Protection Act of 2006, Pub. L. No. 109-290.

➔Section 1114. KRS 304.13-011 is amended to read as follows:

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

- (1) A "market" is the interaction between buyers and sellers consisting of a product market component and a geographic market component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.
- (2) "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fees, rating rules, or any other similar information needed to determine the applicable rate or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer.
- (3) "Supporting information" is the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any other data relied on by the filer, descriptions of methods used in making the rates, and any other information required to be filed by the **~~commissioner~~**~~[executive director]~~.
- (4) "Personal risks" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs.
- (5) "Commercial risks" are any kinds of risks that are not personal risks.
- (6) "Joint underwriting" is a voluntary arrangement established to provide insurance coverage for a risk pursuant to which two (2) or more insurers jointly contract with the insured at a price and under policy terms agreed on between the insurers.
- (7) A "pool" is a voluntary arrangement, other than by a contract of reinsurance, established on a general and continuing basis pursuant to which two (2) or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate through an association, syndicate or other pooling agreement.
- (8) A "residual market mechanism" is an agreement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance that may be afforded applicants who are unable to obtain insurance through ordinary methods.
- (9) An "advisory organization" is any entity, including its affiliates or subsidiaries, which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers and which

assists insurers in ratemaking related activities. Two (2) or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.

- (10) A "competitive market" is a market that has not been found to be noncompetitive pursuant to KRS 304.13-041 and for which no such order is in effect.
- (11) A "noncompetitive market" is a market for which there is an order in effect pursuant to KRS 304.13-041 that a reasonable degree of competition does not exist.
- (12) "Trending" is any procedure for projecting developed losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.
- (13) "Expenses" are those portions of any rate attributable to acquisition, field supervision, and collection expenses, general expenses, and premium taxes, licenses, and fees.
- (14) "Profit" is the portion of any rate attributable to funds needed for growth, contingencies, and return to stockholders.
- (15) "Pure premium" means the loss cost per unit of exposure excluding all loss adjustment expenses.
- (16) "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in cost may be recognized.
- (17) "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to their ultimate anticipated value.
- (18) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.
- (19) "Form provider" means a person who prepares, files, and distributes policy contract forms and endorsements and consults with members, subscribers, customers, or others relative to their use and application, but is not an advisory organization as defined in this subtitle.
- (20) "Loss adjustment expenses" means the expenses incurred by the insurer in the course of settling claims.
- (21) "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses or output from simulation models and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the ~~commissioner~~~~executive director~~ before they become effective.
- (22) "Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.
- (23) "Special assessments" means guaranty fund assessments, residual market mechanism assessments, and other similar assessments which are included in ratemaking. Special assessments shall not be considered as either expenses or losses. Additional charges collected by the insurer and returned to a governmental agency on behalf of an insured are not special assessments. Examples of these additional charges include, but are not limited to, the special fund charge for workers' compensation imposed by KRS Chapter 342, local government premium tax imposed by KRS 91A.080, and the Department of Revenue surcharge imposed by KRS Chapter 136.
- (24) "Statistical agent" means an entity that has been licensed by the ~~commissioner~~~~executive director~~ to collect statistics from insurers and provide reports developed from these statistics to the ~~commissioner~~~~executive director~~ for the purpose of fulfilling the statistical reporting obligations of those insurers under this chapter.

➔Section 1115. KRS 304.13-041 is amended to read as follows:

- (1) A competitive market for any line of insurance is presumed to exist unless the ~~commissioner~~~~executive director~~, after a hearing, determines that a reasonable degree of competition does not exist in the market for such line and issues an order to that effect. Such an order shall expire no later than one (1) year after it is issued. In determining whether a reasonable degree of competition exists, the ~~commissioner~~~~executive director~~ shall consider all relevant information pertaining to the market and the opportunities available to

consumers in the market to acquire pricing and other consumer information, and to compare and obtain insurance from competing insurers.

- (2) The ***commissioner***~~[executive director]~~ shall monitor the degree of competition in this Commonwealth. In doing so, ***the commissioner***~~[he]~~ may utilize existing relevant information or ~~[he]~~ may develop new relevant information. The activities may be conducted internally within the ***Department***~~[Office]~~ of Insurance, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. The relevant information in determining the competitiveness of a specific market may include the number of insurers actively engaged in providing coverage, market shares, and changes in market shares and ease of entry.

➔Section 1116. KRS 304.13-051 is amended to read as follows:

- (1) In a competitive market, every insurer shall file with the ***commissioner***~~[executive director]~~ rates and supplementary information to be used in this state for commercial risks as designated by the ***commissioner***~~[executive director]~~ and for all personal risks. The rates and supplementary rate information shall be filed not later than fifteen (15) days after the date of first use of the rates, unless the ***commissioner***~~[executive director]~~ finds after a hearing that an insurer's rates require closer supervision because of the insurer's financial condition. On a finding, rates for both personal and commercial risks, supplementary rate information, and supporting information shall be filed with the ***commissioner***~~[executive director]~~ at least thirty (30) days before the effective date of the rates. An order shall expire no later than one (1) year after it is issued.
- (2) In a noncompetitive market, every insurer shall file with the ***commissioner***~~[executive director]~~ all rates for that market, supplementary rate information, and supporting information at least thirty (30) days before the proposed effective date of the rates. On application of the filer, the ***commissioner***~~[executive director]~~ may authorize an earlier effective date.
- (3) Any rate filing in effect at the time the ***commissioner***~~[executive director]~~ determines that competition does not exist pursuant to KRS 304.13-041 shall be deemed to be effective until disapproved pursuant to the procedures and rating standards of this chapter.
- (4) Every insurer shall file with the ***commissioner***~~[executive director]~~ all rating manuals and underwriting rules that it uses in this state not later than fifteen (15) days after they become effective. Manuals, rules, and guidelines must be adhered to until amended. The ***commissioner***~~[executive director]~~ may exempt an insurer from filing supporting information if it files by reference, with or without deviation, to a filing which is in effect for another insurer or an advisory organization.
- (5)
 - (a) No insurer shall place into effect any rates, manuals, or underwriting rules which it proposes to use pursuant to subsection (1) or (4) of this section if the rates, manuals or underwriting rules will result in an increase or decrease of more than twenty-five percent (25%) from the insurer's then existing rates for any classification of risks in any of its rating territories within a twelve (12) month period of time.
 - (b) Any insurer which proposes to change its then existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks within any rating territory more than twenty-five percent (25%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the ***commissioner***~~[executive director]~~.
- (6) Rates and supplemental rating information for a residual market mechanism shall not become effective until approved by the ***commissioner***~~[executive director]~~.
- (7) The ***commissioner***~~[executive director]~~ shall review filings made in accordance with subsections (2), (5)(b) and (6) of this section as soon as reasonably possible after they have been made in order to determine whether they meet the applicable requirements of this chapter. Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the ***commissioner***~~[executive director]~~ for an additional period not to exceed thirty (30) days if he ***or she*** gives written notice within the waiting period to the insurer which made the filing that additional time is needed for consideration of the filing. The ***commissioner***~~[executive director]~~ may, when he ***or she*** deems it to be in the public interest, hold a public hearing on any filing before the filing becomes effective to determine whether the filing meets the requirements of this subtitle. In the event that a hearing is held under the provisions of this subsection, the waiting periods

specified in this subsection shall not begin to run until thirty (30) days after the close of the hearing. The burden of establishing that the filing under consideration meets the requirements of this subtitle is on the insurer which makes the filing. A filing shall be deemed to meet the requirements of this subtitle unless disapproved by the **commissioner**~~[executive director]~~ within the waiting period or any extension thereof.

- (8) At any hearing concerning an increase in worker's compensation rates conducted pursuant to subsection (7), the **commissioner**~~[executive director]~~ may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

➔Section 1117. KRS 304.13-053 is amended to read as follows:

- (1) Within sixty (60) days of December 12, 1996, the licensed workers' compensation advisory organizations shall file with the **commissioner**~~[executive director]~~ an estimate of changes in prospective workers' compensation losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1. Within sixty (60) days of receipt of the workers' compensation filing, the **commissioner**~~[executive director]~~ shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.
- (2) Insurers shall file workers' compensation rates incorporating an actuarially-justified estimate of changes in prospective losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1 for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the **commissioner**~~[executive director]~~ as provided in KRS 304.13-051(2).
- (3) Unless the **commissioner**~~[executive director]~~ enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).
- (4) Notwithstanding the provisions of KRS 304.13-051 to the contrary, after December 31, 1998, no insurer providing workers' compensation insurance shall place into effect any rates, manuals, or underwriting rules for workers' compensation insurance which it proposes to use pursuant to KRS 304.13-051(1) or (4) if the rates, manuals, or underwriting rules will result in an increase or decrease of more than fifteen percent (15%) from the workers' compensation insurer's then-existing workers' compensation insurance rates for any classification of risks within a twelve (12) month period of time.
- (5) After December 31, 1998, any workers' compensation insurer which proposes to change its then-existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks more than fifteen percent (15%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the **commissioner**~~[executive director]~~ pursuant to the provisions of KRS 304.13-051.

➔Section 1118. KRS 304.13-055 is amended to read as follows:

With respect to any filing which, if approved, would result in a reduction of rates, the **commissioner**~~[executive director]~~ shall immediately order the proposed rates to be effective. If upon the **commissioner's**~~[executive director's]~~ review of the filing or as a result of a public hearing it appears that the proposed rates should be further reduced, the **commissioner**~~[executive director]~~ may order the insurer or rating organization to show cause within thirty (30) days why such rates should not be further reduced in accordance with the order.

➔Section 1119. KRS 304.13-057 is amended to read as follows:

- (1) Every insurer shall provide to the **commissioner**~~[executive director]~~ information to demonstrate to what extent the insurer's rates are based upon its Kentucky experience.
- (2) Every insurer shall provide to the **commissioner**~~[executive director]~~ information to demonstrate its compliance with the requirements contained in KRS 304.13-410 which requires workers' compensation rates to be based on the net experience of an employer policyholder who has selected a deductible policy as authorized by KRS 304.13-400.

➔Section 1120. KRS 304.13-061 is amended to read as follows:

- (1) The information furnished in support of a filing may include:
 - (a) The experience or judgment of the insurer;
 - (b) The insurer's interpretation of any statistical data it relies on;

- (c) The experience of other insurers; and
 - (d) Any other relevant factors.
- (2) The ***commissioner***~~[executive director]~~ may adopt reasonable administrative regulations for use by insurers to record and report to the ***commissioner***~~[executive director]~~ their rates and other information determined by the ***commissioner***~~[executive director]~~ to be necessary or appropriate for the administration of KRS 304.13-011 to 304.13-161, and the effectuation of its purposes. The ***commissioner***~~[executive director]~~ may adopt reasonable administrative regulations to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in determining whether rating systems comply with the standards set forth in this subtitle. The ***commissioner***~~[executive director]~~ may designate one (1) or more advisory organizations or statistical agents to assist him *or her* in gathering, compiling, and reporting such information, which shall be a matter of public record. The scope of these rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports.
- (3) The ***commissioner***~~[executive director]~~ may promulgate administrative regulations for the interchange of data necessary for the application of rating plans.
- (4) In order to further uniform administration of rate regulatory laws, the ***commissioner***~~[executive director]~~ and every insurer, advisory organization, and statistical agent may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.

➔Section 1121. KRS 304.13-063 is amended to read as follows:

- (1) Any schedule of rates or rating plan for automobile liability and physical damage insurance filed with the ***commissioner***~~[executive director]~~ shall provide for an appropriate reduction in premium charges for a period of at least three (3) years and up to five (5) years for those insureds fifty-five (55) years of age and older who successfully complete a motor vehicle accident prevention course meeting standards set by the Transportation Cabinet or insureds of any age who complete a defensive driving course provided by the United States Armed Forces to members of the United States Armed Forces. The reduction in premium charges for members of the United States Armed Forces who complete a defensive driving course provided by the United States Armed Forces shall be actuarially sound. There shall, however, be no reduction in premiums for a self-instructed course or for a course which does not provide for classroom or field driving instruction for a minimum number of hours, to be determined by the Transportation Cabinet.
- (2) All insurance companies writing automobile liability and physical damage insurance in Kentucky shall allow an appropriate reduction in premium charges to all eligible persons subject to this section.
- (3) Upon successfully completing the approved course, each participant shall be issued by the course's sponsoring agency a certificate which shall be the basis of qualification for the discount on insurance.
- (4) Each participant shall take an approved course each five (5) years to continue to be eligible for the discount on insurance.
- (5) The Transportation Cabinet is hereby empowered to promulgate regulations setting standards for the motor vehicle accident prevention course described in subsection (1) of this section.
- (6) No discount shall be available under this section to those completing the prescribed motor vehicle accident prevention course under a court order as a result of a motor vehicle conviction.

➔Section 1122. KRS 304.13-065 is amended to read as follows:

For motor vehicle insurance rates, whether in a competitive market or a noncompetitive market, appropriate reductions in premium charges for comprehensive coverage shall be applied to those motor vehicles equipped with an antitheft device as provided in KRS 304.20-410 to 304.20-440 which has been approved by the ***commissioner***~~[executive director]~~.

➔Section 1123. KRS 304.13-071 is amended to read as follows:

- (1) Existing rates in a noncompetitive market may be disapproved pursuant to the rating standards of this chapter after a hearing. Rates that have been filed in a noncompetitive market but that have not become effective may be disapproved pursuant to the rating standards of this chapter without a hearing. However, any insurer whose rates have been disapproved without a hearing shall be given a hearing on a written request made within thirty (30) days after the disapproval order. Hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B. If a rate is disapproved, the **commissioner**~~{executive director}~~ shall issue a final order specifying the reasons for disapproval. Any party aggrieved by the final order of the **commissioner**~~{executive director}~~ may appeal as provided in KRS 304.2-370. The effect of a final order shall be stayed during the pendency of the appeal and the existing rate shall remain in effect until the final conclusion thereof.
- (2) At any hearing concerning an increase in worker's compensation rates conducted pursuant to subsection (1), the **commissioner**~~{executive director}~~ may approve a rate other than one that has been proposed by the filer if it is justified by the evidence presented at the hearing.

➔Section 1124. KRS 304.13-081 is amended to read as follows:

- (1) All rates, supplementary rate information, and supporting information filed under KRS 304.13-011 to 304.13-161 shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a charge specified in Subtitle 4 of this chapter.
- (2) The **commissioner**~~{executive director}~~ shall utilize, develop, or cause to be developed a consumer information system that will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners or private passenger insurance. The **commissioner**~~{executive director}~~ may utilize, develop, or cause to be developed a consumer information system which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified in this section. Such activity may be conducted internally within the **department**~~{office}~~, in cooperation with other state insurance departments, through outside contractors, or in any other appropriate manner. To the extent the **commissioner**~~{executive director}~~ considers necessary and appropriate, insurers, advisory organizations, statistical agents, and other persons or organizations involved in conducting the business of insurance in this state, to which this section applies, shall cooperate with the **commissioner**~~{executive director}~~ in the development and utilization of a consumer information system. The reasonable cost of developing a consumer information system shall be assessed against insurers subject to this chapter on an equitable basis.

➔Section 1125. KRS 304.13-091 is amended to read as follows:

- (1) No advisory organization, statistical agent, or form provider shall provide any otherwise permitted service, and no insurer shall utilize the services unless the organization has obtained a license pursuant to subsection (3) of this section.
- (2) No advisory organization, statistical agent, or form provider shall refuse to supply any services for which it is licensed in Kentucky to any insurer authorized to do business in Kentucky and offering to pay the fair and usual compensation for the services.
- (3) An advisory organization, statistical agent, or form provider applying for a license shall include with its application:
 - (a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
 - (b) A list of its members, subscribers, and customers;
 - (c) The name and address of one (1) or more residents of Kentucky upon whom notices, process affecting it, or orders of the **commissioner**~~{executive director}~~ may be served;
 - (d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
 - (e) A biography of the ownership and management of the organization; and
 - (f) Any other relevant information and documents that the **commissioner**~~{executive director}~~ may require.
- (4) Every organization which has applied for a license shall notify the **commissioner**~~{executive director}~~ of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

- (5) If the ***commissioner***~~[executive director]~~ finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, he or she shall issue a license specifying the authorized activity of the applicant. The ***commissioner***~~[executive director]~~ shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market. At the request of the licensee, licenses issued under this section may be renewed on an annual basis.
- (6) Licenses issued pursuant to this section shall remain in effect for one (1) year unless:
- (a) The licensee fails to pay fees required by law for the continuance or renewal of its license;
 - (b) The licensee withdraws from the state; or
 - (c) The license is suspended or revoked.

The ***commissioner***~~[executive director]~~ may at any time, after a hearing to be conducted in accordance with the provisions of this chapter and KRS 304.2-310, revoke or suspend the license of an advisory organization, statistical agent, or form provider which does not comply with the requirements and standards of this chapter.

- (7) The ***commissioner***~~[executive director]~~ shall by administrative regulation establish a written summary of information that shall be included in an application for licenses issued under this section.
- (8) Advisory organizations wishing to operate as statistical agents or form providers may be so authorized under their license as an advisory organization. A separate license is not required.
- (9) Each advisory organization, statistical agent, and form provider shall pay fees as required by KRS 304.4-010 for the application, continuance, or renewal of its license.

➔Section 1126. KRS 304.13-100 is amended to read as follows:

Upon the written application of the insured, stating his *or her* reasons therefor, filed with and approved by the ***commissioner***~~[executive director]~~, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

➔Section 1127. KRS 304.13-121 is amended to read as follows:

Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

- (1) Collect statistical data from members, subscribers, or any other source;
- (2) Develop statistical plans including territorial and class definitions;
- (3) Prepare, file, and distribute prospective loss costs which may include provisions for special assessments. Loss costs, derived in part or entirely upon output from simulation models, must be approved by the ***commissioner***~~[executive director]~~ before they become effective;
- (4) Prepare, file, and distribute manuals of rating rules, rating schedules, and other supplementary rating information that do not include final rates, expense provisions, profit provisions, or minimum premiums;
- (5) Prepare, file, and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables;
- (6) Distribute information that is required or directed to be filed with the ***commissioner***~~[executive director]~~;
- (7) Conduct research and on-site inspections in order to prepare classifications of public fire defenses, and to consult with public officials regarding public fire protection as it would affect members, subscribers and others;
- (8) Conduct research in order to discover, identify, and classify information relating to causes or prevention of losses;
- (9) Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;
- (10) Prepare, file, and distribute policy forms and endorsements and consult with members, subscribers, and others relative to their use and application;

- (11) Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;
- (12) Conduct on-site inspections to determine rating classifications for individual insureds;
- (13) For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system, pursuant to KRS 304.13-167(1);
- (14) Collect, compile, and publish past and current prices of individual insurers, if such information is also made available to the public at a reasonable cost;
- (15) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;
- (16) File final rates, at the direction of the **commissioner**~~[executive director]~~, for residual market mechanisms; and
- (17) Furnish any other services, as approved or directed by the **commissioner**~~[executive director]~~, related to those enumerated in this section.

➔Section 1128. KRS 304.13-131 is amended to read as follows:

- (1) No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person that has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.
- (2) No insurer or advisory organization shall:
 - (a) Attempt to monopolize, or combine, or conspire with any other person to monopolize an insurance market; or
 - (b) Engage in a boycott, on a concerted basis, of an insurance market.
- (3) No insurer shall agree with any other insurer or with an advisory organization to mandate adherence to, or to mandate use of, any rate, prospective loss cost, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to facilitate the reporting of statistics to advisory organizations, statistical agents, or the **commissioner**~~[executive director]~~. The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys, or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.
- (4) Two (2) or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.

➔Section 1129. KRS 304.13-141 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may examine any insurer, pool, advisory organization, statistical agent, form provider, or residual market or joint underwriting mechanism as deemed necessary to ascertain compliance with this chapter. Any examination made by the **commissioner**~~[executive director]~~ or by examiners designated by **the commissioner**~~[him]~~ shall be at the expense of the organization examined as specified in Subtitle 2 of KRS Chapter 304.
- (2) Every insurer, pool, advisory organization, statistical agent, and residual market or joint underwriting mechanism shall maintain reasonable records, adapted to its method of operation, containing its experience or the experience of its members. Records shall include the statistics and other information used by it in its activities. The records shall be available at all reasonable times and at a reasonable location to enable the **commissioner**~~[executive director]~~ to determine whether the activities of an insurer, pool, advisory organization, statistical agent, residual market or joint underwriting mechanism are in compliance with this chapter.
- (3) In lieu of an examination, the **commissioner**~~[executive director]~~ may accept the report of an examination by the insurance supervisory official of another state, if the report is made pursuant to the laws of that state.

➔Section 1130. KRS 304.13-151 is amended to read as follows:

- (1) Notwithstanding KRS 304.13-131(2)(a), insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may, in connection with such activity, cooperate with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms shall not be deemed advisory organizations.
- (2) Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the provisions of this chapter.
- (3) Every pool shall file with the **commissioner**~~{executive director}~~ a copy of its constitution, bylaws, rules, and regulations governing its activities, and articles of incorporation, agreement, or association. It shall also file with the **commissioner**~~{executive director}~~ a list of its members and the name and address of a resident of this state on whom notices or orders of the **commissioner**~~{executive director}~~ or process may be served, and any changes in amendments or changes in the foregoing.
- (4) Any residual market mechanism, plan, or agreement to implement a residual market mechanism, and any changes or amendments in the plan shall be submitted in writing to the **commissioner**~~{executive director}~~ for consideration and approval, together with any other information as may be reasonably required. The **commissioner**~~{executive director}~~ shall approve only those agreements that he or she finds contemplates both the use of rates which meet the standards of this chapter and activities and practices, that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter. At any time after any agreements are in effect, the **commissioner**~~{executive director}~~ may review the practices and activities of the adherents to these agreements and if, after a hearing, the **commissioner**~~{executive director}~~ finds that any practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, the **commissioner**~~{executive director}~~ may issue a written order to the parties and either require the discontinuance of these acts or revoke approval of any such agreement.
- (5) If the **commissioner**~~{executive director}~~ finds after a hearing that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this chapter, an order may be issued requiring the discontinuance of the activity or practice.
- (6) As a condition of its authority under this chapter to transact casualty insurance (as defined in KRS 304.5-070) in this state, every insurer so authorized shall become and remain a signatory to the "Kentucky automobile insurance plan" as it is presently formulated or as it is hereafter amended with the approval of the **commissioner**~~{executive director}~~. The "Kentucky automobile insurance plan" shall be deemed to be a mandated "residual market mechanism" as defined in KRS 304.13-011(8).

➔Section 1131. KRS 304.13-161 is amended to read as follows:

- (1) Every insurer or advisory organization shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard on written request to review the manner in which the rating system has been applied. If the insurer or advisory organization grants the request, the review shall be conducted within ninety (90) days of receiving the request. If the insurer or advisory organization fails to grant or rejects a request within thirty (30) days, the aggrieved person may proceed in the same manner as if the review produced no change in the application of the rate.
- (2) Any party affected by the action made on the request for review may within thirty (30) days of written notice of action appeal to the **commissioner**~~{executive director}~~ for further review of the application of the rating system. The **commissioner**~~{executive director}~~ shall hold a hearing in accordance with KRS Chapter 13B on a showing of good cause. The **commissioner**~~{executive director}~~ may after the hearing issue a final order affirming, modifying, or reversing the action of the insurer or advisory organization.
- (3) For workers' compensation coverage, each insurer or agent shall notify in writing each insured at the time a workers' compensation insurance policy is issued or renewed on or after May 1, 1997, of the insured's rights afforded by this section. The written notice required in this subsection shall apply only to workers' compensation insurers and shall be provided in the manner and format prescribed through administrative regulations promulgated by the **commissioner**~~{executive director}~~.

➔Section 1132. KRS 304.13-163 is amended to read as follows:

In addition to other activities not prohibited, any statistical agent is authorized, on behalf of its members and subscribers, to:

- (1) Develop statistical plans including territorial and class definitions;
- (2) Collect historical data from members, subscribers, or any other source;
- (3) Distribute information that is required or directed to be filed with the **commissioner**~~{executive director}~~;
- (4) Collect, compile, and distribute past and current prices of individual insurers and publish such information;
- (5) Collect and compile exposure and loss experience for the purpose of individual risk experience ratings; and
- (6) Furnish any other services, as approved or directed by the **commissioner**~~{executive director}~~, related to those enumerated in this section.

➔Section 1133. KRS 304.13-165 is amended to read as follows:

- (1) Every advisory organization shall file with the **commissioner**~~{executive director}~~ every statistical plan, all prospective loss costs, provisions for special assessments, and all supplementary rating information, and every change or amendment or modification of any of the foregoing proposed for use in Kentucky. Each filing shall be filed thirty (30) days before it becomes effective, which period may be extended by the **commissioner**~~{executive director}~~ for an additional period not to exceed thirty (30) days, if written notice is given within the initial thirty (30) day period to the advisory organization that additional time is needed for the consideration of the filing. The **commissioner**~~{executive director}~~ may, upon giving written notice to the advisory organization, request additional information that is needed to complete the review of the filing. If the **commissioner**~~{executive director}~~ requests such additional information prior to the filing becoming effective, the filing shall become effective thirty (30) days after the additional information is provided to the **commissioner**~~{executive director}~~.
- (2) Upon written application by the advisory organization, the **commissioner**~~{executive director}~~ may authorize an earlier effective date.
- (3) All filings shall be subject to the provisions of KRS 304.13-081 and all other provisions of this chapter relating to filings made by insurers.

➔Section 1134. KRS 304.13-167 is amended to read as follows:

- (1) Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the **commissioner**~~{executive director}~~ by an advisory organization designated by the **commissioner**~~{executive director}~~.
- (2) Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the **commissioner**~~{executive director}~~.
- (3) A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. These subclassifications and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (4) A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. These rating plans and their filing shall be subject to the provisions of this chapter applicable to filings generally.
- (5) The **commissioner**~~{executive director}~~ shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.
- (6) The **commissioner**~~{executive director}~~ shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers who implement a drug-free workplace program pursuant to administrative regulations adopted by the **Department**~~{Office}~~ of Workers' Claims in the ~~{Department of}~~ Labor **Cabinet**. The plans shall take effect January 1, 2008, shall be actuarially sound, and shall state the savings anticipated to result from such drug-free workplace programs. The credit shall be at least five percent (5%) unless the **commissioner**~~{executive director}~~ determines that five percent

(5%) is actuarially unsound. The ***commissioner***~~[executive director]~~ is also authorized to develop a schedule of premium credits for workers' compensation insurance for employers who have safety programs that contain certain criteria for safety programs. The ***commissioner***~~[executive director]~~ shall consult with the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims in the ~~[Department of]~~ Labor ***Cabinet*** in setting such criteria. A drug-free workplace credit under this subsection shall not be available to employers who receive a credit under KRS 304.13-412 or KRS Chapter 351.

➔Section 1135. KRS 304.13-169 is amended to read as follows:

No person shall willfully withhold information which will affect the rates or premiums chargeable under this subtitle from, or knowingly give false or misleading information to, the ***commissioner***~~[executive director]~~, any statistical agent, any advisory organization, or any insurer.

➔Section 1136. KRS 304.13-171 is amended to read as follows:

- (1) Any policy fee as related to underwriting expenses for a property or casualty insurance contract, issued or renewed on or after July 14, 2000, by an agent licensed under KRS 304.9-085, shall be deemed fully earned. The fee shall only be collected if coverage is provided.
- (2) All fees referred to in subsection (1) of this section shall be submitted to the ***commissioner***~~[executive director]~~ for prior approval.

➔Section 1137. KRS 304.13-320 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may suspend the license of any advisory organization or insurer which fails to comply with an order of the ***commissioner***~~[executive director]~~ within the time limited by the order, or any extension thereof which the ***commissioner***~~[executive director]~~ may grant. The ***commissioner***~~[executive director]~~ shall not suspend the license of any advisory organization or insurer for failure to comply with an order until the time prescribed for an appeal therefrom has expired or if an appeal has been taken, until the order has been affirmed. The ***commissioner***~~[executive director]~~ may modify or rescind a suspension at any time.
- (2) No penalty shall be imposed and no license shall be suspended or revoked except upon a final order of the ***commissioner***~~[executive director]~~, stating his *or her* findings made after a hearing conducted in accordance with KRS Chapter 13B.

➔Section 1138. KRS 304.13-340 is amended to read as follows:

The Workers' Compensation Insurance Plan (KWCIP), a workers' compensation residual market mechanism, in existence by virtue of this subtitle, shall not write new policies or renew policies after September 1, 1995. The board of directors of the Employers' Mutual Insurance Authority, the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims, and the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance shall develop a plan, which shall be reviewed by the Labor and Industry Committee and the Banking and Insurance Committee of the General Assembly, for the orderly and equitable phase-out of the KWCIP. All claims on workers' compensation assigned risk policies in effect or issued prior to September 1, 1995, shall be paid by the KWCIP. The plan developed shall include procedures for application and transfer of the insureds in the KWCIP to the authority, who shall be subject to the qualifications and conditions of coverage required in KRS 342.801 to 342.843 and this section. The authority shall not be liable for any liabilities or deficits incurred on assigned risk policies in effect or issued prior to September 1, 1995.

➔Section 1139. KRS 304.13-350 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall review, approve, and hear appeals on the assignment, reassignment, or modification of any fire protection classification of any fire protection district, municipality, or locality in the state which is made by any lawful insurer, advisory organization, or agency operating in the Commonwealth.

➔Section 1140. KRS 304.13-355 is amended to read as follows:

Any fire protection district, municipality, or locality in the state which is assigned a fire protection classification by any lawful advisory organization or insurer which makes its own rates, operating in the Commonwealth, may appeal to the ***commissioner***~~[executive director]~~ for modification or reassignment of the classification within thirty (30) days of receipt of the classification. The ***commissioner***~~[executive director]~~ shall determine the manner in which an appeal may be filed.

➔Section 1141. KRS 304.13-360 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall make such investigation as he *or she* deems necessary or convenient for proper determination regarding an appeal.
- (2) The books, accounts, papers and records of every fire protection classification advisory organization or insurer which makes its own rates, operating in the Commonwealth, shall be available to the **commissioner**~~[executive director]~~ for inspection and examination. By notice and order, the **commissioner**~~[executive director]~~ may require their production or the production of verified copies at such time and place as he *or she* designates, any expense incurred to be borne by the rating organization or insurer so ordered.

➔Section 1142. KRS 304.13-365 is amended to read as follows:

- (1) Within thirty (30) days of the filing of an appeal, the **commissioner**~~[executive director]~~ shall hold an administrative hearing to be conducted in accordance with KRS 304.2-310. Whenever the **commissioner**~~[executive director]~~ determines that a fire protection classification is unreasonable, he *or she* shall by final order prescribe a reasonable classification to be followed for a period not to exceed one (1) year. A subsequent evaluation by the advisory organization or insurer shall not be permitted until the expiration of the period set by the **commissioner**~~[executive director]~~.
- (2) The **commissioner**~~[executive director]~~ may compel obedience to its final orders by proper proceedings in the Franklin Circuit Court or any other court of competent jurisdiction, and these proceedings shall have priority over all pending cases.

➔Section 1143. KRS 304.13-370 is amended to read as follows:

- (1) No insurer may increase premiums for fire insurance based on a fire protection classification until the expiration of the thirty (30) day period for appeal by the fire protection district, municipality or locality, as provided in KRS 304.13-355. If an appeal is filed, no insurer may increase such premiums until approval of the fire protection classification by the **commissioner**~~[executive director]~~.
- (2) If the **commissioner's**~~[executive director's]~~ reassignment or modification of a fire protection classification results in lower fire insurance premiums, the appropriate insurers shall make any refunds of paid premiums due to customers within the affected fire protection district, municipality or locality. Such refunds shall be determined from the date the advisory organization or insurer last assigned or reassigned the classification appealed.

➔Section 1144. KRS 304.13-380 is amended to read as follows:

- (1) Each fire department operating within the Commonwealth, whether paid or volunteer, shall complete a report each time it responds to a fire call. The report shall be made on a form, similar to the National Fire Protection Association's standard fire reporting form, to be distributed by the Commission on Fire Protection Personnel Standards and Education and shall include but not be limited to the following information:
 - (a) Date of the fire call;
 - (b) Time of day of the fire response;
 - (c) Number of pieces of fire equipment responding to each call;
 - (d) Number of firefighters responding to each call;
 - (e) Description of the estimated fire damages; and
 - (f) Cause of the fire, if known, or the suspected cause of the fire.
- (2) Each fire department operating within the Commonwealth, whether paid or volunteer, shall file a monthly summary of the reports required to be completed in subsection (1) of this section with the commission's office. The commission shall transmit a copy of each fire department's monthly summary to the **commissioner**~~[executive director]~~. Monthly summaries shall be made on a form, similar to the National Fire Protection Association's fire reporting action summary form, to be distributed by the commission.

➔Section 1145. KRS 304.13-390 is amended to read as follows:

If the state fire marshal gives notice to the **Department**~~[Office]~~ of Insurance that any authorized insurer has failed to comply with the provisions of KRS 227.250, the **commissioner**~~[executive director]~~ may take appropriate action up to and including revoking or suspending the insurer's certificate of authority.

➔Section 1146. KRS 304.13-410 is amended to read as follows:

- (1) An employer policyholder who selects a deductible workers' compensation policy shall be granted a premium reduction by the insurer. The premium reduction shall be calculated by the insurer in accordance with administrative regulations promulgated by the **commissioner**~~[executive director]~~ and shall be fully disclosed to the employer policyholder in writing.
- (2) For ratemaking purposes, the premium reduction granted to an employer policyholder in accordance with the provisions of subsection (1) of this section shall be applied and considered prior to the application of experience modification adjustments, premium surcharges, or premium discounts.
- (3) In addition to the provisions contained in subsection (2) of this section, only the net experience of an employer policyholder, which results after application of the deductible amount, rather than the gross experience of the employer policyholder, shall be used by the insurer or advisory organization in the calculation and preparation of workers' compensation rates. Violation of the provisions of this subsection shall constitute grounds for the suspension or revocation of the license of an insurer or advisory organization in the manner prescribed in KRS Chapter 304.13-320.

➔Section 1147. KRS 304.13-412 is amended to read as follows:

- (1) Any employer who is also a licensee of a coal mine that has implemented a drug-free workplace program, including an employee assistance program, certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.
- (2) Each insurer authorized to write workers' compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee of a coal mine for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:
 - (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or
 - (b) Apply to minimum premium policies.
- (3) The **Department**~~[Office]~~ of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug-free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the **Department**~~[Office]~~ of Insurance determines that five percent (5%) is actuarially unsound.
- (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

➔Section 1148. KRS 304.13-415 is amended to read as follows:

- (1) Every employer that is assigned an experience modification factor for workers' compensation in order to determine its workers' compensation premium shall be furnished without charge a complete copy of the data and calculations of the experience modification by the insurance company or any entity to which the insurance company may delegate the duty of calculating and promulgating the experience modification or, if applicable, by any self-insurance group of which the employer is a member.
- (2) Experience modification shall be based upon all payrolls and claims experience for the applicable period regardless of whether the employer was insured by an insurance company, was a member of a self-insurance group, or was a member of the Kentucky Workers' Compensation Assigned Risk Plan for part or all of the period.
- (3) For each workers' compensation insurance policy issued or renewed on or after May 1, 1997, the workers' compensation insurer or the licensed advisory organization shall provide, in accordance with subsection (1) of this section, the policyholder with a written explanation of the policyholder's experience modification factor and the data and methodology utilized in the calculation of the factor.
- (4) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations to establish the guidelines for application of the experience modification factors.

➔Section 1149. KRS 304.13-420 is amended to read as follows:

No insurer shall be required to offer a deductible to an employer policyholder, as provided in KRS 304.13-400, if the insurer determines, subject to review by the **commissioner**~~[executive director]~~, that the prospective employer

policyholder is not financially able to comply with the terms and conditions of a deductible workers' compensation policy.

➔Section 1150. KRS 304.14-120 is amended to read as follows:

- (1) No basic insurance policy or annuity contract form, or application form where written application is required and is to be made a part of the policy or contract, or printed rider or indorsement form or form of renewal certificate, shall be delivered, or issued for delivery in this state, unless the form has been filed with and approved by the **commissioner**~~{executive director}~~. This provision shall not apply to any rates filed under Subtitle 17A of this chapter, surety bonds, or to specially rated inland marine risks, or to policies, riders, indorsements, or forms of unique character designed for and used with relation to insurance upon a particular subject, or which relate to the manner or distribution of benefits or to the reservation of rights and benefits under life or health insurance policies and are used at the request of the individual policyholder, contract holder, or certificate holder. As to group insurance policies issued and delivered to an association outside this state but covering persons resident in this state, all or substantially all of the premiums for which are payable by the insured members, the group certificates to be delivered or issued for delivery in this state shall be filed with and approved by the **commissioner**~~{executive director}~~.
 - (a) As to forms for use in property, marine (other than wet marine and transportation insurance), casualty and surety insurance coverages (other than accident and health) the filing required by this subsection may be made by advisory organizations or form providers on behalf of their members and subscribers; but this provision shall not be deemed to prohibit any such member or subscriber from filing any such forms on its own behalf.
 - (b) Every advisory organization and form provider shall file with the **commissioner**~~{executive director}~~ for approval every property and casualty policy form and endorsement before distribution to members, subscribers, customers, or others.
 - (c) Every property and casualty insurer shall file with the **commissioner**~~{executive director}~~ notice of adoption before use of any approved form filed by an advisory organization or form provider or filed by the insurer pursuant to paragraph (a) of this subsection.
- (2) Every such filing shall be made not less than sixty (60) days in advance of any such delivery. At the expiration of such sixty (60) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the **commissioner**~~{executive director}~~. Approval of any such form by the **commissioner**~~{executive director}~~ shall constitute a waiver of any unexpired portion of such waiting period. The **commissioner**~~{executive director}~~ may extend by not more than a thirty (30) day period within which he **or she** may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial sixty (60) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The **commissioner**~~{executive director}~~ may at any time, after notice and for cause shown, withdraw any such approval.
- (3) Any order of the **commissioner**~~{executive director}~~ disapproving any such form or any notice of the **commissioner**~~{executive director}~~ withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonably to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the **commissioner**~~{executive director}~~ shall in such notice prescribe.
- (4) The **commissioner**~~{executive director}~~ may, by order, exempt from the requirements of this section for so long as he **or she** deems proper any insurance document or form or type thereof as specified in such order to which, in his **or her** opinion, this section may not practicably be applied, or the filing and approval of which are, in his **or her** opinion, not desirable or necessary for the protection of the public.
- (5) Appeals from orders of the **commissioner**~~{executive director}~~ disapproving any such form or withdrawing a previous approval shall be taken as provided in Subtitle 2 of this chapter.
- (6) For the purposes of this section, unless the context requires otherwise:
 - (a) "Advisory organization" has the meaning provided in KRS 304.13-011; and
 - (b) "Form provider" has the meaning provided in KRS 304.13-011.

➔Section 1151. KRS 304.14-130 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ shall disapprove any form filed under KRS 304.14-120, or withdraw any previous approval thereof, only on one (1) or more of the following grounds:
- (a) If it is in any respect in violation of, or does not comply with, this code.
 - (b) If it contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
 - (c) If it has any title, heading, or other indication of its provisions which is misleading, or is printed in a size of type or manner of reproduction so as to be substantially illegible.
 - (d) As to an individual, group, or blanket health insurance policy, if the benefits provided therein are unreasonable in relation to the premium charged.
 - (e) If it excludes coverage for human immunodeficiency virus infection or acquired immunodeficiency syndrome or contains limitations in the benefits payable, or in the terms or conditions of the contract, for human immunodeficiency virus infection or acquired immunodeficiency syndrome which are different than those which apply to any other sickness or medical condition.

- (2) The insurer shall not use in this state any form after disapproval or withdrawal of approval.

➔Section 1152. KRS 304.14-135 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ shall prescribe the following uniform health insurance claim forms which shall be used by all insurers transacting health insurance in this state and by all state agencies that require health insurance claim forms for their records as the sole instrument for reimbursement:
- (a) The uniform health insurance claim form for an institutional provider shall consist of the UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Billing Committee;
 - (b) The uniform health insurance claim form for a dentist shall consist of a data set and form approved by the American Dental Association;
 - (c) The uniform health insurance claim form for all other health care providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee; and
 - (d) A clean claim for pharmacists shall consist of a universal claim form or data set approved by the National Council on Prescription Drug Program.
- (2) An insurer shall not require a provider to:
- (a) Use a claim form that is different than the uniform claim form for the provider type as set out in subsection (1) of this section;
 - (b) Modify the uniform claims form or its content; or
 - (c) Submit additional claims forms.

➔Section 1153. KRS 304.14-140 is amended to read as follows:

- (1) Insurance contracts shall contain such standard or uniform provisions as are required by the applicable provisions of this code pertaining to contracts of particular kinds of insurance. The ***commissioner***~~{executive director}~~ may waive the required use of a particular provision in a particular insurance policy form if:
- (a) ***The commissioner***~~{He}~~ finds such provision unnecessary for or unrelated to the protection of the insured and inconsistent with the purposes of the policy, and
 - (b) The policy is otherwise approved by ***the commissioner***~~{him}~~.
- (2) No policy shall contain any provision inconsistent with or contradictory to any standard or uniform provision used or required to be used, but the ***commissioner***~~{executive director}~~ may approve any substitute provision which is, in his ***or her*** opinion, not less favorable in any particular to the insured or beneficiary than the provisions otherwise required.

- (3) In lieu of the provisions required by this code for contracts for particular kinds of insurance, substantially similar provisions required by the law of the domicile of a foreign or alien insurer may be used when approved by the **commissioner**~~[executive director]~~.

- (4) A policy issued by a domestic insurer for delivery in another jurisdiction may contain any provision required or permitted by the laws of such jurisdiction.

➔Section 1154. KRS 304.14-220 is amended to read as follows:

- (1) Binders or other contracts for temporary insurance may be made orally or in writing, and shall be deemed to include all the usual terms of the policy as to which the binder was given together with such applicable endorsements as are designated in the binder, except as superseded by the clear and express terms of the binder.
- (2) No binder shall be valid beyond the issuance of the policy with respect to which it was given, or beyond ninety (90) days from its effective date, whichever period is the shorter.
- (3) If the policy has not been issued a binder may be extended or renewed beyond such ninety (90) days with the written approval of the **commissioner**~~[executive director]~~, or in accordance with such rules and regulations relative thereto as the **commissioner**~~[executive director]~~ may promulgate.
- (4) This section shall not apply to life or health insurance or title insurance.

➔Section 1155. KRS 304.14-420 is amended to read as follows:

- (1) No insurance policy for homeowners, dwelling fire, automobile, accident and health, life or other forms of personal insurance shall be delivered, issued for delivery, amended or renewed in this state after the effective date set out in subsection (2) of this section unless the policy is in compliance with the provisions of this section and KRS 304.14-430 to 304.14-450.
- (2) The **commissioner**~~[executive director]~~ shall, within one (1) year from July 15, 1988, promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to carry out the provisions of this section and KRS 304.14-430 to 304.14-450 and to establish minimum standards for the readability and intelligibility of insurance contracts. Within one (1) year of the effective date of the administrative regulations all insurers licensed to transact business shall comply with the standards set out by this section and KRS 304.14-430 to 304.14-450 and promulgated by the **commissioner**~~[executive director]~~.

➔Section 1156. KRS 304.14-430 is amended to read as follows:

- (1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall contain as the first page or first page of text, if it is preceded by a title page or pages, a cover sheet or sheets as provided in this section. The cover sheet or sheets shall be printed in legible type and readable language and shall contain at least the following:
- (a) A brief statement that the policy is a legal contract between the policy owner and the company;
- (b) The statement "READ YOUR POLICY CAREFULLY. This cover sheet provides only a brief outline of some of the important features of your policy. This cover sheet is not the insurance contract and only the actual policy provisions will control. The policy itself sets forth, in detail, the rights and obligations of both you and your insurance company. IT IS THEREFORE IMPORTANT THAT YOU READ YOUR POLICY." and
- (c) An index of the major provisions of the policy or contract and the pages on which they are found which may include the following items:
1. The person or persons insured by the policy;
 2. The applicable events, occurrences, conditions, losses, or damages covered by the policy;
 3. The limitations or conditions on the coverage of the policy;
 4. Definitional sections of the policy;
 5. Provision governing the procedure for filing a claim under the policy;
 6. Provisions governing cancellation, renewal, or amendment of the policy by either the insurer or the policyowner;

7. Any options under the policy; and
 8. Provisions governing the insurer's duties and powers in the event that suit is filed against the insured.
- (2) The cover sheet may include, either as part of the index or as a separate section, a brief summary of the extent and types of coverage in the policy.
 - (3) No cover sheet shall be used unless it has been filed with and approved by the **commissioner**~~[executive director]~~. The cover sheet shall be deemed approved sixty (60) days after filing unless disapproved by the **commissioner**~~[executive director]~~ within the sixty (60) day period, subject to a reasonable extension of times as the **commissioner**~~[executive director]~~ may require by notice given within the sixty (60) day period. The **commissioner**~~[executive director]~~ shall disapprove any cover sheet which does not meet the requirements of this section. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

➔Section 1157. KRS 304.14-435 is amended to read as follows:

- (1) All policy forms filed with the **department**~~[office]~~, and any other insurance policy or claim-related information, shall be written in the English language.
- (2) Applications required to be filed with the **department**~~[office]~~ may also be filed in a language other than English. The non-English version of the application shall:
 - (a) Be filed with the **department**~~[office]~~;
 - (b) Be accompanied by a certification written in English that the non-English version is a complete and accurate translation of the English form filed;
 - (c) Be in the same format as the English version; and
 - (d) Contain all items in English immediately followed in parenthesis with the non-English translation.
- (3) This section shall not prohibit an insurer from advertising or providing information related to the policy or claims with translations to consumers in a language other than English.
- (4) If there is a dispute between the English version and the non-English version, the English version shall control and the non-English version shall carry a disclaimer in the non-English language to this effect. The insurance policy is controlling and any advertisements or informational materials used by an insurer shall not be construed to modify or change the insurance policy.

➔Section 1158. KRS 304.14-440 is amended to read as follows:

- (1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall be written in language easily readable and understandable by a person of average intelligence and education.
- (2) In determining whether a policy or contract is readable within the meaning of this section the **commissioner**~~[executive director]~~ shall consider, at least, the following factors:
 - (a) The simplicity of the sentence structure and the shortness of the sentences used;
 - (b) The extent to which commonly used and understood words are employed;
 - (c) The extent to which legal terms are avoided;
 - (d) The extent to which references to other sections or provisions of the contract are minimized;
 - (e) The extent to which definitional provisions are incorporated in the text of the policy or contract; and
 - (f) Any additional factors relevant to the readability or understandability of an insurance policy or contract which the **commissioner**~~[executive director]~~ may prescribe by regulation.

➔Section 1159. KRS 304.14-450 is amended to read as follows:

- (1) All insurance policies subject to the provisions of KRS 304.14-420 to 304.14-450 shall be printed in legible type and in a type face style approved by the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall by regulation establish a list of type face styles approved as acceptable.

- (2) In determining whether a policy is legible the ***commissioner***~~[executive director]~~ shall consider, in addition to the requirements of subsection (1) of this section relating to type face size and style, the following factors:
- (a) Margin size;
 - (b) Contrast and legibility of the color of the ink and paper;
 - (c) The amount and use of space to separate sections of the policy;
 - (d) The use of contrasting titles or headings for sections or similar aids; and
 - (e) Any additional factors relevant to legibility which the ***commissioner***~~[executive director]~~ may prescribe by regulation.

➔Section 1160. KRS 304.14-510 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may make reasonable rules and regulations establishing minimum standards for Medicare supplement insurance policies delivered or issued for delivery in the state. Such regulations may cover but are not limited to:

- (1) Establishing specific standards for policy provisions;
- (2) Prohibiting policy provisions which in the opinion of the ***commissioner***~~[executive director]~~ are unjust, unfair, or unfairly discriminatory to any person insured or proposed for coverage under a Medicare supplement policy;
- (3) Establishing minimum standards for benefits under Medicare supplement policies;
- (4) Prescribing the format and content of the outline of coverage required by KRS 304.14-540. For purposes of this section, "format" means style, arrangements, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:
 - (a) A description of the principal benefits and coverage provided in the policy;
 - (b) A statement of the exceptions, reductions, and limitations contained in the policy;
 - (c) A statement of the renewal provisions, including any reservation by the insurer of a right to change premiums;
 - (d) A statement that the outline of coverage is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions.
- (5) Prescribing a standard form and the contents of an informational brochure for persons eligible for Medicare which is intended to improve the buyer's ability to select the most appropriate coverage and improve the buyer's understanding of Medicare. Except in the case of direct response insurance policies, the ***commissioner***~~[executive director]~~ may require by regulation that the information brochure be provided to any prospective insureds eligible for Medicare concurrently with delivery of the outline of coverage. With respect to direct response insurance policies, the ***commissioner***~~[executive director]~~ may require by regulation that the prescribed brochure be provided upon request to any prospective insureds eligible for Medicare, but in no event later than the time of policy delivery.
- (6) Establishing reasonable captions and notice requirements, determined to be in the public interest and designed to inform prospective insureds that particular insurance coverages are not Medicare supplement coverages, for all accident and sickness insurance policies sold to persons eligible for Medicare, other than:
 - (a) Medicare supplement policies; or
 - (b) Disability income policies.
- (7) Governing the full and fair disclosure of the information in connection with the replacement of accident and sickness policies, subscriber contracts, or certificates by persons eligible for Medicare.

➔Section 1161. KRS 304.14-530 is amended to read as follows:

Medicare supplement policies shall be expected to return to policyholders benefits which are reasonable in relation to the premium charged. The ***commissioner***~~[executive director]~~ shall issue reasonable regulations to establish minimum standards for loss ratios of Medicare supplement policies on the basis of incurred claims experience and earned premiums for the entire period for which rates are computed to provide coverage and in accordance with accepted actuarial principles and practices. For purposes of regulations issued pursuant to this section, Medicare supplement

policies issued as a result of solicitations of individuals through the mail or mass media advertising, including both print and broadcast advertising, shall be treated as individual policies.

➔Section 1162. KRS 304.14-560 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ of insurance shall biennially compile a consumer's guide to long-term care insurance in Kentucky. The consumer's guide shall cover all insurers offering health insurance policies in Kentucky, including health maintenance organizations, which provide coverage for services provided in long-term care facilities as defined in KRS 216.510(1). The purpose of the consumer's guide shall be to improve the buyer's ability to select the most appropriate long-term care coverage and to improve the buyer's understanding of long-term care. The consumer's guide shall contain, at a minimum, the following information:
 - (a) Definitions of long-term care services provided in Kentucky, the cost of services, sources of payment for long-term care, and eligibility for assistance programs;
 - (b) Factors that affect premium rates, such as age, deductibles, duration of benefits, and daily benefits paid;
 - (c) An explanation of the types of limitations contained in long-term care policies;
 - (d) A check list for the use of potential buyers of long-term care insurance which covers items that should be considered when selecting a long-term care insurance policy; and
 - (e) A comparison of the long-term care policies offered for sale in Kentucky. The comparison shall be updated at least annually, shall not recommend one policy over another, and shall provide the following information for policies: premiums at ages fifty-five (55), sixty-five (65), and seventy-five (75); services covered; length of coverage; limitations on coverage; prior institutionalization requirements; elimination period; and any other information the ***commissioner***~~{executive director}~~ deems appropriate.
- (2) The ***commissioner***~~{executive director}~~ shall issue administrative regulations setting forth specific information to be provided by insurers writing long-term health care insurance in Kentucky to the ***department***~~{office}~~ to complete the biennially compiled consumer's guide to long-term care insurance in Kentucky.
- (3) The ***commissioner***~~{executive director}~~ shall distribute, free of charge, a copy of the consumer's guide to long-term care insurance to any person upon request.
- (4) The ***commissioner***~~{executive director}~~ shall assess against insurers writing long-term health care insurance in Kentucky on an equitable basis the cost of compiling, printing, and distributing the consumer's guide to long-term care.

➔Section 1163. KRS 304.14-600 is amended to read as follows:

As used in KRS 304.14-600 to 304.14-625, unless the context requires otherwise:

- (1) "Incidental" indicates that the value of the long-term care benefits provided in a policy is less than ten percent (10%) of the total value of the benefits provided over the life of the policy. Policies may include life insurance, disability insurance, and annuities. These values shall be measured as of the date of issue.
- (2) "Long-term care insurance" means any insurance policy or rider advertised, marketed, offered, or designed to provide coverage for not less than twelve (12) consecutive months for each covered person on an expense-incurred, indemnity, prepaid, or other basis for one (1) or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital unless the hospital or unit is licensed or certified to provide long-term services. This term includes group and individual annuities and life insurance policies or riders which provide directly or which supplement long-term care insurance. This term includes a policy or rider which provides for payment of benefits based upon cognitive impairment or the loss of functional capacity. This term also includes qualified long-term care insurance contracts as defined in 26 U.S.C. sec. 7702B(b). Long-term care insurance may be issued by insurers, fraternal benefit societies, nonprofit hospital, medical-surgical, dental, and health service corporations, health maintenance organizations, or any similar organization to the extent they are otherwise authorized to issue life or health insurance. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income or related asset-protection coverage, accident only coverage, specified disease or specified accident coverage, or limited benefit coverage. With regard to life insurance, this term does not

include life insurance policies which accelerate the death benefit specifically for one (1) or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement, and which provide the option of a lump-sum payment for those benefits and in which neither the benefits nor the eligibility for the benefits is conditioned upon the receipt of long-term care. Any product advertised, marketed, or offered as long-term care insurance or nursing home insurance which otherwise meets the definition of long-term care insurance shall be subject to the provisions of KRS 304.14-600 to 304.14-625.

- (3) "Applicant" means:
 - (a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and
 - (b) In the case of a group long-term care insurance policy, the proposed certificate holder.
- (4) "Certificate" means any certificate issued under a group long-term care insurance policy, which policy has been delivered or issued for delivery in Kentucky, except as provided in KRS 304.14-610.
- (5) "Group long-term care insurance" means a long-term care insurance policy which is delivered or issued for delivery in Kentucky by an insurer, fraternal benefit society, nonprofit health service corporation, or health maintenance organization, and which is issued to:
 - (a) One (1) or more employers or labor organizations, or to a trust or to the trustees of a fund established by one (1) or more employers or labor organizations, or a combination thereof, for employees or former employees or a combination thereof, or for members or former members or a combination thereof, of the labor organizations;
 - (b) Any professional, trade, or occupational association for its members or former or retired members, or combination thereof, if the association:
 1. Is composed of individuals all of whom are or were actively engaged in the same profession, trade, or occupation; and
 2. Has been maintained in good faith for purposes other than obtaining insurance;
 - (c) An association or a trust or the trustee of a fund established, created, or maintained for the benefit of members of one (1) or more associations. Prior to advertising, marketing, or offering the policy within Kentucky, the insurer of the association shall file with the ~~commissioner~~~~executive director~~ evidence that the association has at the outset a minimum of one hundred (100) persons and has been organized and maintained in good faith for purposes other than that of obtaining insurance, has been in active existence for at least one (1) year, and has a constitution and bylaws which provide:
 1. The association holds regular meetings not less than annually to further the purposes of the members;
 2. Except for credit unions, the association collects dues or solicits contributions from members; and
 3. The members have voting privileges and representation on the governing board and committees.

The association shall be deemed to satisfy the organizational requirements unless the ~~commissioner~~~~executive director~~ makes a finding that the association does not satisfy those organizational requirements within the time set forth in KRS 304.14-120; or
 - (d) A group other than that described in paragraphs (a), (b), and (c) of this subsection, subject to a finding by the ~~commissioner~~~~executive director~~ that:
 1. The issuance of the group policy is not contrary to the best interest of the public;
 2. The issuance of the group policy would result in economies of acquisition or administration; and
 3. The benefits are reasonable in relation to the premiums charged.
- (6) "Policy" means any policy, contract, subscriber, agreement, enrollment agreement, rider, or endorsement delivered or issued for delivery in Kentucky.

➔Section 1164. KRS 304.14-610 is amended to read as follows:

Group long-term care insurance coverage shall not be offered to a resident of Kentucky under a group policy issued in another state to a group described in KRS 304.14-600(5)(d) unless the **commissioner**~~executive director~~ or the insurance supervisory official of another state having statutory and regulatory long-term care insurance requirements substantially similar to KRS 304.14-600 to 304.14-625, has made a determination that these requirements have been met. Certificates of group long-term care insurance shall be filed with the **commissioner**~~executive director~~ as required by KRS 304.14-120.

➔Section 1165. KRS 304.14-615 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and require disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, incidental benefits, lapse of insurance, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, premium rating practices and rating increases, requirements for replacement, recurrent conditions, and definitions of terms.
- (2) A long-term care insurance policy shall not:
 - (a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;
 - (b) Contain a provision establishing a new waiting period in the event existing coverage is covered to or replaced by a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or
 - (c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.
- (3)
 - (a) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group defined in KRS 304.14-600(5)(a), shall not use a definition of "pre-existing condition" which is more restrictive than the following: "Pre-existing condition means a condition for which medical services or treatment was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."
 - (b) A long-term care insurance policy or certificate, other than a policy or certificate under a policy issued to a group as defined in KRS 304.14-600(5)(a), shall not exclude coverage for a loss or confinement which is the result of a pre-existing condition unless that loss or confinement begins within six (6) months following the effective date of coverage of an insured person.
 - (c) The **commissioner**~~executive director~~ may extend the limitation periods set forth in subsection (3)(a) and (b) of this section as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.
 - (d) The definition of "pre-existing condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.
- (4)
 - (a) A long-term care insurance policy shall not be delivered or issued for delivery in this Commonwealth if the policy:
 1. Conditions eligibility for any benefits on a prior hospitalization requirement;
 2. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or
 3. Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.

- (b)
 1. A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.
 2. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.
- (5) The **commissioner**~~executive director~~ may promulgate administrative regulations establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the administrative regulations.
- (6) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in KRS 304.14-600(5)(a), the applicant is not satisfied for any reason.
- (7)
 - (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.
 1. The **commissioner**~~executive director~~ shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage.
 2. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.
 3. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.
 - (b) The outline of coverage shall include:
 1. A description of the principal benefits and coverage provided in the policy;
 2. A statement of the principal exclusions, reductions, and limitations contained in the policy;
 3. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;
 4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;
 5. A description of the terms under which the policy or certificate may be returned and premium refunded; and
 6. A brief description of the relationship of the cost of care and benefits.
- (8) A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this Commonwealth or a certificate subject to approval by the **commissioner**~~executive director~~ shall include:
 - (a) A description of the principal benefits and coverage provided in the policy;
 - (b) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
 - (c) A statement that the group master policy determine governing contract provisions.
- (9) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of any request, the insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:

- (a) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;
 - (b) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;
 - (c) Any exclusions, reductions, and limitations on benefits of long-term care insurance; and
 - (d) If applicable to the policy type, the summary shall also include:
 - 1. A disclosure of the effects of exercising other rights under the policy;
 - 2. A disclosure of guarantees related to long-term care of insurance charges; and
 - 3. Current and projected maximum lifetime benefits.
- (10) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder by the insurer. The report shall include:
- (a) Any long-term care benefits paid out during the month;
 - (b) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and
 - (c) The amount of long-term care benefits existing or remaining.
- (11) Any policy or rider advertised or marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of KRS 304.14-600 to 304.14-625.

➔Section 1166. KRS 304.14-617 is amended to read as follows:

- (1) Any long-term care policy, issued on or after June 21, 2001, which provides coverage for assisted living benefits shall cover services received in any assisted living community which:
 - (a) Meets the requirements of KRS 194A.700 to 194A.729 and any administrative regulations promulgated under KRS 194A.700 to 194A.729; and
 - (b) Meets any additional requirements of an assisted living community set forth in the long-term care policy approved by the **commissioner**~~executive director~~.
- (2) Any long-term care policy, issued on or after June 21, 2001, which provides coverage for adult day care services shall cover services received in any adult day care facility which:
 - (a) Meets the requirements of KRS 205.950 or 216B.0443 and any administrative regulations promulgated under KRS 205.950 or 216B.0443; and
 - (b) Meets any additional requirements of an adult day care center set forth in the long-term care policy approved by the **commissioner**~~executive director~~.

➔Section 1167. KRS 304.14-620 is amended to read as follows:

The **commissioner**~~executive director~~ shall issue administrative regulations to establish minimum standards for marketing practices, agent compensation, agent testing, penalties, and reporting practices for long-term care insurance.

➔Section 1168. KRS 304.14-630 is amended to read as follows:

The **commissioner**~~executive director~~ shall issue administrative regulations to establish standards for premium rate practices and rate increases for long-term care benefits.

➔Section 1169. KRS 304.14-635 is amended to read as follows:

The **commissioner**~~executive director~~ shall promulgate administrative regulations to establish standards for incidental long-term care benefits.

➔Section 1170. KRS 304.14-642 is amended to read as follows:

- (1) The Kentucky Long-Term Care Partnership Insurance Program is established as a partnership between the Department for Medicaid Services and the **Department**~~{Office}~~ of Insurance to:
 - (a) Provide incentives for an individual to insure against the cost of providing for his or her long-term care needs;
 - (b) Increase utilization of long-term care insurance policies;
 - (c) Assist in alleviating the financial burden of Kentucky's Medicaid program by encouraging the use of private insurance; and
 - (d) Provide a mechanism for individuals to qualify for Medicaid services for costs of long-term care without exhausting all of their assets and resources.
- (2) A long-term care partnership insurance policy shall:
 - (a) Provide coverage for expenses for at least twelve (12) months for each covered person on an expense-incurred, indemnity, or prepaid basis for one (1) or more long-term care services provided in a setting other than an acute care unit of a hospital;
 - (b) Be qualified under Section 7702B(b) of the Internal Revenue Code of 1986;
 - (c) Provide coverage for long-term care services for a policyholder who is a resident of a state with a qualified long-term care partnership program when coverage first became effective; and
 - (d) Not be issued prior to the effective date of an approved amendment to the State Medicaid Plan.
- (3) The **Department**~~{Office}~~ of Insurance shall have responsibility to approve, pursuant to KRS 304.14-120, any long-term care partnership insurance policy available in Kentucky that meets and continues to meet all applicable federal and state laws and regulations. The state shall not impose any requirement affecting the terms or benefits of such a policy unless the state imposes such requirement on long-term care insurance policies without regard to whether the policy is covered under the partnership or is offered in connection with the partnership.
- (4) The **Department**~~{Office}~~ of Insurance shall ensure that any agent who sells a long-term care partnership insurance policy can demonstrate an understanding of long-term care partnership insurance and how it relates to other public and private coverage of long-term care expenses. The Department for Medicaid Services shall provide consultation, materials, and other information to the **Department**~~{Office}~~ of Insurance to enable the **Department**~~{Office}~~ of Insurance to facilitate the development and issuance of uniform training materials for agents who sell long-term care insurance policies. The **Department**~~{Office}~~ of Insurance may contract with another entity to conduct agent training and testing. Training and certification may be conducted at the expense of the insurance agent.
- (5) Within sixty (60) days of notice of approval of the amendment to the State Medicaid Plan required under KRS 205.619, the **Department**~~{Office}~~ of Insurance shall promulgate an administrative regulation pursuant to KRS Chapter 13A to implement the Kentucky Long-Term Care Partnership Insurance Program.
- (6) The **Department**~~{Office}~~ of Insurance and the Department for Medicaid Services shall report no later than September 30 each year to the Interim Joint Committee on Banking and Insurance and the Interim Joint Committee on Health and Welfare on the number of partnership insurance policies sold in Kentucky, utilization of the partnership insurance policies, and expenditures and cost savings associated with implementation, utilization, and maintenance of the partnership program. If national data reporting standards become available, the report submitted to the federal agency shall meet the requirements of this subsection.

➔Section 1171. KRS 304.14-644 is amended to read as follows:

- (1) Each insurer or its agent, soliciting or offering to sell a policy that is intended to qualify as a partnership policy, shall provide each prospective applicant a Partnership Program Notice disclosing the availability of the Kentucky Long-Term Care Partnership Insurance Program as authorized in Section 6021 of the Deficit Reduction Act of 2005 and outlining the requirements and benefits of a partnership policy.
- (2) The manner and content of the disclosure described in subsection (1) of this section shall be established through promulgation of administrative regulations by the **Department**~~{Office}~~ of Insurance in coordination with the Cabinet for Health and Family Services.

➔Section 1172. KRS 304.14-660 is amended to read as follows:

The **commissioner**~~{executive director}~~ shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for sale of short-term nursing home insurance policies, terms of renewability, initial and subsequent conditions or eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions.

➔Section 1173. KRS 304.14-665 is amended to read as follows:

The **commissioner**~~{executive director}~~ may promulgate administrative regulations establishing loss ratio standards for short-term nursing home insurance policies.

➔Section 1174. KRS 304.14-675 is amended to read as follows:

- (1) Any short-term nursing home insurance policy issued on or after July 15, 2002, which provides coverage for assisted living benefits shall cover services received in any assisted living community which:
 - (a) Meets the requirements of KRS 194A.700 to 194A.729 and any administrative regulations promulgated under KRS 194A.700 to 194A.729; and
 - (b) Meets any additional requirements of an assisted living community set forth in the short-term nursing home insurance policy approved by the **commissioner**~~{executive director}~~.
- (2) Any short-term nursing home insurance policy issued on or after July 15, 2002, which provides coverage for adult day care services shall cover services received in any adult day care facility which:
 - (a) Meets the requirements of KRS 205.950 or 216B.0443 and any administrative regulations promulgated under KRS 205.950 or 216B.0443; and
 - (b) Meets any additional requirements of an adult day care center set forth in the short-term nursing home insurance policy approved by the **commissioner**~~{executive director}~~.

➔Section 1175. KRS 304.15-020 is amended to read as follows:

- (1) "Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communication media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.
- (2) "Business of life settlements" means an activity involved in but not limited to the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of life settlement contracts.
- (3) "Chronically ill" means:
 - (a) Being unable to perform at least two (2) activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence;
 - (b) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
 - (c) Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Secretary of Health and Human Services.
- (4) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (5) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a life settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a life settlement contract but:
 - (a) Whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of one (1) or more policies or to provide credit enhancement; and

- (b) Who has an agreement in writing with one (1) or more licensed life settlement providers to finance the acquisition of life settlement contracts or to provide stop loss insurance.

"Financing entity" does not include a nonaccredited investor or purchaser.

- (6) "Financing transaction" means a transaction in which a life settlement provider obtains financing from a financing entity, including without limitation any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.

- (7) "Fraudulent life settlement act" includes:

- (a) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits his employees or its agents to engage in acts including:

1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a life settlement provider, life settlement broker, life insurance producer, financing entity, insurer, premium finance lender, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:
 - a. An application for the issuance of a life settlement contract or policy;
 - b. The underwriting of a life settlement contract or policy;
 - c. A claim for payment or benefit pursuant to a life settlement contract or policy;
 - d. Premiums paid on a policy;
 - e. Payments and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or policy;
 - f. The reinstatement or conversion of a policy;
 - g. In the solicitation, offer, effectuation, or sale of a life settlement contract or policy;
 - h. The issuance of written evidence of a life settlement contract or policy;
 - i. A financing transaction;
 - j. Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or
 - k. Stranger-originated life insurance;
2. Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a life settlement contract;
3. In the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws;

- (b) Any of the following acts committed by any person or permitted by a person to be committed by the person's employees or agents in the furtherance of a fraud or to prevent detection of a fraud to:

1. Remove, conceal, alter, destroy, or sequester from the **commissioner**~~executive director~~ the assets or records of a licensee or other person engaged in the business of life settlements;
2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
3. Transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;
4. File with the **commissioner**~~executive director~~ or the chief insurance regulatory official of another jurisdiction a document containing false information or which otherwise conceals information about a material fact from the **commissioner**~~executive director~~; or
5. Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this section and KRS 304.15-700 to 304.15-720;

- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a life settlement provider, life settlement broker, insurer, insured, owner, insurance policyowner, or any other person engaged in the business of life settlements or insurance;
 - (d) Recklessly entering into, brokering, or otherwise dealing in a life settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the owner or the owner's agent intended to defraud the policy issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
 - (e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- (8) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
 - (9) "Life expectancy" means the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.
 - (10) "Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.
 - (11) "Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.
 - (12) "Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in policies. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to life settlement transactions available to the ~~commissioner~~~~executive director~~ as if those records and files were maintained directly by the licensed life settlement provider.
 - (13) "Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.
 - (14) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed life settlement provider.
 - (15) "Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls, or has an arrangement or agreement to own or control, the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in paragraph (b) of subsection (17) of this section.
 - (16) "Life settlement broker" or "broker" means an individual, partnership, corporation, or other person who is working exclusively on behalf of an owner and for a fee, commission, or other valuable consideration, offers or advertises the availability of life settlements, introduces an owner to life settlement providers, or offers or attempts to negotiate life settlements between an owner and one (1) or more life settlement providers. "Life settlement broker" does not include an attorney, certified public accountant, or financial planner who is retained to represent the owner and whose compensation is not paid directly or indirectly by the life settlement provider or any other person except the owner.
 - (17) (a) "Life settlement contract" means a written agreement entered into between a life settlement provider and an owner owning a policy or who owns or is covered under a group policy insuring the life of a person

and the agreement establishes the terms under which the life settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate. A life settlement contract also includes a contract for a loan or other financing transaction with an owner secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A life settlement contract includes an agreement with an owner to transfer ownership or change the beneficiary designation of a policy at a later date regardless of the date that compensation is paid to the owner. "Life settlement contract" does not mean a written agreement entered into between an owner and a person having an insurable interest in the insured's life.

- (b) "Life settlement contract" also includes a premium finance loan made for a policy on or before the date of issuance of the policy where:
 - 1. The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;
 - 2. The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or
 - 3. The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (c) "Life settlement contract" does not include:
 - 1. A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;
 - 2. A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under KRS 304.15-700 to 304.15-720;
 - 3. A collateral assignment of a life insurance policy by an owner;
 - 4. A loan made by a lender that does not violate Subtitle 30 of this chapter, if the loan is not described in paragraph (b) of this subsection and is not otherwise within the definition of life settlement contract;
 - 5. An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
 - 6. Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
 - 7. A bona fide business succession planning arrangement:
 - a. Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trust established by its shareholders;
 - b. Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trust established by its partners; or
 - c. Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trust established by its members;
 - 8. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

9. Any other contract, transaction, or arrangement not included in the definition of life settlement contract as determined by the **commissioner**~~executive director~~ by administrative regulation.
- (18) "Life settlement provider" or "provider" means an individual, partnership, corporation, or other person who or that enters into an agreement with a person owning a policy under the terms of which the life settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the life settlement provider. Life settlement provider does not include:
- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution or creditor or secured party that takes an assignment of a policy as collateral for a loan;
 - (b) The issuer of a policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;
 - (c) Any natural person who is not licensed in accordance with KRS 304.15-700 and who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
 - (d) A related provider trust;
 - (e) An authorized or eligible insurer that provides stop-loss coverage to a life settlement provider, financing entity, special purpose entity, or related provider trust;
 - (f) A special purpose entity;
 - (g) A related provider trust;
 - (h) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a policy from a life settlement provider;
 - (i) A purchaser;
 - (j) A financing entity; or
 - (k) Broker.
- (19) "Owner" means a resident of this Commonwealth who is the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a life settlement contract. An owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one (1) owner on a single policy and the owners are residents of different states, the transaction shall be governed by the law of the state in which the owner having the largest percentage of ownership resides or, if the owners hold equal ownership, the state of residence of one (1) owner agreed upon in writing by all owners. "Owner" does not include:
- (a) A life settlement provider licensed pursuant to KRS 304.9-440;
 - (b) A qualified institutional buyer as defined in Rule 144A of the Federal Securities Act of 1933, as amended;
 - (c) A financing entity;
 - (d) A special purpose entity; or
 - (e) A related provider trust.
- (20) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- (21) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for the

policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from the funds and partly from funds contributed by the insured employees.

➔Section 1176. KRS 304.15-035 is amended to read as follows:

Nothing in this subtitle preempts or otherwise limits the provisions of the Securities Act of Kentucky, KRS Chapter 292, or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the ~~commissioner~~~~[executive director]~~ of the Kentucky ~~Department~~~~[Office]~~ of Financial Institutions or ~~the commissioner's~~~~[his]~~ designee acting pursuant to the Securities Act of Kentucky. Compliance with the provisions of this subtitle does not constitute compliance with any applicable provision of the Securities Act of Kentucky and any amendments thereto or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the ~~commissioner~~~~[executive director]~~ of the Kentucky ~~Department~~~~[Office]~~ of Financial Institutions or ~~the commissioner's~~~~[his]~~ designee acting pursuant to the Securities Act of Kentucky.

➔Section 1177. KRS 304.15-045 is amended to read as follows:

No college life insurance policy shall be sold or delivered in this Commonwealth unless the following provisions are complied with:

- (1) A letter of acceptance, on a form approved by the ~~commissioner~~~~[executive director]~~ is presented to the proposed insured, setting forth the conditions concerning the financing agreement, the due date of the note, the amount of the note, the annual rate of interest on the note, and the annual premium on the policy;
- (2) The acceptance letter must be signed by the proposed insured, agreeing that he has read and understands the conditions, a copy to be retained by the insured, and a copy to be retained by the agent and company;
- (3) A copy of a financing arrangement is to be attached to and made a part of the contract.

➔Section 1178. KRS 304.15-115 is amended to read as follows:

- (1) As used in this section:
 - (a) "Policy" includes annuity contracts as defined in KRS 304.5-030 which provide for policy loans, and certificates issued by a fraternal benefit society as defined in KRS 304.29-011;
 - (b) "Policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer;
 - (c) "Policy loan" includes an advance of cash as specified in KRS 304.15-110 and any premium loan made under a policy to pay one (1) or more premiums that were not paid to the life insurer as they fell due; and
 - (d) "Published monthly average" means Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc. or any successor thereto, or, in the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published, a substantially similar average prescribed by the ~~commissioner~~~~[executive director]~~.
- (2) Notwithstanding any other provision of law:
 - (a) Policies issued on or after July 13, 1984, shall contain either, but not both, of the following policy loan interest rate provisions:
 1. A provision permitting a maximum interest rate of not more than eight percent (8%) per annum; or
 2. A provision permitting an adjustable maximum interest rate established at regular intervals by the life insurer as permitted by law.
 - (b) The rate of interest charged on a policy loan made under paragraph (a)2. of this subsection shall not exceed eighteen percent (18%) nor the higher of the following:
 1. The published monthly average for the calendar month ending two (2) months before the date on which the rate is determined; or
 2. The rate used to compute cash surrender values under the policy during the applicable period plus one percent (1%) per annum.

- (c) If the maximum rate of interest is determined pursuant to paragraph (a)2. of this subsection, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy;
 - (d) The maximum rate for each policy shall be determined at regular intervals at least once every twelve (12) months, but not more frequently than once in any three (3) month period. At the intervals specified in the policy:
 - 1. The rate being charged may be increased whenever such increase as determined under paragraph (b) of this subsection would increase the rate by one-half of one percent (0.5%) or more per annum;
 - 2. The rate being charged shall be reduced whenever such reduction as determined under paragraph (b) of this subsection would decrease that rate by one-half of one percent (0.5%) or more per annum.
 - (e) The life insurer shall:
 - 1. Notify the policyholder at the time an advance of cash is made of the initial rate of interest on the loan;
 - 2. Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subparagraph 3. of this paragraph;
 - 3. Send to policyholders with loans reasonable advance notice of any increase in the rate; and
 - 4. Include in the notices required in subparagraphs 1., 2., and 3. of this paragraph the substance of the pertinent provisions of paragraphs (a) and (c) of this subsection.
 - (f) The loan value of the policy shall be determined in accordance with KRS 304.15-110, but no policy shall terminate in a policy year as the sole result of changes in the interest rate during that policy year. The life insurer shall maintain coverage during that policy year until such time at which it would otherwise have terminated if there had been no change during that policy year;
 - (g) The substance of the pertinent provisions of paragraphs (a) and (c) of this subsection shall be set forth in the policies to which they apply;
 - (h) For the purposes of this section, the rate of interest on policy loans permitted under this section shall include the interest rate charged for reinstatement of policy loans for the period during and after any lapse of a policy;
 - (i) No other provision of law shall apply to policy loan interest rates unless such provision specifically applies to such rates.
- (3) The provisions of this section shall not apply to any policy issued before July 13, 1984, unless the policyholder agrees in writing to the applicability of such provisions.

➔Section 1179. KRS 304.15-120 is amended to read as follows:

In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall, except as otherwise permitted by the **commissioner**~~[executive director]~~, be a table showing the amounts of the guaranteed installments.

➔Section 1180. KRS 304.15-175 is amended to read as follows:

- (1) When a life insurance policy has been paid up by completion of all premium payments, the insurer shall provide notice to the **Department**~~[Office]~~ of Insurance within thirty (30) days of completion of all policy payments. The notice to the **department**~~[office]~~ shall include the following information:
 - (a) The name of the policy holder;
 - (b) The last known address of the policy holder;
 - (c) The policy number; and
 - (d) The date the policy was paid up.

- (2) The **commissioner**~~[executive director]~~ shall retain the notice required by subsection (1) of this section in a manner that will facilitate response to policyholder inquiries regarding their policy in the event of loss or destruction of the policy, or in the event of acquisition or merger of the insurer.

➔Section 1181. KRS 304.15-260 is amended to read as follows:

- (1) No policy of life insurance shall be delivered or issued for delivery in this state if it contains any of the following provisions:
- (a) A provision limiting the time within which an action at law or in equity may be commenced on such a policy to less than three (3) years after the cause of action has accrued.
 - (b) A provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one (1) or more of the following circumstances:
 - 1. Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of such war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of such military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in such military action;
 - 2. Death as a result of aviation or any air travel or flight;
 - 3. Death as a result of specified hazardous occupation or occupations;
 - 4. Death while the insured is a resident outside the continental United States and Canada; or
 - 5. Death within two (2) years from the date of issue of the policy as a result of suicide, while sane or insane.
- (2) A policy which contains any exclusion or restriction pursuant to paragraph (b) of subsection (1) of this section, shall also provide that in the event of death under the circumstances to which any such exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the commissioners reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits (or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy) with adjustment for indebtedness or dividend credit.
- (3) This section shall not apply to group life insurance, health insurance, reinsurance, or annuities, or to any provision in a life insurance policy or contract supplemental thereto relating to disability benefits or to additional benefits in the event of death by accident or accidental means.
- (4) Nothing contained in this section shall prohibit any provision which in the opinion of the **commissioner**~~[executive director]~~ is more favorable to the policyholder than a provision permitted by this section.

➔Section 1182. KRS 304.15-310 is amended to read as follows:

- (1) No policy of life insurance, except as stated in KRS 304.15-360 shall be delivered or issued for delivery in this state unless it shall contain, in substance the following provisions, or corresponding provisions which in the opinion of the **commissioner**~~[executive director]~~ are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements hereinafter specified and are essentially in compliance with KRS 304.15-352:
- (a) Paid-up nonforfeiture benefit. That, in the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date, of such amount as may be hereinafter specified. In lieu of such stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

- (b) Cash surrender value. That, upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified.
 - (c) Effective date of benefit. That a specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default.
 - (d) Cash surrender value if policy paid up. That, if the policy shall have become paid up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of such amount as may be hereinafter specified.
 - (e) Mortality table and interest rate used. In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefits, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter, such values and benefits to be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy.
 - (f) Method used in computing value and benefit. A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that such method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which such values and benefits are consecutively shown in the policy.
- (2) Any of the foregoing provisions or portions thereof not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.
 - (3) The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

➔Section 1183. KRS 304.15-315 is amended to read as follows:

- (1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities."
- (2) This section shall not apply to any reinsurance group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract. However, to the extent that a variable annuity contract provides benefits that do not, before the maturity date, vary in accordance with the investment performance of any separate account or accounts

maintained by the insurer as to such contract, as provided for in KRS 304.15-390, the contract shall contain provisions that satisfy the requirements of this section and shall not otherwise be subject to this section.

- (3) In the case of contracts issued on or after the operative date of this section as defined in subsection (12) of this section, no contract of annuity, except as stated in subsection (2) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the ~~commissioner~~~~executive director~~ are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract.
- (a) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (5), (6), (7), (8) and (10) of this section.
 - (b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections (5), (6), (8) and (10) of this section. The insurer shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.
 - (c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.
 - (d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20) monthly, the insurer may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

- (4) The minimum values as specified in subsections (5), (6), (7), (8) and (10) of this section of any paid-up annuity, cash surrender or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.
- (a) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three percent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:
 1. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three percent (3%) per annum; and
 2. The amount of any indebtedness to the insurer on the contract, including interest due and accrued;

and increased by any existing additional amounts credited by the insurer to the contract. The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross consideration credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half percent (87.5%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two (2) times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

- (b) Notwithstanding any other provision of this subsection, for any contract issued on or after July 1, 2003, and before July 1, 2006, the interest rate at which net considerations, prior withdrawals, and partial surrenders shall be accumulated for the purpose of determining nonforfeiture amounts shall be no less than one and one-half percent (1.5%) per annum.
 - (c) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two (2) exceptions:
 - 1. The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22.5%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years.
 - 2. The annual contract charge shall be the lesser of,
 - a. Thirty dollars (\$30), or
 - b. Ten percent (10%) of the gross annual consideration.
 - (d) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75).
- (5) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.
 - (6) For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.
 - (7) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of such interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.
 - (8) For the purpose of determining the benefits calculated under subsections (6) and (7) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.
 - (9) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

- (10) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.
- (11) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (5), (6), (7), (8), and (10) of this section, additional benefits payable:
- (a) In the event of total and permanent disability;
 - (b) As reversionary annuity or deferred reversionary annuity benefits; or
 - (c) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits;

shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

- (12) (a) 1. After August 1, 2005, any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to apply the provisions of KRS 304.15-365 on a contract-form by contract-form basis to annuity contracts issued by the insurer during the period from the date of the election through June 30, 2006;
2. In all other instances, insurers shall apply the provisions of KRS 304.15-315 to annuity contracts issued through June 30, 2006; and
- (b) Insurers shall apply the provisions of KRS 304.15-365 to all annuity contracts issued on or after July 1, 2006.

➔Section 1184. KRS 304.15-340 is amended to read as follows:

- (1) How calculated. This section shall not apply to policies issued on or after the operative date of KRS 304.15-342 as defined therein. Except as provided in subsection (4) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairment or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of:
- (a) The then present value of the future guaranteed benefits provided for by the policy;
 - (b) Two percent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;
 - (c) Forty percent (40%) of the adjusted premium for the first policy year; and
 - (d) Twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.
- (2) In applying the percentages specified in paragraphs (c) and (d) of subsection (1) of this section, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or uniform amount equivalent thereto. Whenever the plan or term of a policy has been changed, either by request of the insured or automatically in accordance with the provisions of the policy, the date of issue of the changed policy for the purposes of determining a nonforfeiture benefit or cash surrender value shall be the date as of which the age of the insured is determined for the purposes of the changed policy. The date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

- (3) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten (10) were the amount provided by such policy at age ten (10).
- (4) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to:
 - (a) The adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by
 - (b) The adjusted premiums for such term insurance, paragraphs (a) and (b) of this subsection being calculated separately and as specified in subsections (1), (2) and (3) of this section, except that, for the purposes of paragraphs (b), (c), and (d) of subsection (1) of this section, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in paragraph (b) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in paragraph (a) of this subsection.
- (5) All adjusted premiums and present values referred to in KRS 304.15-310 to 304.15-360, inclusive, but not including KRS 304.15-342 and 304.15-344 shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured, and such calculations for all policies of industrial insurance shall be made on the basis of the Commissioners 1961 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits provided that such rate of interest shall not exceed four percent (4%) per year except that a rate of interest not exceeding five and one-half percent (5.5%) per year may be used for policies issued on or after June 17, 1978. In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit for ordinary insurance, the rates of mortality assumed may not be more than those shown in the Commissioners 1958 Extended Term Insurance Table and for industrial insurance the rates of mortality may not be more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the ~~commissioner~~^{executive director}.

➔Section 1185. KRS 304.15-342 is amended to read as follows:

- (1) This section shall apply to all policies issued on or after the effective date of this section as defined in subsection (11) of this section. Except as provided in subsection (7) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments or special hazards and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:
 - (a) The then present value of the future guaranteed benefits provided for by the policy;
 - (b) One percent (1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and
 - (c) One hundred twenty-five percent (125%) of the nonforfeiture net level premium as hereinafter defined.

Provided, however, that in applying the percentage specified in (c) above, no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance is uniform in

amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years. This date of issue of a policy for the purpose of this section shall be the date as of which the rated age of the insured is determined.

- (2) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum payable on the date of issue of the policy and on each anniversary of such policy on which a premium falls due.
- (3) In the case of policies which cause, on a basis guaranteed in the policy, unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any such change in the benefits or premiums the future adjusted premiums, nonforfeiture net level premiums and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.
- (4) Except as otherwise provided in subsection (7) of this section, the recalculated future adjusted premiums for any such policy shall be such uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all such future adjusted premiums shall be equal to the excess of (a) the sum of the then present value of the then future guaranteed benefits provided for by the policy and the additional expense allowance, if any, over (b) the then cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.
- (5) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:
 - (a) One percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and
 - (b) One hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.
- (6) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing (a) by (b) where:
 - (a) Equals the sum of:
 1. The nonforfeiture net level premium applicable prior to the change times the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred, and
 2. The present value of the increase in future guaranteed benefits provided for by the policy, and
 - (b) Equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.
- (7) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, such policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for such substandard policy may be calculated as if it were issued to provide such higher uniform amounts of insurance on the standard basis.
- (8) All adjusted premiums and present values referred to in this section shall for all policies of ordinary insurance be calculated on the basis of the commissioners 1980 standard ordinary mortality table or at the election of the insurer for any one (1) or more specified plans of life insurance, the commissioners 1980 standard ordinary mortality table with ten-year select mortality factors; shall for all policies of industrial insurance be calculated on the basis of the commissioners 1961 standard industrial mortality table; and shall for all policies issued in a

particular calendar year be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section for policies issued in that calendar year. Provided, however, that:

- (a) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this section, for policies issued in the immediately preceding calendar year.
 - (b) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available, whether or not required by KRS 304.15-310, shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any.
 - (c) Any insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values.
 - (d) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioners 1980 extended term insurance table for policies of ordinary insurance and not more than the commissioners 1961 industrial extended term insurance table for policies of industrial insurance.
 - (e) For insurance issued on a substandard basis, the calculation of any such adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables.
 - (f) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the ~~commissioner~~~~executive director~~ for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1980 standard ordinary mortality table with or without ten-year select mortality factors or for the commissioners 1980 extended term insurance table.
 - (g) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the ~~commissioner~~~~executive director~~ for use in determining the minimum nonforfeiture standard may be substituted for the commissioners 1961 standard industrial mortality table or the commissioners 1961 industrial extended term insurance table.
- (9) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for such policy as defined in KRS 304.6-130 to 304.6-180, inclusive to the nearer one quarter of one percent (0.25%).
 - (10) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.
 - (11) Any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to comply with the provisions of this section after a specified date before January 1, 1989, which shall be the effective date of this section for such insurer. If an insurer makes no such election, the effective date of this section for such insurer shall be January 1, 1989.

➔Section 1186. KRS 304.15-344 is amended to read as follows:

- (1) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in KRS 304.15-310 to 304.15-340 and in KRS 304.15-342, then:
 - (a) The ~~commissioner~~~~executive director~~ must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by KRS 304.15-310 to 304.15-360 herein;

- (b) The ***commissioner***~~[executive director]~~ must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;
- (c) The cash surrender values and paid-up nonforfeiture benefits provided by such plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of KRS 304.15-310 to 304.15-360, as determined by regulations promulgated by the ***commissioner***~~[executive director]~~.
- (d) Notwithstanding any other provision in the laws of this state, any policy, contract or certificate providing life insurance under any such plan must be affirmatively approved by the ***commissioner***~~[executive director]~~ before it can be marketed, issued, delivered or used in this state.

➔Section 1187. KRS 304.15-365 is amended to read as follows:

- (1) This section shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities of 2005."
- (2) This section shall not apply to any reinsurance group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract. However, to the extent that a variable annuity contract provides benefits that do not, before the maturity date, vary in accordance with the investment performance of any separate account or accounts maintained by the insurer as to such contract, as provided for in KRS 304.15-390, the contract shall contain provisions that satisfy the requirements of this section and shall not otherwise be subject to this section.
- (3) In the case of contracts issued on or after July 1, 2006, no contract of annuity, except as provided in subsection (2) of this section, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the ***commissioner***~~[executive director]~~ are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:
 - (a) That upon cessation of payment of considerations under a contract, or upon the written request of the contract owner, the insurer shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections (8), (9), (10), (11), and (13) of this section;
 - (b) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer shall pay, in lieu of any paid-up annuity benefit, a cash surrender benefit of such amount as is specified in subsections (8), (9), (10), (11), and (13) of this section. The insurer may reserve the right to defer the payment of this cash surrender benefit for a period not to exceed six (6) months after demand therefor with surrender of the contract after making written request and receiving written approval of the ***commissioner***~~[executive director]~~. The request shall address the necessity and equitability to all policyholders of the deferral;
 - (c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits; and
 - (d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which these benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this subsection, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to that period would be less than twenty dollars (\$20) monthly, the insurer may at its option terminate the contract by payment in cash of the then-present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by this payment shall be relieved of any further obligation under such contract.

- (4) The minimum values as specified in subsections (8), (9), (10), (11), and (13) of this section of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.
- (a) The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to that time at rates of interest as indicated in subsection (5) of this section of the net considerations, as defined in paragraph (b) of this subsection, paid prior to that time, decreased by the sum of:
1. Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest as indicated in subsection (5) of this section;
 2. An annual contract charge of fifty dollars (\$50) accumulated at rates of interest as indicated in subsection (5) of this section; and
 3. The amount of any indebtedness to the insurer on the contract, including interest due and accrued.
- (b) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent (87.5%) of gross considerations credited to the contract during that contract year.
- (5) The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent (3%) per annum and the following, which shall be specified in the contract if the interest rate will be reset:
- (a) The five (5) year Constant Maturity Treasury Rate reported by the Federal Reserve as of a date or average over a period rounded to the nearest one-twentieth of one percent (0.05%), specified in the contract no longer than fifteen (15) months prior to the contract issue date or redetermination date under paragraph (d) of this subsection;
- (b) Reduced by one hundred twenty-five (125) basis points;
- (c) Where the resulting interest rate is not less than one percent (1%); and
- (d) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date basis and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five (5) year Constant Maturity Treasury Rate to be used at each redetermination date.
- (6) During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subsection (5)(b) of this section up to an additional one hundred (100) basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional reduction shall not exceed the market value of the benefit. The ~~commissioner~~~~executive director~~ may require a demonstration that the present value of the additional reduction does not exceed the market value of the benefit. Lacking such demonstration that is acceptable to the ~~commissioner~~~~executive director~~, the ~~commissioner~~~~executive director~~ may disallow or limit the additional reduction.
- (7) The ~~commissioner~~~~executive director~~ may promulgate administrative regulations in accordance with KRS Chapter 13A implementing the provisions of subsection (6) of this section and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts for which the ~~commissioner~~~~executive director~~ determines adjustments are justified.
- (8) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date. This present value shall be computed using the mortality table, if any, and the interest rates specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.
- (9) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals

from or partial surrenders of the contract, the present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the insurer on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract. In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time. The death benefit under the contracts shall be at least equal to the cash surrender benefit.

- (10) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, the present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, and increased by any existing additional amounts credited by the insurer to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.
- (11) For the purpose of determining the benefits calculated under subsections (9) and (10) of this section, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.
- (12) Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.
- (13) Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.
- (14) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subsections (8), (9), (10), (11), and (13) of this section, additional benefits payable:
 - (a) In the event of total and permanent disability;
 - (b) As reversionary annuity or deferred reversionary annuity benefits; or
 - (c) As other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits;

shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this section. The inclusion of these additional benefits shall not be required in any paid-up benefits, unless these additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender and death benefits.

- (15) (a) After August 1, 2005, any insurer may file with the ~~commissioner~~~~executive director~~ a written notice of its election to apply the provisions of this section on a contract-form by contract-form basis to annuity contracts issued by the insurer during the period from the date of the election through June 30, 2006.
- (b) Insurers shall apply the provisions of this section to annuity contracts issued on or after July 1, 2006.

➔Section 1188. KRS 304.15-390 is amended to read as follows:

- (1) A domestic life insurer may establish one (1) or more separate accounts, and may allocate thereto, in accordance with the terms of a written contract or agreement, any amounts paid to the insurer in connection

with a pension, retirement or profit-sharing plan, life insurance, or an annuity which are to be applied to provide benefits payable in fixed or in variable dollar amounts or in both.

- (2) The income, if any, and gains and losses, realized or unrealized, on each such account shall be credited to or charged against the amounts allocated to the account in accordance with the agreement, without regard to other income, gains or losses of the insurer.
- (3) Assets allocated to a separate account shall be valued at their market value on the date of valuation, or if there is no readily available market, then in accordance with the terms of the applicable contract or agreement; except, that the portion of the assets of such separate account at least equal to the insurer's reserve liability with regard to the guaranteed benefits and funds referred to in subsection (1) of this section, if any, shall be valued in accordance with rules otherwise applicable to the insurer's assets.
- (4) If the agreement provides for payment of benefits in variable amounts, the contract shall contain a statement of the essential features of the procedure to be followed by the insurer in determining the dollar amount of such variable benefits. Any such contract and any certificate issued thereunder shall state that such dollar amount may decrease or increase and shall contain on its first page a statement that the benefits thereunder are on a variable basis.
- (5) No domestic life insurer, and no other authorized life insurer, shall be authorized to deliver within this state any such contract or agreement providing benefits in variable amounts until the insurer has satisfied the **commissioner**~~[executive director]~~ that its condition or methods of operation in connection with the issuance of such contracts or agreements will not render its operation hazardous to the public or its policyholders in this state. In determining the qualification of an insurer requesting such authority, the **commissioner**~~[executive director]~~ shall consider, among other things:
 - (a) The history and financial condition of the insurer;
 - (b) The character, responsibility and general fitness of the officers and directors of the insurer; and
 - (c) In the case of an insurer other than a domestic insurer, whether the statutes or regulations of the jurisdiction of its incorporation provide a degree of protection to policyholders and the public which is substantially equal to that provided by this section and the rules and regulations issued thereunder.
- (6) Amounts allocated by domestic life insurers to separate accounts in the exercise of the power granted by this section shall be owned by the insurer and the insurer shall not be, or hold itself to be, a trustee, in respect to such amounts.
- (7) The **commissioner**~~[executive director]~~ shall have sole authority to regulate the issuance and sale of such agreements, and to make rules and regulations for the effectuation of this section.

➔Section 1189. KRS 304.15-410 is amended to read as follows:

In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance or annuity which is of such a nature that the minimum reserves cannot be determined by the methods described in KRS 304.6-150, 304.6-155 and 304.6-180, the reserves which are held under any such plan must:

- (1) Be appropriate in relation to the benefits and the pattern of premiums for that plan; and
- (2) Be computed by a method which is consistent with the principles of this standard valuation law;

as determined by regulations promulgated by the **commissioner**~~[executive director]~~.

➔Section 1190. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a life settlement provider without first having obtained a license as a life settlement provider from the **commissioner**~~[executive director]~~.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate life settlement contracts between an owner and one (1) or more life settlement providers or otherwise act on behalf of an owner without first having obtained a license as a life settlement broker from the **commissioner**~~[executive director]~~ as follows:

- (a) All applicants for a life settlement broker license shall attend the required life broker training and pass a life broker examination designated by the **commissioner**~~executive director~~ through administrative regulation.
- (b) A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), shall be deemed to meet the licensing requirements of a life settlement broker and shall be permitted to operate as a life settlement broker without obtaining a license as a life settlement broker as set forth in this subtitle if:
 - 1. That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;
 - 2. Not later than thirty (30) days from the first day of operating as a life settlement broker, the agent notifies the **commissioner**~~executive director~~, on a notification form prescribed by the **commissioner**~~executive director~~, that he is acting as a life settlement broker and pays any applicable fees to be determined by the **commissioner**~~executive director~~. The notification shall include an acknowledgment by the agent that he will operate as a life settlement broker in accordance with this subtitle; and
 - 3. Irrespective of the manner in which a life settlement broker or life insurance agent is compensated, the life settlement broker or life insurance agent is deemed to represent only the owner and owes a fiduciary duty to the owner to act according to the owner's instructions and in the best interests of the owner.
- (c) Notwithstanding this subsection, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner, whose compensation is not paid directly or indirectly by the life settlement provider, may negotiate life settlement contracts without having to obtain a license as a life settlement broker.
- (d) A life insurance agent operating as a life settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the life settlement contract by all the parties for which such agent is operating as a life settlement broker, shall have in force and file with the **commissioner**~~executive director~~ evidence of financial responsibility as follows:
 - 1. A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker, and insuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or
 - 2. An agreement with a licensed life settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the life settlement provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker on a life settlement contract to which the life settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or
 - 3. A deposit with the **commissioner**~~executive director~~ of cash or a cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a life settlement broker.
- (3) Application for a life settlement provider license or a life settlement broker license shall be made in accordance with KRS 304.9-150.
- (4) Licenses for life settlement providers and life settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a life settlement broker or life settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
- (5) Prior to issuance of a license as a life settlement broker or life settlement provider, except as provided in subsection (2)(d) of this section, the applicant shall file with the **commissioner**~~executive director~~, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than twenty thousand dollars (\$20,000) per occurrence, and the sum of one hundred

thousand dollars (\$100,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond, deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee and the **commissioner**~~[executive director]~~. This subsection shall not apply to a life insurance agent operating as a life settlement broker in accordance with subsection (2) of this section.

- (6) No person shall use a life settlement contract form or provide to an owner a disclosure statement form in this Commonwealth unless it has been filed with and approved by the **commissioner**~~[executive director]~~ in the following manner:
 - (a) At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the **commissioner**~~[executive director]~~ has by order given prior approval or disapproval. Approval of a form by the **commissioner**~~[executive director]~~ shall constitute a waiver of any unexpired portion of the waiting period. The **commissioner**~~[executive director]~~ may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The **commissioner**~~[executive director]~~ shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The **commissioner**~~[executive director]~~ may at any time, after notice and for cause shown, withdraw any approval. The **commissioner**~~[executive director]~~ shall disapprove a life settlement contract form or disclosure statement form if, in the determination of the **commissioner**~~[executive director]~~, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the owner. Upon notice and hearing the **commissioner**~~[executive director]~~ shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public; and
 - (b) Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.
- (7) A licensed life settlement provider shall not use any person to perform the functions of a life settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license or is a licensed insurance agent authorized pursuant to this subtitle to operate as a life settlement broker. A licensed life settlement broker shall not use any person to perform the functions of a life settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a life settlement provider.
- (8) If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the **department**~~[office]~~ may take disciplinary action against the employer licensee.
- (9) When a life settlement provider elects to use a related provider trust, the life settlement provider shall file notice of its intention to use that trust with the **department**~~[office]~~ with a copy of the trust agreement. Any change in the trust agreement shall be filed with the **commissioner**~~[executive director]~~ prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a life settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
 - (a) The beneficiary last named by the policy owner prior to entering into the life settlement contract; or
 - (b) To the estate of the owner in the absence of a beneficiary.
- (11) An insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of the life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.
- (12) No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the **commissioner**~~[executive director]~~ for use in connection with life settlement contracts in the Commonwealth.

➔Section 1191. KRS 304.15-705 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may, when the **commissioner**~~[executive director]~~ deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for

a license. The ***commissioner***~~{executive director}~~ shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interest of the public. The reasonable expenses incurred in conducting any examination shall be paid by the licensee or applicant.

- (2) Records of all transactions of life settlement contracts shall be subject to the following:
- (a) The following records of all transactions of life settlement contracts shall be maintained by the licensee for five (5) years after the death of the owner, and shall be available to the ***commissioner***~~{executive director}~~ for inspection during reasonable business hours:
 - 1. Proposed, offered, or executed settlement contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the settlement contract, whichever is later; and
 - 2. All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction.
 - (b) All other business records shall be kept for a period of five (5) years following creation of records, or the completion of the purpose for which records were created, whichever shall occur last.
 - (c) This section shall not relieve a licensed settlement provider of the obligation to produce these documents to the ***commissioner***~~{executive director}~~ after the retention period has expired if the settlement provider has retained the documents.
 - (d) Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of the record.

➔Section 1192. KRS 304.15-708 is amended to read as follows:

- (1) When the ***department***~~{office}~~ finds that a violation presents an immediate danger to the public health, safety, or welfare that requires an immediate final order, it shall issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent.
- (2) The ***department***~~{office}~~ may impose and collect an administrative fine not to exceed ten thousand dollars (\$10,000) for each violation of a cease and desist order issued in accordance with this section.

➔Section 1193. KRS 304.15-709 is amended to read as follows:

- (1) In addition to the penalties and other enforcement provisions of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, if any person violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, or any administrative regulations promulgated under KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the ***department***~~{office}~~ may seek an injunction in Franklin Circuit Court or in the Circuit Court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the ***department***~~{office}~~ determines necessary to restrain the person from committing the violation.
- (2) Any person damaged by the acts of a person in violation of any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126 may bring a civil action against the person in the Circuit Court of the county in which the alleged violator resides, or has a principal place of business, or in the county where the alleged violation occurred.

➔Section 1194. KRS 304.15-710 is amended to read as follows:

- (1) With each application for a life settlement contract, a life settlement provider or life settlement broker shall provide the owner a copy of the ***department's***~~{office's}~~ consumer guide relating to life settlements. The provider shall provide in writing, in a separate document that is signed by the owner and provider the information in this subsection to the owner no later than the date the life settlement contract is signed by all parties. The written disclosures shall be conspicuously displayed in any life settlement contract or in a separate document furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker and shall provide the following information:
 - (a) That there are possible alternatives to life settlement contracts including but not limited to accelerated benefits or policy loans offered under the owner's policy;

- (b) That some or all of the proceeds of the life settlement may be taxable under federal income tax laws and state franchise and income tax laws, and that assistance should be sought from a personal tax advisor;
 - (c) That proceeds of the life settlement contract could be subject to the claims of creditors;
 - (d) That receipt of the proceeds of a life settlement contract may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;
 - (e) That the owner has a right to rescind a life settlement contract before the earlier of thirty (30) calendar days of the date it is executed by all parties or fifteen (15) calendar days after the receipt of the proceeds of the life settlement contract by the owner. If exercised by the owner, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the settlement provider. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all life settlement proceeds and any premiums, loans, and loan interest to the life settlement provider. The life settlement provider shall effectuate the change of ownership of the policy or certificate to the owner immediately upon effective rescission by the owner;
 - (f) That entering into a life settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the owner and that assistance should be sought from a financial adviser;
 - (g) That funds will be sent to the owner within three (3) business days after the life settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated pursuant to the life settlement contract;
 - (h) That the disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."; and
 - (i) That the insured may be contacted by the life settlement provider or its authorized representative for the purpose of determining the insured's health status or to verify the insured's address. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less.
- (2) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and the life settlement provider and provide the following information:
- (a) State the affiliation, if any, between the life settlement provider and the issuer of the policy to be acquired pursuant to a settlement contract;
 - (b) State the name, address and telephone number of the life settlement provider;
 - (c) If a policy to be acquired pursuant to a life settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a settlement contract, the owner shall be informed of the possible loss of coverage on the other lives and shall be advised to consult with his insurance producer or the company issuing the policy for advice on the proposed life settlement contract;
 - (d) State the dollar amount of the current death benefit payable to the life settlement provider under the policy. The life settlement provider shall, if known, also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the life settlement provider's interest in those benefits;

- (e) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents;
 - (f) The date by which the funds will be available to the owner and the transmitter of the funds;
 - (g) That a consumer guide shall be delivered to owners with each application as required in this subsection;
 - (h) That applications and life settlement contracts shall contain the statement as required in KRS 304.15-717(2);
 - (i) That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interests of the owner; and
 - (j) The fact that a change in ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one (1) life.
- (3) If the life settlement provider transfers ownership or changes the beneficiary of the policy, the life settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.
- (4) A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:
- (a) The name, business address, and telephone number of the broker;
 - (b) A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;
 - (c) The name of each broker who receives compensation and the amount of compensation received by the broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;
 - (d) A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purposes of this paragraph, "gross offer or bid" means the total amount or value offered by the provider for the purchase of one (1) or more life insurance policies, inclusive of the commissions and fees; and
 - (e) The failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice.

➔Section 1195. KRS 304.15-712 is amended to read as follows:

- (1) A broker or provider licensed pursuant to KRS 304.15-700 to 304.15-720 may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws of this chapter or rules and administrative regulations promulgated by the ~~commissioner~~~~executive director~~ that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.
- (2) Advertisements shall be accurate, truthful, and not misleading in fact or by implication.
- (3) No person or trust shall:
 - (a) Directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a life insurance policy for the sole purpose of, or with a primary emphasis on, settling the policy; or
 - (b) Use the words "free," "no cost," or words of similar import in the marketing, advertising, soliciting, or otherwise promoting the purchase of a life insurance policy.

➔Section 1196. KRS 304.15-715 is amended to read as follows:

- (1) A life settlement provider entering into a life settlement contract with any person shall first obtain:
 - (a) If the owner is insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

- (b) A document in which the insured consents to the release of his or her medical records to a life settlement provider, life insurance agent, or life settlement broker and, if the policy was issued less than two (2) years from the date of application for a life settlement contract, to the insurance company that issued the policy.
- (2) The insurer shall respond to a request for verification of coverage submitted by a life settlement provider or life settlement broker not later than thirty (30) calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the ~~commissioner~~~~executive director~~. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract or possible fraud, and shall provide sufficient detail of all reasons for the investigation to the life settlement provider or life settlement broker.
- (3) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that he or she has a full and complete understanding of the life settlement contract and a full and complete understanding of the benefits of the policy, and acknowledges that he or she has entered into the life settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, that the terminal or chronic illness or condition was diagnosed after the policy was issued.
- (4) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- (5) All life settlement contracts entered into in this state shall contain an unconditional right to rescind a life settlement contract before the earlier of thirty (30) calendar days after the date it is executed or fifteen (15) calendar days after the date of receipt of the proceeds of the life settlement contract by the owner. If exercised by the owner, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the life settlement provider. If the insured dies during the rescission period, the life settlement contract shall be deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the life settlement provider. The life settlement provider shall effectuate the change of ownership of the policy or certificate to the owner immediately upon effective rescission by the owner.
- (6) The independent third-party trustee shall transfer the proceeds that are due to the owner within two (2) business days upon receipt of acknowledgment of the transfer of ownership from the insurer.
- (7) Failure to tender consideration to the owner for the life settlement contract by the date disclosed renders the life settlement contract voidable by the owner for lack of consideration until the time consideration is tendered to and accepted by the owner.
- (8) Contacts with the insured for the purpose of determining the health status of the insured after the execution of the life settlement contract shall only be made by the life settlement provider or its authorized representative and shall be limited to once every three (3) months for an insured with a life expectancy of more than one (1) year, and to no more than once per month for an insured with a life expectancy of one (1) year or less. The life settlement provider shall explain the procedure for these contacts at the time the life settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Life settlement providers shall be responsible for the actions of their authorized representatives.
- (9) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in the Commonwealth or with a resident of the Commonwealth.
- (10) If a life settlement broker performs any activities required of the provider under this section, the provider is deemed to have fulfilled those requirements of this section that have been properly performed by the broker.
- (11) If a life settlement broker performs any of the disclosure activities required of the provider under KRS 304.15-710, the provider is deemed to have fulfilled those requirements of KRS 304.15-710 that have been properly performed by the broker.

- (12) Within twenty (20) days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by KRS 304.15-702(1)(b).
- (13) Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.
- (14) The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.

➔Section 1197. KRS 304.15-717 is amended to read as follows:

- (1) It is unlawful for any person:
 - (a) To knowingly or intentionally enter into a life settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;
 - (b) To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;
 - (c) To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements as defined in KRS 304.15-020(5);
 - (d) To commit a fraudulent life settlement act;
 - (e) To misrepresent that the life settlement provider, life settlement broker, other licensee, or any other person has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof;
 - (f) To act as a life settlement broker if the person is acting as a life settlement provider in the same life settlement contract;
 - (g) For any person to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee;
 - (h) To engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (i) To engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;
 - (j) To issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the sole purpose of or with a primary emphasis on settling the policy;
 - (k) To enter into a life settlement contact on a policy that was the subject of a premium finance agreement as described in KRS 304.15-020(17)(b)2.;
 - (l) With respect to any life settlement contract or life insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust, or any insurer that is controlling, controlled by, or under common control with such broker unless disclosed to the owner;
 - (m) With respect to any life settlement contract or life insurance policy and a provider, to knowingly enter into a life settlement contract with an owner if, in connection with such life settlement contract, anything of value will be paid to a broker or provider that is controlling, controlled by, or under common control with such provider, the financing entity, or related provider trust that is involved in such life settlement, or any insurer unless disclosed to the owner;
 - (n) With respect to a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by administrative regulation, have been filed with the ~~commissioner~~~~executive director~~. Marketing materials shall not expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that

would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of KRS 304.15-700 to 304.15-720;

- (o) With respect to any insurance company, insurance producer, broker, or provider, or any other person, to make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or
- (p) If an insurer, to:
 1. Engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled policy;
 2. Make any false or misleading statement as to the business of life settlements or financing premiums due for a policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a life settlement contract; or
 3. Engage in any transaction, act, practice, or course of business, or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented.

- (2) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent life settlement act.

- (3) (a) A person engaged in the business of life settlements who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide the information required to the **commissioner**~~[executive director]~~, in a manner prescribed by the **commissioner**~~[executive director]~~.
- (b) Any person who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide the information required to the **commissioner**~~[executive director]~~, in a manner prescribed by the **commissioner**~~[executive director]~~ in administrative regulations.
- (4) (a) Civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
 1. The **commissioner**~~[executive director]~~ or the **commissioner's**~~[executive director's]~~ employees, agents, or representatives;
 2. Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;
 3. A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
 4. The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or life settlement contracts;
 5. The insurer that issued the policy covering the life of the insured; or

6. The licensee and any agents, employees, or representatives.
 - (b) This subsection shall not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.
 - (c) A person who furnishes information concerning fraudulent life settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.
 - (d) This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.
 - (e) This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent life settlement acts or suspected, anticipated, or completed fraudulent insurance acts.
- (5) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the **commissioner**~~executive director~~ in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action, except that:
 - (a) This subsection shall not prohibit release by the **commissioner**~~executive director~~ of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:
 1. In administrative or judicial proceedings to enforce laws administered by the **commissioner**~~executive director~~;
 2. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the National Association of Insurance Commissioners (NAIC); or
 3. At the discretion of the **commissioner**~~executive director~~, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.
 - (b) The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.
- (6) This section shall not:
 - (a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
 - (b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent life settlement acts to a law enforcement or regulatory agency other than the **Department**~~Office~~ of Insurance;
 - (c) Limit the powers granted elsewhere by the laws of this state to the **commissioner**~~executive director~~ or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers; or
 - (d) Preempt, supersede, or limit any provision of any state securities law or any rule, order, administrative regulation, or notice issued thereunder.
- (7) A life settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The **commissioner**~~executive director~~ may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:

- (a) Fraud investigators, who may be life settlement providers or employees or independent contractors of those life settlement providers; and
- (b) An antifraud plan submitted to the **commissioner**~~[executive director]~~ that shall include but is not limited to the following:
 - 1. The procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 - 2. The procedures for reporting possible fraudulent life settlement acts to the **commissioner**~~[executive director]~~;
 - 3. The plan for antifraud education and training of underwriters and other personnel; and
 - 4. A chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

Antifraud plans submitted to the **commissioner**~~[executive director]~~ shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

➔Section 1198. KRS 304.15-719 is amended to read as follows:

Each provider shall file with the **commissioner**~~[executive director]~~ on or before March 1 of each year an annual statement containing such information as the **commissioner**~~[executive director]~~ may prescribe by administrative regulation. In addition to any other requirements, the annual statement of each provider shall also include the names of the insurance companies whose policies have been settled.

➔Section 1199. KRS 304.15-720 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall have the authority to:

- (1) Promulgate administrative regulations in accordance with KRS Chapter 13A implementing KRS 304.15-020 and 304.15-700 to 304.15-720;
- (2) Establish standards for evaluating reasonableness of payments under life settlement contracts where the insured under the policy which is the subject of a life settlement contract is terminally or chronically ill. This authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A life settlement provider, where the insured is not terminally or chronically ill, shall pay an amount greater than the cash surrender value or accelerated death benefit then available;
- (3) Establish appropriate licensing requirements and fees for agents and brokers; and
- (4) Promulgate administrative regulations governing the relationship and responsibilities of an insurer and a life settlement provider, life insurance producer, and others in the business of life settlements during the period of consideration or effectuation of a life settlement contract.

➔Section 1200. KRS 304.16-110 is amended to read as follows:

No policy of group life insurance shall be delivered in this state unless it contains in substance the standard provisions as required by KRS 304.16-120 to 304.16-210, inclusive, or provisions which in the opinion of the **commissioner**~~[executive director]~~ are more favorable to the individuals insured, or at least as favorable to such individuals and more favorable to the policyholders; except, that:

- (1) Provisions set forth in KRS 304.16-170 to 304.16-210, inclusive, shall not apply to policies issued to a creditor to insure its debtors.
- (2) If the group life insurance policy is on a plan of insurance other than the term plan, it shall contain a nonforfeiture provision or provisions which in the opinion of the **commissioner**~~[executive director]~~ is or are equitable to the insured persons and to the policyholder, but such nonforfeiture benefits are not required to be the same as those required for individual life insurance policies.

- (3) The standard provisions required for individual life insurance policies shall not apply to group life insurance policies.

➔Section 1201. KRS 304.17-030 is amended to read as follows:

No policy of health insurance shall be delivered or issued for delivery to any person in this state unless it otherwise complies with this title, and complies with the following:

- (1) The entire money and other considerations therefor shall be expressed therein;
- (2) The time when the insurance takes effect and terminates shall be expressed therein;
- (3) It shall purport to insure only one (1) person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family, who shall be deemed the policyholder, any two (2) or more eligible members of that family, including husband, wife, unmarried dependent children to age nineteen (19), unmarried children from nineteen (19) to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support, and any other person dependent upon the policyholder as provided pursuant to KRS 304.17-310;
- (4) The style, arrangement, and overall appearance of the policy shall give no undue prominence to any portion of the text, and every printed portion of the text of the policy and of any indorsements or attached papers shall be plainly printed in light-faced type of a style in general use, the size of which shall be uniform and not less than ten (10) point with a lower case unspaced alphabet length not less than one hundred and twenty (120) point (the "text" shall include all printed matter except the name and address of the insurer, name on title of the policy, the brief description, if any, and captions and subcaptions);
- (5) The exceptions and reductions of indemnity shall be set forth in the policy and other than those contained in KRS 304.17-050 to 304.17-290, inclusive, shall be printed, at the insurer's option, either included with the benefit provision to which they apply, or under an appropriate caption such as "Exceptions," or "Exceptions and Reductions," except that if an exception or reduction specifically applies only to a particular benefit of the policy, a statement of the exception or reduction shall be included with the benefit provision to which it applies;
- (6) Each form, including riders and indorsements, shall be identified by a form number in the lower left-hand corner of the first page thereof; and
- (7) The policy shall contain no provision purporting to make any portion of the charter, rules, constitution, or bylaws of the insurer a part of the policy unless the portion is set forth in full in the policy, except in the case of the incorporation of, or reference to, a statement of rates or classification of risks, or short-rate table filed with the **commissioner**~~executive director~~.

➔Section 1202. KRS 304.17-040 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in KRS 304.17-050 to 304.17-160, inclusive, in the words in which the same appear; except, that the insurer may at its option, substitute for one (1) or more of such provisions corresponding provisions of different wording approved by the **commissioner**~~executive director~~ which are in each instance not less favorable in any respect to the insured or the beneficiary. Each such provision shall be preceded individually by the applicable caption shown, or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the **commissioner**~~executive director~~ may approve.
- (2) If any such provision is in whole or in part inapplicable to or inconsistent with the coverage provided by a particular form of policy, the insurer, with the approval of the **commissioner**~~executive director~~, shall omit from such policy any inapplicable provision or part of a provision, and shall modify any inconsistent provision or part of a provision in such manner as to make the provision as contained in the policy consistent with the coverage provided by the policy.

➔Section 1203. KRS 304.17-180 is amended to read as follows:

Except as provided in subsection (2) of KRS 304.17-040, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth in KRS 304.17-190 to 304.17-290, inclusive, unless such provisions are in the words in which the same appear in the applicable section, except that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved

by the ***commissioner***~~[executive director]~~ which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the ***commissioner***~~[executive director]~~ may approve.

➔Section 1204. KRS 304.17-220 is amended to read as follows:

- (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on a provision of service basis or on an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability under any expense incurred coverage of this policy shall be for such proportion of the loss as the amount which would otherwise have been payable hereunder plus the total of the like amounts under all such other valid coverages for the same loss of which this insurer had notice bears to the total like amounts under all valid coverages for such loss, and for the return of such portion of the premiums paid as shall exceed the pro rata portion for the amount so determined. For the purpose of applying this provision when other coverage is on a provision of service basis, the like amount of such other coverage shall be taken as the amount which the services rendered would have cost in the absence of such coverage."

- (2) If the foregoing policy provision is included in a policy which also contains the policy provision set out in subsection (1) of KRS 304.17-230, there shall be added to the caption of the foregoing provision the phrase "... Expense Incurred Benefits."
- (3) The insurer may, at its option, include in the provision provided in subsection (1) of this section, a definition of "other valid coverage" approved as to form by the ***commissioner***~~[executive director]~~, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and by hospital or medical service organizations, and to any other coverage the inclusion of which may be approved by the ***commissioner***~~[executive director]~~. In the absence of such definition such term shall not include group insurance, automobile medical payments insurance, or coverage provided by hospital or medical service organizations or by union welfare plans or employer or employee benefit organizations. For the purpose of applying such policy provision no third-party liability coverage amount of benefit provided for such insured pursuant to any compulsory benefit statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying such policy provision no third-party liability coverage shall be included as "other valid coverage."

➔Section 1205. KRS 304.17-230 is amended to read as follows:

- (1) There may be a provision as follows:

"Insurance with Other Insurers: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined."

- (2) If the policy provision set out in subsection (1) of this section is included in a policy which also contains the policy provision set out in subsection (1) of KRS 304.17-220, there shall be added to the caption of the foregoing provisions the phrase "... Other Benefits."
- (3) The insurer may, at its option, include in the provision set out in subsection (1) of this section, a definition of "other valid coverage" approved as to form by the ***commissioner***~~[executive director]~~, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance laws or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the ***commissioner***~~[executive director]~~. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit

statute, including any workers' compensation or employer's liability statute, whether provided by a governmental agency or otherwise, shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying such policy provision no third-party liability coverage shall be included as "other valid coverage."

➔Section 1206. KRS 304.17-240 is amended to read as follows:

- (1) There may be a provision as follows:

"After the loss-of-time benefit of this policy has been payable for ninety (90) days, such benefit will be adjusted, as provided below, if the total amount of unadjusted loss-of-time benefits provided in all valid loss-of-time coverage upon the insured should exceed -- % of the insured's earned income; provided, however, that if the information contained in the application discloses that the total amount of loss-of-time benefits under this policy and under all other valid loss-of-time coverage expected to be effective upon the insured in accordance with the application for this policy exceeded -- % of the insured's earned income at the time of such application, such higher percentage will be used in the place of -- %. Such adjusted loss-of-time benefit under this policy for any month shall be only such proportion of the loss-of-time benefit otherwise payable under this policy as:

- (a) The product of the insured's earned income and -- % (or, if higher, the alternative percentage described at the end of the first sentence of this provision) bears to
- (b) The total amount of loss-of-time benefits payable for such month under this policy and all other valid loss-of-time coverage on the insured (without giving effect of the overinsurance provision in this or any other coverage) less in both paragraphs (a) and (b) of this subsection any amount of loss-of-time benefits payable under other valid loss-of-time coverage which does not contain an 'overinsurance provision.' In making such computation, all benefits and earnings shall be converted to a consistent (insert 'weekly' if the loss-of-time benefit of this policy is payable weekly, 'monthly' if such benefit is payable monthly, etc.) basis. If the numerator of the foregoing ratio is zero (0) or is negative, no benefit shall be payable under this policy. In no event shall this provision
 1. Operate to reduce the total combined amount of loss-of-time benefits for such month payable under this policy and all other valid loss-of-time coverage below the lesser of three hundred dollars (\$300) and the total combined amount of loss-of-time benefits determined without giving effect to any 'overinsurance provision' nor
 2. Operate to increase the amount of benefits payable under this policy above the amount which would have been paid in the absence of this provision, nor
 3. Take into account or operate to reduce any benefit other than the loss-of-time benefit.
- (c) For purposes of this provision:
 1. 'Earned income,' except where otherwise specified, means the greater of the monthly earnings of the insured at the time disability commences and his *or her* average monthly earnings for a period of two (2) years immediately preceding the commencement of such disability, and shall not include any investment income or any other income not derived from the insured's vocational activities.
 2. 'Overinsurance provision' shall include this provision and any other provision with respect to any loss-of-time coverage which may have the effect of reducing an insurer's liability if the total amount of loss-of-time benefits under all coverage exceeds a stated relationship to the insured's earnings."

- (2) The foregoing provision may be included only in a policy which provides a loss-of-time benefit which may be payable for at least fifty-two (52) weeks, which is issued on the basis of selective underwriting of each individual application, and for which the application includes a question designed to elicit information necessary either to determine the ratio of the total loss-of-time benefits of the insured to the insured's earned income or to determine that such ratio does not exceed the percentage of earnings, not less than sixty percent (60%), selected by the insurer and inserted in lieu of the blank factor above. The insurer may require, as part of the proof of claim, the information necessary to administer this provision. If the application indicates that other loss-of-time coverage is to be discontinued, the amount of such other coverage shall be excluded in computing the alternative percentage in the first sentence of the overinsurance provision. The policy shall include a definition of "valid loss-of-time coverage," approved as to form by the ~~commissioner~~~~executive director~~,

which definition may include coverage provided by governmental agencies and by organizations subject to regulations by insurance law and by insurance authorities of this or any other state of the United States or any other country or subdivision thereof, coverage provided for such insured pursuant to any disability benefits statute or any workers' compensation or employer's liability statute, benefits provided by labor-management trustee plans or union welfare plans or by employer or employee benefit organizations, or by salary continuance or pension programs, and any other coverage the inclusion of which may be approved by the ***commissioner***~~[executive director]~~.

- (3) If by application of any of the foregoing provisions the insurer effects a material reduction of benefits otherwise payable under the policy, the insurer shall refund to the insured any premium unearned on the policy by reason of such reduction of coverage during the policy year current and that next preceding at the time the loss commenced, subject to the insurer's right to provide in the policy that no such reduction of benefits or refund will be made unless the unearned premium to be so refunded amounts to five dollars (\$5) or such larger sum as the insurer may so specify.

➔Section 1207. KRS 304.17-380 is amended to read as follows:

Each insurer issuing health insurance policies for delivery in this state shall, before use thereof, file with the ***commissioner***~~[executive director]~~ its premium rates and classification of risks pertaining to such policies. The insurer shall adhere to its rates and classifications as filed with the ***commissioner***~~[executive director]~~. The insurer may change such filings from time to time as it deems proper.

➔Section 1208. KRS 304.17-383 is amended to read as follows:

- (1) No filing under KRS 304.17-380 that contains an increase in premium rates shall become effective until the ***commissioner***~~[executive director]~~ has issued an order approving the filing. The ***commissioner***~~[executive director]~~ may hold a hearing within thirty (30) days after receiving a filing under this subtitle containing a rate increase, and after the hearing shall issue a final order approving or disapproving the filing.
- (2) In approving or disapproving a filing under subsection (1) of this section, the ***commissioner***~~[executive director]~~ shall consider:
 - (a) Whether the benefits provided are reasonable in relation to the premium charged;
 - (b) Previous premium rates for the policies to which the filing applies; and
 - (c) The effect of the increase on policyholders.
- (3) The ***commissioner***~~[executive director]~~ shall notify the Attorney General in writing of the hearing and of the premium increase to be considered. The Attorney General shall be considered a party to the hearing if he *or she* chooses to participate.
- (4) No insurer receiving the ***commissioner's***~~[executive director's]~~ approval of a filing under this section shall submit a new filing containing a rate increase for any of the same policies until at least six (6) months have elapsed following the effective date of the approved increase.
- (5) At any time, the ***commissioner***~~[executive director]~~, after an administrative hearing may withdraw approval of rates previously approved under this section if he *or she* determines that the benefits are no longer reasonable in relation to the premium charged. Administrative hearings conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

➔Section 1209. KRS 304.17A-005 is amended to read as follows:

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

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "At the time of enrollment" means:
 - (a) At the time of application for an individual, an association that actively markets to individual members, and an employer-organized association that actively markets to individual members; and

- (b) During the time of open enrollment or during an insured's initial or special enrollment periods for group health insurance;
- (3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (4) "Basic health benefit plan" means any plan offered to an individual, a small group, or employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of this subtitle. If vision or eye services are offered, these services may be provided by an ophthalmologist or optometrist. Chiropractic benefits may be offered by providers licensed pursuant to KRS Chapter 312;
- (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (7) "COBRA" means any of the following:
 - (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
 - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
 - (c) 42 U.S.C. sec. 300bb;
- (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
 - 1. A group health plan;
 - 2. Health insurance coverage;
 - 3. Part A or Part B of Title XVIII of the Social Security Act;
 - 4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
 - 5. Chapter 55 of Title 10, United States Code, including medical and dental care for members and certain former members of the uniformed services, and for their dependents; for purposes of Chapter 55 of Title 10, United States Code, "uniformed services" means the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service;
 - 6. A medical care program of the Indian Health Service or of a tribal organization;
 - 7. A state health benefits risk pool;
 - 8. A health plan offered under Chapter 89 of Title 5, United States Code, such as the Federal Employees Health Benefit Program;
 - 9. A public health plan as established or maintained by a state, the United States government, a foreign country, or any political subdivision of a state, the United States government, or a foreign country that provides health coverage to individuals who are enrolled in the plan;
 - 10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)); or
 - 11. Title XXI of the Social Security Act, such as the State Children's Health Insurance Program.
- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (14) of this section;
- (9) "Dependent" means any individual who is or may become eligible for coverage under the terms of an individual or group health benefit plan because of a relationship to a participant;
- (10) "Employee benefit plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan as defined by ERISA;

(11) "Eligible individual" means an individual:

- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
- (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
- (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
- (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
- (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;

(12) "Employer-organized association" means any of the following:

- (a) Any entity that was qualified by the ~~commissioner~~~~executive director~~ as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
- (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
- (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;

(13) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;

(14) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

- (a) Coverage only for accident, including accidental death and dismemberment, or disability income insurance, or any combination thereof;
- (b) Coverage issued as a supplement to liability insurance;
- (c) Liability insurance, including general liability insurance and automobile liability insurance;
- (d) Workers' compensation or similar insurance;
- (e) Automobile medical payment insurance;
- (f) Credit-only insurance;
- (g) Coverage for on-site medical clinics;
- (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
- (i) Limited scope dental or vision benefits;

- (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
 - (k) Such other similar, limited benefits as are specified in administrative regulations;
 - (l) Coverage only for a specified disease or illness;
 - (m) Hospital indemnity or other fixed indemnity insurance;
 - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
 - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
 - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan; and
 - (q) Health flexible spending arrangements;
- (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to by an employer, including a self-employed person, or employee organization, to provide health care directly or otherwise to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families;
- (17) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals under KRS 304.17A-400 to 304.17A-480;
- (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;
- (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (20) "Guaranteed acceptance program qualified individual" means an individual who, on or before December 31, 2000:
- (a) Is not an eligible individual;
 - (b) Is not eligible for or covered by other health benefit plan coverage or who is a spouse or a dependent of an individual who:
 - 1. Waived coverage under KRS 304.17A-210(2); or
 - 2. Did not elect family coverage that was available through the association or group market;
 - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
 - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
 - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
 - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
 - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
 - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;

- (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or before December 31, 2000, that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, on or before December 31, 2000, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;
- (22) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code, or limited health service benefit plans;
- (23) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
 - (b) Chiropractors licensed under KRS Chapter 312;
 - (c) Dentists licensed under KRS Chapter 313;
 - (d) Optometrists licensed under KRS Chapter 320;
 - (e) Physician assistants regulated under KRS Chapter 311;
 - (f) Advanced registered nurse practitioners licensed under KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the ~~department~~~~office~~ by administrative regulations promulgated under KRS Chapter 13A;
- (24) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance Program, means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the ~~commissioner~~~~executive director~~ in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the ~~commissioner~~~~executive director~~ under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The ~~commissioner~~~~executive director~~ by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
- 1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
 - 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the ~~commissioner~~~~executive director~~, the scoring scale for which shall be established by the ~~commissioner~~~~executive director~~.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy,

myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;

- (25) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (26) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan. The individual market includes an association plan that is not employer related, issued to individuals on an individually underwritten basis, other than an employer-organized association or a bona fide association, that has been organized and is maintained in good faith for purposes other than obtaining insurance for its members and that has a constitution and bylaws;
- (27) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (28) "Insurer-controlled" means that the ~~commissioner~~~~executive director~~ has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (29) "Kentucky Access" has the meaning provided in KRS 304.17B-001(17);
- (30) "Large group" means:
 - (a) An employer with fifty-one (51) or more employees; or
 - (b) An affiliated group with fifty-one (51) or more eligible members;
- (31) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (32) "Market segment" means the portion of the market covering one (1) of the following:
 - (a) Individual;
 - (b) Small group;
 - (c) Large group; or
 - (d) Association;
- (33) "Participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of the employer or members of the organization, or whose beneficiaries may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- (34) "Preventive services" means medical services for the early detection of disease that are associated with substantial reduction in morbidity and mortality;
- (35) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (36) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (37) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (38) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;

- (39) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;
- (40) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (41) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (42) "Small group" means:
 - (a) A small employer with two (2) to fifty (50) employees; or
 - (b) An affiliated group or association with two (2) to fifty (50) eligible members;
- (43) "Standard benefit plan" means the plan identified in KRS 304.17A-250; and
- (44) "Telehealth" has the meaning provided in KRS 311.550.

➔Section 1210. KRS 304.17A-071 is amended to read as follows:

- (1) The Kentucky Health Purchasing Alliance created under this subtitle shall not issue or renew any business after June 1, 1998. The ~~commissioner~~~~executive director~~ shall take necessary and appropriate actions to terminate all activities of the alliance no later than June 30, 1999, and shall provide assistance to persons who are members of the alliance in obtaining health insurance coverage in the private market. KRS 304.17A-010 to 304.17A-070 shall become null and void on July 1, 1999.
- (2) No health benefit plans shall be issued, delivered, or renewed under the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 on or after June 30, 1998. Health benefit plans in effect on April 10, 1998, shall be subject to the provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 until the end of the contract or policy period. The provisions of KRS 304.17A-110, 304.17A-120, and 304.17A-160 shall become null and void on July 1, 1999.

➔Section 1211. KRS 304.17A-080 is amended to read as follows:

- (1) There is hereby created and established a Health Insurance Advisory Council whose duties shall be to review and discuss with the ~~commissioner~~~~executive director~~ any issues which impact the provision of health insurance in the state. The advisory council shall consist of nine (9) members: the ~~commissioner~~~~executive director~~ plus eight (8) persons appointed by the Governor with the advice of the ~~commissioner~~~~executive director~~ to serve two (2) year terms. The ~~commissioner~~~~executive director~~ shall serve as chair of the advisory council.
- (2) The eight (8) persons appointed by the Governor with the advice of the ~~commissioner~~~~executive director~~ shall be:
 - (a) Two (2) representatives of insurers currently offering health benefit plans in the state;
 - (b) Two (2) practicing health care providers;
 - (c) Two (2) representatives of purchasers of health benefit plans; and
 - (d) Two (2) representatives of agents.
- (3) The council shall:
 - (a) Review and discuss the design of the standard health benefit plan;
 - (b) Review and discuss the rate-filing process for all health benefit plans;
 - (c) Review and discuss the administrative regulations concerning this subtitle to be promulgated by the ~~department~~~~office~~;
 - (d) Make recommendations on high-cost conditions as provided in KRS 304.17B-033;

- (e) Advise the ***Department***~~{Office}~~ of Insurance concerning the ***Department***~~{Office}~~ of Insurance's separation plan for the division of duties and responsibilities between the operation of the ***Department***~~{Office}~~ of Insurance and the operation of Kentucky Access;
 - (f) Review and discuss issues that impact Kentucky Access; and
 - (g) Review and discuss other issues at the request of the ***commissioner***~~{executive director}~~.
- (4) The advisory council shall be a budgetary unit of the ***department***~~{office}~~ which shall pay all of the advisory council's necessary operating expenses and shall furnish all office space, personnel, equipment, supplies, and technical or administrative services required by the advisory council in the performance of the functions established in this section.

➔Section 1212. KRS 304.17A-095 is amended to read as follows:

- (1) (a) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to any market segment other than a large group shall, before use thereof, file with the ***commissioner***~~{executive director}~~ its rates, fees, dues, and other charges paid by insureds, members, enrollees, or subscribers. The insurer shall also submit a copy of the filing to the Attorney General and shall comply with the provisions of this section. The insurer shall adhere to its rates, fees, dues, and other charges as filed with the ***commissioner***~~{executive director}~~. The insurer shall submit a new filing to reflect any material change to the previously filed and approved rate filing. For all other changes, the insurer shall submit an amendment to a previously approved rate filing.
- (b) Notwithstanding any other provisions of this chapter to the contrary, each insurer that issues, delivers, or renews any health benefit plan to a large group as defined in KRS 304.17A-005 shall file the rating methodology with the ***commissioner***~~{executive director}~~ and shall submit a copy of the filing to the Attorney General.
- (2) (a) A rate filing under this section may be used by the insurer on and after the date of filing with the ***commissioner***~~{executive director}~~ prior to approval by the ***commissioner***~~{executive director}~~. A rate filing shall be approved or disapproved by the ***commissioner***~~{executive director}~~ within sixty (60) days after the date of filing. Should sixty (60) days expire after the ***commissioner***~~{executive director}~~ receives the filing before approval or disapproval of the filing, the filing shall be deemed approved.
- (b) In the circumstances of a filing that has been deemed approved or has been disapproved under paragraph (a) of this subsection, the ***commissioner***~~{executive director}~~ shall have the authority to order a retroactive reduction of rates to a reasonable rate if the ***commissioner***~~{executive director}~~ subsequently determines that the filing contained misrepresentations or was based on fraudulent information, and if after applying the factors in subsection (3) of this section the ***commissioner***~~{executive director}~~ determines that the rates were unreasonable. If the ***commissioner***~~{executive director}~~ seeks to order a retroactive reduction of rates and more than one (1) year has passed since the date of the filing, the ***commissioner***~~{executive director}~~ shall consider the reasonableness of the rate over the entire period during which the filing has been in effect.
- (3) In approving or disapproving a filing under this section, the ***commissioner***~~{executive director}~~ shall consider:
 - (a) Whether the benefits provided are reasonable in relation to the premium or fee charged;
 - (b) Whether the fees paid to providers for the covered services are reasonable in relation to the premium or fee charged;
 - (c) Previous premium rates or fees for the policies or contracts to which the filing applies;
 - (d) The effect of the rate or rate increase on policyholders, enrollees, and subscribers;
 - (e) Whether the rates, fees, dues, or other charges are excessive, inadequate, or unfairly discriminatory;
 - (f) The effect on the rates of any assessment made under KRS 304.17B-021; and
 - (g) Other factors as deemed relevant by the ***commissioner***~~{executive director}~~.
- (4) The rates for each policyholder shall be guaranteed for twelve (12) months at the rate in effect on the date of issue or date of renewal.

- (5) At any time the ***commissioner***~~[executive director]~~, after a public hearing for which at least thirty (30) days' notice has been given, may withdraw approval of rates or fees previously approved under this section and may order an appropriate refund or future premium credit to policyholders, enrollees, and subscribers if the ***commissioner***~~[executive director]~~ determines that the rates or fees previously approved are in violation of this chapter.
- (6) Notwithstanding subsection (2) of this section, premium rates may be used upon filing with the ***department***~~[office]~~ of a policy form not previously used if the filing is accompanied by the policy form filing and a minimum loss ratio guarantee. Insurers may use the filing procedure specified in this subsection only if the affected policy forms disclose the benefit of a minimum loss ratio guarantee. An insurer may not elect to use the filing procedure in this subsection for a policy form that does not contain the minimum loss ratio guarantee. If an insurer elects to use the filing procedure in this subsection for a policy form or forms, the insurer shall not use a filing of premium rates that does not provide a minimum loss ratio guarantee for that policy form or forms.
- (a) The minimum loss ratio shall be in writing and shall contain at least the following:
1. An actuarial memorandum specifying the expected loss ratio that complies with the standards as set forth in this subsection;
 2. A statement certifying that all rates, fees, dues, and other charges are not excessive, inadequate, or unfairly discriminatory;
 3. Detailed experience information concerning the policy forms;
 4. A step-by-step description of the process used to develop the experience loss ratio, including demonstration with supporting data;
 5. A guarantee of a specific lifetime minimum loss ratio, that shall be greater than or equal to the following, taking into consideration adjustments for duration as set forth in administrative regulations promulgated by the ***commissioner***~~[executive director]~~:
 - a. Sixty-five percent (65%) for policies issued to individuals or for certificates issued to members of an association that does not offer coverage to small employers;
 - b. Seventy percent (70%) for policies issued to small groups of two (2) to ten (10) employees or for certificates issued to members of an association that offers coverage to small employers; and
 - c. Seventy-five percent (75%) for policies issued to small groups of eleven (11) to fifty (50) employees;
 6. A guarantee that the actual Kentucky loss ratio for the calendar year in which the new rates take effect, and for each year thereafter until new rates are filed, will meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph, adjusted for duration;
 7. A guarantee that the actual Kentucky lifetime loss ratio shall meet or exceed the minimum loss ratio standards referred to in subparagraph 5. of this paragraph; and
 8. If the annual earned premium volume in Kentucky under the particular policy form is less than two million five hundred thousand dollars (\$2,500,000), the minimum loss ratio guarantee shall be based partially on the Kentucky earned premium and other credibility factors as specified by the ***commissioner***~~[executive director]~~.
- (b) The actual Kentucky minimum loss ratio results for each year at issue shall be independently audited at the insurer's expense and the audit shall be filed with the ***commissioner***~~[executive director]~~ not later than one hundred twenty (120) days after the end of the year at issue. The audit shall demonstrate the calculation of the actual Kentucky loss ratio in a manner prescribed as set forth in administrative regulations promulgated by the ***commissioner***~~[executive director]~~.
- (c) The insurer shall refund premiums in the amount necessary to bring the actual loss ratio up to the guaranteed minimum loss ratio.

- (d) A Kentucky policyholder affected by the guaranteed minimum loss ratio shall receive a portion of the premium refund relative to the premium paid by the policyholder. The refund shall be made to all Kentucky policyholders insured under the applicable policy form during the year at issue if the refund would equal ten dollars (\$10) or more per policy. The refund shall include statutory interest from July 1 of the year at issue until the date of payment. Payment shall be made not later than one hundred eighty (180) days after the end of the year at issue.
 - (e) Premium refunds of less than ten dollars (\$10) per insured shall be aggregated by the insurer and paid to the Kentucky State Treasury.
 - (f) None of the provisions of subsections (2) and (3) of this section shall apply if premium rates are filed with the ~~department~~~~office~~ and accompanied by a minimum loss ratio guarantee that meets the requirements of this subsection. Such filings shall be deemed approved. Each insurer paying a risk assessment under KRS 304.17B-021 may include the amount of the assessment in establishing premium rates filed with the ~~commissioner~~~~executive director~~ under this section. The insurer shall identify any assessment allocated.
 - (g) The policy form filing of an insurer using the filing procedure with a minimum loss ratio guarantee will disclose to the enrollee, member, or subscriber as prescribed by the ~~commissioner~~~~executive director~~ an explanation of the lifetime loss ratio guarantee, and the actual loss ratio, and any adjustments for duration.
 - (h) The insurer who elects to use the filing procedure with a minimum loss ratio guarantee shall notify all policyholders of the refund calculation, the result of the refund calculation, the percent of premium on an aggregate basis to be refunded if any, any amount of the refund attributed to the payment of interests, and an explanation of amounts less than ten dollars (\$10).
 - (i) Notwithstanding the provisions of this subsection, an insurer may amend the policy forms used before March 31, 2005, or may amend the minimum loss ratio guarantee on policy forms filed with the ~~department~~~~office~~ and used by the insurer prior to March 31, 2005, to provide for a minimum loss ratio guarantee allowed under this subsection for policies issued, delivered, or renewed on or after March 31, 2005.
- (7) The ~~commissioner~~~~executive director~~ may by administrative regulation prescribe any additional information related to rates, fees, dues, and other charges as they relate to the factors set out in subsection (3) of this section that he or she deems necessary and relevant to be included in the filings and the form of the filings required by this section. When determining a loss ratio for the purposes of loss ratio guarantee, the insurer shall divide the total of the claims incurred, plus preferred provider organization expenses, case management and utilization review expenses, plus reinsurance premiums less reinsurance recoveries by the premiums earned less state and local premium taxes less other assessments. For purposes of determining the loss ratio for any loss ratio guarantee pursuant to this section, the ~~commissioner~~~~executive director~~ may examine the insurer's expenses for preferred provider organization, case management, utilization review, and reinsurance used by the insurer in calculating the loss ratio guarantee for reasonableness. Only those expenses found to be reasonable by the ~~commissioner~~~~executive director~~ may be used by the insurer for determining the loss ratio for purposes of any loss ratio guarantee.
- (8) (a) The ~~commissioner~~~~executive director~~ shall hold a hearing upon written request by the Attorney General. The written request shall be based upon one (1) or more of the reasons set out in subsection (3) of this section and shall state the applicable reasons.
- (b) An insurer may request a hearing, pursuant to KRS 304.2-310, with regard to any action taken by the ~~commissioner~~~~executive director~~ under this section as to the disapproval of rates or an order of a retroactive reduction of rates.
- (c) The hearing shall be a public hearing conducted in accordance with KRS 304.2-310.

➔Section 1213. KRS 304.17A-0952 is amended to read as follows:

Premium rates for a health benefit plan issued or renewed to an individual, a small group, or an association on or after April 10, 1998, shall be subject to the following provisions:

- (1) The premium rates charged during a rating period to an individual with similar case characteristics for the same coverage, or the rates that could be charged to that individual under the rating system for that class of business,

shall not vary from the index rate by more than thirty-five percent (35%) of the index rate upon any policy issuance or renewal, on or after January 1, 2003.

- (2) Notwithstanding the thirty-five percent (35%) variance limitation in subsection (1) of this section, insurers offering an individual health benefit plan that is state-elected under sec. 35(e)(1)F of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201, may vary from the index rate by more than thirty-five percent (35%) for individuals who are eligible for the health coverage tax credit under the following conditions:
 - (a) The insurer certifies that the individual does not meet the insurer's underwriting guidelines for issuance of an individual policy;
 - (b) The policy meets the requirements for state-elected coverage under the Trade Act of 2002; and
 - (c) The premium rate is actuarially justified and has been approved by the **Department**~~[Office]~~ of Insurance pursuant to KRS 304.17A-095.
- (3) The percentage increase in the premium rate charged to an individual for a new rating period shall not exceed the sum of the following:
 - (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
 - (b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claim experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the individual and dependents as determined from the insurer's rate manual for the class of business; and
 - (c) Any adjustment due to change in coverage or change in the case characteristics of the individual as determined from the insurer's rate manual for the class of business.
- (4) The premium rates charged during a rating period to a small group or to an association member with similar case characteristics for the same coverage, or the rates that could be charged to that small group or that association member under the rating system for that class of business, shall not vary from the index rate by more than fifty percent (50%) of the index rate.
- (5) The percentage increase in the premium rate charged to a small group or to an association member for a new rating period shall not exceed the sum of the following:
 - (a) The percentage change in the new business premium rate measured from the first day of the prior rating period to the first day of the new rating period. In the case of a class of business for which the insurer is not issuing new policies, the insurer shall use the percentage change in the base premium rate;
 - (b) Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating periods of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the employee, association member, or dependents as determined from the insurer's rate manual for the class of business; and
 - (c) Any adjustment due to change in coverage or change in the case characteristics of the small group or association member as determined from the insurer's rate manual for the class of business.
- (6) In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- (7) Adjustments in rates for claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, health status, and duration of coverage shall not be charged to an individual group member or the member's dependents. Any adjustment shall be applied uniformly to the rates charged for all individuals and dependents of the small group.
- (8) The **commissioner**~~[executive director]~~ may approve establishment of additional classes of business upon application to the **commissioner**~~[executive director]~~ and a finding by the **commissioner**~~[executive director]~~ that the additional class would enhance the efficiency and fairness for the applicable market segment.

- (a) The index rate for a rating period for any class of business shall not exceed the index rate for any other class of business in that market segment by more than ten percent (10%).
 - (b) An insurer may establish a separate class of business only to reflect substantial differences in expected claims experience or administrative cost related to the following reasons:
 - 1. The insurer uses more than one (1) type of system for the marketing and sale of the health benefit plans;
 - 2. The insurer has acquired a class of business from another insurer; or
 - 3. The insurer is offering a state-elected plan under the provisions of the Trade Act of 2002, Pub. L. No. 107-210 sec. 201.
 - (c) Notwithstanding any other provision of this subsection, beginning January 1, 2001, a GAP participating insurer may establish a separate class of business for the purpose of separating guaranteed acceptance program qualified individuals from other individuals enrolled in their plan prior to January 1, 2001. The index rate for the separate class created under this paragraph shall be established taking into consideration expected claims experience and administrative costs of the new class of business and the previous class of business.
- (9) For the purpose of this section, a health benefit plan that utilizes a restricted provider network shall not be considered similar coverage to a health benefit plan that does not utilize a restricted provider network if utilization of the restricted provider network results in substantial differences in claims costs.
- (10) Notwithstanding any other provision of this section, an insurer shall not be required to utilize the experience of those individuals with high-cost conditions who enrolled in its plans between July 15, 1995, and April 10, 1998, to develop the insurer's index rate for its individual policies.
- (11) Nothing in this section shall be construed to prevent an insurer from offering incentives to participate in a program of disease prevention or health improvement.

➔Section 1214. KRS 304.17A-0954 is amended to read as follows:

- (1) For purposes of this section:
- (a) "Base premium rate" has the meaning provided in KRS 304.17A-005;
 - (b) "Employer" means a person engaged in a trade or business who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year;
 - (c) "Employer-organized association" means any of the following:
 - 1. Any entity which was qualified by the ~~commissioner~~~~executive director~~ as an eligible association prior to April 10, 1998, and which has actively marketed a health insurance program to its members after September 8, 1996, and which is not insurer-controlled;
 - 2. An entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and which is not insurer-controlled; or
 - 3. Any entity which is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation;
 - (d) "Index rate" has the meaning provided in KRS 304.17A-005.
- (2) Notwithstanding any other provision of this chapter, the amount or rate of premiums for an employer-organized association health plan may be determined, subject to the restrictions of subsection (3) of this section, based upon the experience or projected experience of the employer-organized associations whose employers obtain group coverage under the plan. Without the written consent of the employer-organized association filed with the ~~commissioner~~~~executive director~~, the index rate for the employer-organized association shall be calculated solely with respect to that employer-organized association and shall not be tied to, linked to, or otherwise adversely affected by any other index rate used by the issuing insurer.

- (3) The following restrictions shall be applied in calculating the permissible amount or rate of premiums for an employer-organized health insurance plan:
- (a) The premium rates charged during a rating period to members of the employer-organized association with similar characteristics for the same or similar coverage, or the premium rates that could be charged to a member of the employer-organized association under the rating system for that class of business, shall not vary from its own index rate by more than fifty percent (50%) of its own index rate.
 - (b) The percentage increase in the premium rate charged to an employer member of an employer-organized association for a new rating period shall not exceed the sum of the following:
 1. The percentage change in the new business premium rate for the employer-organized association measured from the first day of the prior rating period to the first day of the new rating period;
 2. Any adjustment, not to exceed twenty percent (20%) annually and adjusted pro rata for rating period of less than one (1) year, due to the claims experience, mental and physical condition, including medical condition, medical history, and health service utilization, or duration of coverage of the member as determined from the insurer's rate manual; and
 3. Any adjustment due to change in coverage or change in the case characteristics of the member as determined by the insurer's rate manual.
- (4) In utilizing case characteristics, the ratio of the highest rate factor to the lowest rate factor within a class of business shall not exceed five to one (5:1). For purpose of this limitation, case characteristics include age, gender, occupation or industry, and geographic area.
- (5) For the purpose of this section, a health insurance contract that utilizes a restricted provider network shall not be considered similar coverage to a health insurance contract that does not utilize a restricted provider network if utilization of the restricted provider network results in measurable differences in claims costs.

➔Section 1215. KRS 304.17A-138 is amended to read as follows:

- (1) (a) A health benefit plan shall not exclude a service from coverage solely because the service is provided through telehealth and not provided through a face-to-face consultation if the consultation is provided through the telehealth network established under KRS 194A.125. A health benefit plan may provide coverage for a consultation at a site not within the telehealth network at the discretion of the insurer.
- (b) A telehealth consultation shall not be reimbursable under this section if it is provided through the use of an audio-only telephone, facsimile machine, or electronic mail.
- (2) Benefits for a service provided through telehealth required by this section may be made subject to a deductible, copayment, or coinsurance requirement. A deductible, copayment, or coinsurance applicable to a particular service provided through telehealth shall not exceed the deductible, copayment, or coinsurance required by the health benefit plan for the same service provided through a face-to-face consultation.
- (3) Payment made under this section may be consistent with any provider network arrangements that have been established for the health benefit plan.
- (4) The ~~department[office]~~ shall promulgate an administrative regulation in accordance with KRS Chapter 13A to designate the claim forms and records required to be maintained in conjunction with this section.

➔Section 1216. KRS 304.17A-150 is amended to read as follows:

- (1) On and after July 15, 1995, it is an unfair trade practice for an insurer, agent, broker, or any other person in the business of marketing and selling health plans, to commit or perform any of the following acts:
 - (a) Encourage individuals or groups to refrain from filing an application for coverage with the insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (b) Encourage or direct individuals or groups to seek coverage from another insurer because of the individual's or group's health status, claims experience, industry, occupation, or geographic location; or
 - (c) Encourage an employer to exclude an employee from coverage.

The provisions of this subsection shall not apply to information provided regarding the established geographic service area of an insurer.

- (2) It is an unfair trade practice for an insurer to compensate an agent, broker, or any other person in the business of marketing and selling health plans on the basis of the health status, claims experience, industry, occupation, or geographic location of the insured or prospective insured except as provided in KRS 304.17B-001 to 304.17B-031.
- (3) It shall constitute an unfair trade practice for any insurer, insurance agent, or third-party administrator to refer an individual to Kentucky Access, or to arrange for an individual to apply to Kentucky Access, for the purpose of separating an individual from group health insurance coverage.
- (4) It is an unfair trade practice for an insurer that offers multiple health benefit plans to require a health care provider, as a condition of participation in a health benefit plan of the insurer, to participate in any of the insurer's other health benefit plans. In addition to the proceedings and penalties provided in this chapter for violation of this provision, a contract provision violating this subsection is void.
- (5) It is an unfair trade practice for an insurer not to compute an insured's coinsurance or cost sharing on the basis of the amount actually received by a health-care provider from the insurer.
- (6) The ~~commissioner~~~~executive director~~ may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any insurer that fails to pay an assessment under KRS 304.17B-021. As an alternative, the ~~commissioner~~~~executive director~~ may levy a civil penalty on any member insurer that fails to pay the assessment when due. The civil penalty shall not exceed five percent (5%) of the unpaid assessment per month, but no civil penalty shall be less than one hundred dollars (\$100) per month.
- (7) The remedy provided by KRS 304.12-120 shall be available for conduct proscribed by this section.
- (8) It is an unfair claims settlement practice for any person to make claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which the payments are being made in instances in which the insured has a liability under the policy beyond his or her copayment or deductible.

➔Section 1217. KRS 304.17A-200 is amended to read as follows:

- (1) An insurer that offers health benefit plan coverage in the small group, large group, or association market may not establish rules for eligibility of any individual to enroll under the terms of the plan based on any of the following health status-related factors in relation to the individual or the dependent of the individual:
 - (a) Health status;
 - (b) Medical condition, including both physical and mental illness;
 - (c) Claims experience;
 - (d) Receipt of health care;
 - (e) Medical history;
 - (f) Genetic information;
 - (g) Evidence of insurability, including conditions arising out of acts of domestic violence; and
 - (h) Disability.
- (2) An insurer that offers health benefit plan coverage in the small group, large group, or association market shall not require any individual to pay a premium or contribution which is greater than the premium or contribution for a similarly situated individual enrolled in the plan on the basis of any health status-related factor in relation to the individual or a dependent of the individual. Nothing in this subsection shall prevent the insurer from establishing premium discounts or rebates or modifying otherwise applicable copayments or deductibles in return for adherence to programs of health promotion and disease prevention.
- (3) Subject to subsections (4) to (7) of this section, each insurer that offers health benefit plan coverage in the small groups market shall accept every small employer that applies for coverage and shall accept for enrollment under this coverage every individual eligible for the coverage who applies for enrollment during the period in which the individual first becomes eligible to enroll under the terms of the group health benefit plan.

- (a) Notwithstanding any other provision of this subsection, the insurer may establish group participation rules requiring a minimum number of participants or beneficiaries that must be enrolled in relation to a specified percentage or number of those eligible for enrollment.
 - (b) The terms and participation rules of the group health benefit plan shall be uniformly applicable to small employers in the small group market.
 - (c) This subsection shall not apply to health benefit plan coverage offered by an insurer if the coverage is made available in the small group market only through one (1) or more bona fide associations.
- (4) In the case of an insurer that offers health benefit plan coverage in the small group market through a network plan, the insurer may:
- (a) Limit the employers that may apply for coverage to those with individuals who live, work, or reside in the service area of the network plan; and
 - (b) Within the service area of the network plan, deny coverage to employers if the insurer has demonstrated to the **commissioner**~~executive director~~ that:
 - 1. The network plan will not have the capacity to deliver services adequately to enrollees of any additional groups because of its obligations to existing group contract holders and enrollees; and
 - 2. The insurer is applying this denial uniformly to all employers.
- (5) An insurer, upon denying health benefit plan coverage in any service area in accordance with subsection (4) of this section, shall not offer coverage in the small group market within the service area for a period of one hundred eighty (180) days after the date the coverage is denied.
- (6) An insurer may deny health benefit plan coverage in the small group market if the insurer has demonstrated to the **commissioner**~~executive director~~ that:
- (a) The insurer does not have the financial reserves necessary to underwrite additional coverage; and
 - (b) The insurer is applying this denial uniformly to all employers in the small group market.
- (7) An insurer, upon denying health benefit plan coverage in connection with group health plans in accordance with subsection (6) of this section, shall not offer coverage in the small group market for a period of one hundred eighty (180) days after the date the coverage is denied or until the insurer has demonstrated to the **commissioner**~~executive director~~ that the insurer has sufficient financial reserves to underwrite additional coverage, whichever is later.
- (8) A health benefit plan issued as an individual policy to individual employees or their dependents through or with the permission of a small employer shall be issued on a guaranteed-issue basis to all full-time employees and shall comply with the pre-existing condition provisions of KRS 304.17A-220.
- (9) (a) In connection with the offering of any health benefit plan to a small employer, an insurer:
- 1. Shall make a reasonable disclosure to a small employer, as part of its solicitation and sales materials, of the availability of information described in paragraph (b) of this subsection; and
 - 2. Upon request of a small employer, provide the information described in paragraph (b) of this subsection.
- (b) Subject to paragraph (c) of this subsection, with respect to an insurer offering a health benefit plan to a small employer, information described in this subsection is information concerning:
- 1. The provisions of the coverage concerning the insurer's right to change premium rates and the factors that may affect changes in premium rates;
 - 2. The provisions of the health benefit plan relating to renewability of coverage;
 - 3. The provisions of the health benefit plan relating to any preexisting condition exclusion; and
 - 4. The benefits and premiums available under all health benefit plans for which the small employer is qualified.

- (c) Information described in paragraph (b) of this subsection shall be provided to a small employer in a manner determined to be understandable by the average small employer and shall be sufficient to reasonably inform a small employer of his or her rights and obligations under the health benefit plan.
- (d) An insurer is not required under this section to disclose any information that is proprietary and trade secret information under applicable law.

➔Section 1218. KRS 304.17A-220 is amended to read as follows:

- (1) All group health plans and insurers offering group health insurance coverage in the Commonwealth shall comply with the provisions of this section.
- (2) Subject to subsection (8) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, may, with respect to a participant or beneficiary, impose a pre-existing condition exclusion only if:
 - (a) The exclusion relates to a condition, whether physical or mental, regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment was recommended or received within the six (6) month period ending on the enrollment date. For purposes of this paragraph:
 - 1. Medical advice, diagnosis, care, or treatment is taken into account only if it is recommended by, or received from, an individual licensed or similarly authorized to provide such services under state law and operating within the scope of practice authorized by state law; and
 - 2. The six (6) month period ending on the enrollment date begins on the six (6) month anniversary date preceding the enrollment date;
 - (b) The exclusion extends for a period of not more than twelve (12) months, or eighteen (18) months in the case of a late enrollee, after the enrollment date;
 - (c)
 - 1. The period of any pre-existing condition exclusion that would otherwise apply to an individual is reduced by the number of days of creditable coverage the individual has as of the enrollment date, as counted under subsection (3) of this section; and
 - 2. Except for ineligible individuals who apply for coverage in the individual market, the period of any pre-existing condition exclusion that would otherwise apply to an individual may be reduced by the number of days of creditable coverage the individual has as of the effective date of coverage under the policy; and
 - (d) A written notice of the pre-existing condition exclusion is provided to participants under the plan, and the insurer cannot impose a pre-existing condition exclusion with respect to a participant or a dependent of the participant until such notice is provided.
- (3) In reducing the pre-existing condition exclusion period that applies to an individual, the amount of creditable coverage is determined by counting all the days on which the individual has one (1) or more types of creditable coverage. For purposes of counting creditable coverage:
 - (a) If on a particular day the individual has creditable coverage from more than one (1) source, all the creditable coverage on that day is counted as one (1) day;
 - (b) Any days in a waiting period for coverage are not creditable coverage;
 - (c) Days of creditable coverage that occur before a significant break in coverage are not required to be counted; and
 - (d) Days in a waiting period and days in an affiliation period are not taken into account in determining whether a significant break in coverage has occurred.
- (4) An insurer may determine the amount of creditable coverage in another manner than established in subsection (3) of this section that is at least as favorable to the individual as the method established in subsection (3) of this section.
- (5) If an insurer receives creditable coverage information, the insurer shall make a determination regarding the amount of the individual's creditable coverage and the length of any pre-existing exclusion period that remains. A written notice of the length of the pre-existing condition exclusion period that remains after offsetting for prior creditable coverage shall be issued by the insurer. An insurer may not impose any limit on the amount of time that an individual has to present a certificate or evidence of creditable coverage.

(6) For purposes of this section:

- (a) "Pre-existing condition exclusion" means, with respect to coverage, a limitation or exclusion of benefits relating to a condition based on the fact that the condition was present before the effective date of coverage, whether or not any medical advice, diagnosis, care, or treatment was recommended or received before that day. A pre-existing condition exclusion includes any exclusion applicable to an individual as a result of information relating to an individual's health status before the individual's effective date of coverage under a health benefit plan;
 - (b) "Enrollment date" means, with respect to an individual covered under a group health plan or health insurance coverage, the first day of coverage or, if there is a waiting period, the first day of the waiting period. If an individual receiving benefits under a group health plan changes benefit packages, or if the employer changes its group health insurer, the individual's enrollment date does not change;
 - (c) "First day of coverage" means, in the case of an individual covered for benefits under a group health plan, the first day of coverage under the plan and, in the case of an individual covered by health insurance coverage in the individual market, the first day of coverage under the policy or contract;
 - (d) "Late enrollee" means an individual whose enrollment in a plan is a late enrollment;
 - (e) "Late enrollment" means enrollment of an individual under a group health plan other than:
 - 1. On the earliest date on which coverage can become effective for the individual under the terms of the plan; or
 - 2. Through special enrollment;
 - (f) "Significant break in coverage" means a period of sixty-three (63) consecutive days during each of which an individual does not have any creditable coverage; and
 - (g) "Waiting period" means the period that must pass before coverage for an employee or dependent who is otherwise eligible to enroll under the terms of a group health plan can become effective. If an employee or dependent enrolls as a late enrollee or special enrollee, any period before such late or special enrollment is not a waiting period. If an individual seeks coverage in the individual market, a waiting period begins on the date the individual submits a substantially complete application for coverage and ends on:
 - 1. If the application results in coverage, the date coverage begins; or
 - 2. If the application does not result in coverage, the date on which the application is denied by the insurer or the date on which the offer of coverage lapses.
- (7) (a) 1. Except as otherwise provided under subsection (3) of this section, for purposes of applying subsection (2)(c) of this section, a group health plan, and a health insurance insurer offering group health insurance coverage, shall count a period of creditable coverage without regard to the specific benefits covered during the period.
2. A group health plan, or a health insurance insurer offering group health insurance coverage, may elect to apply subsection (2)(c) of this section based on coverage of benefits within each of several classes or categories of benefits specified in federal regulations. This election shall be made on a uniform basis for all participants and beneficiaries. Under this election, a group health plan or insurer shall count a period of creditable coverage with respect to any class or category of benefits if any level of benefits is covered within this class or category.
3. In the case of an election with respect to a group health plan under subparagraph 2. of this paragraph, whether or not health insurance coverage is provided in connection with the plan, the plan shall:
- a. Prominently state in any disclosure statements concerning the plan, and state to each enrollee at the time of enrollment under the plan, that the plan has made this election; and
 - b. Include in these statements a description of the effect of this election.

- (b) Periods of creditable coverage with respect to an individual shall be established through presentation of certifications described in subsection (9) of this section or in such other manner as may be specified in administrative regulations.
- (8) (a) Subject to paragraph (e) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion on a child who, within thirty (30) days after birth, is covered under any creditable coverage. If a child is enrolled in a group health plan or other creditable coverage within thirty (30) days after birth and subsequently enrolls in another group health plan without a significant break in coverage, the other group health plan may not impose any pre-existing condition exclusion on the child.
- (b) Subject to paragraph (e) of this subsection, a group health plan, and a health insurance insurer offering group health insurance coverage, may not impose any pre-existing condition exclusion on a child who is adopted or placed for adoption before attaining eighteen (18) years of age and who, within thirty (30) days after the adoption or placement for adoption, is covered under any creditable coverage. If a child is enrolled in a group health plan or other creditable coverage within thirty (30) days after adoption or placement for adoption and subsequently enrolls in another group health plan without a significant break in coverage, the other group health plan may not impose any pre-existing condition exclusion on the child. This shall not apply to coverage before the date of the adoption or placement for adoption.
- (c) A group health plan may not impose any pre-existing condition exclusion relating to pregnancy.
- (d) A group health plan may not impose a pre-existing condition exclusion relating to a condition based solely on genetic information. If an individual is diagnosed with a condition, even if the condition relates to genetic information, the insurer may impose a pre-existing condition exclusion with respect to the condition, subject to other requirements of this section.
- (e) Paragraphs (a) and (b) of this subsection shall no longer apply to an individual after the end of the first sixty-three (63) day period during all of which the individual was not covered under any creditable coverage.
- (9) (a) 1. A group health plan, and a health insurance insurer offering group health insurance coverage, shall provide a certificate of creditable coverage as described in subparagraph 2. of this subsection. A certificate of creditable coverage shall be provided, without charge, for participants or dependents who are or were covered under a group health plan upon the occurrence of any of the following events:
 - a. At the time an individual ceases to be covered under a health benefit plan or otherwise becomes eligible under a COBRA continuation provision;
 - b. In the case of an individual becoming covered under a COBRA continuation provision, at the time the individual ceases to be covered under the COBRA continuation provision; and
 - c. On request on behalf of an individual made not later than twenty-four (24) months after the date of cessation of the coverage described in subdivision a. or b. of this subparagraph, whichever is later.

The certificate of creditable coverage as described under subdivision a. of this subparagraph may be provided, to the extent practicable, at a time consistent with notices required under any applicable COBRA continuation provision.
- 2. The certification described in this subparagraph is a written certification of:
 - a. The period of creditable coverage of the individual under the health benefit plan and the coverage, if any, under the COBRA continuation provision; and
 - b. The waiting period, if any, and affiliation period, if applicable, imposed with respect to the individual for any coverage under the plan.
- 3. To the extent that medical care under a group health plan consists of group health insurance coverage, the plan is deemed to have satisfied the certification requirement under this paragraph if the health insurance insurer offering the coverage provides for the certification in accordance with this paragraph.

- (b) In the case of an election described in subsection (7)(a)2. of this section by a group health plan or health insurance insurer, if the plan or insurer enrolls an individual for coverage under the plan and the individual provides a certification of coverage of the individual under paragraph (a) of this subsection:
 - 1. Upon request of that plan or insurer, the entity that issued the certification provided by the individual shall promptly disclose to the requesting plan or insurer information on coverage of classes and categories of health benefits available under the entity's plan or coverage; and
 - 2. The entity may charge the requesting plan or insurer for the reasonable cost of disclosing this information.
- (10) (a) A group health plan, and a health insurance insurer offering group health insurance coverage in connection with a group health plan, shall permit an employee who is eligible but not enrolled for coverage under the terms of the plan, or a dependent of that employee if the dependent is eligible but not enrolled for coverage under these terms, to enroll for coverage under the terms of the plan if each of the following conditions is met:
 - 1. The employee or dependent was covered under a group health plan or had health insurance coverage at the time coverage was previously offered to the employee or dependent;
 - 2. The employee stated in writing at that time that coverage under a group health plan or health insurance coverage was the reason for declining enrollment, but only if the plan sponsor or insurer, if applicable, required that statement at that time and provided the employee with notice of the requirement, and the consequences of the requirement, at that time;
 - 3. The employee's or dependent's coverage described in subparagraph 1. of this paragraph:
 - a. Was under a COBRA continuation provision and the coverage under that provision was exhausted; or
 - b. Was not under such a provision and either the coverage was terminated as a result of loss of eligibility for the coverage, including as a result of legal separation, divorce, cessation of dependent status, such as obtaining the maximum age to be eligible as a dependent child, death of the employee, termination of employment, reduction in the number of hours of employment, employer contributions toward the coverage were terminated, a situation in which an individual incurs a claim that would meet or exceed a lifetime limit on all benefits, or a situation in which a plan no longer offers any benefits to the class of similarly situated individuals that includes the individual; or
 - c. Was offered through a health maintenance organization or other arrangement in the group market that does not provide benefits to individuals who no longer reside, live, or work in a service area and, loss of coverage in the group market occurred because an individual no longer resides, lives, or works in the service area, whether or not within the choice of the individual, and no other benefit package is available to the individual; and
 - 4. An insurer shall allow an employee and dependent a period of at least thirty (30) days after an event described in this paragraph has occurred to request enrollment for the employee or the employee's dependent. Coverage shall begin no later than the first day of the first calendar month beginning after the date the insurer receives the request for special enrollment.
- (b) A dependent of a current employee, including the employee's spouse, and the employee each are eligible for enrollment in the group health plan subject to plan eligibility rules conditioning dependent enrollment on enrollment of the employee if the requirements of paragraph (a) of this subsection are satisfied.
- (c) 1. If:
 - a. A group health plan makes coverage available with respect to a dependent of an individual;
 - b. The individual is a participant under the plan, or has met any waiting period applicable to becoming a participant under the plan and is eligible to be enrolled under the plan but for a failure to enroll during a previous enrollment period; and

- c. A person becomes such a dependent of the individual through marriage, birth, or adoption or placement for adoption;

the group health plan shall provide for a dependent special enrollment period described in subparagraph 2. of this paragraph during which the person or, if not otherwise enrolled, the individual, may be enrolled under the plan as a dependent of the individual, and in the case of the birth or adoption of a child, the spouse of the individual may be enrolled as a dependent of the individual if the spouse is otherwise eligible for coverage.
 - 2. A dependent special enrollment period under this subparagraph shall be a period of at least thirty (30) days and shall begin on the later of:
 - a. The date dependent coverage is made available; or
 - b. The date of the marriage, birth, or adoption or placement for adoption, as the case may be, described in subparagraph 1.c. of this paragraph.
 - 3. If an individual seeks to enroll a dependent during the first thirty (30) days of the dependent special enrollment period, the coverage of the dependent shall become effective:
 - a. In the case of marriage, not later than the first day of the first month beginning after the date the completed request for enrollment is received;
 - b. In the case of a dependent's birth, as of the date of the birth; or
 - c. In the case of a dependent's adoption or placement for adoption, the date of the adoption or placement for adoption.
 - (d) At or before the time an employee is initially offered the opportunity to enroll in a group health plan, the employer shall provide the employee with a notice of special enrollment rights.
- (11) (a) In the case of a group health plan that offers medical care through health insurance coverage offered by a health maintenance organization, the plan may provide for an affiliation period with respect to coverage through the organization only if:
- 1. No pre-existing condition exclusion is imposed with respect to coverage through the organization;
 - 2. The period is applied uniformly without regard to any health status-related factors; and
 - 3. The period does not exceed two (2) months, or three (3) months in the case of a late enrollee.
- (b) 1. For purposes of this section, the term "affiliation period" means a period which, under the terms of the health insurance coverage offered by the health maintenance organization, must expire before the health insurance coverage becomes effective. The organization is not required to provide health care services or benefits during this period and no premium shall be charged to the participant or beneficiary for any coverage during the period.
- 2. This period shall begin on the enrollment date.
 - 3. An affiliation period under a plan shall run concurrently with any waiting period under the plan.
- (c) A health maintenance organization described in paragraph (a) of this subsection may use alternative methods other than those described in that paragraph to address adverse selection as approved by the ~~commissioner~~~~executive director~~.

➔Section 1219. KRS 304.17A-230 is amended to read as follows:

- (1) A health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth shall not impose any pre-existing conditions exclusions as to any eligible individual.
- (2) Each health insurer offering individual health benefit plan coverage in the individual market in the Commonwealth that chooses to impose a pre-existing conditions exclusion on individuals who do not meet the definition of eligible individual shall comply with the provisions of KRS 304.17A-220, which establishes standards and requirements for pre-existing conditions exclusions for group health plans, including crediting previous coverage, and certification of coverage. Pregnancy may be considered to be a pre-existing condition.

- (3) Genetic information shall not be treated as a pre-existing condition in the absence of a diagnosis of the condition related to the information.
- (4) The ~~Department~~~~Office~~ of Insurance shall promulgate administrative regulations necessary to carry out the provisions of this section and KRS 304.17A-220.

➔Section 1220. KRS 304.17A-240 is amended to read as follows:

- (1) Except as provided in this section, an insurer shall renew or continue in force a health benefit plan at the option of the insured.
- (2) An insurer may nonrenew, cancel, or discontinue a health benefit plan based only on one (1) or more of the following:
 - (a) The insured has failed to pay premiums or contributions in accordance with the terms of the plan or the insurer has not received timely premium payments;
 - (b) The insured has performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage;
 - (c) The insured has engaged in intentional and abusive noncompliance with material provisions of the health benefit plan;
 - (d) The insurer is ceasing to offer coverage in the individual or group market in accordance with subsection (3) of this section;
 - (e) In the case of an insurer that offers health benefit plans through a network plan, the individual no longer resides, lives, or works in the service area or in an area for which the insurer is authorized to do business, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals, or there is no longer any enrollee in connection with the group plan who resides, lives, or works in the service area of the insurer;
 - (f) In the case of a health benefit plan that is made available only through one (1) or more bona fide associations, the membership of the individual or employer in the association on the basis of which the coverage is provided ceases, but only if the coverage is terminated under this paragraph uniformly without regard to any health status-related factor of covered individuals; or
 - (g) In the case of a health benefit plan issued to a group, the group no longer meets participation requirements or contribution requirements as established by the insurer.
- (3) (a) In any case in which an insurer decides to discontinue offering a particular type of health benefit plan, coverage of the type may be discontinued by the insurer upon approval by the ~~commissioner~~~~executive director~~ only if:
 - 1. The insurer provides notice to each insured provided coverage of this type in the market of the discontinuation at least ninety (90) days prior to the date of the discontinuation of the coverage;
 - 2. The insurer offers, to each insured provided coverage of this type, the option to purchase any other health benefit plan currently of that type being offered by the insurer in that market; and
 - 3. In exercising the option to discontinue coverage of this type and in offering the option of coverage under subparagraph 2. of this paragraph, the insurer acts uniformly without regard to any health status-related factor of enrolled insureds or insureds who may become eligible for coverage.
- (b) 1. Subject to paragraph (a)3. of this subsection, in any case in which an insurer elects to discontinue offering all health benefit plans in Kentucky, health benefit plans may be discontinued by the insurer only if:
 - a. The insurer provides notice to the ~~commissioner~~~~executive director~~ and to each insured of the discontinuation at least one hundred eighty (180) days prior to the date of the expiration of the coverage; and
 - b. All health benefit plans issued or delivered for issuance in Kentucky are discontinued and coverage under the health benefit plans is not renewed.

2. In the case of a discontinuation under subparagraph 1. of this paragraph, the insurer may not provide for the issuance of any health benefit plans in Kentucky during the five (5) year period beginning on the date of the discontinuation of the last health benefit plan not so renewed.
- (4) At the time of coverage renewal, an insurer may modify, with approval of the ***commissioner***~~[executive director]~~, the health benefit plan for a policy form so long as the modification is consistent with this chapter and effective on a uniform basis among all individuals with that policy form.
- (5) In applying this section in the case of a health benefit plan that is made available by an insurer only through one (1) or more associations, a reference to an individual is deemed to include a reference to an association of which the individual is a member, and a reference to an employer member is deemed to include a reference to the employer.

➔Section 1221. KRS 304.17A-250 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall, by administrative regulations promulgated under KRS Chapter 13A, define one (1) standard health benefit plan. After July 15, 2004, insurers may offer the standard health benefit plan in the individual or small group markets. Except as may be necessary to coordinate with changes in federal law, the ***commissioner***~~[executive director]~~ shall not alter, amend, or replace the standard health benefit plan more frequently than annually.
- (2) If offered, the standard health benefit plan may be available in at least one (1) of these four (4) forms of coverage:
 - (a) A fee-for-service product type;
 - (b) A health maintenance organization type;
 - (c) A point-of-service type; and
 - (d) A preferred provider organization type.
- (3) The standard health benefit plan shall be defined so that it meets the requirements of KRS 304.17B-021 for inclusion in calculating assessments and refunds under Kentucky Access.
- (4) Any health insurer who offers the standard health benefit plan may offer the standard health benefit plan in the individual or small group markets in each and every form of coverage that the health insurer offers to sell.
- (5) Nothing in this section shall be construed:
 - (a) To require a health insurer to offer a standard health benefit plan in a form of coverage that the health insurer has not selected;
 - (b) To prohibit a health insurer from offering other health benefit plans in the individual or small group markets in addition to the standard health benefit plan; or
 - (c) To require that a standard health benefit plan have guaranteed issue, renewability, or pre-existing condition exclusion rights or provisions that are more generous to the applicant than the health insurer would be required to provide under KRS 304.17A-200, 304.17A-220, 304.17A.230, and 304.17A-240.
- (6) All health benefit plans shall cover hospice care at least equal to the Medicare benefits.
- (7) All health benefit plans shall coordinate benefits with other health benefit plans in accordance with the guidelines for coordination of benefits prescribed by the ***commissioner***~~[executive director]~~ as provided in KRS 304.18-085.
- (8) Every health insurer of any kind, nonprofit hospital, medical-surgical, dental and health service corporation, health maintenance organization, or provider-sponsored health delivery network that issues or delivers an insurance policy in this state that directs or gives any incentives to insureds to obtain health care services from certain health care providers shall not imply or otherwise represent that a health care provider is a participant in or an affiliate of an approved or selected provider network unless the health care provider has agreed in writing to the representation or there is a written contract between the health care provider and the insurer or an agreement by the provider to abide by the terms for participation established by the insurer. This requirement to have written contracts shall apply whenever an insurer includes a health care provider as a part of a preferred provider network or otherwise selects, lists, or approves certain health care providers for use by the insurer's insureds. The obligation set forth in this section for an insurer to have written contracts with providers selected for use by the insurer shall not apply to emergency or out-of-area services.

- (9) A self-insured plan may select any third party administrator licensed under KRS 304.9-052 to adjust or settle claims for persons covered under the self-insured plan.
- (10) Any health insurer that fails to issue a premium rate quote to an individual within thirty (30) days of receiving a properly completed application request for the quote shall be required to issue coverage to that individual and shall not impose any pre-existing conditions exclusion on that individual with respect to the coverage. Each health insurer offering individual health insurance coverage in the individual market in the Commonwealth that refuses to issue a health benefit plan to an applicant or insured with a disclosed high-cost condition as specified in KRS 304.17B-001 or for any reason, shall provide the individual with a denial letter within twenty (20) working days of the request for coverage. The letter shall include the name and title of the person making the decision, a statement setting forth the basis for refusing to issue a policy, a description of Kentucky Access, and the telephone number for a contact person who can provide additional information about Kentucky Access.
- (11) If a standard health benefit plan covers services that the plan's insureds lawfully obtain from health departments established under KRS Chapter 212, the health insurer shall pay the plan's established rate for those services to the health department.
- (12) No individually insured person shall be required to replace an individual policy with group coverage on becoming eligible for group coverage that is not provided by an employer. In a situation where a person holding individual coverage is offered or becomes eligible for group coverage not provided by an employer, the person holding the individual coverage shall have the option of remaining individually insured, as the policyholder may decide. This shall apply in any such situation that may arise through an association, an affiliated group, the Kentucky state employee health insurance plan, or any other entity.

➔Section 1222. KRS 304.17A-300 is amended to read as follows:

- (1) A provider-sponsored integrated health delivery network may be created by health care providers for the purpose of providing health care services.
- (2) No person shall in this Commonwealth be, act as, or hold itself out as a provider-sponsored integrated health delivery network unless it holds a certificate of filing from the **commissioner**~~executive director~~. Each provider-sponsored integrated health delivery network that seeks to offer services shall first be certified by the **department**~~office~~.
- (3) To qualify as a provider-sponsored integrated health delivery network, an applicant shall submit information acceptable to the **department**~~office~~ to satisfactorily demonstrate that the provider-sponsored integrated health delivery network:
 - (a) Is licensed and in good standing with the licensure boards for participating providers;
 - (b) Has demonstrated the capacity to administer the health plans it is offering;
 - (c) Has the ability, experience, and structure to arrange for the appropriate level and type of health care services;
 - (d) Has the ability, policies, and procedures to conduct utilization management activities;
 - (e) Has the ability to achieve, monitor, and evaluate the quality and cost effectiveness of care provided by its provider network;
 - (f) Is financially solvent;
 - (g) Has the ability to assure enrollees adequate access to providers, including geographic availability and adequate numbers and types;
 - (h) Has the ability and procedures to monitor access to its provider network;
 - (i) Has a satisfactory grievance procedure and the ability to respond to enrollees' inquiries and complaints;
 - (j) Does not limit the participation of any health care provider in its provider network in another provider network;
 - (k) Has the ability and policies that allow patients to receive care in the most appropriate, least restrictive setting;
 - (l) Does not discriminate in enrolling members;

- (m) Participates in coordination of benefits;
 - (n) Uses standardized electronic claims and billing processes and formats; and
 - (o) Discloses to the cooperative reimbursement arrangements with providers.
- (4) Fees for the following services shall be paid to the **commissioner**~~[executive director]~~ by every provider-sponsored integrated health delivery network, and the fees shall be the same as those for insurers as specified in Subtitle 4 of this chapter:
- (a) For filing an application for a certificate of filing or amendment thereto;
 - (b) For filing an annual statement; and
 - (c) For other services deemed necessary by the **commissioner**~~[executive director]~~.
- (5) Provider-sponsored integrated health delivery networks shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:
- (a) Subtitle 1 -- Scope of Code;
 - (b) Subtitle 2 -- **Commissioner of the Department of Insurance**~~[executive director]~~;
 - (c) Subtitle 3 -- Authorization of Insurers and General Requirements;
 - (d) Subtitle 4 -- Fees and Taxes;
 - (e) Subtitle 5 -- Kinds of Insurance--Limits of Risk--Reinsurance;
 - (f) Subtitle 6 -- Assets and Liabilities;
 - (g) Subtitle 7 -- Investments;
 - (h) Subtitle 8 -- Administration of Deposits;
 - (i) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
 - (j) Subtitle 12 -- Trade Practices and Frauds;
 - (k) Subtitle 14 -- KRS 304.14-120 to 304.14-130 and 304.14-500 to 304.14-560;
 - (l) Subtitle 25 -- Continuity of Management;
 - (m) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
 - (n) Subtitle 37 -- Insurance Holding Company Systems; and
 - (o) Subtitle 99 -- Penalties.

➔Section 1223. KRS 304.17A-310 is amended to read as follows:

To qualify as a provider-sponsored integrated health delivery network, the network shall meet the following financial solvency requirements:

- (1) Maintenance of a fidelity bond or fidelity insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) on employees and officers, directors, and partners who receive, collect, disburse, or invest funds of the provider-sponsored network;
- (2)
 - (a) The provider-sponsored network shall have an initial net worth requirement of one million five hundred thousand dollars (\$1,500,000) and shall thereafter maintain the minimum net worth required under paragraph (b) of this subsection.
 - (b) Every provider-sponsored network shall maintain a minimum net worth equal to the greater of:
 - 1. One million dollars (\$1,000,000);
 - 2. Two percent (2%) of annual premium revenues as reported on the most recent annual financial statement filed with the **commissioner**~~[executive director]~~ on the first one hundred fifty million dollars (\$150,000,000) of premiums and one percent (1%) of annual premiums on the premiums in excess of one hundred fifty million dollars (\$150,000,000);

3. An amount equal to the sum of three (3) months' uncovered health care expenditures as reported on the most recent financial statement filed with the **commissioner**~~{executive director}~~ of insurance; or
 4. An amount equal to the sum of eight percent (8%) of annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis as reported on the most recent financial statement filed with the **commissioner**~~{executive director}~~.
- (c) In determining net worth, no debt shall be considered fully subordinated unless the subordination clause is in a form acceptable to the **commissioner**~~{executive director}~~. Any interest obligation relating to the repayment of any subordinated debt shall be similarly subordinated.
1. The interest expenses relating to the repayment of any fully subordinated debt shall be considered covered expenses.
 2. Any debt incurred by a note meeting the requirements of this section, and otherwise acceptable to the **commissioner**~~{executive director}~~, shall not be considered a liability and shall be recorded as equity.
- (3) (a) Unless otherwise provided below, each provider-sponsored network shall deposit with the **commissioner**~~{executive director}~~ or, at the discretion of the **commissioner**~~{executive director}~~, with any organization or trustee acceptable to the **commissioner**~~{executive director}~~ through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that are acceptable to the **commissioner**~~{executive director}~~ which at all times shall have a value of not less than three hundred thousand dollars (\$300,000).
- (b) The deposit shall be an admitted asset of the provider-sponsored network in the determination of net worth.
- (c) All income from deposits shall be an asset of the provider-sponsored network. A provider-sponsored network that has made a securities deposit may withdraw that deposit or any part thereof after making a substitute deposit of cash, securities, or any combination of these or other measures of equal amount and value. Any securities shall be approved by the **commissioner**~~{executive director}~~ before being deposited or substituted.
- (d) The deposit shall be used to protect the interests of the provider-sponsored network's enrollees and to assure continuation of health care services to enrollees of a provider-sponsored network which is in rehabilitation or conservation. The **commissioner**~~{executive director}~~ may use the deposit for administrative costs directly attributable to a receivership or liquidation. If the provider-sponsored network is placed in receivership or liquidation, the deposit shall be an asset subject to the provisions of Subtitle 33 of this chapter.
- (4) Every provider-sponsored network shall, when determining liabilities, include an amount estimated in the aggregate to provide for any unearned premium and for the payment of all claims for health care expenditures which have been incurred, whether reported or unreported, which are unpaid and for which the provider-sponsored network is or may be liable, and to provide for the expense of adjustment or settlement of such claims.
- (5) (a) Every contract between a provider-sponsored network and a participating provider of health care services shall be in writing and shall set forth that in the event the provider-sponsored network fails to pay for health care services as set forth in the contract, the enrollee shall not be liable to the provider for any sums owed by the provider-sponsored network.
- (b) If the participating provider contract has not been reduced to writing as required by this subsection or if the contract fails to contain the required prohibition, the participating provider shall not collect or attempt to collect from the enrollee sums owed by the provider-sponsored network.
- (6) Each provider-sponsored network shall have a plan for handling insolvency which guarantees the continuation of benefits for the duration of the contract period for which premiums have been paid and continuation of benefits to members who are confined on the date of insolvency in an inpatient facility until their discharge or expiration of benefits.

- (7) If at any time uncovered expenditures exceed ten percent (10%) of total health care expenditures, a provider-sponsored network shall place an uncovered expenditures insolvency deposit with the **commissioner**~~[executive director]~~ or with any organization or trustee acceptable to the **commissioner**~~[executive director]~~ through which a custodial or controlled account is maintained, in cash or securities that are acceptable to the **commissioner**~~[executive director]~~. This deposit shall at all times have a fair market value in an amount of one hundred twenty percent (120%) of the provider-sponsored network's outstanding liability for uncovered expenditures for enrollees, including incurred but not reported claims, and shall be calculated as of the first day of the month and maintained for the remainder of the month. The provider-sponsored network shall file a report within forty-five (45) days of the end of the calendar quarter with information sufficient to demonstrate compliance with this subsection. The provisions of subsection (6) of this section shall apply to the deposit required in this subsection.

➔Section 1224. KRS 304.17A-320 is amended to read as follows:

- (1) No employer-organized association shall in this state self-insure in order to provide health benefit plans for its members unless it holds a certificate of filing from the **commissioner**~~[executive director]~~.
- (2) To qualify for a certificate of filing and to maintain a certificate of filing, the employer-organized association shall comply with the provisions of KRS 304.17A-800 to 304.17A-844 to the extent not in conflict with the expressed provisions of this section.
- (3) Each association that holds a certificate of filing from the **commissioner**~~[executive director]~~ shall be subject to the following:
 - (a) All assessments placed on insurers under KRS 304.17B-021;
 - (b) All rating restrictions placed on employer-organized associations under KRS 304.17A-0954;
 - (c) All rate review requirements placed on insurers under this subtitle;
 - (d) All data collection requirements placed on insurers under this subtitle; and
 - (e) Provisions of Subtitle 12 of this chapter that apply to health insurers.
- (4) Each association that holds a certificate of filing from the **commissioner**~~[executive director]~~ shall notify its members that health benefit plans issued to its members through the association are not protected through the Kentucky Life and Health Insurance Guaranty Association.
- (5) Under the provisions of KRS 304.17A-840, the **commissioner**~~[executive director]~~ may revoke the certificate of filing of any association. A violation of any provision of this section shall be deemed a violation of KRS 304.17A-800 to 304.17A-844 for purposes of KRS 304.17A-840.

➔Section 1225. KRS 304.17A-330 is amended to read as follows:

- (1) All insurers authorized to write health insurance in this state and employer-organized associations that self-insure shall transmit at least annually by July 31 to the **commissioner**~~[executive director]~~ the following information, in a format prescribed by the **commissioner**~~[executive director]~~, on their insurance experience in this state for the preceding calendar year:
 - (a) Total premium by product type and market segment;
 - (b) Total enrollment by product type and market segment;
 - (c) Total cost of medical claims filed by product type and market segment;
 - (d) Total amount of medical claims paid by the insurer and insured by product type and market segment;
 - (e) Total policies canceled by type and the aggregate reasons therefor; and
 - (f) List of total health and medical services paid for, grouped by types of services and costs:
 1. Total cost per health and medical service per insured group:
 - a. Cost paid by insurer;
 - b. Cost paid by insured; and
 2. Number of insureds who received each service.

- (2) With the approval of the ***commissioner***~~[executive director]~~, the ***department***~~[office]~~ may exempt insurers, employer-organized associations that self-insure, and health purchasing outlets from the data reporting requirements of this section if the total number of insureds is less than five hundred (500).

➔Section 1226. KRS 304.17A-340 is amended to read as follows:

- (1) In no event shall more than ten percent (10%) of federal and state funds allocated to the Kentucky Children's Health Insurance Program be used for:
- (a) Children's health programs other than those targeted for low-income children as defined under Title XXI of the Federal Social Security Act;
 - (b) Initiatives for improving the health of children except those low income children as defined under Title XXI of the Federal Social Security Act or an approved Title XXI state plan (KCHIP);
 - (c) Outreach activities that inform families of children who are likely to be eligible for this program or other public or private health coverage programs allowed by the Federal Social Security Act; and
 - (d) Other reasonable costs incurred by the state to administer the program.
- (2) The ***department***~~[office]~~ shall use the insurer's or health maintenance organization's sales and marketing methods and may include the use of agents and payment of commissions, to inform families of the availability of the Kentucky Children's Health Insurance Program and assist them in obtaining coverage for children under the program.

➔Section 1227. KRS 304.17A-410 is amended to read as follows:

As used in KRS 304.17A-400 to 304.17A-480, unless the context requires otherwise:

- (1) "Actual guaranteed acceptance program plan losses" means a dollar amount calculated by subtracting an insurer's guaranteed acceptance program plan claims from that insurer's guaranteed acceptance program plan premiums;
- (2) "Benefits" means amounts paid by an insurer to covered lives or to third parties for the benefit of covered lives. "Benefits" do not include an insurer's administrative costs, any assessments under the plan, allocated loss adjustment expenses, reserves, or other overhead costs;
- (3) "Guaranteed acceptance program plan claims" or "alternative underwriting mechanism losses" means the dollar amount of benefits actually paid by an insurer on behalf of a guaranteed acceptance plan enrollee for claims that were incurred while the individual was a guaranteed acceptance program plan enrollee or another claim measurement formula as the ***department***~~[office]~~ may establish by administrative regulation to measure an insurer's costs, other than administrative costs, allocated loss adjustment expenses, reserves, or other overhead costs, with respect to a program plan;
- (4) "Guaranteed acceptance program plan premiums" means the dollar amount of premiums received by an insurer with respect to program plans;
- (5) "Guaranteed acceptance risk adjustment process" means the process of allocating guaranteed acceptance program plan losses provided for in KRS 304.17A-460;
- (6) "Group market" means the health insurance market under which individuals obtain health insurance coverage, directly or through any arrangement, on behalf of themselves and their dependents through a group health plan or through any arrangement other than through the individual market, or through a federal health benefit plan or program;
- (7) "Health insurance stop-loss policy" means any policy of insurance that directly or indirectly protects, in whole or in part, an employer who self-insures health benefits covering any residents in Kentucky from the risk of paying benefits in excess of any specified amount;
- (8) "Market share" means a percentage calculated by dividing an insurer's health insurance coverage premiums in both the individual and group markets by the total amount of the health insurance coverage premiums in both the individual and group markets for all insurers;
- (9) "Other coverage" means coverage under any of the following:
 - (a) A group plan;

- (b) Part A or Part B of Title XVIII of the Social Security Act, 42 U.S.C. secs. 1995c et seq.;
- (c) A state plan under Title XIX of the Social Security Act, or any successor program;
- (d) Continuation coverage under any COBRA continuation provisions as defined in 42 U.S.C. sec. 300gg-91(d)(4) or under a similar program under any state law; or
- (e) Any other health insurance coverage which is not individual health insurance coverage;
- (10) "Premiums" means amounts paid to insurers to purchase health insurance coverage and includes all amounts paid however denominated, including, but not limited to, amounts indicated as being charged for administrative costs, allocated loss adjustment expenses, reserve or other overhead costs;
- (11) "Program" means the Kentucky Guaranteed Acceptance Program;
- (12) "Refund" means an amount to be paid to an insurer by the program;
- (13) "Stop-loss carrier" means any person providing health insurance stop-loss coverage;
- (14) "Stop-loss premiums" means amounts paid to purchase health insurance stop-loss coverage; and
- (15) "Total actual guaranteed acceptance program plan losses" means a dollar amount equal to the sum of the actual program plan losses of all insurers participating in the program.

➔Section 1228. KRS 304.17A-430 is amended to read as follows:

- (1) A health benefit plan shall be considered a program plan and is eligible for inclusion in calculating assessments and refunds under the program risk adjustment process if it meets all of the following criteria:
 - (a) The health benefit plan was purchased by an individual to provide benefits for only one (1) or more of the following: the individual, the individual's spouse, or the individual's children. Health insurance coverage provided to an individual in the group market or otherwise in connection with a group health plan does not satisfy this criteria even if the individual, or the individual's spouse or parent, pays some or all of the cost of the coverage unless the coverage is offered in connection with a group health plan that has fewer than two (2) participants as current employees on the first day of the plan year;
 - (b) An individual entitled to benefits under the health benefit plan has been diagnosed with a high-cost condition on or before the effective date of the individual's coverage for coverage issued on a guarantee-issue basis after July 15, 1995;
 - (c) The health benefit plan imposes the maximum pre-existing condition exclusion permitted under KRS 304.17A-200;
 - (d) The individual purchasing the health benefit plan is not eligible for or covered by other coverage; and
 - (e) The individual is not a state employee eligible for or covered by the state employee health insurance plan under KRS Chapter 18A.
- (2) Notwithstanding the provisions of subsection (1) of this section, if the total claims paid for the high-cost condition under a program plan for any three (3) consecutive years are less than the premiums paid under the program plan for those three (3) consecutive years, then the following shall occur:
 - (a) The policy shall not be considered to be a program plan thereafter until the first renewal of the policy after there are three (3) consecutive years in which the total claims paid under the policy have exceeded the total premiums paid for the policy and at the time of the renewal the policy also qualifies under subsection (1) as a program plan; and
 - (b) Within the last six (6) months of the third year, the insurer shall provide each person entitled to benefits under the policy who has a high-cost condition with a written notice of insurability. The notice shall state that the recipient may be able to purchase a health benefit plan other than a program plan and shall also state that neither the notice nor the individual's actions to purchase a health benefit plan other than a program plan shall affect the individual's eligibility for plan coverage. The notice shall be valid for six (6) months.
- (3) (a) There is established within the guaranteed acceptance program the alternative underwriting mechanism that a participating insurer may elect to use. An insurer that elects this mechanism shall use the underwriting criteria that the insurer has used for the past twelve (12) months for purposes of the program plan requirement in paragraph (b) of subsection (1) of this section for high-risk individuals

rather than using the criteria established in KRS 304.17A-005(24) and 304.17A-280 for high-cost conditions;

- (b) An insurer that elects to use the alternative underwriting mechanism shall make written application to the **commissioner**~~[executive director]~~. Before the insurer may implement the mechanism, the insurer shall obtain approval of the **commissioner**~~[executive director]~~. Annually thereafter, the insurer shall obtain the **commissioner's**~~[executive director's]~~ approval of the underwriting criteria of the insurer before the insurer may continue to use the alternative underwriting mechanism.

➔Section 1229. KRS 304.17A-505 is amended to read as follows:

An insurer shall disclose in writing to a covered person and an insured or enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its health benefit plan and shall promptly provide the covered person and enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.

- (1) The information required to be disclosed under this section shall include a description of:
 - (a) Covered services and benefits to which the enrollee or other covered person is entitled;
 - (b) Restrictions or limitations on covered services and benefits;
 - (c) Financial responsibility of the covered person, including copayments and deductibles;
 - (d) Prior authorization and any other review requirements with respect to accessing covered services;
 - (e) Where and in what manner covered services may be obtained;
 - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;
 - (g) The covered person's right to the following:
 - 1. A utilization review and the procedure for initiating a utilization review, if an insurer elects to provide utilization review;
 - 2. An internal appeal of a utilization review made by or on behalf of the insurer with respect to the denial, reduction, or termination of a health care benefit or the denial of payment for a health care service, and the procedure to initiate an internal appeal; and
 - 3. An external review and the procedure to initiate the external review process;
 - (h) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider;
 - (i) Other information as the **commissioner**~~[executive director]~~ shall require by administrative regulation;
 - (j) A summary of the drug formulary, including, but not limited to, a listing of the most commonly used drugs, drugs requiring prior authorization, any restrictions, limitations, and procedures for authorization to obtain drugs not on the formulary and, upon request of an insured or enrollee, a complete drug formulary; and
 - (k) A statement informing the insured or enrollee that if the provider meets the insurer's enrollment criteria and is willing to meet the terms and conditions for participation, the provider has the right to become a provider for the insurer.
- (2) The insurer shall file the information required under this section with the **department**~~[office]~~.

➔Section 1230. KRS 304.17A-527 is amended to read as follows:

- (1) A managed care plan shall file with the **commissioner**~~[executive director]~~ sample copies of any agreements it enters into with providers for the provision of health care services. The **commissioner**~~[executive director]~~ shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements shall include the following:
 - (a) A hold harmless clause that states that the provider may not, under any circumstance, including:

1. Nonpayment of moneys due the providers by the managed care plan,
2. Insolvency of the managed care plan, or
3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;

- (b) A continuity of care clause that states that if an agreement between the provider and the managed care plan is terminated for any reason, other than a quality of care issue or fraud, the insurer shall continue to provide services and the plan shall continue to reimburse the provider in accordance with the agreement until the subscriber, dependent of the subscriber, or the enrollee is discharged from an inpatient facility, or the active course of treatment is completed, whichever time is greater, and in the case of a pregnant woman, services shall continue to be provided through the end of the post-partum period if the pregnant woman is in her fourth or later month of pregnancy at the time the agreement is terminated;
 - (c) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the managed care plan;
 - (d) A clause stating that the insurer issuing a managed care plan will, upon request of a participating provider, provide or make available to a participating provider, when contracting or renewing an existing contract with such provider, the payment or fee schedules or other information sufficient to enable the provider to determine the manner and amount of payments under the contract for the provider's services prior to the final execution or renewal of the contract and shall provide any change in such schedules at least ninety (90) days prior to the effective date of the amendment pursuant to KRS 304.17A-577; and
 - (e) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide their licensed health care services to the subscriber, dependent of the subscriber, or enrollee of a managed care plan where the subcontracted provider will bill the managed care plan or subscriber or enrollee directly for the subcontracted services, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the **commissioner**~~[executive director]~~ in accordance with this subsection.
- (2) An insurer that offers a health benefit plan that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the **commissioner**~~[executive director]~~. The insurer shall also file the following information regarding the risk-sharing arrangement:
- (a) The number of enrollees affected by the risk-sharing arrangement;
 - (b) The health care services to be provided to an enrollee under the risk-sharing arrangement;
 - (c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;
 - (d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with KRS 304.17A-500 to 304.17A-590 in exercising any delegated administrative functions; and
 - (e) The insurer's oversight and compliance plan regarding the standards and method of review.
- (3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The **commissioner**~~[executive director]~~ shall have access to a specific risk sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the **department**~~[office]~~ shall be considered to be a trade secret and shall not be subject to KRS 61.872 to 61.884.

➔Section 1231. KRS 304.17A-545 is amended to read as follows:

- (1) A managed care plan shall appoint a medical director who:
 - (a) Is a physician licensed to practice in this state;

- (b) Is in good standing with the State Board of Medical Licensure;
 - (c) Has not had his or her license revoked or suspended, under KRS 311.530 to 311.620;
 - (d) Shall sign any denial letter required under KRS 304.17A-540; and
 - (e) Shall be responsible for the treatment policies, protocols, quality assurance activities, and utilization management decisions of the plan.
- (2) The medical director shall ensure that:
- (a) Any utilization management decision to deny, reduce, or terminate a health care benefit or to deny payment for a health care service because that service is not medically necessary shall be made by a physician, except in the case of a health care service rendered by a chiropractor or optometrist, that decision shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky;
 - (b) A utilization management decision shall not retrospectively deny coverage for health care services provided to a covered person when prior approval has been obtained from the insurer for those services, unless the approval was based upon fraudulent, materially inaccurate, or misrepresented information submitted by the covered person or the participating provider;
 - (c) In the case of a managed care plan, a procedure is implemented whereby participating physicians have an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and whereby other participating providers have an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice;
 - (d) The utilization management program is available to respond to authorization requests for urgent services and is available, at a minimum, during normal working hours for inquiries and authorization requests for nonurgent health care services; and
 - (e) In the case of a managed care plan, a covered person is permitted to choose or change a primary care provider from among participating providers in the provider network and, when appropriate, choose a specialist from among participating network providers following an authorized referral, if required by the insurer, and subject to the ability of the specialist to accept new patients.
- (3) A managed care plan shall develop comprehensive quality assurance or improvement standards adequate to identify, evaluate, and remedy problems relating to access, continuity, and quality of health care services. These standards shall be made available to the public during regular business hours and include:
- (a) An ongoing written, internal quality assurance or improvement program;
 - (b) Specific written guidelines for quality of care studies and monitoring, including attention to vulnerable populations;
 - (c) Performance and clinical outcomes-based criteria;
 - (d) A procedure for remedial action to correct quality problems, including written procedures for taking appropriate corrective action;
 - (e) A plan for data gathering and assessment; and
 - (f) A peer review process.
- (4) Each managed care plan shall have a process for the selection of health care providers who will be on the plan's list of participating providers, with written policies and procedures for review and approval used by the plan.
- (a) The plan shall establish minimum professional requirements for participating health care providers. An insurer may not discriminate against a provider solely on the basis of the provider's license by the state;
 - (b) The plan shall demonstrate that it has consulted with appropriately qualified health care providers to establish the minimum professional requirements;
 - (c) The plan's selection process shall include verification of each health care provider's license, history of license suspension or revocation, and liability claims history;

- (d) A managed care plan shall establish a formal written, ongoing process for the reevaluation of each participating health care provider within a specified number of years after the provider's initial acceptance into the plan. The reevaluation shall include an update of the previous review criteria and an assessment of the provider's performance pattern based on criteria such as enrollee clinical outcomes, number of complaints, and malpractice actions.
- (5) The **commissioner**~~[executive director]~~ shall promulgate administrative regulations to establish a uniform application form and guidelines for the evaluation and reevaluation of health care providers, including psychologists, who will be on the plan's list of participating providers in accordance with subsection (4) of this section. In developing a uniform application and guidelines, the **department**~~[office]~~ shall consider industry standards and guidelines adopted by the Council for Affordable Quality Healthcare. The uniform application form and guidelines shall be used by all insurers.
- (6) A managed care plan shall not use a health care provider beyond, or outside of, the provider's legally authorized scope of practice.

➔Section 1232. KRS 304.17A-550 is amended to read as follows:

- (1) An insurer that offers a managed care plan shall offer a health benefit plan with out-of-network benefits to every contract holder. The plan with out-of-network benefits shall allow a covered person to receive covered services from out-of-network health care providers without having to obtain a referral. The plan with out-of-network benefits may require that an enrollee pre-certify selected services and pay a higher deductible, copayment, coinsurance, excess charges and higher premium for the out-of-network benefit plan pursuant to limits established by administrative regulations promulgated by the **department**~~[office]~~.
- (2) If the contract holder elects the out-of-network offering required under subsection (1) of this section, the insurer shall provide each enrollee with the opportunity at the time of enrollment and during the annual open enrollment period, to enroll in the out-of-network option. If the contract holder elects the out-of-network offering required under subsection (1) of this section, the insurer and the contract holder shall provide written notice of the benefit plan with out-of-network benefits to each enrollee in a plan and shall include in that notice a detailed explanation of the financial costs to be incurred by an enrollee who selects the plan.
- (3) The requirement of this section shall not apply to an insurer contract which offers a managed care plan that provides health care services solely to Medicaid or Medicare recipients.
- (4) Managed care plans currently licensed and doing business in Kentucky that do not yet offer benefit plans with out-of-network benefits must develop and offer those plans within three hundred sixty-five (365) days of April 10, 1998.

➔Section 1233. KRS 304.17A-560 is amended to read as follows:

- (1) No insurance contract with a provider shall contain a most-favored-nation provision except where the **commissioner**~~[executive director]~~ determines that the market share of the insurer is nominal.
- (2) Nothing in this section shall be construed to prohibit a health insurer and a provider from negotiating payment rates and performance-based contract terms that would result in the health insurer receiving a rate that is as favorable, or more favorable, than the rates negotiated between a provider and other health insurance issuers.

➔Section 1234. KRS 304.17A-565 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall enforce the provisions of KRS 304.17A-500 to 304.17A-570 and shall adopt administrative regulations necessary to carry out the provisions of KRS 304.17A-500 to 304.17A-570.

➔Section 1235. KRS 304.17A-600 is amended to read as follows:

As used in KRS 304.17A-600 to 304.17A-633:

- (1) (a) "Adverse determination" means a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are:
 - 1. Not medically necessary, as determined by the insurer, or its designee or experimental or investigational, as determined by the insurer, or its designee; and
 - 2. Benefit coverage is therefore denied, reduced, or terminated.

- (b) "Adverse determination" does not mean a determination by an insurer or its designee that the health care services furnished or proposed to be furnished to a covered person are specifically limited or excluded in the covered person's health benefit plan;
- (2) "Authorized person" means a parent, guardian, or other person authorized to act on behalf of a covered person with respect to health care decisions;
- (3) "Concurrent review" means utilization review conducted during a covered person's course of treatment or hospital stay;
- (4) "Covered person" means a person covered under a health benefit plan;
- (5) "External review" means a review that is conducted by an independent review entity which meets specified criteria as established in KRS 304.17A-623, 304.17A-625, and 304.17A-627;
- (6) "Health benefit plan" means the document evidencing and setting forth the terms and conditions of coverage of any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network policy or certificate; a self-insured policy or certificate or a policy or certificate provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code; or limited health service benefit plans; and for purposes of KRS 304.17A-600 to 304.17A-633 includes short-term coverage policies;
- (7) "Independent review entity" means an individual or organization certified by the ~~department~~~~office~~ to perform external reviews under KRS 304.17A-623, 304.17A-625, and 304.17A-627;
- (8) "Insurer" means any of the following entities authorized to issue health benefit plans as defined in subsection (6) of this section: an insurance company, health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association; nonprofit hospital, medical-surgical, or health service corporation; or any other entity authorized to transact health insurance business in Kentucky;
- (9) "Internal appeals process" means a formal process, as set forth in KRS 304.17A-617, established and maintained by the insurer, its designee, or agent whereby the covered person, an authorized person, or a provider may contest an adverse determination rendered by the insurer, its designee, or private review agent;
- (10) "Nationally recognized accreditation organization" means a private nonprofit entity that sets national utilization review and internal appeal standards and conducts review of insurers, agents, or independent review entities for the purpose of accreditation or certification. Nationally recognized accreditation organizations shall include the National Committee for Quality Assurance (NCQA), the American Accreditation Health Care Commission (URAC), the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), or any other organization identified by the ~~department~~~~office~~;
- (11) "Private review agent" or "agent" means a person or entity performing utilization review that is either affiliated with, under contract with, or acting on behalf of any insurer or other person providing or administering health benefits to citizens of this Commonwealth. "Private review agent" or "agent" does not include an independent review entity which performs external review of adverse determinations;
- (12) "Prospective review" means utilization review that is conducted prior to a hospital admission or a course of treatment;
- (13) "Provider" shall have the same meaning as set forth in KRS 304.17A-005;

- (14) "Qualified personnel" means licensed physician, registered nurse, licensed practical nurse, medical records technician, or other licensed medical personnel who through training and experience shall render consistent decisions based on the review criteria;
- (15) "Registration" means an authorization issued by the ~~department~~~~office~~ to an insurer or a private review agent to conduct utilization review;
- (16) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person. "Retrospective review" does not include the review of a claim that is limited to an evaluation of reimbursement levels, or adjudication of payment;
- (17) (a) "Urgent care" means health care or treatment with respect to which the application of the time periods for making nonurgent determination:
 - 1. Could seriously jeopardize the life or health of the covered person or the ability of the covered person to gain maximum function; or
 - 2. In the opinion of a physician with knowledge of the covered person's medical condition, would subject the covered person to severe pain that cannot be adequately managed without the care or treatment that is the subject of the utilization review; and(b) "Urgent care" shall include all requests for hospitalization and outpatient surgery;
- (18) "Utilization review" means a review of the medical necessity and appropriateness of hospital resources and medical services given or proposed to be given to a covered person for purposes of determining the availability of payment. Areas of review include concurrent, prospective, and retrospective review; and
- (19) "Utilization review plan" means a description of the procedures governing utilization review activities performed by an insurer or a private review agent.

➔Section 1236. KRS 304.17A-607 is amended to read as follows:

- (1) An insurer or private review agent shall not provide or perform utilization reviews without being registered with the ~~department~~~~office~~. A registered insurer or private review agent shall:
 - (a) Have available the services of sufficient numbers of registered nurses, medical records technicians, or similarly qualified persons supported by licensed physicians with access to consultation with other appropriate physicians to carry out its utilization review activities;
 - (b) Ensure that only licensed physicians shall:
 - 1. Make a utilization review decision to deny, reduce, limit, or terminate a health care benefit or to deny, or reduce payment for a health care service because that service is not medically necessary, experimental, or investigational except in the case of a health care service rendered by a chiropractor or optometrist where the denial shall be made respectively by a chiropractor or optometrist duly licensed in Kentucky; and
 - 2. Supervise qualified personnel conducting case reviews;
 - (c) Have available the services of sufficient numbers of practicing physicians in appropriate specialty areas to assure the adequate review of medical and surgical specialty and subspecialty cases;
 - (d) Not disclose or publish individual medical records or any other confidential medical information in the performance of utilization review activities except as provided in the Health Insurance Portability and Accountability Act, Subtitle F, secs. 261 to 264 and 45 C.F.R. secs. 160 to 164 and other applicable laws and administrative regulations;
 - (e) Provide a toll free telephone line for covered persons, authorized persons, and providers to contact the insurer or private review agent and be accessible to covered persons, authorized persons, and providers for forty (40) hours a week during normal business hours in this state;
 - (f) Where an insurer, its agent, or private review agent provides or performs utilization review, be available to conduct utilization review during normal business hours and extended hours in this state on Monday and Friday through 6:00 p.m., including federal holidays;

- (g) Provide decisions to covered persons, authorized persons, and all providers on appeals of adverse determinations and coverage denials of the insurer or private review agent, in accordance with this section and administrative regulations promulgated in accordance with KRS 304.17A-609;
 - (h) Except for retrospective review of an emergency admission where the covered person remains hospitalized at the time the review request is made, which shall be considered a concurrent review, provide a utilization review decision relating to urgent and nonurgent care in accordance with 29 C.F.R. Part 2560, including the timeframes and written notice of the decision. A written notice in electronic format, including e-mail or facsimile, may suffice for this purpose where the covered person, authorized person, or provider has agreed in advance in writing to receive such notices electronically and shall include the required elements of subsection (j) of this section;
 - (i) Provide a utilization review decision within twenty-four (24) hours of receipt of a request for review of a covered person's continued hospital stay and prior to the time when a previous authorization for hospital care will expire;
 - (j) Provide written notice of review decisions to the covered person, authorized person, and providers. An insurer or agent that denies coverage or reduces payment for a treatment, procedure, drug that requires prior approval, or device shall include in the written notice:
 1. A statement of the specific medical and scientific reasons for denial or reduction of payment or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;
 2. The state of licensure, medical license number, and the title of the reviewer making the decision;
 3. Except for retrospective review, a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and
 4. Instructions for initiating or complying with the insurer's internal appeal procedure, as set forth in KRS 304.17A-617, stating, at a minimum, whether the appeal shall be in writing, and any specific filing procedures, including any applicable time limitations or schedules, and the position and phone number of a contact person who can provide additional information;
 - (k) Afford participating physicians an opportunity to review and comment on all medical and surgical and emergency room protocols, respectively, of the insurer and afford other participating providers an opportunity to review and comment on all of the insurer's protocols that are within the provider's legally authorized scope of practice; and
 - (l) Comply with its own policies and procedures on file with the ~~department~~~~office~~ or, if accredited or certified by a nationally recognized accrediting entity, comply with the utilization review standards of that accrediting entity where they are comparable and do not conflict with state law.
- (2) The insurer's failure to make a determination and provide written notice within the time frames set forth in this section shall be deemed to be an adverse determination by the insurer for the purpose of initiating an internal appeal as set forth in KRS 304.17A-617. This provision shall not apply where the failure to make the determination or provide the notice results from circumstances which are documented to be beyond the insurer's control.
 - (3) An insurer or private review agent shall submit a copy of any changes to its utilization review policies or procedures to the ~~department~~~~office~~. No change to policies and procedures shall be effective or used until after it has been filed with and approved by the ~~commissioner~~~~executive director~~.
 - (4) A private review agent shall provide to the ~~department~~~~office~~ the names of the entities for which the private review agent is performing utilization review in this state. Notice shall be provided within thirty (30) days of any change.

➔Section 1237. KRS 304.17A-609 is amended to read as follows:

The ~~department~~~~office~~ shall promulgate emergency administrative regulations regarding utilization review and internal appeal, including the specification of information required of insurers and private review agents which shall, at a minimum, include:

- (1) A utilization review plan that contains all information utilized for conducting preadmission, admission, readmission review, preauthorization, continued stay authorization, and retrospective review and which, for each type of review, includes:
 - (a) Utilization review policies and procedures to evaluate proposed or delivered medical services;
 - (b) Time frames for review;
 - (c) A written summary describing the review process and required forms;
 - (d) Documentation that actively practicing providers with appropriate qualifications are involved in the development or adoption of utilization review criteria relating to specialty and subspecialty areas;
 - (e) Descriptions and names of review criteria upon which utilization review decisions are based; and
 - (f) Additional standards, if any, for the consideration of special circumstances;
- (2) The type and qualifications of the personnel either employed or under contract to perform utilization review;
- (3) Assurance that a toll-free line will be provided that covered persons, authorized persons, and providers may use to contact the insurer or private review agent;
- (4) The policies and procedures to ensure that a representative of the insurer or private review agent shall be reasonably accessible to covered persons, authorized persons, and providers at least forty (40) hours per week during normal business hours;
- (5) The policies and procedures to ensure that all applicable state and federal laws to protect the confidentiality of individual medical records are followed;
- (6) A copy of the materials designed to inform covered persons, authorized persons, and providers of the toll-free number and the requirements of the utilization review plan;
- (7) A list of the entities for which the private review agent is performing utilization review in this state; and
- (8) Evidence of compliance or the ability to comply with the requirements and procedures established regarding utilization review and the administrative regulations promulgated thereunder.
- (9) In lieu of disclosing information specified in subsection (1) of this section, an insurer or private review agent may submit to the ~~department~~~~office~~ evidence of accreditation or certification, if any, with a nationally recognized accreditation organization that oversees the information described in subsections (1) to (8) of this section, provided that the ~~department~~~~office~~ may still require the information in subsection (8) of this section or other information to demonstrate compliance with the requirements of this section and KRS 304.17A-600, 304.17A-607, 304.17A-613, 304.17A-617, 304.17A-623, and 304.17A-625 not covered by the standards of the nationally recognized accreditation organization, as well as basic information necessary for the ~~department~~~~office~~ to contact the insurer or private review agent. Nothing in this subsection shall be construed to prohibit or in any way limit the ~~department's~~~~office's~~ authority to require the submission of information specified in subsections (1) to (8) of this section or any other information the ~~department~~~~office~~ deems necessary for purposes of investigating a complaint that the insurer or private review agent is not in compliance with KRS 304.17A-600 to 304.17A-633.

➔Section 1238. KRS 304.17A-613 is amended to read as follows:

- (1) The ~~department~~~~office~~ shall, through the promulgation of emergency administrative regulations, develop a process:
 - (a) For the review of applications for registration of insurers or private review agents seeking to conduct utilization reviews;
 - (b) For the review of applications for insurers or private review agents seeking registration renewal to continue as a utilization review entity;
 - (c) Ensuring that no registration shall be approved unless the ~~commissioner~~~~executive director~~ has documentation or findings that all applicants seeking registration or renewal to conduct utilization review are in compliance with the requirements and procedures established regarding utilization review, and as to renewals, have complied with KRS 304.17A-600 to 304.17A-633 and administrative regulations promulgated to enforce and to administer KRS 304.17A-600 to 304.17A-633; and

- (d) Establishing fees for applications and renewals in an amount sufficient to pay the administrative costs of the program and any other costs associated with carrying out the provisions of KRS 304.17A-600, 304.17A-603, 304.17A-605, 304.17A-607, 304.17A-609, 304.17A-611, 304.17A-613, and 304.17A-615.
- (2) The registration issued in accordance with this section expires on the second anniversary of the effective date unless it is renewed.
- (3) The registration issued under this section is not transferable.
- (4) The **commissioner**~~{executive director}~~ may revoke or suspend the utilization review registration of any insurer or private review agent who does not comply with the requirements and procedures established regarding utilization review or any administrative regulations promulgated thereunder.
- (5) The **department**~~{office}~~ shall establish reporting requirements to:
 - (a) Evaluate the effectiveness of insurers and private review agents; and
 - (b) Determine if the utilization review plans are in compliance with the requirements and procedures established regarding utilization review and applicable administrative regulations.
- (6) Upon request of any provider, authorized person, or covered person whose care is subject to review, the **department**~~{office}~~ shall provide copies of policies or procedures of any insurer or private review agent that has been issued a registration by the **department**~~{office}~~ to conduct review in this state.
- (7) Notwithstanding any provision to the contrary, an insurer or private review agent registered and in good standing under the provisions of KRS 211.461 to 211.466, prior to July 14, 2000, shall be deemed in compliance with requirements and procedures established in KRS 304.17A-600 to 304.17A-633 regarding utilization review and registered accordingly.
- (8) Upon receipt of written complaints from covered persons, authorized persons, or providers stating that an insurer or a private review agent has failed to perform a review in accordance with the utilization review plan or the requirements and procedures established regarding utilization review, or administrative regulations promulgated thereunder, the **commissioner**~~{executive director}~~ shall:
 - (a) Send a copy of the complaint to the insurer or the private review agent within ten (10) days of receipt of the complaint, and require that any written reply be sent to the **commissioner**~~{executive director}~~ within ten (10) days; and
 - (b) Review the complaint and any written reply received from the insurer or private review agent within the time frames set forth in paragraph (a) of this subsection and make a recommendation to the insurer or private review agent and the covered person, authorized person, or provider.
- (9) The **commissioner**~~{executive director}~~ shall consider complaints before issuing or renewing any registration or renewal of a registration to an insurer or a private review agent.
- (10) Notwithstanding any provision in this section to the contrary, the **department**~~{office}~~ shall accept accreditation or certification by a nationally recognized accreditation organization as sufficient documentation or finding for purposes of subsections (1) and (5) of this section that the insurer or private review agent meets the application requirements for registration or renewal. Insurers or private review agents accredited or certified by a nationally recognized accreditation organization shall be deemed compliant with the utilization review and internal appeals requirements of this section and KRS 304.17A-600, 304.17A-607, 304.17A-609, 304.17A-617, 304.17A-623, and 304.17A-625 and administrative regulations to the extent the standards of such nationally recognized accreditation organization sufficiently meet these requirements. The **department**~~{office}~~ shall have a simplified process in administrative regulations for insurers and private review agents to register using accreditation or certification and shall limit any additional documentation only for demonstrating compliance with requirements in this section and KRS 304.17A-600, 304.17A-607, 304.17A-609, 304.17A-617, 304.17A-623, and 304.17A-625 not met by the standards of a nationally recognized accreditation organization.

➔Section 1239. KRS 304.17A-617 is amended to read as follows:

- (1) Every insurer shall have an internal appeal process to be utilized by the insurer or its designee, consistent with this section and KRS 304.17A-619 and which shall be disclosed to covered persons in accordance with KRS

304.17A-505(1)(g). An insurer shall disclose the availability of the internal process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial which meets the requirements set forth in KRS 304.17A-607(1)(j). For purposes of this section, "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan. Where a coverage denial is involved, in addition to stating the reason for the coverage denial, the required notice shall contain instructions for filing a request for internal appeal.

- (2) The internal appeals process may be initiated by the covered person, an authorized person, or a provider acting on behalf of the covered person. The internal appeals process shall include adequate and reasonable procedures for review and resolution of appeals concerning adverse determinations made under utilization review and of coverage denials, including procedures for reviewing appeals from covered persons whose medical conditions require expedited review. At a minimum, these procedures shall include the following:
 - (a) Insurers or their designees shall provide decisions to covered persons, authorized persons, and providers on internal appeals of adverse determinations or coverage denials within thirty (30) days of receipt of the request for internal appeal;
 - (b) Insurers or their designees shall render a decision not later than three (3) business days after receipt of the request for an expedited appeal of either an adverse determination or a coverage denial. An expedited appeal is deemed necessary when a covered person is hospitalized or, in the opinion of the treating provider, review under a standard time frame could, in the absence of immediate medical attention, result in any of the following:
 1. Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or the unborn child in serious jeopardy;
 2. Serious impairment to bodily functions; or
 3. Serious dysfunction of a bodily organ or part;
 - (c) Internal appeal of an adverse determination shall only be conducted by a licensed physician who did not participate in the initial review and denial. However, in the case of a review involving a medical or surgical specialty or subspecialty, the insurer or agent shall, upon request by a covered person, authorized person, or provider, utilize a board eligible or certified physician in the appropriate specialty or subspecialty area to conduct the internal appeal;
 - (d) Those portions of the medical record that are relevant to the internal appeal, if authorized by the covered person and in accordance with state or federal law, shall be considered and providers given the opportunity to present additional information;
 - (e) In addition to any previous notice required under KRS 304.17A-607(1)(j), and to facilitate expeditious handling of a request for external review of an adverse determination or a coverage denial, an insurer or agent that denies, limits, reduces, or terminates coverage for a treatment, procedure, drug, or device for a covered person shall provide the covered person, authorized person, or provider acting on behalf of the covered person with an internal appeal determination letter that shall include:
 1. A statement of the specific medical and scientific reasons for denying coverage or identifying that provision of the schedule of benefits or exclusions that demonstrates that coverage is not available;
 2. The state of licensure, medical license number, and the title of the person making the decision;
 3. Except for retrospective review, a description of alternative benefits, services, or supplies covered by the health benefit plan, if any; and
 4. Instructions for initiating an external review of an adverse determination, or filing a request for review with the ~~department office~~, if a coverage denial is upheld by the insurer on internal appeal.
- (3) The ~~department office~~ shall establish and maintain a system for receiving and reviewing requests for review of coverage denials from covered persons, authorized persons, and providers. For purposes of this subsection, "coverage denials" shall not include an adverse determination as defined in KRS 304.17A-600 or subsequent denials arising from an adverse determination.

- (a) On receipt of a written request for review of a coverage denial from a covered person, authorized person, or provider, the *department[office]* shall notify the insurer which issued the denial of the request for review and shall call for the insurer to respond to the *department[office]* regarding the request for review within ten (10) business days of receipt of notice to the insurer.
- (b) Within ten (10) business days of receiving the notice of the request for review from the *department[office]*, the insurer shall provide to the *department[office]* the following information:
 - 1. Confirmation as to whether the person who received or sought the health service for which coverage was denied was a covered person under a health benefit plan issued by the insurer on the date the service was sought or denied;
 - 2. Confirmation as to whether the covered person, authorized person, or provider has exhausted his or her rights under the insurer's appeal process under this section; and
 - 3. The reason for the coverage denial, including the specific limitation or exclusion of the health benefit plan demonstrating that coverage is not available.
- (c) In addition to the information described in paragraph (b) of this subsection, the insurer and the covered person, authorized person, or provider shall provide to the *department[office]* any information requested by the *department[office]* that is germane to its review.
- (d) On the receipt of the information described in paragraphs (b) and (c) of this subsection, unless the *department[office]* is not able to do so because making a determination requires resolution of a medical issue, it shall determine whether the service, treatment, drug, or device is specifically limited or excluded under the terms of the covered person's health benefit plan. If the *department[office]* determines that the treatment, service, drug, or device is not specifically limited or excluded, it shall so notify the insurer, and the insurer shall either cover the service, or afford the covered person an opportunity for external review under KRS 304.17A-621, 304.17A-623, and 304.17A-625, where the conditions precedent to the review are present. If the *department[office]* notifies the insurer that the treatment, service, drug, or device is specifically limited or excluded in the health benefit plan, the insurer is not required to cover the service or afford the covered person an external review.
- (e) An insurer shall be required to cover the treatment, service, drug, or device that was denied or provide notification of the right to external review in accordance with paragraph (d) of this subsection whether the covered person has disenrolled or remains enrolled with the insurer.
- (f) If the covered person has disenrolled with the insurer, the insurer shall only be required to provide the treatment, service, drug, or device that was denied for a period not to exceed thirty (30) days, or provide the covered person the opportunity for external review.

➔Section 1240. KRS 304.17A-621 is amended to read as follows:

The Independent External Review Program is hereby established in the *department[office]*. The program shall provide covered persons with a formal, independent review to address disagreements between the covered person and the covered person's insurer regarding an adverse determination made by the insurer, its designee, or a private review agent. This section and KRS 304.17A-623 and 304.17A-625 establish requirements and procedures governing external review and independent review entities.

➔Section 1241. KRS 304.17A-623 is amended to read as follows:

- (1) Every insurer shall have an external review process to be utilized by the insurer or its designee, consistent with this section and which shall be disclosed to covered persons in accordance with KRS 304.17A-505(1)(g). An insurer, its designee, or agent shall disclose the availability of the external review process to the covered person in the insured's timely notice of an adverse determination or notice of a coverage denial as set forth in KRS 304.17A-607(1)(j) and in the denial letter required in KRS 304.17A-617(1) and (2)(e). For purposes of this section "coverage denial" means an insurer's determination that a service, treatment, drug, or device is specifically limited or excluded under the covered person's health benefit plan.
- (2) A covered person, an authorized person, or a provider acting on behalf of and with the consent of the covered person, may request an external review of an adverse determination rendered by an insurer, its designee, or agent.

- (3) The insurer shall provide for an external review of an adverse determination if the following criteria are met:
- (a) The insurer, its designee, or agent has rendered an adverse determination;
 - (b) The covered person has completed the insurer's internal appeal process, or the insurer has failed to make a timely determination or notification as set forth in KRS 304.17A-619(2). The insurer and the covered person may however, jointly agree to waive the internal appeal requirement;
 - (c) The covered person was enrolled in the health benefit plan on the date of service or, if a prospective denial, the covered person was enrolled and eligible to receive covered benefits under the health benefit plan on the date the proposed service was requested; and
 - (d) The entire course of treatment or service will cost the covered person at least one hundred dollars (\$100) if the covered person had no insurance.
- (4) The covered person, an authorized person, or a provider with consent of the covered person shall submit a request for external review to the insurer within sixty (60) days, except as set forth in KRS 304.17A-619(1), of receiving notice that an adverse determination has been timely rendered under the insurer's internal appeal process. As part of the request, the covered person shall provide to the insurer or its designee written consent authorizing the independent review entity to obtain all necessary medical records from both the insurer and any provider utilized for review purposes regarding the decision to deny, limit, reduce or terminate coverage.
- (5) The covered person shall be assessed a one (1) time filing fee of twenty-five dollars (\$25) to be paid to the independent review entity and which may be waived if the independent review entity determines that the fee creates a financial hardship on the covered person. The fee shall be refunded if the independent review entity finds in favor of the covered person.
- (6) A covered person shall not be afforded an external review of an adverse determination if:
- (a) The subject of the covered person's adverse determination has previously gone through the external review process and the independent review entity found in favor of the insurer; and
 - (b) No relevant new clinical information has been submitted to the insurer since the independent review entity found in favor of the insurer.
- (7) The ~~department~~~~office~~ shall establish a system for each insurer to be assigned an independent review entity for external reviews. The system established by the ~~department~~~~office~~ shall be prospective and shall require insurers to utilize independent review entities on a rotating basis so that an insurer does not have the same independent review entity for two (2) consecutive external reviews. The ~~department~~~~office~~ shall contract with no less than two (2) independent review entities.
- (8) (a) If a dispute arises between an insurer and a covered person regarding the covered person's right to an external review, the covered person may file a complaint with the ~~department~~~~office~~. Within five (5) days of receipt of the complaint, the ~~department~~~~office~~ shall render a decision and may direct the insurer to submit the dispute to an independent review entity for an external review if it finds:
- 1. The dispute involves denial of coverage based on medical necessity or the service being experimental or investigational; and
 - 2. All of the requirements of subsection (3) of this section have been met.
- (b) The complaint process established in this section shall be separate and distinct from, and shall in no way limit other grievance or complaint processes available to consumers under other provisions of the KRS or duly promulgated administrative regulations. This complaint process shall not limit, alter, or supplant the mechanisms for appealing coverage denials established in KRS 304.17A-617.
- (9) The external review process shall be confidential and shall not be subject to KRS 61.805 to 61.850 and KRS 61.870 to 61.884.
- (10) External reviews shall be conducted in an expedited manner by the independent review entity if the covered person is hospitalized, or if, in the opinion of the treating provider, review under the standard time frame could, in the absence of immediate medical attention, result in any of the following:
- (a) Placing the health of the covered person or, with respect to a pregnant woman, the health of the covered person or her unborn child in serious jeopardy;
 - (b) Serious impairment to bodily functions; or

(c) Serious dysfunction of a bodily organ or part.

- (11) Requests for expedited external review, shall be forwarded by the insurer to the independent review entity within twenty-four (24) hours of receipt by the insurer.
- (12) For expedited external review, a determination shall be made by the independent review entity within twenty-four (24) hours from the receipt of all information required from the insurer. An extension of up to twenty-four (24) hours may be allowed if the covered person and the insurer or its designee agree. The insurer or its designee shall provide notice to the independent review entity and to the covered person, by same-day communication, that the adverse determination has been assigned to an independent review entity for expedited review.
- (13) External reviews which are not expedited shall be conducted by the independent review entity and a determination made within twenty-one (21) calendar days from the receipt of all information required from the insurer. An extension of up to fourteen (14) calendar days may be allowed if the covered person and the insurer are in agreement.

➔Section 1242. KRS 304.17A-625 is amended to read as follows:

- (1) In making its decision, an independent review entity conducting the external review shall take into account all of the following:
 - (a) Information submitted by the insurer, the covered person, the authorized person, and the covered person's provider, including the following:
 - 1. The covered person's medical records;
 - 2. The standards, criteria, and clinical rationale used by the insurer to make its decision; and
 - 3. The insurer's health benefit plan;
 - (b) Findings, studies, research, and other relevant documents of government agencies and nationally recognized organizations, including the National Institutes of Health, or any board recognized by the National Institutes of Health, the National Cancer Institute, the National Academy of Sciences, and the United States Food and Drug Administration, the Centers for Medicare & Medicaid Services of the United States Department of Health and Human Services, and the Agency for Health Care Research and Quality; and
 - (c) Relevant findings in peer-reviewed medical or scientific literature, published opinions of nationally recognized medical specialists, and clinical guidelines adopted by relevant national medical societies.
- (2) The independent review entity shall base its decision on the information submitted under subsection (1) of this section. In making its decision, the independent review entity shall consider safety, appropriateness, and cost effectiveness.
- (3) The insurer shall provide any coverage determined by the independent review entity to be medically necessary. The independent review entity shall not be permitted to allow coverage for services specifically limited or excluded by the insurer in its health benefit plan. The decision shall apply only to the individual covered person's external review.
- (4) Nothing in this section shall be construed as requiring an insurer to provide coverage for out of network services, procedures, or tests, except as set forth in KRS 304.17A-515(1)(c) and 304.17A-550.
- (5) The insurer shall be responsible for the cost of the external review.
- (6) The independent review entity shall provide to the covered person, treating provider, insurer, and the ~~department~~~~office~~ a decision which shall include:
 - (a) The findings for either the insurer or covered person regarding each issue under review;
 - (b) The proposed service, treatment, drug, device, or supply for which the review was performed;
 - (c) The relevant provisions in the insurer's health benefit plan and how applied; and
 - (d) The relevant provisions of any nationally recognized and peer-reviewed medical or scientific documents used in the external review.

- (7) The decision of the independent review entity shall not be made solely for the convenience of the insurer, the covered person, or the provider.
- (8) Consistent with the rules of evidence, a written decision prepared by an independent review entity shall be admissible in any civil action related to the adverse determination. The independent review entity's decision shall be presumed to be a scientifically valid and accurate description of the state of medical knowledge at the time it was written.
- (9) The decision of the independent review entity shall be binding on the insurer with respect to that covered person. Failure of the insurer to provide coverage as required by the independent review entity shall:
 - (a) Be a violation of the insurance code of a nature sufficient to warrant the ~~commissioner~~~~executive director~~ revoking or suspending the insurer's license or certificate of authority; and
 - (b) Constitute an unfair claims settlement practice as set forth in KRS 304.12-230.
- (10) Failure to provide coverage as required by the independent review entity shall also subject the insurer to the provisions of KRS 304.99-010 and 304.99-020 and require the insurer to pay the claim that was the subject of the external review, without need for the covered person or authorized person to further establish a right as to the payment amount. Reasonable attorney fees associated with the actions of the insured necessary to collect amounts owed the covered person shall be assessed against and borne by the insurer.
- (11) The insurer shall implement the decision of the independent review entity whether the covered person has disenrolled or remains enrolled with the insurer.
- (12) If the covered person has been disenrolled with the insurer, the insurer shall only be required to provide the treatment, service, drug, or device that was previously denied by the insurer, its agent, or designee and later approved by the independent review entity for a period not to exceed thirty (30) days.
- (13) Within thirty (30) days of the decision in favor of the covered person by the independent review entity, the insurer shall provide written notification to the ~~department~~~~office~~ that the decision has been implemented in accordance with this section.
- (14) An independent review entity and any medical specialist the entity utilizes in conducting an external review shall not be liable in damages in a civil action for injury, death, or loss to person or property and is not subject to professional disciplinary action for making, in good faith, any finding, conclusion, or determination required to complete the external review. This subsection does not grant immunity from civil liability or professional disciplinary action to an independent review entity or medical specialist for an action that is outside the scope of authority granted in KRS 304.17A-621, 304.17A-623, and 304.17A-625.
- (15) Nothing in KRS 304.17A-600 to 304.17A-633 shall be construed to create a cause of action against any of the following:
 - (a) An employer that provides health care benefits to employees through a health benefit plan;
 - (b) A medical expert, private review agent, or independent review entity that participates in the utilization review, internal appeal, or external review addressed in KRS 304.17A-600 to 304.17A-633; or
 - (c) An insurer or provider acting in good faith and in accordance with any finding, conclusion, or determination of an Independent Review Entity acting within the scope of authority set forth in KRS 304.17A-621, 304.17A-623, and 304.17A-625.
- (16) The covered person, insurer, or provider in the external review may submit written complaints to the ~~department~~~~office~~ regarding any independent review entity's actions believed to be an inappropriate application of the requirements set forth in KRS 304.17A-621, 304.17A-623, and 304.17A-625. The ~~department~~~~office~~ shall promptly review the complaint, and if the ~~department~~~~office~~ determines that the actions of the independent review entity were inappropriate, the ~~department~~~~office~~ shall take corrective measures, including decertification or suspension of the independent review entity from further participation in external reviews. The ~~department's~~~~office's~~ actions shall be subject to the powers and administrative procedures set forth in subtitle 17A of KRS Chapter 304.

➔Section 1243. KRS 304.17A-627 is amended to read as follows:

- (1) To be certified as an independent review entity under this chapter, an organization shall submit to the ~~department~~~~office~~ an application on a form required by the ~~department~~~~office~~. The application shall include the following:

- (a) The name of each stockholder or owner of more than five percent (5%) of any stock or options for an applicant;
 - (b) The name of any holder of bonds or notes of the applicant that exceeds one hundred thousand dollars (\$100,000);
 - (c) The name and type of business of each corporation or other organization that the applicant controls or with which it is affiliated and the nature and extent of the affiliation or control;
 - (d) The name and a biographical sketch of each director, officer, and executive of the applicant and any entity listed under paragraph (c) of this subsection and a description of any relationship the named individual has with an insurer as defined in KRS 304.17A-600 or a provider of health care services;
 - (e) The percentage of the applicant's revenues that are anticipated to be derived from independent reviews;
 - (f) A description of the minimum qualifications employed by the independent review entity to select health care professionals to perform external review, their areas of expertise, and the medical credentials of the health care professionals currently available to perform external reviews; and
 - (g) The procedures to be used by the independent review entity in making review determinations.
- (2) If at any time there is a material change in the information included in the application, provided for in subsection (1) of this section, the independent review entity shall submit updated information to the ~~department~~~~office~~.
 - (3) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by an insurer or a trade or professional association of payors.
 - (4) An independent review entity shall not be a subsidiary of, or in any way affiliated with, or owned, or controlled by a trade or professional association of providers.
 - (5) Health care professionals who are acting as reviewers for the independent review entity shall hold in good standing a nonrestricted license in a state of the United States.
 - (6) Health care professionals who are acting as reviewers for the independent review entity shall hold a current certification by a recognized American medical specialty board or other recognized health care professional boards in the area appropriate to the subject of the review, be a specialist in the treatment of the covered person's medical condition under review, and have actual clinical experience in that medical condition.
 - (7) The independent review entity shall have a quality assurance mechanism to ensure the timeliness and quality of the review, the qualifications and independence of the physician reviewer, and the confidentiality of medical records and review material.
 - (8) Neither the independent review entity nor any reviewers of the entity, shall have any material, professional, familial, or financial conflict of interest with any of the following:
 - (a) The insurer involved in the review;
 - (b) Any officer, director, or management employee of the insurer;
 - (c) The provider proposing the service or treatment or any associated independent practice association;
 - (d) The institution at which the service or treatment would be provided;
 - (e) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the covered person whose treatment is under review; or
 - (f) The covered person.
 - (9) As used in this section, "conflict of interest" shall not be interpreted to include:
 - (a) A contract under which an academic medical center or other similar medical center provides health care services to covered persons, except for academic medical centers that may provide the service under review;
 - (b) Provider affiliations which are limited to staff privileges; or

- (c) A specialist reviewer's relationship with an insurer as a contracting health care provider, except for a specialist reviewer proposing to provide the service under review.
- (10) On an annual basis, the independent review entity shall report to the ~~department~~~~office~~ the following information:
 - (a) The number of independent review decisions in favor of covered persons;
 - (b) The number of independent review decisions in favor of insurers;
 - (c) The average turnaround time for an independent review decision;
 - (d) The number of cases in which the independent review entity did not reach a decision in the time specified in statute or administrative regulation; and
 - (e) The reasons for any delay.

➔Section 1244. KRS 304.17A-629 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations to implement the provisions of KRS 304.17A-621, 304.17A-623, 304.17A-625, 304.17A-627, 304.17A-629, and 304.17A-631.

➔Section 1245. KRS 304.17A-633 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall report every six (6) months to the Interim Joint Committee on Banking and Insurance, and to the Governor on the state of the Independent External Review Program. The report shall include a summary of the number of reviews conducted, medical specialties affected, and a summary of the findings and recommendations made by the independent external review entity.

➔Section 1246. KRS 304.17A-649 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall promulgate administrative regulations necessary to implement the provisions of KRS 304.17A-640, 304.17A-641, 304.17A-643, 304.17A-645, and 304.17A-647.

➔Section 1247. KRS 304.17A-665 is amended to read as follows:

Sixty (60) days prior to the regular session of the General Assembly in 2002, and sixty (60) days prior to each subsequent even-numbered-year regular session of the General Assembly, the ~~commissioner~~~~executive director~~ shall submit a written report to the Legislative Research Commission on the impact on health insurance costs of KRS 304.17A-660 to 304.17A-669.

➔Section 1248. KRS 304.17A-700 is amended to read as follows:

As used in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123:

- (1) "Adjudicate" means an insurer pays, contests, or denies a clean claim;
- (2) "Claims payment time frame" means the time period prescribed under KRS 304.17A-702 following receipt of a clean claim from a provider at the address published by the insurer, whether it is the address of the insurer or a delegated claims processor, within which an insurer is required to pay, contest, or deny a health care claim;
- (3) "Clean claim" means a properly completed billing instrument, paper or electronic, including the required health claim attachments, submitted in the following applicable form:
 - (a) A clean claim from an institutional provider shall consist of:
 - 1. The UB-92 data set or its successor submitted on the designated paper or electronic format as adopted by the NUBC;
 - 2. Entries stated as mandatory by the NUBC; and
 - 3. Any state-designated data requirements determined and approved by the Kentucky State Uniform Billing Committee and included in the UB-92 billing manual effective at the time of service.
 - (b) A clean claim for dentists shall consist of the form and data set approved by the American Dental Association.
 - (c) A clean claim for all other providers shall consist of the HCFA 1500 data set or its successor submitted on the designated paper or electronic format as adopted by the National Uniform Claims Committee.

- (d) A clean claim for pharmacists shall consist of a universal claim form and data set approved by the National Council on Prescription Drug Programs;
- (4) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance;
- (5) "Covered person" means a person on whose behalf an insurer offering a health benefit plan is obligated to pay benefits or provide services;
- (6) "~~Department~~~~[Office]~~" means the ~~Department~~~~[Office]~~ of Insurance;
- (7) "Electronic" or "electronically" means electronic mail, computerized files, communications, or transmittals by way of technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;
- (8) "Health benefit plan" has the same meaning as provided in KRS 304.17A-005;
- (9) "Health care provider" or "provider" means a provider licensed in Kentucky as defined in KRS 304.17A-005 and, for the purposes of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 only, shall include physical therapists licensed under KRS Chapter 327, psychologists licensed under KRS Chapter 319, and social workers licensed under KRS Chapter 335. Nothing contained in KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 shall be construed to include physical therapists, psychologists, and social workers as a health care provider or provider under KRS 304.17A-005;
- (10) "Health claim attachments" means medical information from a covered person's medical record required by the insurer containing medical information relating to the diagnosis, the treatment, or services rendered to the covered person and as may be required pursuant to KRS 304.17A-720;
- (11) "Institutional provider" means a health care facility licensed under KRS Chapter 216B;
- (12) "Insurer" has the same meaning provided in KRS 304.17A-005;
- (13) "Kentucky Uniform Billing Committee (KUBC)" means the committee of health care providers, governmental payors, and commercial insurers established as a local arm of NUBC to implement the bill requirements of the NUBC and to prescribe any additional billing requirements unique to Kentucky insurers;
- (14) "National Uniform Billing Committee (NUBC)" means the national committee of health care providers, governmental payors, and commercial insurers that develops the national uniform billing requirements for institutional providers as referenced in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.;
- (15) "Retrospective review" means utilization review that is conducted after health care services have been provided to a covered person; and
- (16) "Utilization review" has the same meaning as provided in KRS 304.17A-600(18).

➔Section 1249. KRS 304.17A-720 is amended to read as follows:

- (1) In order to improve the efficiency and effectiveness of the health care system through administrative simplification of billing requirements, the ~~commissioner~~~~[executive director]~~ shall prescribe, through the promulgation of administrative regulations, standardized health claim attachments to be used by all insurers requiring additional medical information to process health care claims. The Kentucky State Uniform Billing Committee shall make recommendations to the ~~commissioner~~~~[executive director]~~ on the standardization of attachments.
- (2) Any administrative regulations that prescribe standardized health claim attachments shall be updated to conform with federal standards following the release of national requirements for transactions and data elements in accordance with the Federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Chapter 6A, Subchapter XXV, sec. 300gg et seq.

➔Section 1250. KRS 304.17A-722 is amended to read as follows:

- (1) No later than ninety (90) days following July 15, 2002, the ~~department~~~~[office]~~ shall promulgate administrative regulations requiring all insurers to report information on a calendar quarter basis on prompt payment of claims to providers, as defined in KRS 304.17A-700, that shall be limited to the following:

- (a) The number of clean claims received by the insurer, its agent, or designee during the reporting period;
 - (b) The percentage of clean claims received by the insurer, its agent, or designee that were:
 - 1. Adjudicated within the claims payment timeframe;
 - 2. Adjudicated within one (1) to thirty (30) days from the end of the claims payment timeframe;
 - 3. Adjudicated within thirty-one (31) to sixty (60) days from the end of the claims payment timeframe;
 - 4. Adjudicated within sixty-one (61) to ninety (90) days from the end of the claims payment timeframe;
 - 5. Adjudicated more than ninety (90) days from the end of the claims payment timeframe; and
 - 6. Not yet adjudicated;
 - (c) The percentage of clean claims received during the reporting quarter that were paid and not denied or contested:
 - 1. Within the claims payment timeframe;
 - 2. Within one (1) to thirty (30) days from the end of the claims payment timeframe;
 - 3. Within thirty-one (31) to sixty (60) days from the end of the claims payment timeframe;
 - 4. Within sixty (60) to ninety (90) days from the end of the claims payment timeframe;
 - 5. More than ninety (90) days from the end of the claims payment timeframe; and
 - 6. Not yet paid;
 - (d) Amount of interest paid; and
 - (e) For clean claims received during the reporting quarter that were not denied or contested, the percentage of the total dollar amount of those claims that were paid within the claims payment timeframe.
- (2) Data required in subsection (1) of this section shall be reported for hospitals, physicians, and all other providers, excluding pharmacies.
 - (3) Insurers shall submit information required in subsection (1) of this section to the ~~department~~~~office~~ no later than one hundred eighty (180) days following the close of the reporting quarter.
 - (4) The ~~department~~~~office~~ shall, as part of the market conduct survey of each insurer, audit the insurer to determine compliance with KRS 304.17A-700 to 304.17A-730 and KRS 304.14-135 and 304.99-123. Findings shall be made available to the public upon request.
 - (5) The ~~commissioner~~~~executive director~~ shall annually present to the Interim Joint Committee on Banking and Insurance and to the Governor a report on the payment practices of insurers and compliance with the provisions of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 and the ~~commissioner's~~~~executive director's~~ enforcement activities, including the number of complaints received and those acted upon by the ~~department~~~~office~~.

➔Section 1251. KRS 304.17A-752 is amended to read as follows:

- (1) No individual or business entity shall act or hold themselves out as an insurance purchasing outlet without first being registered as an insurance purchasing outlet by the ~~commissioner~~~~executive director~~ of the Kentucky ~~Department~~~~Office~~ of Insurance in accordance with KRS 304.17A-750 to 304.17A-770 and 304.47-020.
- (2) No individual or business entity shall act for an insurance purchasing outlet to sell, solicit, or negotiate a health benefit plan to an eligible person unless the individual or business entity acting for the insurance purchasing outlet is licensed in accordance with Subtitle 9 of Chapter 304 as an agent with a health line of authority.
- (3) The ~~commissioner~~~~executive director~~ may promulgate administrative regulations necessary to administer KRS 304.17A-750 to 304.17A-770 and 304.47-020.

➔Section 1252. KRS 304.17A-754 is amended to read as follows:

- (1) A business entity seeking to obtain a certificate of registration to act as an insurance purchasing outlet shall complete and file with the ***commissioner***~~[executive director]~~ of the Kentucky ***Department***~~[Office]~~ of Insurance an application prescribed by the ***commissioner***~~[executive director]~~.
- (2) An application shall not be deemed filed until all information necessary to process the application properly has been received by the ***commissioner***~~[executive director]~~.
- (3) Within one hundred eighty (180) days of receipt of an application for a certificate of registration, the ***commissioner***~~[executive director]~~ shall make a determination concerning the application and provide notice to the applicant. If approved, a certificate of registration, in a form prescribed by the ***commissioner***~~[executive director]~~, shall be provided to the insurance purchasing outlet.
- (4) The business entity seeking a certificate of registration to act as an insurance purchasing outlet shall file the following with the ***commissioner***~~[executive director]~~:
 - (a) Organizational information, including partnership agreements, articles of incorporation, bylaws, and other applicable documents;
 - (b) A business plan, including plan of operations, marketing plan, and financial projections of not less than three (3) years;
 - (c) Appeal procedures for denied enrollment to a health purchasing outlet;
 - (d) Enrollment procedures;
 - (e) Payment procedures;
 - (f) Evidence of financial responsibility to operate as an insurance purchasing outlet in the form of the following:
 1. A fidelity bond in an amount not less than ten percent (10%) of projected annual premiums collected; and
 2. A certificate of an insurer authorized to write legal liability insurance in Kentucky certifying that the insurer has and will keep in effect on behalf of the insurance purchasing outlet a policy of insurance covering the legal liability of the insurance purchasing outlet as a result of erroneous acts or failure to act in its capacity as an insurance purchasing outlet. The policy shall provide indemnification for the benefit of any aggrieved party as a result of each single occurrence in the sum of not less than ten thousand dollars (\$10,000). The policy shall not be terminated unless at least thirty (30) days prior written notice has been given to the ***commissioner***~~[executive director]~~ and to the insurance purchasing outlet;
 - (g) Biographical affidavits of owners, partners, officers, and directors of the applicant;
 - (h) Identification of any contracted company which manages the insurance purchasing outlet, or any administrator which adjusts or settles claims of the insurance purchasing outlet members;
 - (i) Names and addresses of the principal places of business of the applicants;
 - (j) Geographic area to be serviced;
 - (k) Requirements for membership and participation in the insurance purchasing outlet;
 - (l) Name and address of each participating insurer, if known;
 - (m) Proposed health benefit plan to be offered, if known; and
 - (n) Any other information required by the ***commissioner***~~[executive director]~~ to evaluate the applicant's suitability as an insurance purchasing outlet.
- (5) Any information filed by an insurance purchasing outlet pursuant to subsection (4) of this section that changes shall be refiled with the ***commissioner***~~[executive director]~~ for approval.
- (6) The ***commissioner***~~[executive director]~~ may promulgate administrative regulations to establish standards in accordance with subsection (4) of this section.

➔Section 1253. KRS 304.17A-758 is amended to read as follows:

- (1) The insurance purchasing outlet may collect premiums and the value of vouchers from or on behalf of insurance purchasing outlet members under its administrator license.
- (2) The insurance purchasing outlet shall not adjust or settle claims on insurance purchasing outlet members under its administrator license.
- (3) The insurance purchasing outlet shall comply with KRS 304.9-371 to 304.9-377.
- (4) The insurance purchasing outlet shall furnish annual and quarterly financial statements no later than sixty (60) days after the end of the reporting period on a form prescribed by the **commissioner**~~executive director~~. Additionally, the insurance purchasing outlet shall furnish to the **commissioner**~~executive director~~ annual audited financial statements based on generally accepted accounting principles by an independent certified public accountant on or before one hundred twenty (120) days from the end of the insurance purchasing outlet's fiscal year for the immediately preceding fiscal year.
- (5) The books and records of the insurance purchasing outlet shall be retained in the state of Kentucky and made available to the **commissioner**~~executive director~~ for inspection or examination.
- (6) Upon payment of all applicable fees, the certificate of registration issued in accordance with KRS 304.17A-754 shall be renewed at the same time that the insurance purchasing outlet renews its administrator license in accordance with Subtitle 9 of Chapter 304.
- (7) The certificate of registration issued under KRS 304.17A-754 is not transferable.
- (8) The **department**~~office~~ shall promulgate administrative regulations to establish fees for the initial registration and renewal of registration of an insurance purchasing outlet.

➔Section 1254. KRS 304.17A-760 is amended to read as follows:

- (1) An insurance purchasing outlet shall:
 - (a) Set and collect fees to finance necessary costs incurred in marketing, selling, servicing, and administering its services;
 - (b) Offer health benefit plans to eligible persons;
 - (c) Provide premium and voucher collection services for participating insurers;
 - (d) Establish and adhere to appropriate administrative and accounting procedures for operating the health purchasing outlet;
 - (e) Establish and adhere to rules, conditions, and procedures for insurance purchasing outlet members and participating insurers;
 - (f) Establish and adhere to enrollment and participation requirements for insurance purchasing outlet members;
 - (g) Receive, review, and conduct appeals for persons who have been denied enrollment to an insurance purchasing outlet;
 - (h) Demonstrate and maintain at all times proof of financial responsibility and solvency;
 - (i) Prepare an annual report on the operations of the insurance purchasing outlet in accordance with administrative regulations promulgated by the **commissioner**~~executive director~~;
 - (j) Establish procedures for billing and collection of premiums from insurance purchasing outlet members;
 - (k) Establish procedures for collecting and redeeming vouchers; and
 - (l) Maintain an administrator license in accordance with Subtitle 9 of Chapter 304.
- (2) An insurance purchasing outlet may:
 - (a) Contract with qualified third parties for any services necessary to carry out the powers and duties authorized or required by this chapter;
 - (b) Employ necessary staff;
 - (c) Sue or be sued;

- (d) Contract with independent licensed administrators to adjust or settle claims, since the insurance purchasing outlet is prohibited from these activities in accordance with KRS 304.17A-758; and
- (e) Employ, contract, or otherwise use licensed insurance agents to market and service coverage.

➔Section 1255. KRS 304.17A-762 is amended to read as follows:

- (1) For administrative purposes, an insurance purchasing outlet shall be the policyholder or contract holder of the health benefit plan on behalf of an insurance purchasing outlet member.
- (2) The participating insurer shall issue a certificate of coverage to each insurance purchasing outlet member.
- (3) The insurance purchasing outlet shall provide the following disclosures to an insurance purchasing outlet member at the time of enrollment:
 - (a) The insurance purchasing outlet is not an insurer and does not pay benefits or claims. It collects and distributes premiums on behalf of insurance purchasing outlet members;
 - (b) The insurance purchasing outlet is registered with the Kentucky **Department**~~{Office}~~ of Insurance to provide specific administrative services and may not assume any risk for claim and benefit payments; and
 - (c) Other disclosures as the **commissioner**~~{executive director}~~ shall require by administrative regulation.

➔Section 1256. KRS 304.17A-768 is amended to read as follows:

- (1) A voucher issued by an employer shall only be redeemable at an insurance purchasing outlet. A voucher shall be nonassignable and nontransferable.
- (2) An insurance purchasing outlet shall redeem the value of the voucher with the employer. If an employer fails to redeem the value of the voucher, the insurance purchasing outlet shall notify the eligible person. An eligible person may pay the premium amount directly to the insurance purchasing outlet if the employer fails to redeem the value of the voucher.
- (3) An insurance purchasing outlet shall pay an insurer the appropriate premium amount on or before the premium due date. If an insurance purchasing outlet fails to pay the premium amount on or before the due date the following shall occur:
 - (a) An insurer shall issue the insurance purchasing outlet a notice of termination if the premium amount is not paid pursuant to KRS 304.17A-245.
 - (b) Upon receipt of a notice of termination from the insurer, the insurance purchasing outlet shall issue the eligible member a notice of termination.
 - (c) The insurer shall notify the eligible person of his **or her** conversion rights under KRS 304.18-110.
- (4) An insurer may allow for a thirty-one (31) day grace period for the premium amount to be paid by the insurance purchasing outlet.
- (5) The **department**~~{office}~~ shall prescribe the items to be included on a voucher.
- (6) An insurance purchasing outlet shall be required to accept a voucher as payment for a health benefit plan, or as partial payment if the value of the voucher is insufficient to cover the full premium of the health benefit plan.
- (7) An insurance purchasing outlet may charge a reasonable administrative fee to cover the cost of processing the voucher.
- (8) The **commissioner**~~{executive director}~~ shall promulgate administrative regulations to implement the provisions of this section.

➔Section 1257. KRS 304.17A-802 is amended to read as follows:

- (1) "Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a self-insured employer-organized association group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.
- (2) "Agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a self-insured employer-organized association group.

- (3) "~~**Commissioner**~~~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Insurance.
- (4) "Deceptive" means an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is an intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.
- (5) "Employer-organized association" means an entity defined in KRS 304.17A-804.
- (6) "Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.
- (7) "Insolvent" or "insolvency" means the inability of a self-insured employer-organized association group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.
- (8) "Person" includes but is not limited to any individual, partnership, association, trust, or corporation.
- (9) "Qualified actuary" means a member of the American Academy of Actuaries or a Fellow of the Society of Actuaries.
- (10) "Self-insured employer-organized association group" means a group described in KRS 304.17A-804.
- (11) "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to claims adjustment, compilation of statistics in preparation of contribution and assessments, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.
- (12) "Unfair" means an act, practice, or statement which is unconscionable.

➔Section 1258. KRS 304.17A-806 is amended to read as follows:

No person or entity in this state shall be, act as, or hold itself out as a self-insured employer-organized association group unless it holds a certificate of filing from the **commissioner**~~[executive director]~~. All certificates of filing shall be issued by the **commissioner**~~[executive director]~~.

➔Section 1259. KRS 304.17A-808 is amended to read as follows:

A proposed self-insured employer-organized association group shall file with the **commissioner**~~[executive director]~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the **commissioner**~~[executive director]~~ upon a form prescribed by the **commissioner**~~[executive director]~~ and shall set forth or be accompanied by:

- (1) The group's name, location of its principal office, date of organization, and identification of its fiscal year. The application shall also include the name and address of each member if known at the time of application. If this information is unknown, a description of the group to be solicited for membership shall be included;
- (2) A copy of the articles of association or governance documents;
- (3) A copy of agreements with the administrator and with any service company;
- (4) A copy of the bylaws of the proposed group;
- (5) Certification of the group's financial solvency as set forth in KRS 304.17A-812;
- (6) Designation of the initial board of trustees and administrator;
- (7) The address where books and records of the group will be maintained at all times; and
- (8) A statement describing the self-insured employer-organized association which shall include:
 - (a) The health services to be offered;
 - (b) The financial risks to be assumed;
 - (c) The initial geographic area to be served;
 - (d) Pro forma financial projections for the first three (3) years of operation, including the assumptions the projections are based upon;

- (e) The sources of working capital and funding;
- (f) A description of the persons to be covered by the self-insured employer-organized association;
- (g) Any proposed reinsurance arrangements;
- (h) Any proposed management, administrative, or cost-sharing arrangements; and
- (i) A description of the self-insured employer-organized association's proposed method of marketing.

➔Section 1260. KRS 304.17A-810 is amended to read as follows:

Upon receipt of an application for a certificate of filing, the **commissioner**~~[executive director]~~ shall issue or deny the same. A certificate of filing shall be issued only if the **commissioner**~~[executive director]~~ finds that the applicant has complied with KRS 304.17A-808, has paid the application fee, and the **commissioner**~~[executive director]~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the self-insured employer-organized association group are competent, trustworthy, and possess good reputation;
- (2) The self-insured employer-organized association group is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination, the **commissioner**~~[executive director]~~ may consider:
 - (a) The adequacy of working capital;
 - (b) Any agreement with an insurer, a government, or any other organization for insuring the payment of health claims or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the self-insurance group; and
 - (c) Compliance with KRS 304.17A-812, as a guarantee that the obligations will be duly performed.

➔Section 1261. KRS 304.17A-812 is amended to read as follows:

- (1) This section applies to a group applying for and holding a certificate of filing as a self-insured employer-organized association group.
- (2) To obtain and to maintain its certificate of filing, a self-insured employer-organized association group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including known claims and expenses and incurred but unreported claims and expenses.
- (3) The **commissioner**~~[executive director]~~ shall require the following of a self-insured employer-organized association group:
 - (a) An actuarial certification by a member of the American Academy of Actuaries of the adequacy of the proposed rates funding arrangements of the group;
 - (b) Specific reinsurance ensuring the solvency of the funding arrangement;
 - (c) A demonstration of capital and surplus as follows:
 - 1. Initial financial requirements. Every self-insured employer-organized association shall demonstrate initial capital and surplus equal to the greater of:
 - a. Five hundred thousand dollars (\$500,000);
 - b. Two percent (2%) of projected annual contribution revenues on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of projected annual contributions on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or
 - c. An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of projected annual hospital expenditures paid on a managed hospital payment basis.
 - 2. Continuing financial requirements. Every self-insured employer-organized association shall demonstrate ongoing capital and surplus equal to the greater of:

- a. Five hundred thousand dollars (\$500,000);
 - b. Two percent (2%) of annual contribution revenues, as reported on the most recent annual financial statement filed with the **commissioner**~~[executive director]~~, on the first one hundred fifty million dollars (\$150,000,000) of contributions and one percent (1%) of annual premiums on the contributions in excess of one hundred fifty million dollars (\$150,000,000); or
 - c. An amount equal to the sum of eight percent (8%) of projected annual health care expenditures except those paid on a capitated basis or managed hospital payment basis and four percent (4%) of annual hospital expenditures paid on a managed hospital payment basis, as reported on the most recent financial statement filed with the **commissioner**~~[executive director]~~; and
- (d) A fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the **commissioner**~~[executive director]~~.
- (4) The **commissioner**~~[executive director]~~, if not satisfied with the financial strength of a self-insured employer-organized association group, may require any or all of the following of a self-insured employer-organized association group:
- (a) Security in the form and amount prescribed by the **commissioner**~~[executive director]~~ as follows:
 - 1. A surety bond issued by a corporate surety authorized to transact business in the Commonwealth of Kentucky; or
 - 2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer, which may be used to meet all or part of the security requirement.

The bond or financial security endorsement shall be solely for the benefit of the insured creditors to pay claims and associated expenses and shall be payable upon the failure of the group to pay professional or public liability claims the group is legally obligated to pay. The **commissioner**~~[executive director]~~ may establish and adjust the requirements for the amount of security based on differences among groups in their size, types of business, years in existence, or other relevant factors.

- (b) Specific and aggregate excess insurance in a form and amount issued by an insurer acceptable to the **commissioner**~~[executive director]~~.

➔Section 1262. KRS 304.17A-814 is amended to read as follows:

A self-insured employer-organized association group shall notify the **commissioner**~~[executive director]~~ immediately of any change in the information required to be filed under KRS 304.17A-808 or 304.17A-812.

➔Section 1263. KRS 304.17A-816 is amended to read as follows:

The funds of a self-insured employer-organized association group shall be invested only in securities or other investments permitted by Subtitle 7 of this chapter, or such other securities or investments as the **commissioner**~~[executive director]~~ may permit by administrative regulation.

➔Section 1264. KRS 304.17A-820 is amended to read as follows:

The **commissioner**~~[executive director]~~ or any person authorized by him *or her* shall have the power to examine the financial condition, affairs, and management of any self-insured employer-organized association group subject to the provisions of KRS 304.17A-800 to 304.17A-844. The **commissioner**~~[executive director]~~ shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to its affairs, transactions, or conditions. The **commissioner**~~[executive director]~~ shall so examine each self-insured employer-organized association group subject to the provisions of KRS 304.17A-800 to 304.17A-844 no less frequently than every four (4) years. An examination under this section shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

➔Section 1265. KRS 304.17A-824 is amended to read as follows:

- (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the **commissioner**~~[executive director]~~ pursuant to KRS 304.17A-840.

- (2) The ***commissioner***~~[executive director]~~ shall not grant the request of the self-insured employer-organized association group to terminate its certificate of filing unless the group has filed with the ***commissioner***~~[executive director]~~ a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but unreported claims and expenses.
- (3) Subject to filing with the ***commissioner***~~[executive director]~~, a self-insured employer-organized association group may merge with another self-insured employer-organized association group. As a result of any merger, the resulting self-insured employer-organized association shall assume in full all obligations of the constituent groups.

➔Section 1266. KRS 304.17A-826 is amended to read as follows:

- (1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the self-insured employer-organized association or by other laws of the Commonwealth. The trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the self-insured employer-organized association group, and to assure that there is adequate funding to cover health liabilities, that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.
- (2) The board of trustees shall:
 - (a) Maintain responsibility for all moneys collected or disbursed from the group;
 - (b) Maintain minutes of its meetings and make the minutes available to the ***commissioner***~~[executive director]~~; and
 - (c) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
- (3) The board of trustees shall not:
 - (a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the ***commissioner***~~[executive director]~~; or
 - (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group.
- (4) In its discretion, the self-insured employer-organized association group may refer to its trustees as directors. If this is done, the provisions of KRS 304.17A-800 to 304.17A-844 referring to trustees shall be construed as referring to directors.

➔Section 1267. KRS 304.17A-832 is amended to read as follows:

- (1) All self-insured employer-organized association groups shall file with the ***commissioner***~~[executive director]~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the ***commissioner***~~[executive director]~~ and shall include:
 - (a) Actuarially-appropriate reserves for:
 1. Known claims and expenses associated therewith.
 2. Claims incurred but not reported and any expenses associated therewith.
 3. Unearned contributions and assessments.
 4. Bad debts, which reserves shall be known as liabilities.
 - (b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.

- (2) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- (3) The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the **commissioner**~~[executive director]~~.

➔Section 1268. KRS 304.17A-834 is amended to read as follows:

Self-insured employer-organized association groups shall file with the **commissioner**~~[executive director]~~ their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per form filing.

➔Section 1269. KRS 304.17A-840 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend or revoke any certificate of filing issued to a self-insured employer-organized association group if the **commissioner**~~[executive director]~~ finds that any of the following conditions exist:
 - (a) The self-insured employer-organized association group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.17A-800 to 304.17A-844, unless amendments to the submissions have been filed with and approved by the **commissioner**~~[executive director]~~;
 - (b) The self-insured employer-organized association group is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to participants or prospective participants;
 - (c) The self-insured employer-organized association group, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (d) The self-insured employer-organized association group has engaged in any unfair or deceptive practices under its certificate of filing; or
 - (e) The self-insured employer-organized association group has failed to correct a violation of KRS 304.17A-800 to 304.17A-844 or the administrative regulations promulgated thereunder, within a reasonable time period established by the **commissioner**~~[executive director]~~ in administrative regulations.
- (2) A certificate of filing shall be suspended or revoked only after compliance with the hearing procedure set forth in KRS 304.2-310 to 304.2-370.
- (3) When a certificate of filing of a self-insured employer-organized association group is suspended, the group shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.
- (4) If the certificate of filing of a self-insured employer-organized association group is revoked, the group shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The **commissioner**~~[executive director]~~ may, by written order, prevent further operation of the group if he *or she* finds it to be in the best interest of the participants, to the end that the participants will be afforded the greatest practical opportunity to obtain health coverage elsewhere. If the **commissioner**~~[executive director]~~ permits further operation, the self-insured employer-organized association group shall continue to collect the contributions required of participants.

➔Section 1270. KRS 304.17A-842 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable administrative regulations not inconsistent with the provisions of KRS 304.17A-800 to 304.17A-844 that he *or she* deems necessary for the proper administration of these sections. Nothing in KRS 304.17A-800 to 304.17A-844 or 304.17A-320 or any administrative regulation promulgated thereunder shall require any self-insured employer-organized association group or its members to take any action in violation of the Constitution of the Commonwealth of Kentucky.

➔Section 1271. KRS 304.17A-844 is amended to read as follows:

- (1) After a hearing or upon agreement by the self-insured employer-organized association group, the **commissioner**~~[executive director]~~ may suspend or revoke the certificate of filing of a self-insured employer-

organized association group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a self-insured employer-organized association group, or both, for:

- (a) Violations of KRS 304.17A-800 to 304.17A-844 or administrative regulations promulgated thereunder;
 - (b) Obtaining a certificate of filing by unfair or deceptive means;
 - (c) Operating in a financially hazardous manner;
 - (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
 - (e) Unfair or deceptive business practices.
- (2) The **commissioner**~~[executive director]~~, in his **or her** discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any self-insured employer-organized association group upon the commencement of the following proceedings:
- (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1272. KRS 304.17A-846 is amended to read as follows:

- (1) Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to an employer-organized association health benefit plan, within thirty (30) calendar days after a written request, the information relating to its health benefit plan that has been requested, including but not limited to the following information for the previous three (3) years or for the entire period of coverage, whichever is shorter:
- (a) Aggregate claims experience by month, including claims experience for pharmacy benefits;
 - (b) Total premiums paid by month;
 - (c) Total number of insureds on a monthly basis by coverage tier; and
 - (d) Sufficient detailed claims information to permit the employer-organized association to verify eligibility and participation of the groups and individuals participating in the employer-organized association program.

The **department**~~[office]~~ shall, by July 15, 2005, promulgate administrative regulations to implement the provisions of this section and define the extent that individual information shall be provided.

- (2) This section shall not require the insurer to disclose any nonpublic personal health information without the written consent of the individual who is the subject of the information, as required by administrative regulations promulgated by the **commissioner**~~[executive director]~~. However, nonpublic personal health information may be provided to the employer-organized association health benefit plan and large group health benefit plan with fifty-one (51) or more enrolled employees as a covered entity to cover entity transfer under the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. sec. 300gg et seq., provided that the health benefit plan certifies to the insurer that it has adopted HIPAA-required safeguards and will treat the nonpublic personal health information in accordance with HIPAA standards.
- (3) Any insurer issuing or delivering group health benefit plans in the Commonwealth shall provide to a large group health benefit plan with fifty-one (51) or more enrolled employees, within thirty (30) calendar days after receipt of a written request, the following information relating to its health benefit plan:
- (a) Total premiums paid by month;
 - (b) Total number of insureds on a monthly basis by coverage tier; and
 - (c) Additional utilization data to help the employer measure costs in the following areas:
 - 1. Detailed prescription drug utilization information, including generic versus brand utilization;

2. Number of office visits to primary care providers and specialists;
 3. Number of emergency room visits;
 4. Number of inpatient and outpatient hospitalizations;
 5. Number of members utilizing deductible and out-of-pocket expenses by cost level; and
 6. A list of the most prevalent disease categories.
- (4) Insurers shall not be required to produce reports requested pursuant to subsection (3) of this section more than twice annually.

➔Section 1273. KRS 304.17B-001 is amended to read as follows:

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

- (1) "Administrator" is defined in KRS 304.9-051(1);
- (2) "Agent" is defined in KRS 304.9-020;
- (3) "Assessment process" means the process of assessing and allocating guaranteed acceptance program losses or Kentucky Access funding as provided for in KRS 304.17B-021;
- (4) "Authority" means the Kentucky Health Care Improvement Authority;
- (5) "Case management" means a process for identifying an enrollee with specific health care needs and interacting with the enrollee and their respective health care providers in order to facilitate the development and implementation of a plan that efficiently uses health care resources to achieve optimum health outcome;
- (6) "~~Commissioner~~~~[Executive director]~~" is defined in KRS 304.1-050(1);
- (7) "~~Department~~~~[Office]~~" is defined in KRS 304.1-050(2);
- (8) "Earned premium" means the portion of premium paid by an insured that has been allocated to the insurer's loss experience, expenses, and profit year to date;
- (9) "Enrollee" means a person who is enrolled in a health benefit plan offered under Kentucky Access;
- (10) "Eligible individual" is defined in KRS 304.17A-005(11);
- (11) "Guaranteed acceptance program" or "GAP" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (12) "Guaranteed acceptance program participating insurer" means an insurer that offered health benefit plans through December 31, 2000, in the individual market to guaranteed acceptance program qualified individuals;
- (13) "Health benefit plan" is defined in KRS 304.17A-005(22);
- (14) "High-cost condition" means acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency, cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington's chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open-heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, Wilson's disease, chronic renal failure, malignant neoplasm of the trachea, malignant neoplasm of the bronchus, malignant neoplasm of the lung, malignant neoplasm of the colon, short gestation period for a newborn child, and low birth weight of a newborn child;
- (15) "Incurred losses" means for Kentucky Access the excess of claims paid over premiums received;
- (16) "Insurer" is defined in KRS 304.17A-005(27);
- (17) "Kentucky Access" means the program established in accordance with KRS 304.17B-001 to 304.17B-031;
- (18) "Kentucky Access Fund" means the fund established in KRS 304.17B-021;
- (19) "Kentucky Health Care Improvement Authority" means the board established to administer the program initiatives listed in KRS 304.17B-003(5);
- (20) "Kentucky Health Care Improvement Fund" means the fund established for receipt of the Kentucky tobacco master settlement moneys for program initiatives listed in KRS 304.17B-003(5);

- (21) "MARS" means the Management Administrative Reporting System administered by the Commonwealth;
- (22) "Medicaid" means coverage in accordance with Title XIX of the Social Security Act, 42 U.S.C. secs. 1396 et seq., as amended;
- (23) "Medicare" means coverage under both Parts A and B of Title XVIII of the Social Security Act, 42 U.S.C. secs. 1395 et seq., as amended;
- (24) "Pre-existing condition exclusion" is defined in KRS 304.17A-220(6);
- (25) "Standard health benefit plan" means a health benefit plan that meets the requirements of KRS 304.17A-250;
- (26) "Stop-loss carrier" means any person providing stop-loss health insurance coverage;
- (27) "Supporting insurer" means all insurers, stop-loss carriers, and self-insured employer-controlled or bona fide associations; and
- (28) "Utilization management" is defined in KRS 304.17A-500(12).

➔Section 1274. KRS 304.17B-003 is amended to read as follows:

- (1) There is hereby established the Kentucky Health Care Improvement Authority as an agency, instrumentality, and political subdivision of the Commonwealth and a public body corporate and politic with all the powers, duties, and responsibilities conferred upon it by statute and necessary or convenient to carry out its functions. The authority shall be administered by a board of fifteen (15) members and is created to perform the public functions of administering programs financed by the funds appropriated to the authority in conformance with KRS 304.17B-001 to 304.17B-031 and any terms and conditions established by the General Assembly as a part of the act appropriating the funds. The members of the board shall consist of the following:
 - (a) The ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Insurance, or the ~~commissioner's~~~~[executive director's]~~ designated representative, who shall serve as chair;
 - (b) The secretary of the Cabinet for Health and Family Services, or the secretary's designated representative, who shall serve as vice chair;
 - (c) Two (2) nonvoting members serving ex officio from the House of Representatives, one (1) of whom shall be appointed by the Speaker of the House and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;
 - (d) Two (2) nonvoting members serving ex officio from the Senate, one (1) of whom shall be appointed by the President of the Senate and one (1) appointed by the minority floor leader, and who shall serve a term of two (2) years;
 - (e) The deans of the University of Louisville School of Medicine and the University of Kentucky College of Medicine, or their designated representatives;
 - (f) The commissioner of the Department for Public Health, or the commissioner's designated representative;
 - (g) Two (2) representatives of Kentucky health care providers, who shall be appointed by the Governor; and
 - (h) Four (4) citizens at large of the Commonwealth, who shall be appointed by the Governor.
- (2) The terms of office of the initial appointments of the citizen at-large members of the board shall expire one (1), two (2), three (3), and four (4) years respectively from the expiration date of the initial appointment. One (1) of the initial terms of the representatives of health care providers, at least one (1) of whom shall be male and at least one (1) of whom shall be female, shall be for two (2) years and one (1) shall be for four (4) years. All succeeding appointments shall be for four (4) years from the expiration date of the term of the initial appointment. Two (2) of the citizens at large shall be male and two (2) shall be female. Board members shall serve until their successors are appointed.
- (3) In making private sector and citizen-at-large appointments to the board, the Governor shall assure broad geographical and ethnic representation as well as representation from consumers and the major sectors of Kentucky's health care and health insurance businesses. Private sector and citizen-at-large members shall serve without compensation but shall be reimbursed for reasonable and necessary expenses.

- (4) The authority shall establish procedures for accountability, including the review of expenditures, and develop mechanisms to measure the success of programs that receive allocated funds in accordance with any criteria or instructions provided by the General Assembly. The authority shall be attached to the **Department**~~{Office}~~ of Insurance for administrative purposes and shall establish advisory boards it deems appropriate, which shall consist of health insurance consumers, health care providers, and insurance company representatives, to assist with oversight of fund expenditures.
- (5) Grants and funds obtained under KRS 304.17B-001 to 304.17B-031 shall be used for expenditures as follows:
 - (a) Seventy percent (70%) of all moneys in the fund shall be placed into the Kentucky Access fund for the purpose of funding Kentucky Access;
 - (b) Twenty percent (20%) of all moneys in the fund shall be spent on a collaborative partnership between the University of Louisville and the University of Kentucky dedicated to lung cancer research; and
 - (c) Ten percent (10%) of all moneys in the fund shall be used to discourage the use of harmful substances by minors.
- (6) The authority shall assure that a public hearing is held on the expenditure of funds allocated under this section, except for funds allocated to the Kentucky Access fund. Advertisement of the public hearing shall be published at least once but may be published two (2) more times, if one (1) publication occurs not less than seven (7) days nor more than twenty-one (21) days before the scheduled date of the public hearing. The authority shall submit an annual report to the Governor and the General Assembly indicating how the funds were used and an evaluation of the program's effectiveness in health care and access to health insurance for Kentucky residents.
- (7) Neither the authority nor its employees shall be liable for any obligations of any of the programs established under KRS 304.17B-001 to 304.17B-031. No member or employee of the authority shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under KRS 304.17B-001 to 304.17B-031, unless the act or omission constitutes willful or wanton misconduct. The authority may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.
- (8) The authority shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of KRS 304.17B-001 to 304.17B-031, including, but not limited to, retaining the staff it deems necessary for the proper performance of its duties.
- (9) The authority shall meet at least quarterly and at other times upon call of the chair or a majority of the authority.

➔Section 1275. KRS 304.17B-005 is amended to read as follows:

- (1) There is hereby created Kentucky Access, which shall ensure that health coverage is made available to each Kentucky individual resident applying and qualifying for coverage. Any health coverage provided under this section shall begin no sooner than January 1, 2001. Kentucky Access is designed for the purpose of implementing an acceptable alternative mechanism within the meaning of 42 U.S.C. sec. 300gg-44(a)(1) so that Kentucky may preserve the flexibility over the regulation of health coverage allowed by federal law.
- (2) Kentucky Access shall operate under the Division of Kentucky Access in the **Department**~~{Office}~~ of Insurance. The division shall be headed by a division director appointed by the secretary of the ~~{Environmental and}~~ Public Protection Cabinet in accordance with KRS 12.050.
- (3) Neither the ~~department~~~~{office}~~ nor its employees shall be liable for any obligations of Kentucky Access. No member or employee of the ~~department~~~~{office}~~ shall be liable, and no cause of action of any nature may arise against them, for any act or omission related to the performance of their powers and duties under KRS 304.17B-001 to 304.17B-031, unless such act or omission constitutes willful or wanton misconduct. The ~~department~~~~{office}~~ may provide in its policies and procedures for indemnification of, and legal representation for, its members and employees.

➔Section 1276. KRS 304.17B-007 is amended to read as follows:

In its duties to operate and administer Kentucky Access, the ~~department~~~~{office}~~ shall, through itself or designated agents:

- (1) Establish administrative and accounting procedures for the operation of Kentucky Access;
- (2) Enter into contracts as necessary;

- (3) Take legal action necessary:
 - (a) To avoid the payment of improper claims against Kentucky Access or the coverage provided by or through Kentucky Access;
 - (b) To recover any amounts erroneously or improperly paid by Kentucky Access;
 - (c) To recover any amounts paid by the Kentucky Access as a result of mistake of fact or law;
 - (d) To recover other amounts due Kentucky Access; or
 - (e) To operate and administer its obligations under the provisions of KRS 304.17B-001 to 304.17B-031;
- (4) Establish, and modify as appropriate, rates, rate schedules, rate adjustments, premium rates, expense allowances, claim reserve formulas, and any other actuarial function appropriate to the administration and operation of Kentucky Access. Premium rates and rate schedules may be adjusted for appropriate factors, including, but not limited to, age and sex, and shall take into consideration appropriate factors in accordance with established actuarial and underwriting practices;
- (5) Establish procedures under which applicants and participants in Kentucky Access shall have an internal grievance process and a mechanism for external review through an independent review organization in accordance with this chapter;
- (6) Select a third-party administrator in accordance with KRS 304.17B-011;
- (7) Require that all health benefit plans, riders, endorsements, or other forms and documents used to administer Kentucky Access meet the requirements of Subtitles 12, 14, 17, 17A, and 38 of this chapter;
- (8) Adopt nationally recognized uniform claim forms in accordance with this chapter;
- (9) Develop and implement a marketing strategy to publicize the existence of Kentucky Access, including, but not limited to, eligibility requirements, procedures for enrollment, premium rates, and a toll-free telephone number to call for questions;
- (10) Establish and review annually provider reimbursement rates that ensure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under Kentucky Access at least to the extent that such care and services are available to the general population. The ~~department~~~~office~~ shall only authorize contracts with health care providers that prohibit the provider from collecting from the enrollee any amounts in excess of copayment amounts, coinsurance amounts, deductible amounts, and amounts for noncovered services;
- (11) Conduct periodic audits to assure the general accuracy of the financial and claims data submitted to the ~~department~~~~office~~ and be subject to an annual audit of its operations;
- (12) Issue health benefit plans January 1, 2001, or thereafter, in accordance with the requirements of KRS 304.17B-001 to 304.17B-031;
- (13) Require a referral fee of fifty dollars (\$50) to be paid to agents who refer applicants who are subsequently enrolled in Kentucky Access. The referral fee shall be paid only on the initial enrollment of an applicant. Referral fees shall not be paid on any enrollments of enrollees who have been previously enrolled in Kentucky Access, or for renewals for enrollees;
- (14) Bill and collect premiums from enrollees in the amount determined by the ~~department~~~~office~~;
- (15) Assess insurers and stop-loss carriers in accordance with KRS 304.17B-021;
- (16) Reimburse GAP participating insurers for GAP losses pursuant to KRS 304.17B-021;
- (17) Establish a provider network for Kentucky Access by developing a statewide provider network or by contracting with an insurer for a statewide provider network. In the event the ~~department~~~~office~~ contracts with an insurer, the ~~department~~~~office~~ may take into consideration factors including, but not limited to, the size of the provider network, the composition of the provider network, and the current market rate of the provider network. The provider network shall be made available to the third-party administrator specified in KRS 304.17B-011 and shall be limited to Kentucky Access enrollees.
- (18) Be audited by the Auditor of Public Accounts;

- (19) By administrative regulation, amend the definition of high-cost conditions provided in KRS 304.17B-001 by adding other high-cost conditions;
- (20) The ~~department~~~~{office}~~ shall report on an annual basis to the Interim Joint Committee on Banking and Insurance the separation plan pursuant to KRS 304.17A-080 for the division of duties and responsibilities between the operation of the ~~Department~~~~{Office}~~ of Insurance and the operation of Kentucky Access; and
- (21) Any other actions as may be necessary and proper for the execution of the ~~department's~~~~{office's}~~ powers, duties, and obligations under KRS 304.17B-001 to 304.17B-031.

➔Section 1277. KRS 304.17B-009 is amended to read as follows:

In its duties to operate and administer Kentucky Access, the ~~department~~~~{office}~~ may, through itself or third parties:

- (1) Exercise any and all powers granted to insurers under this chapter; and
- (2) Sue or be sued.

➔Section 1278. KRS 304.17B-011 is amended to read as follows:

- (1) The ~~department~~~~{office}~~ shall select a third-party administrator, through the state competitive bidding process, to administer Kentucky Access. The third-party administrator shall be an administrator licensed by the ~~department~~~~{office}~~. The ~~department~~~~{office}~~ shall consider criteria in selecting a third-party administrator that shall include, but not be limited to, the following:
 - (a) A third-party administrator's proven ability to demonstrate performance of the operations of an insurer to include the following: enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, quality improvement, drug utilization review, premium billing and collection, claims payment, and data reporting;
 - (b) The total cost to administer Kentucky Access;
 - (c) A third-party administrator's proven ability to demonstrate that Kentucky Access shall be administered in a cost-efficient manner;
 - (d) A third-party administrator's proven ability to demonstrate experience in two (2) or more states administering a risk pool for a minimum of a three (3) year period; and
 - (e) A third-party administrator's financial condition and stability.
- (2) The ~~department~~~~{office}~~ may contract with the third-party administrator for a period of four (4) years with an option for a two (2) year extension as approved by the ~~department~~~~{office}~~ on a year-by-year contract basis. At least one (1) year prior to the expiration of the third-party administrator's contract, the ~~department~~~~{office}~~ may solicit third-party administrators, including the current third-party administrator, to submit bids to serve as the third-party administrator for the succeeding four (4) year period.
- (3) In addition to any duties and obligations set forth in the contract with the third-party administrator, the third-party administrator shall:
 - (a) Develop and establish policies and procedures for enrollee enrollment, eligibility determination, provider enrollment and credentialing, utilization management, case management, disease management, quality improvement, drug utilization review, premium billing and collection, data reporting, and other responsibilities determined by the ~~department~~~~{office}~~;
 - (b) Develop and establish policies and procedures for paying the agent referral fee under KRS 304.17B-001 to 304.17B-031;
 - (c) Develop and establish policies and procedures to ensure timely and efficient payment of claims to include, but not limited to, the following:
 - 1. Develop and provide a claims billing manual to health care providers enrolled in Kentucky Access that includes information relating to the proper billing of a claim and the types of claim forms to use;
 - 2. Payment of all claims in accordance with the provisions of this chapter and the administrative regulations promulgated thereunder; and

3. Notification to an enrollee through an explanation of benefits if a claim is denied or if there is enrollee financial responsibility of a paid claim for deductible or coinsurance amounts;
- (d) Issue denial letters under KRS 304.17A-540 for denial of preauthorization and precertification requests for medical necessity and medical appropriateness determinations;
- (e) Submit information to the *department{office}* under KRS 304.17A-330;
- (f) Submit reports to the *department{office}* regarding the operation and financial condition of Kentucky Access. The frequency, content, and form of the reports shall be determined by the *department{office}*;
- (g) Submit an annual report to the *department{office}* three (3) months after the end of each calendar year. The annual report shall include:
 1. Earned premium;
 2. Administrative expenses;
 3. Incurred losses for the year;
 4. Paid losses for the year;
 5. Number of enrollees enrolled in Kentucky Access by category of eligibility; and
 6. Any other information requested by the *department{office}*; and
- (h) Be subject to examination by the *department{office}* under Subtitles 2 and 3 of this chapter.
- (4) The third-party administrator shall be paid for necessary and reasonable expenses, as provided in the contract between the *department{office}* and the third-party administrator.

➔Section 1279. KRS 304.17B-013 is amended to read as follows:

- (1) The schedule of rates, premium rates charged to enrollees, deductible amounts, copayment amounts, coinsurance amounts, and other cost-sharing amounts shall be established by the *department{office}*. Premium rates charged to enrollees are not intended to fully cover the cost of providing health care coverage to Kentucky Access enrollees, and any claims in excess of premium rates shall be covered by the Kentucky Access fund.
- (2) Premium rates for health benefit plans provided under Kentucky Access shall bear a reasonable relationship to each other. Premium rates shall be varied based on age and gender. The initial premium rates for plan coverage shall not exceed one hundred fifty percent (150%) of the applicable individual standard risk rates, as established by the *department{office}*. In no event shall premium rates exceed one hundred seventy-five percent (175%) of the rates applicable to individual standard risks.
- (3) Premium rates for coverage issued by Kentucky Access shall be established annually by the *department{office}*, using reasonable actuarial principles, and shall reflect anticipated experience and expenses for risks under Kentucky Access.

➔Section 1280. KRS 304.17B-015 is amended to read as follows:

- (1) Any individual who is an eligible individual is eligible for coverage under Kentucky Access, except as specified in paragraphs (a), (b), (d), and (e) of subsection (4) of this section.
- (2) Any individual who is not an eligible individual who has been a resident of the Commonwealth for at least twelve (12) months immediately preceding the application for Kentucky Access coverage is eligible for coverage under Kentucky Access if one (1) of the following conditions is met:
 - (a) The individual has been rejected by at least one (1) insurer for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage;
 - (b) The individual has been offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium rate at the time of enrollment or upon renewal; or
 - (c) The individual has a high-cost condition listed in KRS 304.17B-001.

- (3) A Kentucky Access enrollee whose premium rates exceed claims for a three (3) year period shall be issued a notice of insurability. The notice shall indicate that the Kentucky Access enrollee has not had claims exceed premium rates for a three (3) year period and may be used by the enrollee to obtain insurance in the regular individual market.
- (4) An individual shall not be eligible for coverage under Kentucky Access if:
- (a) The individual has, or is eligible for, on the effective date of coverage under Kentucky Access, substantially similar coverage under another contract or policy, unless the individual was issued coverage from a GAP participating insurer as a GAP qualified individual prior to January 1, 2001. A GAP qualified individual shall be automatically eligible for coverage under Kentucky Access without regard to the requirements of subsection (2) of this section. An individual who is ineligible for coverage pursuant to this paragraph shall not preclude the individual's spouse or dependents from being eligible for Kentucky Access coverage. As used in this paragraph, "eligible for" includes any individual who was eligible for coverage but waived that coverage. That individual shall be ineligible for Kentucky Access coverage through the period of waived coverage;
 - (b) The individual is eligible for coverage under Medicaid or Medicare;
 - (c) The individual previously terminated Kentucky Access coverage and twelve (12) months have not elapsed since the coverage was terminated, unless the individual demonstrates a good faith reason for the termination;
 - (d) Except for covered benefits paid under the standard health benefit plan as specified in KRS 304.17B-019, Kentucky Access has paid two million dollars (\$2,000,000) in covered benefits per individual. The maximum limit under this paragraph may be increased by the ~~department~~~~office~~; or
 - (e) The individual is confined to a public institution or incarcerated in a federal, state, or local penal institution or in the custody of federal, state, or local law enforcement authorities, including work release programs.
- (5) The coverage of any person who ceases to meet the requirements of this section or the requirements of any administrative regulation promulgated under this subtitle may be terminated.
- ➔Section 1281. KRS 304.17B-017 is amended to read as follows:
- (1) At least annually, the ~~department~~~~office~~ shall evaluate and revise as necessary rates to be charged to Kentucky Access enrollees.
 - (2) Except as provided in KRS 304.17B-019, the ~~department~~~~office~~ may revise its health benefit plans, cost-sharing arrangements, plan delivery rules, schedule of benefits, rates, and cost-containment features provided under Kentucky Access at the time of the health benefit plan renewal as necessary to ensure that Kentucky Access maintains adequate resources for continued operation.
- ➔Section 1282. KRS 304.17B-019 is amended to read as follows:
- (1) Kentucky Access shall offer at least three (3) health benefit plans to enrollees, which shall be similar to the health benefit plans currently being marketed to individuals in the individual market. One (1) plan shall be the standard health benefit plan set forth in KRS 304.17A-250.
 - (2) At least one (1) plan shall be offered in a traditional fee-for-service form. At least one (1) plan may be offered in a managed-care form at such time as the ~~department~~~~office~~ can establish an appropriate provider network in available service areas.
 - (3) The ~~department~~~~office~~ shall provide for utilization review and case management for all health benefit plans issued under Kentucky Access.
 - (4) The ~~department~~~~office~~ shall review and compare health benefit plans provided under Kentucky Access to health benefit plans provided in the individual market. Based on the review, the ~~department~~~~office~~ may amend or replace the health benefit plans issued under Kentucky Access, except for the standard health benefit plan as specified in subsection (1) of this section.
 - (5) Individuals who apply and are determined eligible for health benefit plans issued under Kentucky Access shall have coverage effective the first day of the month after the application month.

- (6) For eligible individuals, health benefit plans issued under Kentucky Access shall not impose any pre-existing condition exclusions. In all other cases, a pre-existing condition exclusion may be imposed in accordance with KRS 304.17A-230.
- (7) Health benefit plans issued under Kentucky Access shall be guaranteed renewable except as otherwise specified in KRS 304.17B-015 and KRS 304.17A-240.
- (8) All health benefit plans issued under Kentucky Access shall provide that, upon the death or divorce of the individual in whose name the contract was issued, every other person covered in the contract may elect within sixty-three (63) days to continue under the same or a different contract.
- (9) Health benefit plans issued under Kentucky Access shall coordinate benefits with other health benefit plans and be the payer of last resort.
- (10) Except for the standard health benefit plan specified in subsection (1) of this section, health benefit plans issued under Kentucky Access shall pay covered benefits up to a lifetime limit of two million dollars (\$2,000,000) per covered individual. The maximum limit under this subsection may be increased by the ~~department~~~~office~~.

➔Section 1283. KRS 304.17B-021 is amended to read as follows:

- (1) In addition to the other powers enumerated in KRS 304.17B-001 to 304.17B-031, the ~~department~~~~office~~ shall assess insurers in the amounts specified in this section. The assessment shall be used for the purpose of funding GAP losses and Kentucky Access.
 - (a) The amount of the assessment for each calendar year shall be as follows:
 - 1. From each stop-loss carrier, an amount that is equal to two dollars (\$2) upon each one hundred dollars (\$100) of health insurance stop-loss premiums;
 - 2. From all insurers, an amount based on the total amount of all health benefit plan premiums earned during the prior assessment period and paid by all insurers who received any of the health benefit plan premiums on which the annual assessment is based. The percentage rate used for the annual assessment shall be the same percentage rate as calculated in the GAP risk adjustment process for the six (6) month period of July 1, 1998, through December 31, 1998;
 - 3. If determined necessary by the ~~department~~~~office~~, a second assessment may be assessed in the same manner as the annual assessment in subparagraph 2. of this paragraph; and
 - 4. In no event shall the sum of the first assessment provided for in subparagraph 2. of this paragraph and the second assessment provided for in subparagraph 3. of this paragraph be greater than one percent (1%) of the total amount of all assessable health benefit plan premiums earned during the prior assessment period.
 - (b) The first assessment shall be for the period from January 1, 2000, through December 31, 2000, and shall be paid on or before March 31, 2001. Subsequent annual assessments shall be paid on or before March 31 of the year following the assessment period.
- (2) Every supporting insurer shall report to the ~~department~~~~office~~, in a form and at the time as the ~~department~~~~office~~ may specify, the following information for the specified period:
 - (a) The insurer's total stop-loss premiums and health benefit plan premiums in the individual, small group, large group, and association markets; and
 - (b) Other information as the ~~department~~~~office~~ may require.
- (3) As part of the assessment process, the ~~department~~~~office~~ shall establish and maintain the Kentucky Access fund. All funds shall be held at interest, in a single depository designated in accordance with KRS 304.8-090(1) under a written trust agreement in accordance with KRS 304.8-095. All expense and revenue transactions of the fund shall be posted to the Management Administrative Reporting System (MARS) and its successors.
- (4) The Kentucky Access fund shall be funded from the following sources:
 - (a) Premiums paid by Kentucky Access enrollees;

- (b) The funds designated for Kentucky Access in the Kentucky Health Care Improvement fund;
 - (c) Appropriations from the General Assembly;
 - (d) All premium taxes collected under KRS Chapter 136 from any insurer, and any retaliatory taxes collected under KRS 304.3-270 from any insurer, for accident and health premiums that are in excess of the amount of the premium taxes and retaliatory taxes collected for the calendar year 1997;
 - (e) Annual assessments from supporting insurers;
 - (f) A second assessment from supporting insurers;
 - (g) Gifts, grants, or other voluntary contributions;
 - (h) Interest or other earnings on the investment of the moneys held in the account; and
 - (i) Any funds remaining on January 1, 2001, in the guaranteed acceptance program account may be transferred to the Kentucky Access fund.
- (5) The ~~department~~~~office~~ shall determine on behalf of Kentucky Access the premiums, the expenses for administration, the incurred losses, taking into account investment income and other amounts needed to satisfy reserves, estimated claim liabilities, and other obligations for each calendar year. The ~~department~~~~office~~ shall also determine the amount of the actual guaranteed acceptance program plan losses for each calendar year. The ~~department~~~~office~~ shall assess insurers as follows:
- (a) On or before March 31 of each year, the amount set forth in subsection (1)(a)1. and (1)(a)2. of this section.
 - (b) If the amount of actual guaranteed acceptance program plan losses exceeds the assessment provided for in paragraph (a) of this subsection, a second assessment shall be authorized under subsection (1)(a)3. of this section. If the amount of GAP losses exceeds the assessments provided under subsection (1)(a)1., subsection (1)(a)2., and subsection (1)(a)3. of this section, moneys received and available from the Kentucky Health Care Improvement Fund after the ~~department~~~~office~~ determines available funding for Kentucky Access for the current calendar year pursuant to subsection (6) of this section, shall be used to reimburse GAP participating insurers for any actual guaranteed acceptance program losses. If the amount of GAP losses exceeds the amount in the Kentucky Health Care Improvement Fund after reserving sufficient funds for Kentucky Access for the current year, each GAP participating insurer shall be reimbursed up to the amount of its proportional share of actual guaranteed acceptance program plan losses from the fund. Effective for any assessment on or after January 1, 2001, in calculating GAP losses, total premiums and total claims of the GAP participating insurer shall be used. Actual guaranteed acceptance program losses shall be calculated as the difference between the total GAP claims and the total GAP premiums on an aggregate basis.
 - (c) If GAP losses are fully covered by the assessment process provided for in subsection (1)(a)1. and (1)(a)2. of this section and the second assessment provided for in subsection (1)(a)3. of this section is not necessary to cover GAP losses, and as determined by the ~~department~~~~office~~ using reasonable actuarial principles Kentucky Access funding is needed, a second assessment provided for in subsection (1)(a)3. of this section shall be completed.
- (6) After the end of each calendar year, GAP losses shall be reimbursed only after the ~~department~~~~office~~ determines that appropriate funding is available for Kentucky Access for the current calendar year. GAP losses shall be reimbursed after reserving sufficient funds for Kentucky Access.
- (7) With respect to a GAP participating insurer who reasonably will be expected both to pay assessments and to receive payments from the assessment fund, the ~~department~~~~office~~ shall calculate the net amount owed to or to be received from the fund, and the ~~department~~~~office~~ shall only collect assessments for or make payments from the fund based upon net amounts.
- (8) Insurers paying an assessment may include in any health insurance rate filing the amount of these assessments as provided for in Subtitle 17A of this chapter.
- (9) Insurers shall pay any assessment amounts authorized in KRS 304.17B-001 to 304.17B-031 within thirty (30) days of receiving notice from the ~~department~~~~office~~ of the assessment amount.

- (10) Any surpluses remaining in the Kentucky Access fund after completion of the assessment process for a calendar year shall be maintained for use in the assessment process for future calendar years and such funds shall not lapse. The general fund appropriations to the Kentucky Access fund shall not lapse.
- (11) Assessments on health benefit plan premiums that are required under KRS 304.17B-001 to 304.17B-031 shall not be applied to premiums received by an insurer for state employees, Medicaid recipients, Medicare beneficiaries, and CHAMPUS insureds.
- (12) The ~~department~~~~office~~ shall direct that receipts of Kentucky Access be held at interest, and may be used to offset future losses or to reduce plan premiums in accordance with the terms of KRS 304.17B-001 to 304.17B-031. As used in this subsection, "future losses" may include reserves for incurred but not reported claims.
- (13) The ~~department~~~~office~~ shall conduct examinations of insurers and stop-loss carriers reasonably necessary to determine if the information provided by the insurers or stop-loss carriers is accurate.
- (14) The insurer, as a condition of conducting health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.
- (15) The stop-loss carrier, as a condition of doing health insurance business in Kentucky, shall pay the assessments specified in KRS 304.17B-001 to 304.17B-031.

➔Section 1284. KRS 304.17B-023 is amended to read as follows:

- (1) After the end of each calendar year, a GAP participating insurer shall report the following information for the previous calendar year:
 - (a) The total earned premium in the individual, small group, large group, and association markets;
 - (b) The number of GAP policies in force as of December 31;
 - (c) The amount of the insurer's GAP premiums received during the calendar year covered by the report;
 - (d) The amount of the insurer's GAP claims paid during the calendar year covered by the report;
 - (e) The amount of the insurer's GAP losses; and
 - (f) Other information as the ~~department~~~~office~~ may require to be reported.
- (2) After the end of each calendar year, and based upon the reports filed under subsection (1) of this section, the ~~department~~~~office~~ shall calculate and provide to each insurer who filed a report the following information relating to the calendar year:
 - (a) The amount of each reporting insurer's market share;
 - (b) The total amount of GAP premiums for all reporting insurers;
 - (c) The total amount of GAP claims paid by all reporting insurers;
 - (d) The amount of total actual GAP losses;
 - (e) The amount of the insurer's assessment or refund; and
 - (f) Other information as the ~~department~~~~office~~ may elect to calculate and report.

The ~~department~~~~office~~ shall complete its calculation and provide each insurer the results of its calculation within sixty (60) days after receiving all required information.

- (3) The ~~department~~~~office~~ shall pay GAP losses to GAP participating insurers in accordance with this section and KRS 304.17B-021(5).
- (4) The ~~department~~~~office~~ shall conduct examinations of insurers participating in Kentucky Access as are reasonably necessary to determine if the information provided by the insurers is accurate.

➔Section 1285. KRS 304.17B-027 is amended to read as follows:

Kentucky Access and the ~~department~~~~office~~ shall be exempt from all taxes levied by the state or any of its subdivisions.

➔Section 1286. KRS 304.17B-029 is amended to read as follows:

- (1) Sixty (60) days prior to the regular session of the General Assembly in the year 2002, and sixty (60) days prior to each subsequent regular session of the General Assembly thereafter, the ~~department~~~~office~~ shall submit a written report to the Legislative Research Commission and provide a detailed briefing. The report shall contain an evaluation of Kentucky Access, an evaluation of issues concerning high-risk individuals, and other information as the ~~department~~~~office~~ deems necessary.
- (2) Beginning no later than June 30, 2001, and annually thereafter, the Auditor of Public Accounts shall audit Kentucky Access and within sixty (60) days of completion of the audit shall submit a copy of the audit to the Legislative Research Commission and the ~~Department~~~~Office~~ of Insurance.

➔Section 1287. KRS 304.17B-031 is amended to read as follows:

- (1) The ~~department~~~~office~~ shall promulgate administrative regulations necessary to carry out the provisions of KRS 304.17B-001 to 304.17B-031.
- (2) Kentucky Access shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:
 - (a) Subtitle 1;
 - (b) Subtitle 2;
 - (c) Subtitle 3;
 - (d) Subtitle 5;
 - (e) Subtitle 8;
 - (f) Subtitle 9;
 - (g) Subtitle 12;
 - (h) Subtitle 14;
 - (i) Subtitle 17;
 - (j) Subtitle 17A;
 - (k) Subtitle 25;
 - (l) Subtitle 38; and
 - (m) Subtitle 47.

➔Section 1288. KRS 304.17B-033 is amended to read as follows:

- (1) No less than annually, the Health Insurance Advisory Council shall review the list of high-cost conditions established under KRS 304.17B-001(14) and recommend changes to the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ may accept or reject any or all of the recommendations and may make whatever changes by administrative regulation the ~~commissioner~~~~executive director~~ deems appropriate. The council, in making recommendations, and the ~~commissioner~~~~executive director~~, in making changes, shall consider, among other things, actual claims and losses on each diagnosis and advances in treatment of high-cost conditions.
- (2) The ~~commissioner~~~~executive director~~ may by administrative regulation add to or delete from the list of high-cost conditions for Kentucky Access.

➔Section 1289. KRS 304.17C-010 is amended to read as follows:

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

- (1) "At the time of enrollment" means the same as defined in KRS 304.17A-005(2);
- (2) "Enrollee" means an individual who is enrolled in a limited health service benefit plan;
- (3) "Health care provider" or "provider" means the same as defined in KRS 304.17A-005(23);
- (4) "Insurer" means any insurance company, health maintenance organization, self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA, provider-sponsored integrated health delivery network, self-insured employer-organized association, nonprofit hospital, medical-surgical, dental, health

service corporation, or limited health service organization authorized to transact health insurance business in Kentucky who offers a limited health service benefit plan; and

- (5) "Limited health service benefit plan" means any policy or certificate that provides services for dental, vision, mental health, substance abuse, chiropractic, pharmaceutical, podiatric, or other such services as may be determined by the **commissioner**~~executive director~~ to be offered under a limited health service benefit plan. A limited health service benefit plan shall not include hospital, medical, surgical, or emergency services except as these services are provided incidental to the plan.

➔Section 1290. KRS 304.17C-030 is amended to read as follows:

- (1) An insurer shall disclose in writing to a covered person and an insured or enrollee, in a manner consistent with the provisions of KRS 304.14-420 to 304.14-450, the terms and conditions of its limited health service benefit plan and shall promptly provide the covered person and enrollee with written notification of any change in the terms and conditions prior to the effective date of the change. The insurer shall provide the required information at the time of enrollment and upon request thereafter.
- (2) The information required to be disclosed under this section shall include a description of:
- (a) Covered services and benefits to which the enrollee or other covered person is entitled;
 - (b) Restrictions or limitations on covered services and benefits;
 - (c) Financial responsibility of the covered person, including copayments and deductibles;
 - (d) Prior authorization and any other review requirements with respect to accessing covered services;
 - (e) Where and in what manner covered services may be obtained;
 - (f) Changes in covered services or benefits, including any addition, reduction, or elimination of specific services or benefits;
 - (g) The covered person's right to the following:
 - 1. A utilization review and the procedure for initiating a utilization review, if an insurer elects to provide utilization review; and
 - 2. An internal appeal of a utilization review decision made by or on behalf of the insurer with respect to the denial, reduction, or termination of a limited health service benefit plan or the denial of payment for a health care service, and the procedure to initiate an internal appeal;
 - (h) Measures in place to ensure the confidentiality of the relationship between an enrollee and a health care provider;
 - (i) Other information as the **commissioner**~~executive director~~ shall require by administrative regulation;
 - (j) A summary of the drug formulary, including but not limited to a listing of the most commonly used drugs, drugs requiring prior authorization, any restrictions, limitations, and procedures for authorization to obtain drugs not on the formulary, and, upon request of an insured or enrollee, a complete drug formulary; and
 - (k) A statement informing the insured or enrollee that if the provider meets the insurer's enrollment criteria and is willing to meet the terms and conditions for participation, the provider has the right to become a provider for the insurer.

- (3) The insurer shall file the information required under this section with the **department**~~office~~.

➔Section 1291. KRS 304.17C-060 is amended to read as follows:

- (1) An insurer shall file with the **commissioner**~~executive director~~ sample copies of any agreements it enters into with providers for the provision of health care services. The **commissioner**~~executive director~~ shall promulgate administrative regulations prescribing the manner and form of the filings required. The agreements shall include the following:
- (a) A hold harmless clause that states that the provider may not, under any circumstance, including:
 - 1. Nonpayment of moneys due to providers by the insurer;

2. Insolvency of the insurer; or
3. Breach of the agreement,

bill, charge, collect a deposit, seek compensation, remuneration, or reimbursement from, or have any recourse against the subscriber, dependent of subscriber, enrollee, or any persons acting on their behalf, for services provided in accordance with the provider agreement. This provision shall not prohibit collection of deductible amounts, copayment amounts, coinsurance amounts, and amounts for noncovered services;

- (b) A survivorship clause that states the hold harmless clause and continuity of care clause shall survive the termination of the agreement between the provider and the insurer; and
 - (c) A clause requiring that if a provider enters into any subcontract agreement with another provider to provide health care services to the subscriber, dependent of the subscriber, or enrollee of a limited health service benefit plan, the subcontract agreement must meet all requirements of this subtitle and that all such subcontract agreements shall be filed with the **commissioner**~~executive director~~ in accordance with this subsection.
- (2) An insurer that enters into any risk-sharing arrangement or subcontract agreement shall file a copy of the arrangement with the **commissioner**~~executive director~~. The insurer shall also file the following information regarding the risk-sharing arrangement:
- (a) The number of enrollees affected by the risk-sharing arrangement;
 - (b) The health care services to be provided to an enrollee under the risk-sharing arrangement;
 - (c) The nature of the financial risk to be shared between the insurer and entity or provider, including but not limited to the method of compensation;
 - (d) Any administrative functions delegated by the insurer to the entity or provider. The insurer shall describe a plan to ensure that the entity or provider will comply with the requirements of this subtitle in exercising any delegated administrative functions; and
 - (e) The insurer's oversight and compliance plan regarding the standards and method of review.
- (3) Nothing in this section shall be construed as requiring an insurer to submit the actual financial information agreed to between the insurer and the entity or provider. The **commissioner**~~executive director~~ shall have access to a specific risk-sharing arrangement with an entity or provider upon request to the insurer. Financial information obtained by the **department**~~office~~ shall be considered to be a trade secret and shall not be subject to ~~the~~ KRS 61.872 to 61.884.

➔Section 1292. KRS 304.18-020 is amended to read as follows:

- (1) "Group health insurance" is hereby declared to be that form of health insurance covering groups of persons as defined in this section, with or without one (1) or more members of their families or one (1) or more of their dependents, or covering one (1) or more members of the families or one (1) or more dependents of such groups of persons, and issued upon the following basis:
 - (a) Under a policy issued to an employer or trustees of a fund established by an employer, who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer (except as to policies insuring only against aviation or transportation hazards). The term "employees" as used in this paragraph shall be deemed to include the officers, directors, managers and employees of the employer, the individual proprietor or partner if the employer is an individual proprietor or partnership, the officers, directors, managers and employees of subsidiary or affiliated corporations, the individual proprietors, partners and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract or otherwise. The term "employees" as used in this paragraph may include retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officers. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.
 - (b) Under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, insuring members, employees, or employees of members of the association for the

benefit of persons other than the association or its officers or trustees. The term "employees" as used in this paragraph may include directors of corporate members and retired employees.

- (c) Under a policy issued to the trustees of a fund established by two (2) or more employers in the same or related industry or by one (1) or more labor unions or by one (1) or more employers and one (1) or more labor unions or by an association as defined in paragraph (b), which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or of such association, or employees of members of such association, for the benefit of persons other than the employers or the unions or such association. The term "employees" as used in this paragraph may include the officers, directors, managers, and employees of the employer, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The term "employees" as used in this paragraph may include retired employees. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.
 - (d) Under a policy issued to a creditor insuring a group of debtors, as defined in KRS 304.16-040, and under the same conditions and limitations as specified in such section, but the amount in indemnity payable with respect to any person insured thereunder shall not at any time exceed the aggregate of the periodic scheduled unpaid installments.
 - (e) Under a policy issued to any other person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy.
 - (f) Under a policy issued to cover any other substantially similar group which, in the discretion of the ~~commissioner~~~~executive director~~, may be subject to the issuance of a group health policy or contract.
- (2) Any group health policy which contains provisions for the payment by the insurer of benefits for expenses incurred on account of hospital, nursing, medical, or surgical services for members of the family or dependents of a person in the insured group may provide for the continuation of such benefit provisions, or any part or parts thereof, after the death of the person in the insured group.

➔Section 1293. KRS 304.18-060 is amended to read as follows:

"Blanket health insurance" is that form of health insurance covering groups of persons as enumerated in one (1) of the following subsections under a policy or contract issued to:

- (1) Any common carrier or to any operator, owner, or lessee of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on the common carrier or the means of transportation.
- (2) An employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder.
- (3) A college, school or other institution of learning; a school district or districts; a school jurisdictional unit; or to the head, principal, or governing board of any such educational unit, who or which shall be deemed the policyholder, covering students, teachers, or employees.
- (4) A religious, charitable, recreational, educational or civic organization or branch thereof, which shall be deemed the policyholder covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder.
- (5) A sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors.
- (6) A volunteer fire department, first aid, emergency management agency, or other such volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by the policyholder.
- (7) A newspaper or other publisher, which shall be deemed the policyholder, covering its carriers.
- (8) An association, including a labor union, which has a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the

policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by the policyholder.

- (9) Any other person or group covering any other risk or class of risks which, in the discretion of the ~~commissioner~~~~executive director~~, may be properly eligible for blanket health insurance. The discretion of the ~~commissioner~~~~executive director~~ may be exercised on an individual risk basis or class of risks, or both.

➔Section 1294. KRS 304.18-070 is amended to read as follows:

Any insurer authorized to write health insurance in this state shall have the power to issue blanket health insurance. No such blanket policy, except as provided in subsection (4) of KRS 304.14-120, may be issued or delivered in this state unless a copy of the form thereof has been filed in accordance with KRS 304.14-120. Every such blanket policy shall contain provisions which in the opinion of the ~~commissioner~~~~executive director~~ are not less favorable to the policyholder and the individual insured than the following:

- (1) A provision that the policy, including indorsements and a copy of the application, if any, of the policyholder and the persons insured shall constitute the entire contract between the parties, and that any statement made by the policyholder or by a person insured shall in the absence of fraud be deemed a representation and not a warranty, and that no such statements shall be used in defense to a claim under the policy, unless contained in a written application. Such person, his *or her* beneficiary or assignee shall have the right to make a written request to the insurer for a copy of such application, and the insurer shall within fifteen (15) days after the receipt of such request at its principal office or any branch office of the insurer, deliver or mail to the person making such request a copy of such application. If such copy is not so delivered or mailed, the insurer shall be precluded from introducing such application as evidence in any action based upon or involving any statements contained therein.
- (2) A provision that written notice of sickness or of injury must be given to the insurer within twenty (20) days after the date when such sickness or injury occurred. Failure to give notice within such time shall not invalidate or reduce any claim if it is shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.
- (3) A provision that the insurer will furnish either to the claimant or to the policyholder for delivery to the claimant such forms as are usually furnished by it for filing proof of loss. If such forms are not furnished before the expiration of fifteen (15) days after giving such notice, the claimant shall be deemed to have complied with the requirements of the policy as to proof of loss upon submitting, within the time fixed in the policy for filing proof of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.
- (4) A provision that in the case of a claim for loss of time for disability, written proof of such loss must be furnished to the insurer within ninety (90) days after the commencement of the period for which the insurer is liable, and that subsequent written proofs of the continuance of such disability must be furnished to the insurer at such intervals as the insurer may reasonably require, and that in the case of a claim for any other loss, written proof of such loss must be furnished to the insurer within ninety (90) days after the date of such loss. Failure to furnish such proof within such time shall not invalidate or reduce any claim if it is shown not to have been reasonably possible to furnish such proof and that such proof was furnished as soon as was reasonably possible.
- (5) A provision that all benefits payable under the policy other than benefits for loss of time will be payable immediately upon receipt of due written proof of such loss, and that, subject to due proof of loss, all accrued benefits payable under the policy for loss of time will be paid not less frequently than monthly during the continuance of the period for which the insurer is liable, and that any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of such proof.
- (6) A provision that the insurer at its own expense shall have the right and opportunity to examine the person of the insured when and so often as it may reasonably require during the pendency of claim under the policy and also the right and opportunity to make an autopsy where it is not prohibited by law.
- (7) A provision that no action at law or in equity shall be brought to recover under the policy prior to the expiration of sixty (60) days after written proof of loss has been furnished in accordance with the requirements of the policy and that no such action shall be brought after the expiration of three (3) years after the time written proof of loss is required to be furnished.

➔Section 1295. KRS 304.18-085 is amended to read as follows:

The ~~commissioner~~~~[executive director]~~ shall prescribe guidelines for coordination of benefits by group health insurance policies. All group health insurance policies delivered, issued for delivery, or renewed in Kentucky after July 15, 1986, shall comply with the guidelines prescribed by the ~~commissioner~~~~[executive director]~~.

➔Section 1296. KRS 304.18-110 is amended to read as follows:

- (1) As used in this section:
 - (a) "Group policy" means group health insurance policies as defined in KRS 304.18-020 and blanket health insurance policies which the ~~commissioner~~~~[executive director]~~, in his *or her* discretion, designates as subject to this section, which:
 1. Affect the rights of a Kentucky insured and bear a reasonable relation to Kentucky, regardless of whether delivered or issued for delivery in Kentucky;
 2. Provide hospital or surgical expenses benefits, other than for a specific disease or accidental injury only; and
 3. Are delivered, issued for delivery, or renewed after July 15, 2002;
 - (b) "Medicare" means Title XVIII of the United States Social Security Act as amended or superseded.
- (2) Persons insured under group policies have the right upon termination of group membership to continue coverage for themselves and their dependents upon meeting the following conditions:
 - (a) The group member has been covered by the group policy or any group policy it replaced for at least three (3) months; and
 - (b) Notice is given to the insurer and payment of the group rate is made to the insurer, by the group member, within thirty-one (31) days after notice pursuant to subsection (7) of this section.
- (3) Continued group health insurance coverage shall terminate on the earlier of:
 - (a) The date eighteen (18) months after the date on which the group coverage would otherwise have terminated because of termination of group membership;
 - (b) If the group member fails to make timely payment of premium to the insurance company, the end of the period for which premium payment was made; or
 - (c) The date the group policy is terminated and is not replaced by another group policy within thirty-one (31) days.
- (4) If a group policy is replaced, by a succeeding insurer, persons under the continued group health insurance shall remain covered under the prior insurer's policy until it terminates in accordance with subsection (3) of this section.
- (5) The right to continue group health insurance coverage shall also be available:
 - (a) To the surviving spouse, at the death of the group member, with respect to the spouse and such children whose coverage under the group policy would terminate or terminates by reason of the death of the group member;
 - (b) To a child solely with respect to himself *or herself* upon termination of membership in the group or his *or her* coverage by reason of operation of the limiting age of coverage under the group policy while covered as a dependent thereunder; or
 - (c) To a former spouse for himself *or herself* and such children of whom he *or she* is awarded custody when coverage under the group policy would terminate or terminates by reason of termination of dependency as defined in the group policy and resulting from an order dissolving the marriage entered by a court of competent jurisdiction.
- (6) Continuation of group health insurance coverage need not be granted in the following situations:
 - (a) On the effective date of coverage, the applicant is or could be covered by Medicare;
 - (b) On the effective date of coverage, the applicant is or could be covered by another group coverage (insured or uninsured).

(7) Notice of the right to continue group health insurance coverage shall be given as follows:

- (a) For group policies delivered, issued for delivery, or renewed after July 15, 2002, the insurer shall give written notice of the right to continue group health insurance coverage to any group member entitled to continue coverage under this section upon notice from the group policyholder that the group member has terminated membership in the group. The thirty-one (31) day period of subsection (2)(b) of this section shall not begin to run until the notice required by this paragraph is mailed or delivered to the last known address of the group member;
- (b) If a group member becomes entitled to obtain continued health insurance coverage, pursuant to this section, and the insurer fails to give the group member written notice of the right, pursuant to this subsection, the insurer shall give written notice to the former group member as soon as practicable after being notified of the insurer's failure to give written notice of continuation rights to the group member and such group member shall have an additional period within which to exercise continuation or conversion rights. The additional period shall expire sixty (60) days after written notice is received from the insurer. Written notice delivered or mailed to the last known address of the group member shall constitute the giving of notice for the purpose of this paragraph. If a group member makes application and pays the premium for continued health insurance coverage within the additional period allowed by this paragraph, the effective date of continued health insurance coverage shall be the date of termination from the group. However, nothing in this subsection shall require an insurer to give notice or provide continuation coverage to a former group member ninety (90) days after termination of the former group member's group coverage.

➔Section 1297. KRS 304.18-120 is amended to read as follows:

- (1) A converted policy issued pursuant to the conversion privilege contained in a group policy providing hospital or surgical expense insurance shall not impose a lifetime maximum benefit of less than five hundred thousand dollars (\$500,000).
- (2) The ~~commissioner~~~~executive director~~ by administrative regulation shall establish minimum benefits for a converted policy issued pursuant to the conversion privilege contained in a group health policy.

➔Section 1298. KRS 304.18-124 is amended to read as follows:

As used in KRS 304.18-124 to 304.18-127, "group policy" means group health insurance policies as defined in KRS 304.18-020 and blanket health insurance policies which the ~~commissioner~~~~executive director~~, in his *or her* discretion, designates as subject to KRS 304.18-124 to 304.18-127, which:

- (1) Affect the rights of a Kentucky insured and bear a reasonable relation to Kentucky, regardless of whether delivered or issued for delivery in Kentucky;
- (2) Provide hospital or surgical expenses benefits or indemnities, other than for a specific disease or accidental injury only, or benefits for loss of time from employment; and
- (3) Are delivered, issued for delivery, or renewed after July 13, 1990.

➔Section 1299. KRS 304.18-130 is amended to read as follows:

- (1) Except as otherwise expressly provided herein, no contract providing major medical or outpatient care benefits, issued pursuant to Subtitles 18, 32, and 38 of KRS Chapter 304, shall be sold or offered for sale in the Commonwealth of Kentucky unless such contract offers the master policyholder the option to purchase in new contracts the minimum benefits for treatment of alcoholism as specified in KRS 304.18-140.
- (2) Coverage for treatment shall be divided into three (3) distinct phases:
 - (a) Emergency detoxification treatment;
 - (b) Residential treatment; and
 - (c) Outpatient treatment.

Such contracts shall contain a stipulation that no payment shall be made by the carrier to the provider except upon completion of the phase of program of treatment by the patient, under the guidance and direction of a physician licensed to practice in the Commonwealth or a professional, designated by such physician, who is a recognized staff member of a treatment facility licensed by the ~~department~~~~office~~ or accredited by the Joint Commission on the Accreditation of Hospitals.

- (3) Disability and accident income benefits and basic health care contracts that do not provide major medical or outpatient care are excluded from KRS 304.18-130 to 304.18-180.

➔Section 1300. KRS 304.18-140 is amended to read as follows:

Group contracts providing major medical or outpatient care benefits issued pursuant to KRS 304.18-130 for treatment of alcoholism shall require:

- (1) That the patient be under the supervision of a physician licensed to practice in the Commonwealth or a professional designated by such physician, and who is a recognized staff member of a treatment facility licensed by the ~~department~~~~office~~ or accredited by the Joint Commission on the Accreditation of Hospitals;
- (2) That the patient receive appropriate emergency detoxification treatment, residential treatment and outpatient treatment at facilities licensed by the ~~department~~~~office~~ or accredited by the Joint Commission on the Accreditation of Hospitals, for alcoholism treatment; and
- (3) That the following minimum benefits per patient be provided:
 - (a) Emergency detoxification - 3 days, \$40 per day
 - (b) Residential treatment - 10 days, \$50 per day
 - (c) Outpatient treatment - 10 visits, \$10 per visit.

➔Section 1301. KRS 304.18-180 is amended to read as follows:

The ~~commissioner~~~~executive director~~ of insurance shall administer the provisions of KRS 304.18-130 to 304.18-170 and may adopt rules and regulations to implement the provisions of KRS 304.18-130 to 304.18-170.

➔Section 1302. KRS 304.19-080 is amended to read as follows:

- (1) All such policies, certificates of insurance, notices of proposed insurance, applications for insurance, indorsements and riders delivered or issued for delivery in this state and the schedule of premium rates pertaining thereto shall be filed with the ~~commissioner~~~~executive director~~.
- (2) All life insurance and all health insurance in connection with loans or other credit transactions shall be subject to the provisions of this subtitle, except health insurance in connection with a loan or other credit transaction of more than five (5) years' duration or life insurance in connection with a loan or other credit transaction of more than ten (10) years' duration; nor shall insurance be subject to provisions of this subtitle where the issuance of such insurance is an isolated transaction on the part of the insurer not relating to an agreement or a plan for insuring debtors of the creditor; nor shall insurance issued for an amount in excess of forty thousand dollars (\$40,000) be subject to this subtitle.
- (3) (a) Credit life insurance. The premium rates set forth hereunder, or actuarially equivalent, shall not exceed:
 1. For decreasing term credit life insurance, a single premium of sixty cents (\$0.60) per annum per one hundred dollars (\$100) of scheduled indebtedness, or sixty-five cents (\$0.65) per annum per one hundred dollars (\$100) of scheduled indebtedness if dismemberment benefits are included in the policy.
 2. Single premium rates for indebtedness repayable in monthly installments other than twelve (12) in number shall not exceed one-twelfth (1/12) of the above premium rate multiplied by the number of full months in the scheduled period.
 3. A premium payable monthly at the rate of ninety-two cents (\$0.92) per one thousand dollars (\$1,000) of outstanding unpaid insured indebtedness or one dollar (\$1) per one thousand dollars (\$1,000) of outstanding unpaid insured indebtedness if dismemberment benefits are included in the policy, will be deemed the actuarial equivalent of the foregoing rates.
 4. For level term credit life insurance, a single premium of one dollar and twenty cents (\$1.20) per annum per one hundred dollars (\$100) of indebtedness or one dollar and thirty cents (\$1.30) per one hundred dollars (\$100) of indebtedness if dismemberment benefits are included in the policy.
- (b) 1. The standards set forth above are applicable to a plan of death benefits with or without requirements for evidence of insurability which contain no exclusions except for suicide; other exclusions must receive the approval of the ~~commissioner~~~~executive director~~, and

2. Coverage shall be offered to all debtors regardless of age; or to all debtors not older than the applicable age limit which shall be not less than sixty-five (65) at the inception of the indebtedness or sixty-six (66) at the scheduled maturity date of the transaction, provided that each company's right to underwrite risks on an individual basis shall not be restricted by this subparagraph. Appropriate adjustments may be made with the approval of the ~~commissioner~~~~executive director~~ if premium rates are determined according to the age of the insured debtor or by age brackets.
 3. Rates for use with forms which are more restrictive in any material respect shall reflect such variations in lower rates. Similarly, forms providing more extensive benefits than set forth above may carry appropriately higher charges.
 4. The standards set forth above shall be applicable to contracts which may contain a provision excluding or denying a claim for death, resulting from pre-existing illness, disease or physical condition for which the debtor received medical advice, consultation or treatment during the twelve (12) month period immediately preceding the effective date of the debtor's coverage and which would ordinarily be expected to affect materially the debtor's health during the period of coverage; provided, however, that after such coverage has been in force for six (6) months (twelve (12) months for contracts of more than three (3) years), this pre-existing exclusion clause shall not operate to deny coverage for any death thereafter. The contract shall contain no other provision which excludes or restricts liability in the event of death caused in a certain specified manner, except provisions excluding or restricting coverage in the event of intentionally self-inflicted injuries, foreign travel or residence, flight in nonscheduled aircraft, war or military service.
- (4) (a) Credit health insurance. The following premium rates, or actuarially equivalent rates, shall be charged for the coverages set forth hereunder:

Single Premium Per \$100 of Initial Indebtedness

Number of Monthly Installments	Nonretroactive Basis		Retroactive Basis	
	14-Day	30-Day	14-Day	30-Day
	Wait	Wait	Wait	Wait
1-6 months	\$ 1.51	\$.69	\$2.02	\$.92
7-12 months	2.02	.91	2.69	1.22
13-19 months	2.50	1.56	3.33	2.08
20-24 months	2.93	1.84	3.91	2.45
25-30 months	3.28	2.34	4.37	3.12
31-36 months	3.85	2.77	5.14	3.70
37-48 months	4.77	3.67	6.36	4.89
49-60 months	5.68	4.58	7.58	6.11

- (b) 1. The standards set forth above shall be applicable to contracts which may contain a provision excluding or denying a claim for disability, resulting from pre-existing illness, disease or physical condition for which the debtor received medical advice, consultation or treatment during the twelve (12) month period immediately preceding the effective date of the debtor's coverage and which would ordinarily be expected to affect materially the debtor's health during the period of coverage; provided, however, that after such coverage has been in force for six (6) months (twelve (12) months for contracts of more than three (3) years), this pre-existing exclusion clause shall not operate to deny coverage for any disability commencing thereafter. The contract shall contain no other provision which excludes or restricts liability in the event of disability caused in

a certain specified manner, except provisions excluding or restricting coverage in the event of pregnancy, intentionally self-inflicted injuries, foreign travel or residence, flight in nonscheduled aircraft, war or military service.

2. Coverage shall be offered to all debtors regardless of age, or to all debtors not older than the applicable age limit which shall be not less than sixty-five (65) at the inception of the indebtedness or sixty-six (66) at the scheduled maturity date of the transaction, provided that each company's right to underwrite risks on an individual basis shall not be restricted by this subparagraph. Appropriate adjustments may be made with the approval of the **commissioner**~~executive director~~ if premium rates are determined according to the age of the insured debtor or by age brackets.
 3. Rates for use with forms which are more restrictive in any material respect shall reflect such variations in lower rates. Similarly, forms providing more extensive benefits than set forth above may carry appropriately higher charges.
- (5) Statistical reporting. Each insurer writing credit life or credit health insurance within this state shall keep and maintain statistical data of its experience on these kinds of insurance. The insurer shall, on or before May 1 of each year, file with the **commissioner**~~executive director~~ its statistical experience data for the year ending December 31 immediately preceding. Such experience shall be reported on forms conforming to those now or hereafter from time to time adopted by the National Association of Insurance Commissioners.
 - (6) If a group policy has been delivered in this state before June 18, 1980, or has been or is delivered in another state before or on or after June 18, 1980, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this state as specified in subsections (2) and (4) of KRS 304.19-070, and such forms shall be approved by the **commissioner**~~executive director~~ if they conform with the requirements specified in such subsections and if the schedules of premium rates applicable to the insurance evidenced by such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the **commissioner**~~executive director~~. The premium rate in effect on existing group policies may be continued until the first policy anniversary date following June 18, 1980. After June 18, 1980, no borrower shall be added to an existing group policy at rates higher than those set forth in subsections (3) and (4) of this section.
 - (7) The foregoing rates and procedures are deemed to be legislative prerogatives and shall not be subject to administrative or executive change or modification.

➔Section 1303. KRS 304.19-082 is amended to read as follows:

- (1) Notwithstanding KRS 304.19-080, an insurer issuing credit health insurance coverage to credit union borrowers, when the coverage is not required as a condition of the loan, may use higher credit health insurance premium rates for specific credit unions if the rates for those credit unions have been filed with the **commissioner**~~executive director~~, and within thirty (30) days of the filing the **commissioner**~~executive director~~ has not disapproved the rate as excessive in relation to the benefits provided.
- (2) In determining whether to disapprove any rate, the **commissioner**~~executive director~~ shall give due consideration to the morbidity costs with respect to the insurance, a reasonable margin for underwriting expenses, profits, contingencies and other reasonable costs and expenses attributable to the insurer, and costs and compensation to the creditor for providing and servicing the insurance, plus the premium taxes payable on the insurance.

➔Section 1304. KRS 304.19-090 is amended to read as follows:

- (1) Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the **commissioner**~~executive director~~. No insurer shall issue any credit life insurance or credit health insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the **commissioner**~~executive director~~.
- (2) Each individual policy or group certificate shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid or credited promptly to the person entitled thereto. The **commissioner**~~executive director~~ shall prescribe a minimum refund and no refund which would be less than such minimum need be made. The formula to be used in computing such refund shall be filed with and approved by the **commissioner**~~executive~~

~~director~~. Nothing contained in this section shall require the debtor to surrender any policy or group certificate for cancellation or termination solely because the indebtedness has been paid in full prior to the scheduled maturity date nor require the insurer to return any premiums.

- (3) When a debtor purchases credit life insurance or credit health insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the account.
- (4) The amount charged to a debtor for any credit life insurance or credit health insurance shall not exceed the premiums charged by the insurer, as computed at the time the charge to the debtor is determined.
- (5) Nothing in this subtitle shall be construed to authorize any payments for insurance now prohibited under any statute, or rule thereunder, governing credit transactions.

➔Section 1305. KRS 304.19-100 is amended to read as follows:

All policies of credit life insurance and credit health insurance shall be delivered or issued for delivery in this state only by an insurer authorized to do an insurance business herein, and shall be issued only through holders of licenses, or authorization issued by the **commissioner**~~executive director~~.

➔Section 1306. KRS 304.19-130 is amended to read as follows:

Whenever the **commissioner**~~executive director~~ finds that there has been a violation of this subtitle or any administrative regulations promulgated pursuant thereto, **the commissioner**~~he~~ shall conduct a hearing in accordance with this chapter and KRS Chapter 13B.

➔Section 1307. KRS 304.20-020 is amended to read as follows:

- (1) No automobile liability or motor vehicle liability policy of insurance insuring against loss resulting from liability imposed by law for bodily injury or death suffered by any person arising out of the ownership, maintenance or use of a motor vehicle shall be delivered or issued for delivery in this state with respect to any motor vehicle registered or principally garaged in this state unless coverage is provided therein or supplemental thereto, in limits for bodily injury or death set forth in KRS 304.39-110 under provisions approved by the **commissioner**~~executive director~~, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness or disease, including death, resulting therefrom; provided that the named insured shall have the right to reject in writing such coverage; and provided further that, unless the named insured requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured had rejected the coverage in connection with a policy previously issued to him **or her** by the same insurer.
- (2) For the purpose of this coverage the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency; an insured motor vehicle with respect to which the amounts provided, under the bodily injury liability bond or insurance policy applicable at the time of the accident with respect to any person or organization legally responsible for the use of such motor vehicle, are less than the limits described in KRS 304.39-110; and an insured motor vehicle to the extent that the amounts provided in the liability coverage applicable at the time of the accident is denied by the insurer writing the same.
- (3) Protection against an insurer's insolvency shall be applicable only to accidents occurring during a policy period in which its insured's uninsured motorist coverage is in effect where the liability insurer of the tortfeasor becomes insolvent within one (1) year after such an accident. Nothing herein contained shall be construed to prevent any insurer from affording insolvency protection under terms and conditions more favorable to its insureds than is provided hereunder.
- (4) In the event of payment to any person under the coverage required by this section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer.

➔Section 1308. KRS 304.20-040 is amended to read as follows:

- (1) As used in this section:

- (a) "Policy" means an automobile liability insurance policy, delivered or issued for delivery in this state, insuring a single individual or husband and wife resident of the same household, as named insured, and under which the insured vehicles therein designated are of the following types only:
 - 1. A motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers, nor rented to others;
 - 2. Any other four-wheel motor vehicle with a load capacity of one thousand five hundred (1,500) pounds or less which is not used in the occupation, profession, or business of the insured; provided, however, that this section shall not apply:
 - a. To any policy issued under an automobile assigned risk plan;
 - b. To any policy insuring more than four (4) automobiles; or
 - c. To any policy covering garage, automobile sales agency, repair shop, service station, or public parking place operation hazards;
 - (b) "Automobile liability insurance policy" includes only coverage for bodily injury and property damage liability, basic reparations benefits, and the provisions therein, if any, relating to medical payments, uninsured motorists coverage, underinsured motorists coverage, and automobile physical damage coverage;
 - (c) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than three (3) months shall for the purpose of this section be considered as if written for a policy period or term of three (3) months. Provided, further, that any policy written for a term longer than one (1) year or any policy with no fixed expiration date, shall for the purpose of this section, be considered as if written for successive policy periods or terms of one (1) year, and the policy may be terminated at the expiration of any annual period upon giving seventy-five (75) days' notice of nonrenewal prior to the anniversary date;
 - (d) "Nonpayment of premium" means failure of the named insured to discharge when due any of his *or her* obligations in connection with the payment of premiums on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit;
 - (e) "Declination" or "decline" means either the refusal of an insurer to issue an automobile liability insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or refusal of an agent to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. The offering of insurance coverage with a company within an insurance group that is different from the company requested on the nonbinding application or written request for coverage, or the offering of insurance upon different terms than requested in the nonbinding application or written request for coverage, shall be considered to be a declination; and
 - (f) "Agent" includes, but is not limited to, surplus lines broker.
- (2) (a) A notice of cancellation of a policy shall be effective only if it is based on one (1) or more of the following reasons:
- 1. Nonpayment of premium;
 - 2. The driver's license or motor vehicle registration of the named insured or of any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the one hundred eighty (180) days immediately preceding its effective date;
 - 3. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;

4. Discovery of willful acts or omissions on the part of the named insured that increase any hazard insured against; or
 5. A determination by the **commissioner**~~[executive director]~~ that the continuation of the policy would place the insurer in violation of this chapter or the rules or administrative regulations of the **commissioner**~~[executive director]~~.
- (b) This subsection shall not apply to any policy or coverage which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy.
 - (c) Modification of automobile physical damage coverage by the inclusion of a deductible not exceeding one hundred dollars (\$100) shall not be deemed a cancellation of the coverage or of the policy.
 - (d) This subsection shall not apply to nonrenewal.
- (3) No notice of cancellation of a policy to which subsection (2) of this section applies shall be effective unless mailed or delivered by the insurer to the named insured at least twenty (20) days prior to the effective date of cancellation; provided, however, that where cancellation is for nonpayment of premium, at least fourteen (14) days' notice of cancellation accompanied by the reason therefor shall be given. This subsection shall not apply to renewals.
 - (4) No insurer or agent shall decline, refuse to renew, or cancel a policy of automobile insurance solely because:
 - (a) Of the credit history, or lack of credit history, of the applicant or insured;
 - (b) The applicant or insured has previously obtained automobile coverage through a residual market mechanism or from a carrier providing nonstandard coverage;
 - (c) The applicant or insured has sustained one (1) or more losses that immediately result from a natural cause without the intervention of any person and that could not have been prevented by the exercise of prudence, diligence, and care;
 - (d) Of the race, religion, nationality, ethnic group, age, sex, or marital status of the applicant or named insured; or
 - (e) Another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.
 - (5) No insurer shall fail to renew a policy unless it shall mail or deliver to the named insured, at the address shown in the policy, at least seventy-five (75) days' advance notice of its intention not to renew. If notice is not provided, coverage shall be deemed to be renewed for the ensuing policy period upon payment of the appropriate payment under the same terms and conditions, until the named insured has accepted replacement coverage with another insurer, or until the named insured has agreed to the nonrenewal.
 - (6) The transfer of a policyholder between companies within the same insurance group shall be considered a nonrenewal.
 - (7) Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.
 - (8) If the insurer has manifested its willingness to renew by mailing or delivering a renewal notice, bill, certificate, or policy to the first-named insured at his **or her** last known address at least thirty (30) days before the end of the current policy period with the amount of the renewal premium charge and its due date clearly set forth therein, then the policy shall expire and terminate without further notice to the insured on the due date, unless the renewal premium is received by the insurer or its authorized agent on or before that date. When any policy terminates pursuant to this subsection because the renewal premium was not received on or before the due date, the insurer shall, within fifteen (15) days, deliver or mail to the first-named insured at his **or her** last known address a notice that the policy was not renewed and the date on which the coverage under it ceased to exist.
 - (9)
 - (a) Proof of mailing of renewal premium to the insurer or its agent, when authorized, on or before the due date, shall constitute a presumption of receipt pursuant to subsection (8) of this section.
 - (b) Proof of mailing of notice of cancellation or of intention not to renew or of reasons for cancellation or nonrenewal to the named insured at the address shown in the policy shall be sufficient proof of notice.
 - (10) No insurer shall impose or request an additional premium higher than its standard premium for automobile insurance, cancel or refuse to issue a policy, or refuse to renew a policy solely because the insured or the

applicant is an individual with a disability, so long as the disability does not substantially impair the person's mechanically assisted driving ability.

- (11) When an automobile liability insurance policy is canceled other than for nonpayment of premium, or in the event of failure to renew a policy of automobile liability insurance, the insurer shall notify the named insured of his *or her* possible eligibility for automobile liability insurance coverage through the Kentucky automobile assigned risk plan. The notice shall accompany or be included in the notice of cancellation or the notice of intent not to renew. The notice shall also inform the insured that he *or she* may, within seven (7) days, request the ~~commissioner~~~~executive director~~ in writing to determine whether there is sufficient reason to cancel or not to renew the policy. Within fourteen (14) days of receiving such a written request, the ~~commissioner~~~~executive director~~ shall send his *or her* findings to the insurer and to the insured. When he *or she* sends ~~his~~ findings, the ~~commissioner~~~~executive director~~ shall notify both parties of their right to request a hearing under KRS 304.2-310(2)(b) and KRS Chapter 13B. The party requesting the hearing shall give the ~~commissioner~~~~executive director~~ written confirmation of attendance at the hearing not more than five (5) days before, nor less than forty-eight (48) hours before, the scheduled hearing. If the requesting party fails to give the required written confirmation, the ~~commissioner~~~~executive director~~ shall cancel the hearing.
- (12) The reason for nonrenewal or cancellation shall accompany or be included in the notice of nonrenewal or cancellation.
- (13) Except where the maximum limits of coverage have been purchased, every notice of first renewal shall include a provision or be accompanied by a notice stating in substance that added uninsured motorists, underinsured motorists, and personal injury protection coverages may be purchased by the insured.
- (14) There shall be no liability on the part of and no cause of action of any nature shall arise against the ~~commissioner~~~~executive director~~ or against any insurer, its authorized representative, its agents, its employees, or any firm, person, or corporation furnishing to the insurer information as to reasons for cancellation or nonrenewal, for any statement made by any of them in any written notice of cancellation or nonrenewal, or in any other communication, oral or written, specifying the reasons for cancellation or nonrenewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.
- (15) (a) If the ~~commissioner~~~~executive director~~ determines that an insurer has violated any provision of this section, the ~~commissioner~~~~executive director~~ may require the insurer to:
 1. Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
 2. Reinstate insurance coverage to the end of the policy period; or
 3. Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated.
- (b) As to any person who has violated any provisions of this section, the ~~commissioner~~~~executive director~~ may:
 1. Issue a cease and desist order to restrain the person from engaging in practices that violate this section;
 2. Suspend or revoke the person's license or certificate of authority;
 3. Assess a civil penalty against the person in accordance with KRS 304.99-020; or
 4. Take any combination of the actions specified in this paragraph.

➔Section 1309. KRS 304.20-045 is amended to read as follows:

- (1) No insurer shall increase the premium on an automobile liability insurance policy solely as a result of a claim for an automobile accident filed by an insured if the insured was not at fault nor contributorily negligent.
- (2) An insured may notify in writing the ~~commissioner~~~~executive director of insurance~~ if the insured believes that an insurer has increased his *or her* premium in violation of subsection (1) of this section. The ~~commissioner~~~~executive director~~ shall investigate the complaint, take appropriate action, and send written notice of his *or her* actions to the insured.

➔Section 1310. KRS 304.20-080 is amended to read as follows:

Any public housing authority created pursuant to KRS Chapter 80 may self-insure, subject to approval of the ~~commissioner~~~~executive director~~ by filing with the ~~commissioner~~~~executive director~~ in satisfactory form:

- (1) A continuing undertaking by the owner or other appropriate person to pay tort liabilities;
- (2) Evidence that appropriate provision exists for prompt and efficient administration of all claims; and
- (3) Evidence that reliable financial arrangements, deposits, or commitments exist providing coverage substantially equivalent to that afforded by a policy of insurance for payment of claims against a public housing authority.

➔Section 1311. KRS 304.20-090 is amended to read as follows:

Any insurer providing workers' compensation insurance coverage for a Kentucky location shall provide proof of coverage to the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims in the ~~Department of Labor~~ **Cabinet** in accordance with the requirements of the chapter.

➔Section 1312. KRS 304.20-150 is amended to read as follows:

- (1) As used in KRS 304.20-160 to 304.20-190, "authorized agencies" shall mean:
 - (a) State ~~commissioner~~~~executive director~~ of insurance;
 - (b) The state fire marshal when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (c) The state Attorney General when authorized or charged with the investigation of fires at the place where the fire actually took place;
 - (d) The commissioner of the Department of Kentucky State Police;
 - (e) The full-time Commonwealth's or county attorney responsible for prosecutions in the county where the fire occurred;
 - (f) The Federal Bureau of Investigation or any other federal agency having the authority to investigate federal offenses arising from arson; and
 - (g) Any United States' attorney's office authorized or charged with investigation or prosecution of the fire in question or the violation of any statute arising from said fire.
- (2) As used in KRS 304.20-160 to 304.20-190, "relevant" means information having any tendency to make the existence of any fact that is of consequence to the investigation or determination of the issue more probable or less probable than it would be without the evidence.
- (3) For the purposes of KRS 304.20-160 to 304.20-190, information will be "deemed important" if such information is requested by an authorized agency.
- (4) "Insurer," as used in KRS 304.20-160 to 304.20-190, shall be defined in the same manner as it is defined in KRS 304.1-040, and shall include the Kentucky FAIR plan and reinsurance association, and all authorized persons acting on behalf of an insurer.

➔Section 1313. KRS 304.20-330 is amended to read as follows:

After coverage has been in effect more than sixty (60) days or after the effective date of a renewal policy a notice of cancellation shall not be issued unless it is based on at least one (1) of the following reasons:

- (1) Nonpayment of premium;
- (2) Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- (3) Discovery of willful or reckless acts or omissions on the part of the named insured which increase any hazard insured against;
- (4) The occurrence of a change in the risk which substantially increases any hazard insured against after insurance coverage has been issued or renewed;
- (5) A violation of any local fire, health, safety, building, or construction regulation or ordinance with respect to any insured property or the occupancy thereof which substantially increases any hazard insured against;

- (6) The insurer is unable to reinsure the risk covered by the policy; or
- (7) A determination by the ***commissioner***~~[executive director]~~ that the continuation of the policy would place the insurer in violation of the Kentucky insurance code or regulations of the ***commissioner***~~[executive director]~~.

➔Section 1314. KRS 304.20-350 is amended to read as follows:

If the ***commissioner***~~[executive director]~~ determines that:

- (1) An insurer has violated KRS 304.20-320, 304.20-330 or 304.20-340, the ***commissioner***~~[executive director]~~ may require the insurer to:
 - (a) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
 - (b) Reinstate insurance coverage to the end of the policy period; or
 - (c) Continue insurance coverage at a rate and on the same terms and conditions as are available to other risks similarly situated;
- (2) Any person has violated any provisions of KRS 304.20-320 to this section, the ***commissioner***~~[executive director]~~ may:
 - (a) Issue a cease and desist order to restrain such person from engaging in practices which violate KRS 304.20-320 to this section;
 - (b) Suspend or revoke such person's license or certificate of authority;
 - (c) Assess a civil penalty against such person pursuant to KRS 304.99-020; or
 - (d) Take any combination of the actions specified in this section.

➔Section 1315. KRS 304.20-380 is amended to read as follows:

Every property insurer, as defined in this chapter, authorized to do business in this state shall include a premium credit or discount provision in its rates filed with the ***commissioner***~~[executive director]~~ for buildings equipped with an automatic sprinkler system. The amount of the discount shall reflect the cost savings the insurer expects to realize in insuring property equipped with automatic sprinkler systems.

➔Section 1316. KRS 304.21-020 is amended to read as follows:

- (1) Whenever an insurer has been granted a certificate of authority to transact surety insurance in this state, the ***commissioner***~~[executive director]~~ shall on or before the first day of the next succeeding month send to the county clerk of each county in this state his *or her* certificate, over the seal of *the department*~~[his office]~~, stating that such insurer has complied with the laws of this state and is authorized to transact a business as surety in this state. The county clerk shall record the certificate and it shall become a permanent part of the records of the county clerk.
- (2) The ***commissioner***~~[executive director]~~ shall on or before the first day of March of each year forward to each county clerk a list containing the names of all surety insurers, foreign and domestic, which are then authorized to transact business in the state.
- (3) The county clerks shall preserve such list on the files of the court, open to public inspection.

➔Section 1317. KRS 304.21-030 is amended to read as follows:

If a theretofore authorized surety insurer withdraws from this state or if its certificate of authority is terminated, the ***commissioner***~~[executive director]~~ shall give notice thereof forthwith by mailing a certificate of such fact to the county clerk of each county in this state. Upon receipt of the certificate the county clerk shall enter a notation across the face of the record of the certificate of authority of the insurer as referred to in KRS 304.21-020, showing the withdrawal of the insurer or the termination of its certificate of authority, as the case may be, together with the date thereof.

➔Section 1318. KRS 304.21-040 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ is authorized to issue to any person applying therefor, a certificate showing that any surety insurer that has complied with the laws of this state, is qualified to do a surety business in this state, and stating the general terms of the risks authorized to be so written.

- (2) Any such certificate or any certified copy of any uncanceled certificate shall be received in evidence as a sufficient justification of such surety and its authority to do business in this state; provided, however, that the certificate of the county clerk to any such certified copy, or any certificate furnished directly by the **commissioner**~~executive director~~ to an applicant therefor, must bear a date the same as, or later than the date of the bond, undertaking or obligation upon which justification is being made.

➔Section 1319. KRS 304.21-090 is amended to read as follows:

Whenever any licensed company writing blanket bonds on banks or credit unions in the Commonwealth intends to cancel, terminate or not renew the bond of any bank or credit union, it shall notify the **Department**~~Office~~ of Financial Institutions of its intention to cancel, terminate or not renew any such bond not less than thirty (30) days prior to the effective date of such action.

➔Section 1320. KRS 304.22-020 is amended to read as follows:

- (1) Every title insurer shall, before use in this state, file with the **commissioner**~~executive director~~ its schedule of the risk portion of premium rates for title insurance, and thereafter every modification or amendment thereof.
- (2) Rates for title insurance shall not be excessive, inadequate, or unfairly discriminatory.
- (3) The insurer shall adhere to the rates as so filed by it.

➔Section 1321. KRS 304.22-040 is amended to read as follows:

An insurer shall not in any manner guarantee the payment of the principal or the interest of bonds or other obligations executed by others, other than (a) in connection with the handling of litigation relating to losses or claims involving the insurer, its insureds, its agents or its attorneys, or (b) in connection with the settlement of such losses or claims, or (c) in the event such guarantee is specifically approved by the **commissioner**~~executive director~~.

➔Section 1322. KRS 304.24-050 is amended to read as follows:

- (1) Upon receipt of the articles of incorporation of the proposed insurer, the **commissioner**~~executive director~~ shall submit such articles to the Attorney General for examination. Within ten (10) days after receipt thereof the Attorney General shall return the articles to the **commissioner**~~executive director~~ with a written statement as to whether the articles comply with law.
- (2) If the Attorney General has found the articles to be in compliance with law and has so stated to the **commissioner**~~executive director~~, the **commissioner**~~executive director~~ shall stamp or otherwise certify his **or her** approval thereon, retain one (1) copy of the articles for his **or her** files and deliver the remaining three (3) copies of the articles to the incorporators for filing as provided by laws governing business corporations generally.
- (3) The incorporators shall concurrently file with the **commissioner**~~executive director~~ duplicates of filings made on behalf of the corporation with the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Financial Institutions pursuant to KRS Chapter 292, and upon compliance with the provisions of such chapter governing sale of securities, the incorporators may open books to receive subsections for capital stock of the corporation.
- (4) After all stock stated by the articles as to the amount of capital with which the corporation will begin business (which shall not be less than the applicable minimum amounts required by the provisions of this code to qualify for authority to transact the kind of insurance specified by the articles) has been subscribed and paid for either in cash or in assets of the kind eligible for investment of a domestic insurer under this code, the incorporators shall make application for a certificate of authority as provided in Subtitle 3.
- (5) In addition to the requirements of this subtitle, the incorporators shall also comply with such other applicable laws governing the organization of domestic business corporations as are not in conflict with the provisions of this subtitle.

➔Section 1323. KRS 304.24-060 is amended to read as follows:

- (1) Upon receiving the application provided for in subsection (4) of KRS 304.24-050, the **commissioner**~~executive director~~ shall make an examination of the affairs of the proposed corporation to ascertain whether it has complied with requirements of law and has fully paid-in capital stock and assets in amount necessary to qualify for authority to transact the kind or kinds of insurance proposed to be transacted. As a part of such examination the **commissioner**~~executive director~~ shall require the incorporators or directors to certify, under oath, that assets exhibited to him **or her** are the bona fide property of the proposed corporation.

- (2) If after such examination the ***commissioner***~~[executive director]~~ finds that the proposed corporation is fully entitled thereto, ***the commissioner***~~[he]~~ shall issue to it his ***or her*** certificate of authority to transact the kind or kinds of insurance for which it has qualified.

➔Section 1324. KRS 304.24-070 is amended to read as follows:

The incorporation of an insurer shall be effective as of the date of issuance by the Secretary of State of its articles of incorporation; and thereupon the corporation shall be vested with all the powers, rights and privileges, and be subject to all the duties, liabilities and restrictions applicable to insurer corporations; subject, however, to qualification and application for, and issuance to the corporation of, a certificate of authority as an insurer by the ***commissioner***~~[executive director]~~ under the provisions of this code.

➔Section 1325. KRS 304.24-080 is amended to read as follows:

- (1) A domestic mutual insurer heretofore or hereafter formed may amend its articles of incorporation for any lawful purpose by affirmative vote of a majority of those of its members present or represented by proxy at any regular annual meeting of its members, or at any special meeting of members called for the purpose. Written notice of the proposed amendment shall be given members at least thirty (30) days prior to the meeting, and may be given in the same manner and at the same time as notice of the meeting is given or in any other appropriate manner.
- (2) Upon adoption of the amendment the insurer shall prepare articles of amendment in quadruplicate, setting forth the amendment and the date and manner of the adoption thereof. The articles of amendment shall be executed by the insurer's president or vice president and secretary or assistant secretary, and be acknowledged by them before an officer authorized by law to take acknowledgments of deeds.
- (3) The quadruplicate originals of the articles of amendment shall be delivered to the ***commissioner***~~[executive director]~~, shall be subject to examination and certification by the Attorney General, to approval by the ***commissioner***~~[executive director]~~, and to filing, all as provided for original articles of incorporation under KRS 304.24-040. For filing articles of amendment of the articles of incorporation of a domestic mutual insurer the Secretary of State shall charge and collect a fee of ten dollars (\$10), for credit to the general fund.

➔Section 1326. KRS 304.24-090 is amended to read as follows:

- (1) A domestic stock insurer may amend its articles of incorporation for any lawful purpose through the same procedures prescribed in KRS Chapter 271B.
- (2) Quadruplicate originals of articles of amendment shall be delivered to the ***commissioner***~~[executive director]~~, shall be subject to examination and certification by the Attorney General, to approval by the ***commissioner***~~[executive director]~~, and to filing, all as provided for original articles of incorporation under KRS 304.24-040.

➔Section 1327. KRS 304.24-110 is amended to read as follows:

- (1) Before soliciting any applications for insurance required under KRS 304.24-100 as qualification for the original certificate of authority, the incorporators of the proposed insurer shall file with the ***commissioner***~~[executive director]~~ a corporate surety bond in the penal sum of \$100,000, in favor of the state and for the use and benefit of the state and of applicant members and creditors of the corporation. The bond shall be conditioned as follows:
 - (a) For the prompt return to applicant members of all premiums collected in advance,
 - (b) For payment of all indebtedness of the corporation,
 - (c) For payment of costs incurred by the state in event of any legal proceedings for liquidation or dissolution of the corporation,
 all in the event the corporation fails to complete its organization and secure a certificate of authority within one (1) year after the date of its certificate of incorporation, and
 - (d) That it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the incorporators and the ***commissioner***~~[executive director]~~.

- (2) In lieu of such bond, the incorporators may deposit with the **commissioner**~~[executive director]~~ \$100,000 in cash or United States government bonds negotiable and payable to the bearer, with a market value of not less than \$100,000, to be held in trust upon the same conditions as required for the bond.
- (3) Any such bond filed or deposit or remaining portion thereof held under this section shall be released and discharged upon settlement and termination of all liabilities against it.
- (4) In addition to the bond the proposed insurer shall file with the **commissioner**~~[executive director]~~ copies of any proposed form or policy to be offered and schedule of premium rates therefor, copies of all advertising and sales literature proposed to be used in such solicitation, and such other information relative to the solicitation of such insurance or procuring of such funds as the **commissioner**~~[executive director]~~ may reasonably require, all of which must comply with the law.

➔Section 1328. KRS 304.24-120 is amended to read as follows:

- (1) Upon receipt of the **commissioner's**~~[executive director's]~~ approval of the bond or deposit as provided in KRS 304.24-110, the directors and officers of the proposed domestic mutual insurer may commence solicitation of such requisite applications for insurance policies as they may accept, and may receive deposits of premiums thereon.
- (2) All such applications shall be in writing signed by the applicant, covering subjects of insurance resident, located or to be performed in this state.
- (3) All such applications shall provide that:
 - (a) Issuance of the policy is contingent upon the insurer qualifying for and receiving a certificate of authority;
 - (b) No insurance is in effect unless and until the certificate of authority has been issued; and
 - (c) The prepaid premium or deposit, and membership or policy fee, if any, shall be refunded in full to the applicant if organization is not completed and the certificate of authority is not issued and received by the insurer before a specified reasonable date, which date shall be not later than one (1) year after the date of the certificate of incorporation.
- (4) All qualifying premiums collected shall be in cash.
- (5) Solicitation for such qualifying applicants for insurance shall be by licensed agents of the corporation, and the **commissioner**~~[executive director]~~ shall, upon the corporation's application therefor, issue temporary agent's licenses expiring on the date specified pursuant to paragraph (c) of subsection (3) of this section to individuals qualified as for a resident's license except as to the taking or passing of an examination. The **commissioner**~~[executive director]~~ may suspend or revoke any such license for any of the causes and pursuant to the same procedures as are applicable to suspension or revocation of licenses of agent's in general under Subtitle 9.

➔Section 1329. KRS 304.24-130 is amended to read as follows:

- (1) All sums collected by a domestic mutual corporation as premiums or fees on qualifying applications for insurance therein shall be deposited in trust in a bank or trust company in this state under a written trust agreement consistent with this section and with paragraph (c) of subsection (3) of KRS 304.24-120 and 304.24-140. The corporation shall file an executed copy of such trust agreement with the **commissioner**~~[executive director]~~.
- (2) Upon issuance to the corporation of a certificate of authority as an insurer for the kind of insurance for which such applications were solicited, all funds so held in trust shall become the funds of the insurer, and the insurer shall thereafter in due course issue and deliver its policies for which premiums had been paid and accepted. The insurance provided by such policies shall be effective as of the date of the certificate of authority or thereafter as provided by the respective policies.

➔Section 1330. KRS 304.24-140 is amended to read as follows:

If the proposed domestic insurer fails to complete its organization and to secure its original certificate of authority within one (1) year after the date of its certificate of incorporation, its corporate powers shall cease, and the **commissioner**~~[executive director]~~ shall return or cause to be returned to the persons entitled thereto all advance deposits or payments of premiums held in trust under KRS 304.24-130.

➔Section 1331. KRS 304.24-150 is amended to read as follows:

After being authorized to transact one (1) kind of insurance a mutual insurer may be authorized by the **commissioner**~~executive director~~ to transact additional kinds of insurance by compliance with the applicable financial requirements set forth in KRS 304.24-100 and by otherwise complying with the applicable provisions of this code.

➔Section 1332. KRS 304.24-170 is amended to read as follows:

- (1) A domestic mutual insurer shall have bylaws for the government of its affairs. The insurer's initial board of directors shall adopt original bylaws, subject to the approval of the insurer's members at the next meeting of members.
- (2) The bylaws shall contain provisions, consistent with this code, relating to:
 - (a) The voting rights of members;
 - (b) Election of directors, and the number, qualifications, terms of office and powers of directors;
 - (c) Annual and special meetings of members;
 - (d) The number, designation, election, terms and powers and duties of the respective corporate officers;
 - (e) Deposit, custody, disbursement and accounting for corporate funds;
 - (f) Fidelity bonds covering officers and employees of the insurer handling its funds, to be issued by the corporate surety and to be in such amount as may be reasonable; and
 - (g) Such other matters as may be customary, necessary, or convenient for the management or regulation of corporate affairs.
- (3) The insurer shall promptly file with the **commissioner**~~executive director~~ a copy, certified by the insurer's secretary, of its bylaws and of every modification thereof or addition thereto. The **commissioner**~~executive director~~ shall disapprove any bylaw provision deemed by him *or her*, after a hearing held thereon, to be unlawful, unreasonable, inadequate, unfair or detrimental to the proper interests or protection of the insurer's members or any class thereof. The insurer shall not, after receiving written notice of such disapproval and during the existence thereof, effectuate any bylaw provision so disapproved.

➔Section 1333. KRS 304.24-190 is amended to read as follows:

- (1) Meetings of members of a domestic mutual insurer shall be held in the city or town of its registered office in this state, except as may otherwise be provided in the insurer's bylaws with the **commissioner's**~~executive director's~~ approval.
- (2) Each such insurer shall, during the first six (6) months of each calendar year, hold the annual meeting of its members to fill vacancies existing or occurring in the board of directors, receive and consider reports of the insurer's officers as to its affairs and transact such other business as may properly be brought before it.
- (3) Written notice of the time and place of the annual meeting of members shall be given members not less than thirty (30) days prior to the meeting. Notice may be given by imprinting the notice plainly on the policies issued by the insurer or in any other appropriate manner. Any change of the date or place of the annual meeting shall be made only by an annual meeting of members. Notice of such change, among other appropriate methods may be given:
 - (a) By imprinting such new date or place on all policies which will be in effect as of the date of such changed meeting;
 - (b) Unless the **commissioner**~~executive director~~ otherwise orders, notice of the new date or place need be given only through policies issued after the date of the annual meeting at which such change was made and in premium notices and renewal certificates issued during the twenty-four (24) months immediately following such meeting.
- (4) If more than six (6) months are allowed to elapse after an annual meeting of members is due to be held without such annual meeting being held, the **commissioner**~~executive director~~ shall, upon written request of any officer, director, or member of the insurer, cause written notice of such meeting to be given to the insurer's members, and the meeting shall be held as soon as reasonably possible thereafter.

➔Section 1334. KRS 304.24-230 is amended to read as follows:

- (1) If at any time the assets of a domestic mutual insurer are less than its liabilities and the minimum amount of surplus required to be maintained by it under this code for authority to transact the kinds of insurance being transacted, and the deficiency is not cured from other sources, its directors may, if the same is approved by the **commissioner**~~[executive director]~~, levy an assessment only on its members who held policies providing for contingent liability at any time within the twelve (12) months next preceding the date the levy was authorized by the board of directors, and such members shall be liable to the insurer for the amount so assessed.
- (2) The levy of assessment shall be for such an amount, subject to the **commissioner's**~~[executive director's]~~ approval, as is required to cure such deficiency and to provide a reasonable amount of working funds above such minimum amount of surplus, but such working funds so provided shall not exceed five percent (5%) of the sum of the insurer's liabilities and such minimum required surplus as of the date of the levy.
- (3) As to the respective policies subject to the levy, the assessment shall be computed upon such reasonable basis as may be approved by the **commissioner**~~[executive director]~~ in writing in advance of the levy.
- (4) No member shall have an offset against any assessment for which he *or she* is liable, on account of any claim for unearned premium or loss payable.
- (5) As to life insurance, any part of such assessment upon a member which remains unpaid following notice of assessment, demand for payment, and lapse of a reasonable waiting period as specified in such notice, may, if approved by the **commissioner**~~[executive director]~~ as being in the best interests of the insurer and its members, be secured by placing a lien upon the cash surrender values and accumulated dividends held by the insurer to the credit of the member.

➔Section 1335. KRS 304.24-250 is amended to read as follows:

- (1) A domestic mutual insurer while maintaining unimpaired surplus funds not less in amount than the minimum paid-in capital stock and surplus required to be maintained by a domestic stock insurer, formed under this code, for authority to transact the same kinds or kind of insurance, may, upon receipt of the **commissioner's**~~[executive director's]~~ order so authorizing, extinguish the contingent liability to assessment of its members as to all its policies in force and may omit provisions imposing contingent liability in all policies currently issued.
- (2) The **commissioner**~~[executive director]~~ shall not authorize a domestic insurer to extinguish the contingent liability of any of its members or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its members and in all such policies for all kinds of insurance transacted by it.
- (3) A foreign or alien mutual insurer may issue nonassessable policies to its members in this state pursuant to its charter and the laws of its domicile.

➔Section 1336. KRS 304.24-260 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall revoke the authority of a domestic mutual insurer to issue policies without contingent liability if
 - (a) At any time the insurer's assets are less than the sum of its liabilities and the surplus required for such authority, or
 - (b) The insurer, by resolution of its board of directors approved by a majority of its members, requests that the authority be revoked.
- (2) During the absence of such authority the insurer shall not issue any policy without providing therein for the contingent liability of the policyholder, nor renew any policy which is then in force without indorsing the same to provide for such contingent liability.

➔Section 1337. KRS 304.24-280 is amended to read as follows:

- (1) No insurer shall hereafter make any contract whereby any person is granted or is to enjoy in fact the management of the insurer to the substantial exclusion of its board of directors, or to have the controlling or preemptive right to produce substantially all insurance business for the insurer, or, if an officer, director or otherwise part of the insurer's management, is to receive any commission, bonus or compensation based upon the volume of the insurer's business or transactions, unless the contract is filed with and approved by the **commissioner**~~[executive director]~~. The contract shall be deemed approved unless disapproved by the **commissioner**~~[executive director]~~ within twenty (20) days after date of filing, subject to such reasonable

extension of time as the **commissioner**~~[executive director]~~ may require by notice given within such twenty (20) days. Any disapproval shall be delivered to the insurer in writing, stating the grounds therefor.

- (2) Any such contract shall provide that any such manager or producer of its business shall within ninety (90) days after expiration of each calendar year furnish the insurer's board of directors a written statement of amounts received under or on account of the contract and amounts expended thereunder during such calendar year, including the emoluments received therefrom by the respective directors, officers, and other principal management personnel of the manager or producer, and with such classification of items and further detail as the insurer's board of directors may reasonably require.
- (3) The **commissioner**~~[executive director]~~ shall disapprove any such contract if he *or she* finds that it:
 - (a) Subjects the insurer to excessive charges; or
 - (b) Is to extend for any unreasonable length of time; or
 - (c) Does not contain fair and adequate standards of performance, or
 - (d) Contains other inequitable provision or provisions which impair the proper interests of stockholders or policyholders of the insurer.
- (4) The **commissioner**~~[executive director]~~ may, after a hearing held thereon, withdraw his *or her* approval of any such contract theretofore approved by him *or her*, if he *or she* finds that the bases of his *or her* original approval no longer exist, or that the contract has in actual operation, shown itself to be subject to disapproval on any of the grounds referred to in subsection (3) of this section.
- (5) This section does not apply as to contracts entered into prior to June 18, 1970, nor to extensions or amendments to such contracts, nor to relationships and agreements between parents, subsidiaries, or affiliates.

➔Section 1338. KRS 304.24-290 is amended to read as follows:

The insurer shall establish and maintain in this state its principal office and place of business. The insurer's principal records shall be kept either at its principal office or, with the approval of the **commissioner**~~[executive director]~~, at its place of business in any other state where it, or its affiliate as defined in subsection (4) of KRS 304.37-010, is engaged in the business of entering into contracts of insurance.

➔Section 1339. KRS 304.24-300 is amended to read as follows:

- (1) A domestic stock or mutual insurer may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the insurer's surplus in excess of that stipulated in such agreement. The agreement may provide for interest, which interest shall or shall not constitute a liability of the insurer as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan, except that if public offering and sale is made of the loan securities, the insurer may pay the reasonable costs thereof approved by the **commissioner**~~[executive director]~~.
- (2) Money so borrowed, together with the interest thereon if so stipulated in the agreement, shall not form a part of the insurer's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, or be the basis of any setoff; but until repaid, financial statements filed or published by the insurer shall show as a footnote thereto the amount thereof then unpaid together with any interest thereon accrued but unpaid. A surplus note shall be reported as surplus and not as debt only if the surplus note contains the following provisions:
 - (a) Subordination to policyholder;
 - (b) Subordination to claimant and beneficiary claims;
 - (c) Subordination to all other classes of creditors other than surplus note holders; and
 - (d) Interest payments and principal repayments require prior approval of the state of domicile.
- (3) Any such loan shall be subject to the **commissioner's**~~[executive director's]~~ approval. The insurer shall in advance of the loan, file with the **commissioner**~~[executive director]~~ a statement of the purpose of the loan and a copy of the proposed loan agreement. The loan and agreement shall be deemed approved unless within fifteen (15) days after date of such filing the insurer is notified of the **commissioner's**~~[executive director's]~~

disapproval and the reasons therefor. The ***commissioner***~~[executive director]~~ shall disapprove any proposed loan or agreement if he *or she* finds the loan is unnecessary or excessive for the purpose intended, or that the terms of the loan agreement are not fair and equitable to the parties and to other similar lenders, if any, to the insurer, or that the information so filed by the insurer is inadequate.

- (4) Any such loan or substantial portion thereof shall be repaid by the insurer when no longer reasonably necessary for the purpose originally intended. No repayment of such a loan shall be made unless approved in advance by the ***commissioner***~~[executive director]~~.
- (5) This section shall not apply to other kinds of loans obtained by the insurer in ordinary course of business, nor to loans secured by pledge or mortgage of assets.

➔Section 1340. KRS 304.24-350 is amended to read as follows:

- (1) If the assets of an insurer at any time are less than its liabilities, including its capital stock as a liability, if a stock insurer, or its minimum required surplus if a mutual insurer, the ***commissioner***~~[executive director]~~ shall forthwith determine the amount of such deficiency and give notice to the insurer to make good the deficiency within ninety (90) days after the giving of such notice.
- (2) The insurer may cure the deficiency by a decrease of its capital stock or by other lawful means. The deficiency shall be made good in cash or in assets eligible under this code for investment of the insurer's funds or by decrease of the insurer's capital stock to an amount not below the minimum required for the kinds of insurance to be thereafter transacted.
- (3) If the deficiency is not made good and proof thereof filed with the ***commissioner***~~[executive director]~~ within such ninety-day period, the ***commissioner***~~[executive director]~~ shall revoke the insurer's certificate of authority, the insurer shall be deemed insolvent, and shall be proceeded against as authorized by this code.

➔Section 1341. KRS 304.24-360 is amended to read as follows:

- (1) A stock insurer may become a mutual insurer under such reasonable plan and procedure as may be approved by the ***commissioner***~~[executive director]~~ after a hearing thereon.
- (2) The ***commissioner***~~[executive director]~~ shall not approve any such plan or procedure of mutualization unless:
 - (a) ***The commissioner***~~[He]~~ finds that it is equitable to stockholders and policyholders;
 - (b) It is subject to approval by the holders of not less than three-fourths (3/4) of the insurer's outstanding capital stock having voting rights, and by not less than two-thirds (2/3) of the insurer's policyholders, who vote on such plan in person, by proxy, or by mail, pursuant to such reasonable notice and procedure as may be approved by the ***commissioner***~~[executive director]~~;
 - (c) If a life insurer, the right to vote thereon is limited to holders of policies, other than term or group policies, whose policies have been in force for more than one (1) year;
 - (d) Mutualization will result in retirement of shares of the insurer's capital stock at a price not in excess of the fair market value thereof as determined by competent disinterested appraisers;
 - (e) The plan provides for the purchase of the shares of any dissenting stockholder in the same manner and subject to the same applicable conditions as provided by KRS Chapter 271B as to rights of dissenting stockholders with respect to merger or consolidation of business corporations;
 - (f) The plan provides for definite conditions to be fulfilled by a designated early date upon which such mutualization will be deemed effective; and
 - (g) The mutualization leaves the insurer with surplus funds reasonably adequate for the security of its policyholders and to enable it to continue successfully in business in the states in which it is then authorized to transact insurance and for the kinds of insurance included in its certificates of authority in such states.
- (3) This section shall not apply to mutualization under order of court pursuant to rehabilitation or reorganization of an insurer under Subtitle 33.

➔Section 1342. KRS 304.24-370 is amended to read as follows:

A domestic stock insurer may convert to a Kentucky ordinary business corporation through the following procedures:

- (1) The insurer shall give the **commissioner**~~[executive director]~~ written notice of its intent to convert to an ordinary business corporation;
- (2) The insurer shall bulk reinsure all of its insurance, if any, in force, with another authorized insurer under a bulk reinsurance agreement approved by the **commissioner**~~[executive director]~~ as provided in KRS 304.24-420. The agreement of bulk reinsurance may be made contingent upon approval of stockholders as provided in subsection (4) of this section;
- (3) The insurer shall set aside funds in a special reserve in such amount and subject to such administration as may be found by the **commissioner**~~[executive director]~~ to be reasonable and adequate for the purpose, for payment of all obligations, if any, of the insurer incurred by it and remaining unpaid under its insurance contracts prior to the effective date of such bulk reinsurance, or make other reasonable disposition satisfactory to the **commissioner**~~[executive director]~~ for such payment;
- (4) The proposed conversion shall be approved by affirmative vote of not less than two-thirds (2/3) of each class of outstanding securities of the insurer having voting rights, at a special meeting of holders of such securities called for the purpose; and at such meeting and by a like vote the certificate of organization of the corporation shall be amended to remove therefrom the power to transact an insurance business as an insurer, to provide for such new powers and purposes authorized by the general corporation laws of this state as may be consistent with the purposes for which the corporation is thereafter to exist, and to make such further alterations in the certificate of organization as may be required under such general corporation laws of an ordinary business corporation;
- (5) Security holders of the corporation who dissent from such proposed conversion shall have the same applicable rights as exist under such general corporation laws with respect to dissent from a proposed merger of the corporation; and
- (6) Upon compliance with subsections (1) to (4) of this section, inclusive, and upon filing of the amendment of the certificate of organization with the **commissioner**~~[executive director]~~ and otherwise as required by laws applicable to ordinary business corporations, the conversion shall thereupon become effective.

➔Section 1343. KRS 304.24-390 is amended to read as follows:

- (1) A domestic insurer may merge or consolidate with one (1) or more domestic or foreign insurers, by complying with the applicable provisions of the statutes of this state governing the merger or consolidation of corporations formed for profit, but subject to subsections (2), (3) and (4) of this section.
- (2) No such merger or consolidation shall be effectuated unless in advance thereof the plan and agreement therefor have been filed with the **commissioner**~~[executive director]~~ and approved in writing by him *or her* after a hearing thereon. The **commissioner**~~[executive director]~~ shall give such approval within a reasonable time after such filing unless *the commissioner*~~[he]~~ finds such plan or agreement:
 - (a) Is contrary to law; or
 - (b) Inequitable to the stockholders or members of the insurers involved; or
 - (c) Would substantially reduce the security of and service to be rendered to policyholders of the domestic insurer in this state or elsewhere; or
 - (d) Would materially tend to lessen competition in the insurance business in this state or elsewhere as to the kinds of insurance involved, or would materially tend to create a monopoly as to such business; or
 - (e) Is subject to other material and reasonable objections.
- (3) No director, officer, agent or employee of any insurer party to such merger or consolidation, or member of the family of such director, officer, agent, or employee, shall receive any fee, commission, compensation or other valuable consideration whatsoever for in any manner aiding, promoting or assisting therein except as set forth in such plan or agreement.
- (4) If members of an insurer are entitled to vote, two-thirds (2/3) of the votes cast by such members of such insurer, as are represented at the meeting in person or by proxy, is necessary for the approval of any such agreement or plan.

- (5) If the ***commissioner***~~[executive director]~~ does not approve any such plan or agreement he ***or she*** shall so notify the insurer in writing specifying his ***or her*** reasons therefor.

➔Section 1344. KRS 304.24-400 is amended to read as follows:

- (1) A domestic stock insurer shall not acquire a controlling interest in the shares of another stock insurer by an exchange of securities or partly in exchange for securities and partly for cash or property, unless the insurer has first submitted the plan for such acquisition and exchange to the ***commissioner***~~[executive director]~~ and the ***commissioner***~~[executive director]~~ has approved the same.
- (2) The ***commissioner***~~[executive director]~~ shall not so approve unless he ***or she*** finds the plan for such acquisition and exchange and the terms and conditions thereof to be fair and equitable to all parties concerned therein, after a hearing to which all persons to whom it is proposed to issue securities in such exchange shall have the right to appear.
- (3) Notice and conduct of such hearing shall be as provided in Subtitle 2.

➔Section 1345. KRS 304.24-415 is amended to read as follows:

- (1) (a) Every insurer domiciled in this state shall file a report with the ***commissioner***~~[executive director]~~ disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the ***commissioner***~~[executive director]~~ for review, approval, or information purposes pursuant to other provisions of this chapter.
- (b) The report required in paragraph (a) of this subsection is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.
- (c) One (1) complete copy of the report, including any exhibits or other attachments, shall be filed with:
 1. The insurance department of the insurer's state of domicile; and
 2. The National Association of Insurance Commissioners.
- (d) All reports obtained by or disclosed to the ***commissioner***~~[executive director]~~ pursuant to this section shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the ***commissioner***~~[executive director]~~, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the ***commissioner***~~[executive director]~~, after giving the insurer who would be affected notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by publication, in which event the ***commissioner***~~[executive director]~~ may publish all or any part in the manner the ***commissioner***~~[executive director]~~ may deem appropriate.
- (2) (a) No acquisitions or dispositions of assets need be reported pursuant to subsection (1) of this section if the acquisitions or dispositions are not material. For purposes of this section, a material acquisition, or the aggregate of any series of related acquisitions during any thirty (30) day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.
- (b)
 1. Asset acquisitions subject to this section include every purchase, lease exchange, merger, consolidation, succession, or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.
 2. Asset dispositions subject to this section include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction, or other disposition.
- (c)
 1. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:
 - a. Date of the transaction;
 - b. Manner of acquisition or disposition;

- c. Description of the assets involved;
 - d. Nature and amount of the consideration given or received;
 - e. Purpose of, or reason for, the transaction;
 - f. Manner by which the amount of consideration was determined;
 - g. Gain or loss recognized or realized as a result of the transaction; and
 - h. Names of the persons from which the assets were acquired or to whom they were disposed.
2. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.
- (3) (a) No nonrenewals, cancellations, or revisions of ceded reinsurance agreements need be reported pursuant to subsection (1) of this section if the nonrenewals, cancellations or revisions are not material. For purposes of this section, a material nonrenewal, cancellation, or revision is one that affects:
- 1. As respects property and casualty business, including accident and health business written by a property and casualty insurer:
 - a. More than fifty percent (50%) of the insurer's total ceded written premium; or
 - b. More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
 - 2. As respects life, annuity, and accident and health business, more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
 - 3. As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
 - a. An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one (1) or more unauthorized reinsurers; or
 - b. Previously established collateral requirements have been reduced or waived as respects one (1) or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.
- (b) No filing shall be required if:
- 1. As respects property and casualty business, including accident and health business written by a property and casualty insurer, the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business; or
 - 2. As respects life, annuity, and accident and health business, the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirements prior to any cession.
- (c) The following information is required to be disclosed in any report of a material nonrenewal, cancellation, or revision of ceded reinsurance agreements:
- 1. Effective date of the nonrenewal, cancellation, or revision;
 - 2. The description of the transaction with an identification of the initiator thereof;

3. Purpose of, or reason for, the transaction; and
 4. If applicable, the identity of the replacement reinsurers.
- (d) Insurers are required to report all material nonrenewals, cancellations, or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to a pool if the insurer has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

➔Section 1346. KRS 304.24-420 is amended to read as follows:

- (1) A domestic insurer may reinsure all or substantially all of its business in force, or all or substantially all of a major class thereof, with another insurer, stock or mutual, by an agreement of bulk reinsurance after compliance with this section. No such agreement shall become effective unless filed with the **commissioner**~~executive director~~ and approved by him **or her** in writing.
- (2) The **commissioner**~~executive director~~ shall approve such agreements within a reasonable time after filing if he **or she** finds:
 - (a) That the plan and agreement are fair and equitable to each insurer and to the policyholders involved;
 - (b) That the reinsurance, if effectuated, would not substantially reduce the protection or service to the policyholders of any domestic insurer involved;
 - (c) That the agreement embodies adequate provisions by which the reinsuring insurer becomes liable to the original insureds for any loss or damage occurring under the policies reinsured in accordance with the original terms of such policies, and that the reinsuring insurer shall duly furnish each such insured with a certificate evidencing such assumption of liability;
 - (d) That the assuming reinsurer is authorized to transact such insurance in this state, or is qualified as for such authorization and will appoint the **commissioner**~~executive director~~ and his **or her** successors as its irrevocable attorney for service of process, so long as any policy so reinsured or claim thereunder remains in force or outstanding;
 - (e) That such reinsurance would not materially tend to lessen competition in the insurance business in this state or elsewhere as to the kinds of insurance involved, and would not materially tend to create a monopoly as to such business; and
 - (f) That the proposed bulk reinsurance is free of other reasonable objections.
- (3) If the **commissioner**~~executive director~~ does not so approve he **or she** shall forthwith notify each insurer involved in writing, specifying his **or her** reasons therefor.
- (4) If for reinsurance of all or substantially all of the business in force of a mutual insurer at a time when the insurer's surplus is not impaired, the plan and agreement for such reinsurance must be approved by vote of not less than two-thirds (2/3) of the mutual insurer's members voting thereon at a meeting of members called for the purpose, pursuant to such reasonable notice and procedure as is provided for in the agreement. If a life insurer, right to vote may be limited to members whose policies are other than term or group policies, and have been in effect for more than one (1) year.
- (5) No director, officer, agent or employee of any insurer party to such reinsurance, nor any other person shall receive any compensation for arranging such bulk reinsurance other than as provided in the agreement submitted to and approved by the **commissioner**~~executive director~~.

➔Section 1347. KRS 304.24-430 is amended to read as follows:

- (1) A solvent domestic stock or mutual insurer, which then is not the subject of a delinquency proceeding under Subtitle 33, may voluntarily dissolve under a plan therefor in writing authorized by its board of directors, approved or adopted by stockholders or members as hereinafter provided, and filed with and approved by the **commissioner**~~executive director~~. The plan shall provide for the disposition, by bulk reinsurance or other lawful procedure, of all insurance in force in the insurer, for full discharge of all obligations of the insurer, and designate or provide for trustees to conduct and administer the settlement of the insurer's affairs.

- (2) The **commissioner**~~[executive director]~~ shall approve the plan unless found by him **or her** to be unlawful or unfair or inequitable or prejudicial to the interests of stockholders, policyholders or creditors.
- (3) If a mutual insurer, the plan must have been approved by vote of not less than two-thirds (2/3) of the policyholders voting thereon at a special meeting of such policyholders called and held for the purpose pursuant to such reasonable notice and information as the **commissioner**~~[executive director]~~ may have approved.
- (4) If a stock insurer, the plan must have been adopted by vote of not less than two-thirds (2/3) of all outstanding voting securities of the insurer at a special meeting of such security holders called and held for the purpose.
- (5) Following approval of the dissolution and plan therefor by members or adoption thereof by stockholders as above provided, and approval by the **commissioner**~~[executive director]~~, the trustees designated or provided for in the plan shall proceed to execute the plan. When all liabilities of the corporation have been discharged or otherwise adequately provided for, and all assets of the corporation have been liquidated and distributed in accordance with the plan, the trustees shall so certify in quadruplicate under oath in writing. The trustees shall deliver the original and the three (3) copies of such certificate to the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall make such examination of the affairs of the corporation, and of the liquidation and distribution of its assets and discharge of or provision for its liabilities as **the commissioner**~~he~~ deems advisable. If upon such examination **the commissioner**~~he~~ finds that the facts set forth in the certificate of the trustees are true, **the commissioner**~~he~~ shall inscribe his **or her** approval on the certificate, file the original thereof so inscribed in the office of the Secretary of State, file copy thereof in the **department**~~office~~, and return the remaining two (2) copies to the trustees. The trustees shall file one (1) of such copies for recording in the office of the county clerk of the county in which the corporation's principal place of business is located, and retain the fourth copy for the corporate files.
- (6) Upon filing the certificate of the trustees with the Secretary of State as provided in subsection (5) of this section, the Secretary of State shall issue to the trustees his **or her** certificate of dissolution, and the corporate existence of the corporation shall thereupon forever terminate. The Secretary of State shall charge and collect a fee of twenty-five dollars (\$25) for the filing of the trustee's certificate, and shall deposit the same with the State Treasurer for credit to the general fund.

➔Section 1348. KRS 304.24-440 is amended to read as follows:

- (1) Upon any liquidation of a domestic mutual insurer, its assets remaining after discharge of its indebtedness, policy obligations, repayment of contributed or borrowed surplus, if any, and expenses of administration, shall be distributed to currently existing persons who had been members of the insurer for at least one (1) year and who were its members at any time within thirty-six (36) months next preceding the date such liquidation was authorized or ordered, or date of last termination of the insurer's certificate of authority whichever date is the earlier; except, that if the **commissioner**~~[executive director]~~ has reason to believe that those in charge of the management of the insurer have caused or encouraged the reduction of the number of members of the insurer in anticipation of liquidation and for the purpose of reducing thereby the number of persons who may be entitled to share in distribution of the insurer's assets, **the commissioner**~~he~~ may enlarge the thirty-six (36) month qualification period above provided for by such additional period as he **or she** may deem to be reasonable.
- (2) The insurer shall make a reasonable classification of its policies so held by such members, and a formula based upon such classification for determining the equitable distributive share of each such member. Such classification and formula shall be subject to the approval of the **commissioner**~~[executive director]~~.

➔Section 1349. KRS 304.24-500 is amended to read as follows:

- (1) The purpose of this section is to:
 - (a) Provide a means whereby any insurer organized under the laws of any other state may become a domestic insurer;
 - (b) Provide a means for any domestic insurer to transfer its domicile to another state; and
 - (c) Provide a means for the continuation of a certificate of authority and other approvals pertaining to any foreign insurer which transfers its corporate domicile to another state by merger, consolidation, or any other lawful method.

- (2) Any insurer which is organized under the laws of any other state and is admitted to do business in this state for the purpose of writing insurance may, upon approval of the **commissioner**~~{executive director}~~, become a domestic insurer by complying with all of the requirements of this chapter relating to the organization and authorization of a domestic insurer of the same type and by designating its principal place of business at a place in this state. The domestic insurer shall be entitled to like certificates of authority to transact business in this state, and shall be subject to the authority and jurisdiction of this state.
- (3) Any domestic insurer may, upon approval of the **commissioner**~~{executive director}~~, transfer its domicile to any other state in which it is admitted to transact the business of insurance. Upon the transfer, the insurer shall cease to be a domestic insurer, and shall be authorized to transact insurance business in this state if qualified as a foreign insurer. The **commissioner**~~{executive director}~~ shall approve the proposed transfer unless the **commissioner**~~{executive director}~~ shall determine the transfer is not in the interest of the policyholders of this state.
- (4) The certificate of authority, agents' appointments and licenses, rates, and other items which the **commissioner**~~{executive director}~~ allows, in the **commissioner's**~~{executive director's}~~ discretion, which are in existence at the time any insurer authorized to transact the business of insurance in this state transfers its corporate domicile to this or any other state by merger, consolidation, or merger pursuant to KRS 271B.11-070, or any other lawful method, shall continue in full force and effect upon the transfer if the insurer remains duly qualified to transact the business of insurance in this state. All outstanding policies of any transferring insurer shall remain in full force and effect and need not be endorsed as to the new name of the insurer or its new location unless so ordered by the **commissioner**~~{executive director}~~. Every transferring insurer shall file new policy forms with the **commissioner**~~{executive director}~~ on or before the effective date of the transfer but may use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the **commissioner**~~{executive director}~~. However, every transferring insurer shall notify the **commissioner**~~{executive director}~~ in writing of the details of the proposed transfer and shall file promptly appropriate amendments to corporate documents required to be filed with the **commissioner**~~{executive director}~~.
- (5)
 - (a) Any insurer transferring its domicile in accordance with subsections (2) or (3) of this section shall file an application for redomestication and transfer of domicile with the **commissioner**~~{executive director}~~. This transfer of domicile must be approved by order of the **commissioner**~~{executive director}~~. If the **commissioner**~~{executive director}~~ does not approve the transfer of domicile, the applicant insurer may request a hearing in accordance with KRS 304.2-310(2)(b).
 - (b) An applicant filing to become a domestic insurer in accordance with subsection (2) of this section shall include a notice of transfer of domicile to the Secretary of State and the articles, amended articles, or restated articles of incorporation in compliance with KRS 271B.2-020.
 - (c) An application filed by a domestic insurer to transfer its domicile to another state in accordance with subsection (3) of this section shall include a copy of the order approving the redomestication issued by the new state of domicile.

➔Section 1350. KRS 304.24-600 is amended to read as follows:

- (1) A domestic mutual insurer may convert to a stock insurer by amendment of its articles of incorporation and upon compliance with the requirements of KRS 304.24-600 to 304.24-625 and the applicable requirements of this subtitle and Subtitle 3 of this chapter.
- (2) A domestic mutual insurer shall only convert to a stock insurer in accordance with a plan of conversion approved by the **commissioner**~~{executive director}~~.

➔Section 1351. KRS 304.24-603 is amended to read as follows:

- (1) The board of directors of the converting mutual shall adopt a resolution proposing the amendment of its articles of incorporation in accordance with KRS 304.24-080 and proposing a plan of conversion.
- (2) The plan of conversion shall:
 - (a) Describe the manner in which the proposed conversion shall occur and the insurer and any other business entity that will result from or be directly affected by the conversion, including the former mutual and any affiliate;

- (b) Provide that the membership interests in the converting mutual shall be extinguished as of the effective date of the conversion;
 - (c) Require the fair and equitable distribution of aggregate consideration to the eligible members, upon the extinguishing of their membership interests, which shall be equal to the fair value of the converting mutual as determined under a fair formula:
 - 1. Describe the manner in which the fair value of the converting mutual shall be determined or established;
 - 2. Describe the form or forms of consideration that shall be distributed to the eligible members; and
 - 3. Specify relevant classes, categories, or groups of eligible members, and describe the method or formula that shall be used for the equitable allocation of the aggregate consideration among the eligible members;
 - (d) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends that shall be implemented through establishment of a closed block or other method acceptable to the **commissioner**~~executive director~~ in compliance with KRS 304.24-600 to 304.24-625;
 - (e) Specify the effective date of the plan of conversion and distributions to eligible members; and
 - (f) Include all other provisions that are necessary for, or material to, the implementation of the conversion.
- (3) The plan of conversion may include any other provisions that the converting mutual deems necessary or reasonable.

➔Section 1352. KRS 304.24-605 is amended to read as follows:

- (1) The converting mutual shall file with the **commissioner**~~executive director~~ an application for approval of the plan of conversion.
- (2) The application shall consist of the following:
 - (a) The plan of conversion;
 - (b) A certificate of the secretary of the converting mutual regarding the adoption of the plan of conversion;
 - (c) A statement of the reasons for the proposed conversion and why it is in the best interests of the converting mutual and its eligible members, including an analysis of the risks and benefits to the converting mutual and its members and a comparison of the risks and benefits of reasonable alternatives to a conversion;
 - (d) A five (5) year business plan of the former mutual, including five (5) year financial projections, detailed descriptive narrative, and all relevant assumptions;
 - (e) Any plans or proposals that the former mutual or any affiliate company may have to raise additional capital through the issuance of stock or otherwise; and any other plans that the former mutual or any affiliate company may have to sell or otherwise issue stock to any person, including the adoption of any employee compensation or benefit plan under which stock may be issued;
 - (f) Any plans or proposals that the former mutual or any affiliate company may have to liquidate or dissolve any company, to sell any material assets, or to merge or consolidate with any person, or to make any other material change in investment policy, business, corporate structure, or management;
 - (g) Any plans or arrangement for a delayed distribution of consideration to eligible members, or restrictions on sale or transfer of stock or other securities;
 - (h) A plan of operation for any closed block established for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends;
 - (i) Copies of the current articles of incorporation and bylaws of the converting mutual;
 - (j) Copies of any proposed articles of incorporation and bylaws of the former mutual;

- (k) A list of individuals who are or have been selected to become directors or officers of the former mutual and of any affiliate, or the individuals who perform or will perform duties customarily performed by a director or officer, including the following information:
 - 1. The individual's principal occupation;
 - 2. All offices and positions the individual has held in the preceding five (5) years;
 - 3. Any criminal convictions of the individual;
 - 4. Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years;
 - 5. Information concerning the supervision, rehabilitation, or liquidation of any insurer or the bankruptcy of any corporation or other entity of which the individual was an officer or director;
 - 6. Information concerning any state or federal securities law allegations against the individual that resulted in a determination that the individual violated the state or federal securities law, a plea of nolo contendere, or a consent decree;
 - 7. Information concerning the revocation of any state or federal license issued to the individual; and
 - 8. Information as to whether the individual was refused a fidelity or other bond during the previous ten (10) years.
 - (l) A fairness opinion addressed to the board of directors of the converting mutual from a qualified independent financial advisor, that the provision of stock, cash, policy benefits, or other forms of consideration upon extinguishing the converting mutual's membership interests under the plan of conversion, is fair and equitable to the eligible members, as a group, from a financial point of view;
 - (m) An actuarial opinion and supporting memorandum;
 - (n) A description of the plans of the former mutual or its affiliates to assure that an active trading market for any stock or other securities distributed to eligible members will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions, at reasonable cost and effort. These plans may consist of:
 - 1. Appointing a registrar and transfer agent for the stock or other securities;
 - 2. Making filings, applications, or registrations for the stock or other securities with the Federal Securities and Exchange Commission and with appropriate state securities regulators;
 - 3. Listing the stock or other securities on a national or other securities exchange;
 - 4. Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities;
 - 5. Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effective date of the plan of conversion, in order to facilitate the development of a public market; and
 - 6. Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or an affiliate at market value without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees;
 - (o) Any additional information, documents, or materials that the converting mutual deems necessary or reasonable; and
 - (p) Any other additional information, documents, or materials that the **commissioner**~~executive director~~ may request in writing.
- (3) (a) The actuarial opinion shall address whether:
- 1. The methodology or formulas used to determine the total aggregate consideration to be distributed to eligible members is reasonable and appropriate;

2. The methodology or formulas used to allocate consideration among the eligible members is reasonable and appropriate;
 3. The financial condition of the former mutual will not be adversely diminished; and
 4. If a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of the policy dividends, the plan of operation, and the sufficiency of the assets allocated to the closed block, is reasonable.
- (b) The actuarial opinion shall be provided by a qualified and independent actuary who is a member of the American Academy of Actuaries. The opinion shall be given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given.
- (c) The opinion shall be supported by a memorandum of the actuary, describing the calculations made and the assumptions used in the calculations.

➔Section 1353. KRS 304.24-607 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall have ninety (90) days to review the plan of conversion after it is filed. Upon completion of the review, the **commissioner**~~[executive director]~~ shall schedule a public hearing on the plan of conversion.
- (2) The **commissioner**~~[executive director]~~ shall hold a hearing upon the plan of conversion in accordance with KRS 304.2-310.
- (3) The converting insurer shall present evidence that the plan of conversion complies with KRS 304.24-600 to 304.24-625.
- (4) Persons wishing to make comments and submit information may submit written statements prior to the public hearing and may appear and be heard at the hearing. These comments shall be part of the record and shall be considered by the **commissioner**~~[executive director]~~ before issuing an order on the plan of conversion.
- (5) At least forty-five (45) days prior to the hearing date, the converting mutual shall provide information regarding the hearing to the eligible members and its other policyholders and certificate holders. The information provided shall include a brief statement of the subject of the hearing, the date, time, and location of the hearing, a description of members eligible to vote on the plan of conversion, and a statement indicating the location at which the public portion of the application may be examined. This information shall be provided by mail or by other means approved by the **commissioner**~~[executive director]~~.
- (6) Following the hearing, the **commissioner**~~[executive director]~~ shall, by order, approve, conditionally approve, or disapprove the plan of conversion. The **commissioner**~~[executive director]~~ may require, as a condition of approval of the plan of conversion, modification of the proposed plan of conversion. The insurer shall file the amendments required by the conditional approval within thirty (30) days of the date of the order. The **commissioner**~~[executive director]~~ may grant an extension for filing amendments for good cause shown. If the applicant does not timely file the required amendments, the plan of conversion shall be deemed disapproved.

➔Section 1354. KRS 304.24-609 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall approve the plan of conversion if the **commissioner**~~[executive director]~~ finds, following the hearing, that the plan of conversion:
 - (a) Complies with the provisions of this chapter and all other applicable laws;
 - (b) Is fair and equitable to the eligible members and the other policyholders of the converting mutual;
 - (c) Is actuarially reasonable and appropriate;
 - (d) Will not jeopardize the financial stability of the former mutual or prejudice the interest of its policyholders; and
 - (e) Provides that the former mutual shall be able to satisfy the requirements for issuance of a certificate of authority to write the kinds of insurance for which the converting mutual is presently authorized.

- (2) The ***commissioner***~~[executive director]~~ shall, at the converting mutual's expense, hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts as may be necessary to assist the ***commissioner***~~[executive director]~~ in reviewing all matters under KRS 304.24-600 to 304.24-625 that are related to the plan of conversion and the application. The ***commissioner***~~[executive director]~~ may at any time require the converting mutual to deposit an amount of money with the ***department***~~[office]~~ in anticipation of expenses to be incurred by the ***commissioner***~~[executive director]~~ under this subsection.
- (3) The ***commissioner***~~[executive director]~~ may consider the effect of any action taken by the converting insurer within a three (3) year period immediately prior to the filing of the plan of conversion if the action taken by the insurer has a material effect on the fairness and equity of the plan of conversion.

➔Section 1355. KRS 304.24-611 is amended to read as follows:

- (1) The plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in this section and in KRS 304.24-095.
- (2) The meeting of members shall be held no later than ninety (90) days after the issuance of the ***commissioner's***~~[executive director's]~~ order of approval of the plan of conversion or after the filing of all amendments in compliance with the order of conditional approval of the plan of conversion.
- (3) The converting mutual shall give written notice of the right to vote on the plan of conversion to the members of the converting mutual entitled to vote. The notice shall be accompanied by explanatory information concerning the plan of conversion and may be accompanied by proxy solicitation materials. The notice and accompanying information and materials shall not be provided to the members until approved by the ***commissioner***~~[executive director]~~. The notice and accompanying materials shall include:
 - (a) A brief statement of the subject of the meeting;
 - (b) The date, time, and location of the meeting;
 - (c) A description of the member's right to attend and participate in the meeting;
 - (d) A description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion;
 - (e) If reasonably ascertainable by the converting mutual, a description of the form and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed;
 - (f) A copy of the plan of conversion and summary of the plan; and
 - (g) A reference to the applicable statutory provisions.
- (4) The notice required by subsection (3) of this section shall achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the ***commissioner***~~[executive director]~~.
- (5) The notice shall be mailed, or provided by some other method or methods as may be approved by the ***commissioner***~~[executive director]~~, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion.
- (6) Only persons who are members of the converting mutual on both the date the converting mutual's board of directors adopts the resolution proposing the plan of conversion and the record date for the meeting established by the board of directors shall be entitled to vote on the plan of conversion and the proposed amendment to the articles of incorporation of the converting mutual. Each voting member shall be entitled to vote in accordance with KRS 304.24-210.
- (7) Notwithstanding KRS 304.24-210, a member may vote by proxy only if:
 - (a) The proxy was solicited and obtained from the member for the express and sole purpose of voting on the plan of conversion, amendments to the articles of incorporation and bylaws, and any other matter materially related to the plan of conversion; and
 - (b) The proxy solicitation materials were provided to the ***commissioner***~~[executive director]~~ prior to sending the materials to the members.

- (8) The plan of conversion and the proposed amendment to the converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of at least two-thirds (2/3) of the members voting at the meeting in person or by proxy.

➔Section 1356. KRS 304.24-615 is amended to read as follows:

- (1) The total aggregate consideration to be distributed to the eligible members shall be determined under a fair formula. The total aggregate consideration shall not be less than the converting mutual's total surplus or surplus as regards policyholders; plus the value of all nonadmitted assets; plus a reasonable present equity in reserves, if any; minus any adjustments for contributed or borrowed surplus.
- (2) The consideration to be distributed to the eligible members shall be cash, stock, or other securities of the former mutual or of an affiliate, additional paid up insurance or annuity benefits, or any combination of these forms of consideration or other forms of consideration described in the plan of conversion and approved by the **commissioner**~~{executive director}~~.
- (3) The form of consideration to be distributed to a class, category, or group of eligible members may differ from the form of consideration to be distributed to another class, category, or group of eligible members. The choice of the form of consideration may take into account such factors as the type of policies with respect to which the consideration is being distributed, the country or state of residence or tax status of the eligible members, the length of time that eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.
- (4) Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. That period of time shall not exceed six (6) months, unless approved by the **commissioner**~~{executive director}~~.

➔Section 1357. KRS 304.24-617 is amended to read as follows:

In determining whether the method or formula in the plan of conversion is fair and equitable, the **commissioner**~~{executive director}~~ may consider the following factors:

- (1) Voting rights;
- (2) Number of eligible members;
- (3) Length of membership in the converting mutual;
- (4) Premiums paid by members;
- (5) Policy limits;
- (6) Risk of line of insurance;
- (7) Sources of the proportionate contributions to historical surplus, based on such groupings, classification, historical information, assumptions, and projections as are actuarially sound and reasonable;
- (8) For a converting mutual that is a property and casualty company, the net earned premiums each eligible member has paid to the converting mutual, compared to the total net earned premiums paid by all eligible members, in each case during the period of time specified in the plan of conversion; and
- (9) Any other relevant factors the **commissioner**~~{executive director}~~ may deem appropriate.

➔Section 1358. KRS 304.24-619 is amended to read as follows:

- (1) No dividend preservation provisions shall provide in any way or substitute for the distribution of consideration to eligible members upon extinguishing their membership interests.
- (2) Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or deemed to be in force by the plan of conversion on the effective date of the plan of conversion for which the converting mutual insurer has an experience-based dividend scale due, paid, or accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted, except that:

- (a) Policies that would be included but for the fact that their recent issuance results in no dividends for an initial period, may be included;
- (b) Policies that are in force as extended term insurance may be included; and
- (c) Other categories of policies and benefits not described in this subsection may be included or excluded with approval of the **commissioner**~~[executive director]~~.

➔Section 1359. KRS 304.24-621 is amended to read as follows:

- (1) The provisions of this section apply if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.
- (2) The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this section and the other applicable requirements of KRS 304.24-600 to 304.24-625.
- (3) The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block.
- (4) The assets allocated to the closed block, together with the revenue from the closed block, shall be calculated to be reasonably sufficient to support the business in the closed block until the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion, and to provide for continuation of dividend scales in effect on the adoption date of the plan of conversion, if the experience underlying those scales continues and for appropriate adjustments in the scales if the experience changes.
- (5) The assets to a closed block shall be specified in the plan of operation and must consist of:
 - (a) A list of designated assets of the converting mutual's general account or specified segments, which list shall change periodically to reflect the acquisition and disposition of assets;
 - (b) A designated portion of each asset of the converting mutual's general account or specified segments thereof, which portion shall change periodically to reflect the cash flows of the closed block; or
 - (c) Assets designated by a combination of the methods described in paragraphs (a) and (b) of this subsection.
- (6) The plan of operation shall specify which of those methods of assignment of closed block assets is being used and shall set forth the methods by which the designations referred to in subsection (5) of this section are changed during the course of closed block operations.
- (7) The former mutual shall submit to the **commissioner**~~[executive director]~~ annual reports, in a form acceptable to the **commissioner**~~[executive director]~~, that account for and describe the operations of the closed block; and as specified in the plan of operation provide for annual reviews of, and reports and opinions on, the closed block by an independent actuary.
- (8) The plan of operation shall provide for the conditions under which the former mutual may terminate the closed block.
- (9) The former mutual shall not distribute any residual assets of the closed block until the plan for distribution of the residual assets is approved by the **commissioner**~~[executive director]~~.

➔Section 1360. KRS 304.24-623 is amended to read as follows:

- (1) Except as specifically provided in the plan of conversion, for a period of five (5) years following the effective date of the conversion, no person or persons acting in concert, other than the former mutual, any affiliate, any employee benefit plans, or trusts sponsored by the former mutual or affiliate, shall directly or indirectly offer to acquire or acquire in any manner the beneficial ownership of five percent (5%) or more of any class of a voting security of the former mutual or any affiliate company without the prior approval by the **commissioner**~~[executive director]~~ of a statement filed by that person with the **commissioner**~~[executive director]~~. The statement shall contain the information required by KRS 304.37-120(2) and any other information required by the **commissioner**~~[executive director]~~.
- (2) The **commissioner**~~[executive director]~~ shall not approve the acquisition if the **commissioner**~~[executive director]~~ finds that:
 - (a) The requirements of KRS 304.37-120(4)(a) have not been satisfied;

- (b) The acquisition will frustrate the fair and equitable plan of conversion as approved by the members and the ***commissioner***~~[executive director]~~;
 - (c) The acquisition or change of control will result in unjust enrichment of the acquiring persons to the detriment of the eligible members of the converting mutual; and
 - (d) The acquisition would not be in the best interest of the present and future policyholders of the former mutual, without regard to any interest of policyholders as shareholders of the former mutual or any affiliate company.
- (3) The requirements of this section shall be in addition and supplemental to any other filings or approvals required by this chapter or otherwise by law.

➔Section 1361. KRS 304.24-625 is amended to read as follows:

During the one (1) year period following the effective date of the plan of conversion, neither the former mutual nor any affiliate company shall sell or issue, or adopt any plan or benefit program providing for the sale or issuance of, any stock or other equity security except:

- (1) As disclosed in the approved plan of conversion; or
- (2) As otherwise approved by the ***commissioner***~~[executive director]~~, upon a finding that the stock transaction:
 - (a) Will not frustrate the plan of conversion as approved by the members and the ***commissioner***~~[executive director]~~; and
 - (b) Is not adverse to the best interests of the policyholders of the former mutual, without regard to any interests of policyholders as shareholders of the former mutual or any affiliate company.

➔Section 1362. KRS 304.25-020 is amended to read as follows:

- (1) When used in this subtitle, the following terms shall mean and include the following:
 - (a) Acting director. Acting director means an acting director elected or appointed in accordance with this subtitle.
 - (b) Acting officer. Acting officer means an acting officer appointed in accordance with this subtitle.
 - (c) Acute emergency. Acute emergency means a period, as formally declared and proclaimed by the Governor of this state, in which, by reason of loss of life, epidemic disease, destruction or damage of property, contamination of property by radiological, chemical or bacteriological means, or disruption of the means of transportation or communication, resulting from an attack, it is impossible or impractical for the business of insurance in this state to be conducted in strict accord with the provision of law or charter applicable thereto.
 - (d) Attack. Attack means any attack, actual or imminent, or series of attacks by an enemy or a foreign nation upon the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, shell fire, or atomic, radiological, chemical, bacteriological or biological means or other weapons or processes.
 - (e) Board. Board means the board of directors, board of trustees, committee or similar body having control of the affairs of an insurance organization.
 - (f) Charter. Charter means the certificate of organization or incorporation or special law incorporating a corporation together with its bylaws, or the agreement establishing a fund or association together with its constitution and bylaws.
 - (g) ***Commissioner***~~[Executive — director]~~. ***Commissioner***~~[Executive — director]~~ means the ***commissioner***~~[executive director]~~ of the ***Department of*** Insurance or person duly designated to exercise the powers of that ***department***~~[office]~~ during an attack or acute emergency.
 - (h) Director. Director means a director, trustee or member of a board.
 - (i) Domestic organization. Domestic organization means any insurance organization which is domiciled in this state.

- (j) Insurance organization. Insurance organization means any insurer, rating organization, service or advisory organization, joint underwriting association, which is subject, in whole or in part, to the insurance laws of this state.
 - (k) Officer. Officer means an officer of a domestic insurance organization.
 - (l) Quorum. Quorum means the minimum number of directors required by charter and bylaw, exclusive of the provisions of this subtitle, to be present for valid action to be taken at a meeting of a board with respect to each particular item of business which may come before such meeting.
- (2) This subtitle does not and shall not be construed to limit the powers of, or permit or require, any insurance organization which is not domiciled in this state or of any branch office, or agents of such insurance organization, or the directors, officers, members, policyholders, or stockholders of any such organization to act, or fail to act, in such fashion as would violate the laws of the jurisdiction wherein such organization has its domicile.

➔Section 1363. KRS 304.25-030 is amended to read as follows:

- (1) With the approval of the **commissioner**~~executive director~~, any domestic organization may, at any time, adopt, in the same manner as in the case of ordinary bylaws, emergency bylaws to become operative during a period of acute emergency. Emergency bylaws may contain provisions with respect to the number of directors capable of acting which shall constitute its board, the number of such directors which shall constitute a quorum at a meeting of the board, the number of votes necessary for action by such board, the manner in which vacancies on the board shall be filled, the line of succession of its officers, and the interim management of the affairs of the insurance organization; such provisions, if approved by the **commissioner**~~executive director~~, need not comply with the requirement of the charter of such domestic organization or of the insurance or incorporation laws of this state.
- (2) KRS 304.25-040 and subsections (2) to (6), inclusive, of KRS 304.25-050, shall not be applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the **commissioner**~~executive director~~.

➔Section 1364. KRS 304.25-040 is amended to read as follows:

- (1) Notwithstanding any provision of its charter, any domestic insurance organization, without complying with any provision of law requiring approval, or application for approval, of a change of location of its principal office may, from time to time, change the location thereof during an acute emergency to a suitable location within the United States, and may carry on its business at such new location during such acute emergency, and for a reasonable time thereafter. Any insurance organization which changes the location of its principal office during an acute emergency shall notify the **commissioner**~~executive director~~ thereof in writing as soon as practical, stating the address of the new location, the address of the former location, and the dates when business is ceasing at the former location and commencing at the latter location.
- (2) Notwithstanding any contrary provision of law or its charter, if at any time during an acute emergency affecting any domestic insurance organization, no person otherwise empowered to call meetings of the board is capable of acting, a meeting thereof may be called by any director or acting director or if no director or acting director is capable of acting, by any officer or acting officer. If it shall be impractical or impossible to give notice of a meeting of the board in the manner prescribed by charter and law, other than this subtitle, the person calling such a meeting may give notice thereof by making such reasonable efforts as circumstances may permit to notify each director and acting director of the time and place of the meeting, but need not specify the purposes thereof. Failure of any director or acting director to receive actual notice of a meeting of directors and acting directors shall not affect the power of the directors and acting directors present at such meeting to exercise the powers of an emergency board of directors as prescribed in this section. Nothing in this subtitle shall be construed as requiring a meeting of the board of such an organization to be convened in any manner different from that prescribed by its charter and by the provisions of law other than this subtitle.
- (3) If three (3) or more directors and acting directors of any domestic insurance organization are present at any meeting of its board duly convened during an acute emergency affecting such domestic insurance organization, they shall constitute its emergency board of directors which, notwithstanding any contrary provision of law or of its charter, shall have the power, subject to the limitations prescribed by this subtitle, by a majority of those present, to take any and every action which may be necessary to enable such domestic insurance organization to meet the exigencies of the acute emergency and conduct its business during such period, but no other

powers. The powers of an emergency board of directors shall include, but shall not be limited to, the following powers:

- (a) Fill vacancies and absentees. At any meeting, to elect such acting directors as it may deem necessary, without regard to the number of directors which would otherwise be required, to serve in any positions on such board which are vacant or in place of any directors or acting directors who are absent from such meeting, but not to elect any director on a permanent basis.
 - (b) Acting officers and duties. To elect such acting officers as it may deem necessary, without regard to the number of officers which would otherwise be required, to serve in any offices which are vacant or in place of any officers or acting officers who fail to appear and assume their duties, to fix the compensation and determine the powers and duties of acting officers and to remove acting officers but not to remove any officer or to fill any vacancy on a permanent basis or to cause the insurance organization to enter into any contract of employment for a term in excess of one (1) year.
 - (c) Change of location. To cause the insurance organization to change the location of its principal office, pursuant to this section, or any of its places of business, and to authorize such action as it may deem appropriate to acquire space and facilities at new locations, but not to acquire for use of its principal office property in fee or for a term in excess of one (1) year.
 - (d) Postpone meetings. To postpone any meeting of the stockholders, policyholders or members or directors of such organization if, in the judgment of a majority of the members of such emergency board of directors, it would be impracticable to hold such meeting at the time it would otherwise have been held or conducted.
 - (e) Call meetings. If it shall appear to an emergency board of directors that a quorum of the board cannot be assembled within a reasonable time, to call a meeting of the stockholders, policyholders or members of the insurance organization to be held as soon as the circumstances may reasonably permit, at a place to be designated by the emergency board of directors within this state or a contiguous state, for the purpose of electing directors to fill vacancies on the board, but for no other purpose, and to propose nominees for such election. Any such meetings of stockholders, policyholders or members shall be held upon notice given in accordance with the charter of the organization and applicable law other than this section.
- (4) As soon as practicable after each meeting of an emergency board of directors, the person who presided thereat shall notify the **commissioner**~~executive director~~ in writing of the time and place of such meeting, of the manner in which notice thereof was given, of the persons present and of all actions taken at such meeting.
 - (5) No person prohibited by law or by the charter of a domestic insurance organization from serving as a member of its board shall be eligible to serve as an acting director except that no person shall be disqualified to serve as an acting director by reason of his **or her** not being a stockholder, policyholder or member of such insurance organization, by reason of his **or her** not being a resident of this state or of a contiguous state, or by reason of the number of directors or acting directors who are officers, acting officers or employees of the insurance organization. Any person may serve as an acting director of a fund who is a director, acting director, officer or acting officer of an organization which is a party to the agreement creating the fund. No oath of acting directors shall be required.
 - (6) Acting directors elected under this section or appointed under KRS 304.25-060 shall be entitled to vote at all meetings of emergency board of directors equally with directors. Acting directors shall not be entitled to take part in the deliberations or to vote at any meeting of the board which is duly convened in accordance with the applicable provisions of its charter and of law other than this subtitle and at which a quorum is present. Each acting director shall serve until the director or acting director in whose place he **or she** was elected or appointed shall attend the meeting of the board or until the director is duly elected to fill the vacancy in which such acting director has been serving, whichever event occurs earlier. An acting director shall be entitled to the compensation, if any, payable to a director.
 - (7) Acting officers elected pursuant to this section shall have powers and duties and receive such compensation as may from time to time be determined by the emergency board of directors. Each acting officer shall serve until the officer in whose place he **or she** was elected shall appear and assume his **or her** duties or until his **or her** successor officer or acting officer shall be elected, whichever event occurs earlier.

- (8) This section shall not be deemed applicable during a period of acute emergency to any domestic organization operating in accordance with and under emergency bylaws theretofore approved by the ***commissioner***~~{executive director}~~.

➔Section 1365. KRS 304.25-050 is amended to read as follows:

- (1) Designate additional acting directors. If at any time during an acute emergency, the number of directors or acting directors of a domestic insurance organization who are capable of acting shall be less than three (3), as determined by the ***commissioner***~~{executive director}~~ after a reasonable investigation, the ***commissioner***~~{executive director}~~ shall have the power to designate additional acting directors in such number as will bring to three (3) the number of directors and acting directors who are capable of acting.
- (2) Resolve controversies. To resolve controversy as to the power of any group of persons purporting to act as an emergency board of directors so to act, the ***commissioner***~~{executive director}~~ shall, upon a determination that such action will tend to promote the safe and sound and orderly conduct of the business of any domestic insurance organization, have power to issue orders declaring that any such group shall or shall not have the powers of an emergency board of directors, or confirming, modifying or vacating in whole or in part any action taken or purportedly taken by any such group or by removing any acting director.
- (3)
 - (a) Declare provisions of law operative or inoperative. At any time after an attack, upon his determination that such action will tend to promote certainty as to the powers of insurance organizations or individuals pursuant to this subtitle or that such action is desirable to enable insurance organizations to take preparatory precautions prior to the occurrence of an acute emergency, the ***commissioner***~~{executive director}~~ shall have power to declare that any provision of this subtitle which he may specify shall be operative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration such organization and its directors, officers, acting directors and acting officers shall have all powers conferred by this subtitle. The failure of the ***commissioner***~~{executive director}~~ so to declare shall not be deemed to limit the powers of any organization or its directors, officers, acting directors or acting officers where an acute emergency exists in fact.
 - (b) At any time after the commencement of an acute emergency or after the ***commissioner***~~{executive director}~~ shall have declared any provision of this subtitle operative under this subsection upon his determination that an insurance organization is able, in whole or in part, to carry on its business in compliance with its charter and the laws, other than this subtitle, the ***commissioner***~~{executive director}~~ shall have power to declare that any provision of this subtitle which he may specify shall be inoperative with respect to any domestic insurance organization or to the Kentucky business of any other insurance organization which he may designate. Upon such declaration, such organization shall be governed by its charter and the provisions of law other than this subtitle, except insofar as they remain inoperative.
- (4) Possession of business and property. Upon the determination that, as a result of an acute emergency, the business and affairs of an insurance organization cannot otherwise be conducted in a safe and sound manner, the ***commissioner***~~{executive director}~~ may forthwith take possession of the business and property of the insurance organization within this state or, if a domestic insurance organization, its business and property wherever situated. This subtitle shall be applicable in any case in which the ***commissioner***~~{executive director}~~ takes possession of an insurance organization under this subsection as though the insurance organization were an insurer of which the ***commissioner***~~{executive director}~~ had taken possession under this subtitle, except that no such provision shall be applicable which the ***commissioner***~~{executive director}~~ shall have declared inapplicable under this subsection. The ***commissioner***~~{executive director}~~ shall have power to declare inapplicable any such provision upon his determination that the same is inappropriate or unnecessary to protect the interest of the public or the stockholders or creditors of the insurance organization, in view of the acute emergency and the nature of the organization.
- (5) When powers exercised. The powers given the ***commissioner***~~{executive director}~~ by subsections (2) and (4) of this section shall be exercised by him only in the event that there is no court of competent jurisdiction available to which an application can be made for an order permitting him to exercise such powers with respect to a particular insurance organization. The powers conferred by subsection (4) of this section shall not be exercised in a case of an insurance organization which is not insolvent within the meaning of this subtitle, unless the ***commissioner***~~{executive director}~~ finds that such insurance organization lacks personnel able to manage its business in the interest of the public, stockholders and policyholders.

- (6) Regulations. The ***commissioner***~~[executive director]~~ shall have power to issue general and specific regulations, directives and orders consistent with and in furtherance of the purpose of this subtitle.

➔Section 1366. KRS 304.25-060 is amended to read as follows:

- (1) Presumption. In any action or proceeding it shall be presumed that an acute emergency existing within this state constitutes an acute emergency affecting every insurance organization doing business within this state.
- (2) Powers of board. During an acute emergency the board of a domestic insurance organization which has adopted emergency bylaws approved by the ***commissioner***~~[executive director]~~ shall have all of the powers conferred by such bylaws, and no other or different powers with respect to the subject matter of this subtitle, and the board of a domestic insurance organization which has not adopted emergency bylaws approved by the ***commissioner***~~[executive director]~~ shall have all of the powers of an emergency board of directors as the same are provided for under this subtitle.

➔Section 1367. KRS 304.26-020 is amended to read as follows:

The term "equity security" when used in this subtitle means:

- (1) Any stock or similar security; or
- (2) Any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or
- (3) Any such warrant or right; or
- (4) Any other security which the ***commissioner***~~[executive director]~~ deems to be of similar nature and considers necessary or appropriate, by such rules and regulations as ***the commissioner***~~[he]~~ may prescribe in the public interest or for the protection of investors, to treat as an equity security.

➔Section 1368. KRS 304.26-030 is amended to read as follows:

Every person who is directly or indirectly the beneficial owner of more than ten percent (10%) of any class of any equity security of a domestic stock insurer, or who is a director or an officer of such insurer, shall:

- (1) File in the office of the ***commissioner***~~[executive director]~~ within ten (10) days after he ***or she*** becomes such beneficial owner, director or officer, a statement, in such form as the ***commissioner***~~[executive director]~~ may prescribe, of the amount of all equity securities of such insurer of which he ***or she*** is the beneficial owner; and
- (2) Within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, file in the office of the ***commissioner***~~[executive director]~~ a statement, in such form as the ***commissioner***~~[executive director]~~ may prescribe, indicating his ***or her*** ownership at the close of the calendar month and such changes in his ***or her*** ownership as have occurred during such calendar month.

➔Section 1369. KRS 304.26-040 is amended to read as follows:

- (1) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his ***or her*** relationship to such insurer, any profit realized by him ***or her*** from any purchase and sale, or any sale and purchase, of any equity security of such insurer within any period of less than six (6) months, unless such security was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the insurer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction or holding the security purchased or of not repurchasing the security sold for a period exceeding six (6) months.
- (2) Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the insurer, or by the owner of any security of the insurer in the name and in behalf of the insurer if the insurer fails or refuses to bring such suit within sixty (60) days after request or fails diligently to prosecute the same thereafter; but no such suit shall be brought more than two (2) years after the date such profit was realized.
- (3) This section shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security involved, or any transaction or transactions which the ***commissioner***~~[executive director]~~ by rules and regulations may exempt as not comprehended within the purpose of this section.

➔Section 1370. KRS 304.26-050 is amended to read as follows:

- (1) It is unlawful for any such beneficial owner, director or officer, directly or indirectly, to sell any equity security of such insurer if the person selling the security or his *or her* principal:
 - (a) Does not own the security sold, or
 - (b) If the owner of the security does not deliver it against such sale within twenty (20) days thereafter, or does not within five (5) days after such sale deposit it in the mails or other usual channels of transportation, but no person shall be deemed to have violated this section if he *or she* proves that notwithstanding the exercise of good faith he *or she* was unable to make such delivery or deposit within such time, or that to do so would cause undue inconvenience or expense.
- (2) The **commissioner**~~[executive director]~~ shall establish, and from time to time amend, regulations with regard to proxies, consents, or authorizations in respect of securities issued by any domestic stock insurer, such regulations to conform to those prescribed by the National Association of Insurance Commissioners.

➔Section 1371. KRS 304.26-060 is amended to read as follows:

- (1) The provisions of KRS 304.26-040 do not apply to any purchase and sale, or sale and purchase, and the provisions of subsection (1) of KRS 304.26-050 do not apply to any sale, of an equity security of a domestic stock insurer not then or theretofore held by him *or her* in an investment account, by a dealer in the ordinary course of his *or her* business and incident to the establishment or maintenance by him *or her* of a primary or secondary market (otherwise than on an exchange as defined in the Securities Exchange Act of 1934) for such security.
- (2) The **commissioner**~~[executive director]~~ may, by such rules and regulations as he *or she* deems necessary or appropriate in the public interest, define and prescribe terms and conditions with respect to securities held in an investment account and transactions made in the ordinary course of business and incident to the establishment or maintenance of a primary or secondary market.

➔Section 1372. KRS 304.26-070 is amended to read as follows:

The provisions of KRS 304.26-030 and 304.26-040 and subsection (1) of KRS 304.26-050, do not apply to foreign or domestic arbitrage transactions unless made in contravention of such rules and regulations as the **commissioner**~~[executive director]~~ may adopt in order to carry out the purposes of this subtitle.

➔Section 1373. KRS 304.26-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall have the power to make such rules and regulations as may be necessary for the execution of the functions vested in him *or her* by KRS 304.26-030 to 304.26-080, inclusive, and may for such purpose classify domestic stock insurers, securities and other persons or matters within his *or her* jurisdiction.
- (2) No provision of KRS 304.26-030 to 304.26-050, inclusive, imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule or regulation of the **commissioner**~~[executive director]~~, notwithstanding that such rule or regulation may, after such act or omission, be amended or rescinded or determined by judicial or other authority to be invalid for any reason.

➔Section 1374. KRS 304.27-060 is amended to read as follows:

- (1) Twenty-five (25) or more persons domiciled in this state may organize a domestic reciprocal insurer and make application to the **commissioner**~~[executive director]~~ for a certificate of authority to transact insurance.
- (2) The proposed attorney shall fulfill the requirements of and shall execute and file with the **commissioner**~~[executive director]~~ when applying for a certificate of authority, a declaration setting forth:
 - (a) The name of the insurer;
 - (b) The location of the insurer's principal office, which shall be the same as that of the attorney and shall be maintained within this state;
 - (c) The kinds of insurance proposed to be transacted;
 - (d) The names and addresses of the original subscribers;
 - (e) The designation and appointment of the proposed attorney and a copy of the power of attorney;

- (f) The names and addresses of the officers and directors of the attorney, if a corporation, or its members, if a firm;
 - (g) The powers of the subscribers' advisory committee; and the names and terms of office of the members thereof;
 - (h) A copy of the subscribers' agreement;
 - (i) That all moneys paid to the reciprocal insurer shall, after deducting therefrom any sum payable to the attorney, be held in the name of the insurer and for the purposes specified in the subscribers' agreement;
 - (j) A statement that each of the original subscribers has in good faith applied for insurance of a kind proposed to be transacted, and that the insurer has received from each such subscriber the full premium or premium deposit required for the policy applied for, for a term of not less than six (6) months at an adequate rate theretofore filed with the **commissioner**~~[executive director]~~;
 - (k) A statement of the financial condition of the insurer, a schedule of its assets, and a statement that the surplus as required by KRS 304.3-120 is on hand; and
 - (l) A copy of each policy, indorsement and application form it then proposes to issue or use.
- (3) The declaration shall be acknowledged by the attorney in the manner required for the acknowledgment of deeds.

➔Section 1375. KRS 304.27-070 is amended to read as follows:

- (1) The certificate of authority of a reciprocal insurer shall be issued to its attorney in the name of the insurer.
- (2) The **commissioner**~~[executive director]~~ may refuse, suspend or revoke the certificate of authority, in addition to other grounds therefor, including those provided in Subtitles 2 and 3 of this chapter, for failure of the attorney to comply with any applicable provision of this code.

➔Section 1376. KRS 304.27-080 is amended to read as follows:

- (1) The rights and powers of attorney of a reciprocal insurer shall be as provided in the power of attorney given it by the subscribers.
- (2) The power of attorney must set forth:
 - (a) The powers, duties and compensation of the attorney;
 - (b) That the attorney is empowered to accept service of process on behalf of the insurer in actions against the insurer upon contracts exchanged;
 - (c) The general services to be performed by the attorney;
 - (d) The maximum amount to be deducted from advance premiums or deposits to be paid to the attorney and the general items of expense in addition to losses, to be paid by the insurer; and
 - (e) Except as to nonassessable policies, a provision for a contingent several liability of each subscriber in a specified amount which amount shall be not less than one (1) nor more than ten (10) times the premium or premium deposit stated in the policy.
- (3) The power of attorney may:
 - (a) Provide for the right of substitution of the attorney and revocation of the power of attorney and rights thereunder;
 - (b) Impose such restrictions upon the exercise of the power as are agreed upon by the subscribers;
 - (c) Provide for the exercise of any right reserved to the subscribers directly or through their advisory committee; and
 - (d) Contain other lawful provisions deemed advisable.
- (4) The terms of any power of attorney or agreement collateral thereto shall be reasonable and equitable, and no such power or agreement, or any amendment thereof, shall be used or be effective in this state until approved by the **commissioner**~~[executive director]~~.

➔Section 1377. KRS 304.27-100 is amended to read as follows:

- (1) Concurrently with the filing of the declaration provided for in KRS 304.27-060, the attorney of a domestic reciprocal insurer shall file with the **commissioner**~~[executive director]~~ a bond in favor of this state for the benefit of all persons damaged as a result of breach by the attorney of the conditions of his **or her** bond as set forth in subsection (2) of this section. The bond shall be executed by the attorney and by an authorized corporate surety, and shall be subject to the **commissioner's**~~[executive director's]~~ approval.
- (2) The bond shall be in the penal sum of \$100,000, aggregate in form, conditioned that the attorney will faithfully account for all moneys and other property of the insurer coming into his **or her** hands, and that he **or she** will not withdraw or appropriate to his **or her** own use from the funds of the insurer, any moneys or property to which he **or she** is not entitled under the power of attorney.
- (3) The bond shall provide that it is not subject to cancellation unless thirty (30) days' advance notice in writing of cancellation is given both the attorney and the **commissioner**~~[executive director]~~.

➔Section 1378. KRS 304.27-110 is amended to read as follows:

In lieu of such bond, the attorney may maintain on deposit with the **commissioner**~~[executive director]~~ a like amount in cash or in value of securities qualified under this code as insurer's investments, and subject to the same conditions as the bond.

➔Section 1379. KRS 304.27-140 is amended to read as follows:

The attorney or other parties may advance to a domestic reciprocal insurer upon reasonable terms such funds as it may require from time to time in its operations. Sums so advanced shall not be treated as a liability of the insurer, and except upon liquidation of the insurer, shall not be withdrawn or repaid except out of the insurer's realized earned surplus in excess of its minimum required surplus. No such withdrawal or repayment shall be made without the advance approval of the **commissioner**~~[executive director]~~. This section does not apply to bank loans, or to other loans made upon security.

➔Section 1380. KRS 304.27-150 is amended to read as follows:

- (1) The annual statement of a reciprocal insurer shall be made and filed by its attorney.
- (2) The statement shall be supplemented by such information as may be required by the **commissioner**~~[executive director]~~ relative to the affairs and transactions of the attorney.

➔Section 1381. KRS 304.27-160 is amended to read as follows:

In determining the financial condition of a reciprocal insurer the **commissioner**~~[executive director]~~ shall apply the following rules:

- (1) **The commissioner**~~[He]~~ shall charge as liabilities the same reserves as are required of incorporated insurers issuing nonassessable policies on a reserve basis.
- (2) The surplus deposits of subscribers shall be allowed as assets, except that any premium deposit delinquent for ninety (90) days shall first be charged against such surplus deposit.
- (3) The surplus deposits of subscribers shall not be charged as a liability.
- (4) All premium deposits delinquent less than ninety (90) days shall be allowed as assets.
- (5) An assessment levied upon subscribers, and not collected shall be allowed as assets.
- (6) The contingent liability of subscribers shall not be allowed as an asset.
- (7) The computation of reserves shall be based upon premium deposits other than membership fees and without any deduction for the compensation of the attorney.

➔Section 1382. KRS 304.27-210 is amended to read as follows:

- (1) Assessments may from time to time be levied upon subscribers of a domestic reciprocal insurer liable therefor under the terms of their policies by the attorney upon approval in advance by the subscribers' advisory committee and the **commissioner**~~[executive director]~~; or by the **commissioner**~~[executive director]~~ in liquidation of the insurer.

- (2) Each subscriber's share of a deficiency for which an assessment is made, but not exceeding in any event his *or her* aggregate contingent liability as computed in accordance with KRS 304.27-230, shall be computed by applying to the premium earned on the subscriber's policy or policies during the period to be covered by the assessment, the ratio of the total deficiency to the total premiums earned during such period upon all policies subject to the assessment.
- (3) In computing the earned premiums for the purposes of this section, the gross premium received by the insurer for the policy shall be used as a base, deducting therefrom solely charges not recurring upon the renewal or extension of the policy.
- (4) No subscriber shall have an offset against any assessment for which he *or she* is liable, on account of any claim for unearned premium or losses payable.

➔Section 1383. KRS 304.27-220 is amended to read as follows:

Every subscriber of a domestic reciprocal insurer having contingent liability shall be liable for, and shall pay his *or her* share of any assessment, as computed and limited in accordance with this subtitle, if:

- (1) While his *or her* policy is in force or within one (1) year after its termination, he *or she* is notified by either the attorney or the **commissioner**~~executive director~~ of his *or her* intention to levy such assessment, or
- (2) If an order to show cause why a receiver, conservator, rehabilitator or liquidator of the insurer should not be appointed is issued while his *or her* policy is in force or within one (1) year after its termination.

➔Section 1384. KRS 304.27-240 is amended to read as follows:

- (1) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the minimum capital stock and surplus required to be maintained by a domestic stock insurer authorized to transact like kinds of insurance, upon application of the attorney and as approved by the subscribers' advisory committee the **commissioner**~~executive director~~ shall issue his *or her* certificate authorizing the insurer to extinguish the contingent liability of subscribers under its policies then in force in this state, and to omit provisions imposing contingent liability in all policies delivered or issued for delivery in this state for so long as all such surplus remains unimpaired.
- (2) Upon impairment of such surplus, the **commissioner**~~executive director~~ shall forthwith revoke the certificate. Such revocation shall not render subject to contingent liability any policy then in force and for the remainder of the period for which the premium has theretofore been paid; but after such revocation no policy shall be issued or renewed without providing for contingent assessment liability of the subscriber.
- (3) The **commissioner**~~executive director~~ shall not authorize a domestic reciprocal insurer so to extinguish the contingent liability of any of its subscribers or in any of its policies to be issued, unless it qualifies to and does extinguish such liability of all its subscribers and in all such policies for all kinds of insurance transacted by it. Except, that if required by the laws of another state in which the insurer is transacting insurance as an authorized insurer, the insurer may issue policies providing for the contingent liability of such of its subscribers as may acquire such policies in such state, and need not extinguish the contingent liability applicable to policies theretofore in force in such state.

➔Section 1385. KRS 304.27-260 is amended to read as follows:

Upon the liquidation of a domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy obligations, the return of any contributions of the attorney or other persons to its surplus, and the return of any unused premium, savings, or credits then standing on subscribers' accounts, shall be distributed to its subscribers who were such within the twelve (12) months prior to the last termination of its certificate of authority, according to such reasonable formula as the **commissioner**~~executive director~~ may approve.

➔Section 1386. KRS 304.27-270 is amended to read as follows:

- (1) A domestic reciprocal insurer upon affirmative vote of not less than two-thirds (2/3) of its subscribers who vote on such merger pursuant to due notice and the approval of the **commissioner**~~executive director~~ of the terms therefor, may merge with another reciprocal insurer or be converted to a stock or mutual insurer.
- (2) Such a stock or mutual insurer shall be subject to the same capital or surplus requirements and shall have the same rights as a like domestic insurer transacting like kinds of insurance.

- (3) The **commissioner**~~[executive director]~~ shall not approve any plan for such merger or conversion which is inequitable to subscribers, or which, if for conversion to a stock insurer, does not give each subscriber preferential right to acquire stock of the proposed insurer proportionate to his **or her** interest in the reciprocal insurer as determined in accordance with KRS 304.27-260 and a reasonable length of time within which to exercise such right.

➔Section 1387. KRS 304.27-280 is amended to read as follows:

- (1) If the assets of a domestic reciprocal insurer are at any time insufficient to discharge its liabilities, other than any liability on account of funds contributed by the attorney or others, and to maintain the required surplus, its attorney shall forthwith make up the deficiency or levy an assessment upon the subscribers for the amount needed to make up the deficiency; but subject to the limitation set forth in the power of attorney or policy.
- (2) If the attorney fails to make up such deficiency or to make the assessment within thirty (30) days after the **commissioner**~~[executive director]~~ orders him **or her** to do so, or if the deficiency is not fully made up within sixty (60) days after the date the assessment was made, the insurer shall be deemed insolvent and shall be proceeded against as authorized by this code.
- (3) If liquidation of such an insurer is ordered, an assessment shall be levied upon the subscribers for such an amount, subject to limits as provided by this subtitle, as the **commissioner**~~[executive director]~~ determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds contributed by the attorney or other persons, but including the reasonable cost of the liquidation.

➔Section 1388. KRS 304.28-030 is amended to read as follows:

Underwriters shall file with the **commissioner**~~[executive director]~~ for an original certificate of authority, an application, signed and sworn to by their duly authorized attorney, setting forth in addition to matters required in KRS 304.3-150:

- (1) The name of the attorney and title under which the business is to be conducted, which title shall contain the name Lloyd's and shall not be so similar to any name or title in use in this state as to be likely to confuse or deceive.
- (2) The names and addresses of all the underwriters proposing to engage in the business.
- (3) The number of underwriters, which shall not be less than twenty-five (25), and that each underwriter is worth in his **or her** own right not less than \$20,000 over and above all his **or her** liabilities.
- (4) A copy of each form of policy or contract by which such insurance is to be effected.
- (5) A copy of the form of power of attorney by virtue of which the attorney is to act for and bind the several underwriters and a copy of the articles of agreement entered into between the underwriters themselves and the attorney.
- (6) A financial statement showing in detail the assets contributed or accumulated in the hands of the attorney, committee of underwriters, trustees and/or other officers of such underwriters at Lloyd's, together with the liabilities incurred and outstanding and the income received and disbursements made by the attorney for the underwriters.
- (7) An instrument executed by each and all of the underwriters specially empowering the attorney to accept services of process for each underwriter in any action on any policy or contract of insurance and an instrument from the attorney to the **commissioner**~~[executive director]~~, delegating the attorney's powers in this respect to the **commissioner**~~[executive director]~~.

➔Section 1389. KRS 304.28-040 is amended to read as follows:

- (1) Upon the filing of the documents required, the **commissioner**~~[executive director]~~ shall examine them. If it appears that all the statements made are true and that the rights of the policyholders will be protected thereunder, and that the insurer is otherwise qualified therefor, **the commissioner**~~[he]~~ shall issue a certificate of authority to the underwriters under the name chosen and approved, authorizing them to transact the business of insurance as specified in the application.
- (2) Prior to the issuance of an original certificate of authority, a Lloyd's organization shall submit to examination of its affairs, by the **commissioner**~~[executive director]~~, or, if acceptable to the **commissioner**~~[executive director]~~, shall file with **the commissioner**~~[him]~~ a certified copy of an examination of its affairs made within two (2) years by the proper supervising official of some other state.

➔Section 1390. KRS 304.28-050 is amended to read as follows:

Additional or substituted underwriters shall be bound in the same manner and to the same extent as original subscribers to the articles of agreement and power of attorney on file with the **commissioner**~~{executive director}~~, and the acts of the duly appointed deputy or substitute attorney of any attorney licensed under this subtitle in accepting powers of attorney from underwriters and in making and issuing policies and contracts of insurance and in doing any additional acts incident thereto shall be deemed authorized by the license issued to the original attorney.

➔Section 1391. KRS 304.29-101 is amended to read as follows:

A domestic society organized on or after January 1, 1989, shall be formed as follows:

- (1) Seven (7) or more citizens of the United States, a majority of whom are citizens of this state, who desire to form a fraternal benefit society, may make, sign and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:
 - (a) The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company as to be misleading or confusing;
 - (b) The purposes for which it is being formed and the mode in which its corporate powers are to be exercised. The purposes shall not include more liberal powers than are granted by this subtitle; and
 - (c) The names and residences of the incorporators and the names, residences and official titles of all the officers, trustees, directors, or other persons who are to have and exercise the general control of the management of the affairs and funds of the society for the first year or until the ensuing election at which all such officers shall be elected by the supreme governing body, which election shall be held not later than one (1) year from the date of issuance of the permanent certificate of authority.
- (2) The articles of incorporation, duly certified copies of the society's bylaws and rules, copies of all proposed forms of certificates, applications therefor, and circulars to be issued by the society and a bond conditioned upon the return to applicants of the advanced payments if the organization is not completed within one (1) year shall be filed with the **commissioner**~~{executive director}~~, who may require further information. The bond with sureties approved by the **commissioner**~~{executive director}~~ shall be in an amount, not less than three hundred thousand dollars (\$300,000) nor more than one million five hundred thousand dollars (\$1,500,000), as required by the **commissioner**~~{executive director}~~. All documents filed shall be in the English language. If the purposes of the society conform to the requirements of this subtitle and all provisions of the law have been complied with, the **commissioner**~~{executive director}~~ shall so certify, retain and file the articles of incorporation and furnish the incorporators a preliminary certificate of authority authorizing the society to solicit members.
- (3) No preliminary certificate of authority granted under the provisions of this section shall be valid after one (1) year from its date or after such further period, not exceeding one (1) year, as may be authorized by the **commissioner**~~{executive director}~~ upon cause shown, unless the five hundred (500) applicants hereinafter required have been secured and the organization has been completed as herein provided. The articles of incorporation and all other proceedings thereunder shall become null and void in one (1) year from the date of the preliminary certificate of authority, or at the expiration of the extended period, unless the society shall have completed its organization and received a certificate of authority to do business.
- (4) Upon receipt of a preliminary certificate of authority from the **commissioner**~~{executive director}~~, the society may solicit members for the purpose of completing its organization, shall collect from each applicant the amount of not less than one (1) regular monthly premium in accordance with its table of rates, and shall issue to each applicant a receipt for the amount so collected. No society shall incur any liability other than for the return of advance premium, nor issue any certificate, nor pay, allow, or offer or promise to pay or allow, any benefit to any person until:
 - (a) Actual bona fide applications for benefits have been secured on not less than five hundred (500) applicants, and any necessary evidence of insurability has been furnished to and approved by the society;
 - (b) At least ten (10) subordinate lodges have been established into which the five hundred (500) applicants have been admitted;
 - (c) There has been submitted to the **commissioner**~~{executive director}~~, under oath of the president or secretary, or corresponding officer of the society, a list of the applicants, giving their names, addresses,

date each was admitted, name and number of the subordinate lodge of which each applicant is a member, amount of benefits to be granted and premiums therefor; and

- (d) It shall have been shown to the ***commissioner***~~[executive director]~~, by sworn statement of the treasurer, or corresponding officer of the society, that at least five hundred (500) applicants have each paid in cash at least one (1) regular monthly premium, which premiums in the aggregate shall amount to at least one hundred fifty thousand dollars (\$150,000). The advance premiums shall be held in trust during the period of organization; and if the society has not qualified for a certificate of authority within one (1) year, the premiums shall be returned to the applicants.
- (5) The ***commissioner***~~[executive director]~~ may make examination and require further information as he *or she* deems advisable. Upon presentation of satisfactory evidence that the society has complied with all the provisions of law, the ***commissioner***~~[executive director]~~ shall issue to the society a certificate of authority to that effect and that the society is authorized to transact business pursuant to the provisions of KRS Chapter 304. The certificate of authority shall be prima facie evidence of the existence of the society at the date of the certificate. The ***commissioner***~~[executive director]~~ shall cause a record of the certificate of authority to be made. A certified copy of the record may be given in evidence with like effect as the original certificate of authority.
- (6) Any incorporated society authorized to transact business in this state at the time this subtitle becomes effective shall not be required to reincorporate.
- (7) No unincorporated or voluntary association shall be permitted to transact business in this state as a fraternal benefit society.

➔Section 1392. KRS 304.29-111 is amended to read as follows:

- (1) A domestic society may amend its laws in accordance with the provisions thereof by action of its supreme governing body at any regular or special meeting or, if its laws so provide, by referendum. The referendum may be held in accordance with the provisions of its laws by the vote of the voting members of the society, by the vote of delegates or representatives of voting members, or by the vote of local lodges. A society may provide for voting by mail. No amendment submitted for adoption by referendum shall be adopted unless, within six (6) months from the date of submission, a majority of the members voting shall have signified their consent to the amendment by one (1) of the methods herein specified.
- (2) No amendment to the laws of any domestic society shall take effect unless approved by the ***commissioner***~~[executive director]~~, who shall approve the amendment if he *or she* finds that it has been duly adopted and is not inconsistent with any requirement of the laws of this state or with the character, objects and purposes of the society. Unless the ***commissioner***~~[executive director]~~ shall disapprove any amendment within sixty (60) days after the filing, the amendment shall be considered approved. The approval or disapproval of the ***commissioner***~~[executive director]~~ shall be in writing and mailed to the secretary or corresponding officer of the society at its principal office. In case the ***commissioner***~~[executive director]~~ disapproves the amendment, the reasons therefor shall be stated in the written notice.
- (3) Within ninety (90) days from the approval by the ***commissioner***~~[executive director]~~, all amendments, or a synopsis, shall be furnished to all members of the society, either by mail or by publication in full in the official publication of the society. The affidavit of any officer of the society or of anyone authorized by it to mail any amendments or synopsis, stating facts which show that same have been duly addressed and mailed, shall be prima facie evidence that the amendments or synopsis, have been furnished the addressee.
- (4) Every foreign or alien society authorized to do business in this state shall file with the ***commissioner***~~[executive director]~~ a duly certified copy of all amendments of, or additions to, its laws within ninety (90) days after the enactment of same.
- (5) Printed copies of the laws as amended, certified by the secretary or corresponding officer of the society, shall be prima facie evidence of the legal adoption thereof.

➔Section 1393. KRS 304.29-131 is amended to read as follows:

- (1) A domestic society may, by a reinsurance agreement, cede any individual risk or risks in whole or in part to an insurer, other than another fraternal benefit society, having the power to make reinsurance and authorized to do business in this state, or if not so authorized, one (1) which is approved by the ***commissioner***~~[executive director]~~; but no society may reinsure substantially all of its insurance in force without the written permission of the ***commissioner***~~[executive director]~~. It may take credit for the reserves on the ceded risks to the extent

reinsured; but no credit shall be allowed as an admitted asset or as a deduction from liability, to a ceding society for reinsurance made, ceded, renewed, or otherwise becoming effective after January 1, 1989, unless the reinsurance is payable by the assuming insurer on the basis of the liability of the ceding society under the contract or contracts reinsured without diminution because of the insolvency of the ceding society.

- (2) Notwithstanding the limitation in subsection (1) of this section, a society may reinsure the risks of another society in a consolidation or merger approved by the **commissioner**~~executive director~~ under KRS 304.29-141.

➔Section 1394. KRS 304.29-141 is amended to read as follows:

- (1) A domestic society may consolidate or merge with any other society by complying with the provisions of this section. It shall file with the **commissioner**~~executive director~~:
- (a) A certified copy of the written contract containing in full the terms and conditions of the consolidation or merger;
 - (b) A sworn statement by the president and secretary or corresponding officers of each society showing the financial condition thereof on a date fixed by the **commissioner**~~executive director~~ but not earlier than December 31, next preceding the date of the contract;
 - (c) A certificate of the officers, duly verified by their respective oaths, that the consolidation or merger has been approved by a two-thirds (2/3) vote of the supreme governing body of each society, the vote being conducted at a regular or special meeting of each body, or, if the society's laws so permit, by mail; and
 - (d) Evidence that at least sixty (60) days prior to the action of the supreme governing body of each society, the text of the contract has been furnished to all members of each society either by mail or by publication in full in the official publication of each society.
- (2) If the **commissioner**~~executive director~~ finds that the contract is in conformity with the provisions of this section, that the financial statements are correct and that the consolidation or merger is just and equitable to the members of each society, the **commissioner**~~executive director~~ shall approve the contract and issue a certificate to that effect. Upon approval, the contract shall be in full force and effect unless any society which is a party to the contract is incorporated under the laws of any other state or territory. If the consolidation or merger shall not become effective unless and until it has been approved as provided by the laws of the state or territory and a certificate of approval filed with the **commissioner**~~executive director~~ of this state or, if the laws of the state or territory contain no such provision, the consolidation or merger shall not become effective unless and until it has been approved by the commissioner of insurance of the state or territory and a certificate of the approval filed with the **commissioner**~~executive director~~ of this state.
- (3) Upon the consolidation or merger becoming effective, all the rights, franchises and interests of the consolidated or merged societies in and to every species of property, real, personal or mixed, and things in action thereunto belonging shall be vested in the society resulting from or remaining after the consolidation or merger without any other instrument, except that conveyances of real property may be evidenced by proper deeds; and the title to any real estate or interest therein, vested under the laws of this state in any of the societies consolidated or merged, shall not revert or be in any way impaired by reason of the consolidation or merger, but shall vest absolutely in the society resulting from or remaining after the consolidation or merger.
- (4) The affidavit of any officer of the society or of anyone authorized by it to mail any notice or document, stating that the notice or document has been duly addressed and mailed, shall be prima facie evidence that the notice or document has been furnished the addressees.

➔Section 1395. KRS 304.29-151 is amended to read as follows:

Any domestic fraternal benefit society may be converted and licensed as a mutual life insurance company by compliance with all the requirements of the insurance laws of this state for mutual life insurance companies. A plan of conversion shall be prepared in writing by the board of directors setting forth in full the terms and conditions of conversion. The affirmative vote of two-thirds (2/3) of all members of the supreme governing body at a regular or special meeting shall be necessary for the approval of the plan. No conversion shall take effect unless and until approved by the **commissioner**~~executive director~~ who may give approval if he **or she** finds that that proposed change is in conformity with the requirements of law and not prejudicial to the certificate holders of the society.

➔Section 1396. KRS 304.29-191 is amended to read as follows:

- (1) Every society authorized to do business in this state shall issue to each owner of a benefit contract a certificate specifying the amount of benefits provided. The certificate, together with any riders or endorsements attached thereto, the laws of the society, the application for membership, the application for insurance and declaration of insurability, if any, signed by the applicant, and all amendments to each, shall constitute the benefit contract, as of the date of issuance, between the society and the owner, and the certificate shall so state. A copy of the application for insurance and declaration of insurability, if any, shall be endorsed upon or attached to the certificate. All statements on the application shall be representations and not warranties. Any waiver of this provision shall be void.
- (2) Any changes, additions or amendments to the laws of the society duly made or enacted subsequent to the issuance of the certificate, shall bind the owner and the beneficiaries, and shall govern and control the benefit contract in all respects the same as though the changes, additions or amendments had been made prior to and were in force at the time of the application for insurance, except that no change, addition or amendment shall destroy or diminish benefits which the society contracted to give the owner as of the date of issuance.
- (3) Any person upon whose life a benefit contract is issued prior to attaining the age of majority shall be bound by the terms of the application and certificate and by all the laws and rules of the society to the same extent as though the age of majority had been attained at the time of application.
- (4) A society shall provide in its laws that, if its reserves as to all or any class of certificates become impaired, its board of directors or corresponding body may require that there shall be paid by the owner to the society the amount of the owner's equitable proportion of the deficiency as ascertained by its board, and that if the payment is not made either:
 - (a) It shall stand as an indebtedness against the certificate and draw interest not to exceed the rate specified for certificate loans under the certificates; or
 - (b) In lieu of or in combination with paragraph (a), the owner may accept a proportionate reduction in benefits under the certificate.

The society may specify the manner of the election and which alternative is to be presumed if no election is made.

- (5) Copies of any of the documents mentioned in this section, certified by the secretary or corresponding officer of the society, shall be received as evidence of the terms and conditions thereof.
- (6) No certificate shall be delivered or issued for delivery in this state unless a copy of the form has been filed with and approved by the **commissioner**~~executive director~~ in the manner provided for like policies issued by life insurers in this state. Every life, accident, health, or disability insurance certificate and every annuity certificate issued on or after one (1) year from January 1, 1989 shall meet the standard contract provision requirements not inconsistent with this subtitle for like policies issued by life insurers in this state, except that a society may provide for a grace period for payment of premiums of one (1) full month in its certificates. The certificates shall also contain a provision stating the amount of premiums which are payable under the certificate and a provision reciting or setting forth the substance of any sections of the society's laws or rules in force at the time of issuance of the certificate which, if violated, will result in the termination or reduction of benefits payable under the certificate. If the laws of the society provide for expulsion or suspension of a member, the certificate shall also contain a provision that any member so expelled or suspended, except for nonpayment of a premium or within the contestable period for material misrepresentation in the application for membership or insurance, shall have the privilege of maintaining the certificate in force by continuing payment of the required premium.
- (7) Benefit contracts issued on the lives of persons below the society's minimum age for adult membership may provide for transfer of control or ownership to the insured at an age specified in the certificate. A society may require approval of an application for membership in order to effect this transfer, and may provide in all other respects for the regulation, government and control of certificates and all rights, obligations and liabilities incident thereto and connected therewith. Ownership rights prior to transfer shall be specified in the certificate.
- (8) A society may specify the terms and conditions on which benefit contracts may be assigned.

➔Section 1397. KRS 304.29-251 is amended to read as follows:

- (1) Standards of valuation for certificates issued prior to one (1) year after January 1, 1989, shall be those provided by the laws applicable immediately prior to January 1, 1989.

- (2) The minimum standards of valuation for certificates issued on or after one (1) year from January 1, 1989, shall be based on the following tables:
 - (a) For certificates of life insurance -- the commissioner's 1941 standard ordinary mortality table, the commissioner's 1941 standard industrial mortality table, the commissioner's 1958 standard ordinary mortality table, the commissioner's 1980 standard ordinary mortality table, or any more recent table made applicable to life insurers;
 - (b) For annuity and pure endowment certificates, for total and permanent disability benefits, for accidental death benefits and for noncancellable accident and health benefits -- such tables as are authorized for use by life insurers in this state.

All of the above shall be under valuation methods and standards, including interest assumptions, in accordance with the laws of this state applicable to life insurers issuing policies containing like benefits.

- (3) The **commissioner**~~[executive director]~~ may, in his **or her** discretion, accept other standards for valuation if he **or she** finds that the reserves produced thereby will not be less in the aggregate than reserves computed in accordance with the minimum valuation standard herein prescribed. The **commissioner**~~[executive director]~~ may, in his **or her** discretion, vary the standards of mortality applicable to all benefit contracts on substandard lives or other extra hazardous lives by any society authorized to do business in this state.
- (4) Any society, with the consent of the commissioner of insurance of the state of domicile of the society and under the conditions, if any, which the **commissioner**~~[executive director]~~ may impose, may establish and maintain reserves on its certificates in excess of the reserves required thereunder, but the contractual rights of any benefit member shall not be affected thereby.

➔Section 1398. KRS 304.29-261 is amended to read as follows:

- (1) Every society transacting business in this state shall annually, on or before the first day of March, file with the **commissioner**~~[executive director]~~ a true statement of its financial condition, transactions and affairs for the preceding calendar year and pay the fee required under KRS 304.4-010 for filing it. The statement shall be in general form and context as approved by the National Association of Insurance Commissioners for fraternal benefit societies and as supplemented by additional information required by the **commissioner**~~[executive director]~~.
- (2) As part of the annual statement, each society shall, on or before the first day of March, file with the **commissioner**~~[executive director]~~ a valuation of its certificates in force on December 31 last preceding. The **commissioner**~~[executive director]~~ may, in his **or her** discretion for cause shown, extend the time for filing the valuation for not more than two (2) calendar months. The valuation shall be done in accordance with the standards specified in KRS 304.29-251. The valuation and underlying data shall be certified by a qualified actuary or, at the expense of the society, verified by the actuary of the department of insurance of the state of domicile of the society.
- (3) A society failing to file the annual statement in the form and within the time provided by this section shall forfeit one hundred dollars (\$100) for each day during which the default continues; and, upon notice by the **commissioner**~~[executive director]~~, its authority to do business in this state shall cease while the default continues.
- (4) Each society authorized to transact business in this state pursuant to this subtitle shall comply with KRS 304.2-205.

➔Section 1399. KRS 304.29-271 is amended to read as follows:

Societies which are now authorized to transact business in this state may continue to do business until May 1 next succeeding January 1, 1989. The authority of the societies, and all societies hereafter licensed, may be renewed annually, but in all cases shall terminate on the succeeding April 30. However, a license so issued shall continue in full force and effect until the new license be issued or specifically refused. For each license or renewal, the society shall, prior to May 1, pay to the **commissioner**~~[executive director]~~ a fee as specified in Subtitle 4 of this chapter. A duly certified copy or duplicate of the license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this subtitle.

➔Section 1400. KRS 304.29-291 is amended to read as follows:

No foreign or alien society shall transact business in this state without a license issued by the ***commissioner***~~[executive director]~~. Any society desiring admission to this state shall comply substantially with the requirements and limitations of this subtitle applicable to domestic societies. Any society may be licensed to transact business in this state upon filing with the ***commissioner***~~[executive director]~~:

- (1) A duly certified copy of its articles of incorporation;
- (2) A copy of its bylaws, certified by its secretary or corresponding officer;
- (3) A power of attorney to the ***commissioner***~~[executive director]~~ as prescribed in KRS 304.29-351;
- (4) A statement of its business under oath of its president and secretary or corresponding officers in a form prescribed by the ***commissioner***~~[executive director]~~, duly verified by an examination made by the supervising insurance official of its home state or other state, territory, province or country, satisfactory to the ***commissioner***~~[executive director]~~;
- (5) Certification from the proper official of its home state, territory, province or country that the society is legally incorporated and licensed to transact business therein;
- (6) Copies of its certificate forms; and
- (7) Such other information as the ***commissioner***~~[executive director]~~ may deem necessary; and upon a showing that its assets are invested in accordance with the provisions of this subtitle.

➔Section 1401. KRS 304.29-301 is amended to read as follows:

- (1) If the ***commissioner***~~[executive director]~~, upon investigation, finds that a domestic society:
 - (a) Has exceeded its powers;
 - (b) Has failed to comply with any provision of this subtitle;
 - (c) Is not fulfilling its contracts in good faith;
 - (d) Has a membership of less than four hundred (400) after an existence of one (1) year or more; or
 - (e) Is conducting business fraudulently or in a manner hazardous to its members, creditors, the public or the business,

the ***commissioner***~~[executive director]~~ shall notify the society of the deficiency or deficiencies and state in writing the reasons for his *or her* dissatisfaction. The ***commissioner***~~[executive director]~~ shall issue a written notice to the society requiring that the deficiency or deficiencies which exist be corrected. After the notice, the society shall have a thirty (30) day period in which to comply with the ***commissioner's***~~[executive director's]~~ request for correction; and if the society fails to comply, the ***commissioner***~~[executive director]~~ shall notify the society of the findings of noncompliance and require the society to show cause on a date named why it should not be enjoined from carrying on any business until the violation complained of shall have been corrected, or why an action in Franklin Circuit Court should not be commenced against the society.

- (2) If on that date the society does not present good and sufficient reasons why it should not be so enjoined or why such action should not be commenced, the ***commissioner***~~[executive director]~~ may present the facts to the Attorney General who shall, if he *or she* deems the circumstances warrant, commence an action to enjoin the society from transacting business.
- (3) The court shall notify the officers of the society of a hearing. If after a full hearing it appears that the society should be so enjoined or liquidated or a receiver appointed, the court shall enter the necessary order. No society so enjoined shall have the authority to do business until:
 - (a) The ***commissioner***~~[executive director]~~ finds that the violation complained of has been corrected;
 - (b) The costs of the action shall have been paid by the society, if the court finds that the society was in default as charged;
 - (c) The court has dissolved its injunction; and
 - (d) The ***commissioner***~~[executive director]~~ has reinstated the certificate of authority.

- (4) If the court orders the society liquidated, it shall be enjoined from carrying on any further business. The receiver of the society shall take possession of the books, papers, money and other assets of the society, and, under the direction of the court, close the affairs of the society and distribute its funds to those entitled to them.
- (5) No action under this section shall be recognized in any court of this state unless brought by the Attorney General upon request of the **commissioner**~~[executive director]~~. If a receiver is to be appointed for a domestic society, the court shall appoint the **commissioner**~~[executive director]~~ as receiver.
- (6) The provisions of this section relating to hearing by the **commissioner**~~[executive director]~~, action by the Attorney General at the request of the **commissioner**~~[executive director]~~ of insurance, hearing by the court, injunction and receivership shall be applicable to a society which shall voluntarily determine to discontinue business.

➔Section 1402. KRS 304.29-311 is amended to read as follows:

- (1) If the **commissioner**~~[executive director]~~ upon investigation finds that a foreign or alien society transacting or applying to transact business in this state:
 - (a) Has exceeded its powers;
 - (b) Has failed to comply with any of the provisions of this subtitle;
 - (c) Is not fulfilling its contracts in good faith; or
 - (d) Is conducting its business fraudulently or in a manner hazardous to its members or creditors or the public,

the **commissioner**~~[executive director]~~ shall notify the society of the deficiency or deficiencies and state in writing the reasons for his *or her* dissatisfaction. The **commissioner**~~[executive director]~~ shall issue a written notice to the society requiring that the deficiency or deficiencies which exist are corrected. After the notice, the society shall have a thirty (30) day period in which to comply with the **commissioner's**~~[executive director's]~~ request for correction; and if the society fails to comply, the **commissioner**~~[executive director]~~ shall notify the society of the findings of noncompliance and require the society to show cause on a date named why its license should not be suspended, revoked or refused. If on that date the society does not present good and sufficient reason why its authority to do business in this state should not be suspended, revoked or refused, the **commissioner**~~[executive director]~~ may suspend or refuse the license of the society to do business in this state until satisfactory evidence is furnished to the **commissioner**~~[executive director]~~ that suspension or refusal should be withdrawn or the **commissioner**~~[executive director]~~ may revoke the authority of the society to do business in this state.

- (2) Nothing contained in this section shall be taken or construed as preventing any society from continuing in good faith all contracts made in this state during the time the society was legally authorized to transact business herein.

➔Section 1403. KRS 304.29-321 is amended to read as follows:

No application or petition for injunction against any domestic, foreign or alien society, or lodge thereof, shall be recognized in any court of this state unless made by the Attorney General upon request of the **commissioner**~~[executive director]~~.

➔Section 1404. KRS 304.29-351 is amended to read as follows:

- (1) Every society authorized to do business in this state shall appoint in writing the Secretary of State and each successor in office to be its true and lawful attorney upon whom all lawful process in any action or proceeding against it shall be served, and shall agree that any lawful process against it which is served on the attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the appointment, certified by the **commissioner**~~[executive director]~~, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original might be admitted.
- (2) Service of process in any action may be made by service upon the Secretary of State as provided in KRS 304.3-230.

➔Section 1405. KRS 304.29-361 is amended to read as follows:

All decisions and findings of the ***commissioner***~~[executive director]~~ made under the provisions of this subtitle shall be subject to review by proper proceedings in any court of competent jurisdiction in this state.

➔Section 1406. KRS 304.29-371 is amended to read as follows:

- (1) Nothing contained in this chapter shall be so construed as to affect or apply to:
 - (a) Grand or subordinate lodges of societies, orders or associations now doing business in this state which provide benefits exclusively through local or subordinate lodges;
 - (b) Orders, societies or associations which admit to membership only persons engaged in one (1) or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies societies or ladies' auxiliaries to such orders, societies or associations;
 - (c) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than four hundred dollars (\$400) or disability benefits of not more than three hundred fifty dollars (\$350) to any person in any one (1) year, or both; or
 - (d) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than four hundred dollars (\$400) or for disability benefits of not more than three hundred fifty dollars (\$350) to any one (1) person in any one (1) year, or both.
- (2) Any society or association described in paragraphs (c) or (d) of subsection (1) of this section which provides for death or disability benefits for which benefit certificates are issued, and any society or association included in paragraph (d) of subsection (1) of this section which has more than one thousand (1000) members, shall not be exempted from the provisions of this subtitle but shall comply with all requirements therein.
- (3) No society which, by the provisions of this section, is exempt from the requirements of this subtitle, except any society described in paragraph (b) of subsection (1) of this section, shall give or allow, or promise to give or allow to any person any compensation for procuring new members.
- (4) Every society which provides for benefits in case of death or disability resulting solely from accident, and which does not obligate itself to pay natural death or sick benefits, shall have all of the privileges and be subject to all the applicable provisions and regulations of this subtitle except that the provisions thereof relating to medical examination, valuations of benefit certificates, and incontestability, shall not apply to the society.
- (5) The ***commissioner***~~[executive director]~~ may require from any society or association, by examination or otherwise, such information as will enable the ***commissioner***~~[executive director]~~ to determine whether the society or association is exempt from the provisions of this subtitle.
- (6) Societies, exempted under the provisions of this section, shall also be exempt from all other provisions of the insurance laws of this state.

➔Section 1407. KRS 304.30-020 is amended to read as follows:

For the purpose of this subtitle:

- (1) The term "insurance premium finance company" or "premium finance company" means a person engaged in the business of entering into insurance premium finance agreements.
- (2) The term "premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent in payment of premiums on an insurance contract together with a service charge as authorized and limited by this subtitle.
- (3) The term "licensee" means a premium finance company, holding a license issued by the ***commissioner***~~[executive director]~~ under this subtitle.

➔Section 1408. KRS 304.30-030 is amended to read as follows:

- (1) No person shall engage in the business of financing insurance premiums in this state without first having obtained a license as a premium finance company from the ***commissioner***~~[executive director]~~.

- (2) The annual license fee shall be as specified in Subtitle 4 of this chapter. Licenses may be renewed from year to year as of the first day of May of each year upon payment of the fee.
- (3) The person to whom the license or the renewal thereof may be issued shall file sworn answers, subject to the penalties of perjury, to such interrogatories as the **commissioner**~~[executive director]~~ may require. The **commissioner**~~[executive director]~~ shall have authority, at any time, to require the applicant fully to disclose the identity of all stockholders, partners, officers, and employees and he *or she* may, in his *or her* discretion, refuse to issue or renew a license in the name of any firm, partnership, or corporation if ~~the commissioner~~~~he~~ is not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this subtitle.

➔Section 1409. KRS 304.30-040 is amended to read as follows:

- (1) Upon the filing of an application and the payment of the license fee, the **commissioner**~~[executive director]~~ shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this subtitle. If the **commissioner**~~[executive director]~~ does not so find, he *or she* shall, within sixty (60) days after he *or she* has received the application, at the request of the applicant, give the applicant an administrative hearing. Hearings under this subtitle shall be conducted in accordance with KRS Chapter 13B.
- (2) The **commissioner**~~[executive director]~~ shall issue or renew a license as may be applied for when he *or she* is satisfied that the person to be licensed:
 - (a) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
 - (b) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
 - (c) If a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

➔Section 1410. KRS 304.30-050 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may revoke or suspend the license of any premium finance company when and if, after investigation, it appears to the **commissioner**~~[executive director]~~ that:
 - (a) Any license issued to the company was obtained by fraud,
 - (b) There was any misrepresentation in the application for the license,
 - (c) The holder of the license has otherwise shown himself *or herself* untrustworthy or incompetent to act as a premium finance company,
 - (d) The company has violated any of the provisions of this chapter, or
 - (e) The company has been rebating part of the service charge as allowed and permitted by KRS 304.30-090 to any insurance agent or any employee of an insurance agent or to any other person as an inducement to the financing of any insurance policy with the premium finance company.
- (2) Before the **commissioner**~~[executive director]~~ shall revoke, suspend, or refuse to renew the license of any premium finance company, he *or she* shall give to the person an opportunity for a hearing to be conducted in accordance with KRS Chapter 13B. In lieu of or in addition to revoking or suspending the license for any of the causes enumerated in the section, after hearing as provided in this subsection, the **commissioner**~~[executive director]~~ may subject the company to a penalty specified in Subtitle 99 of this chapter when ~~the commissioner determines~~~~[in his judgment he finds]~~ that the public interest would not be harmed by the continued operation of the company. The amount of any penalty shall be paid by the company through the ~~department~~~~[office]~~ of the **commissioner**~~[executive director]~~ to the State Treasurer.
- (3) If any applicant or licensee is aggrieved by any final order of the **commissioner**~~[executive director]~~, the applicant or licensee shall have the right to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 1411. KRS 304.30-060 is amended to read as follows:

- (1) Every licensee shall maintain records of its premium finance transactions and the records shall be open to examination and investigation by the **commissioner**~~executive director~~.
- (2) Every licensee shall preserve its records of premium finance transactions, including cards used in a card system, for at least five (5) years after making the final entry in respect to any premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.
- (3) For the purpose of determining market conduct, business practices, financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations and compliance with law, the **commissioner**~~executive director~~ shall examine the affairs, transactions, accounts, records and assets of each licensed premium finance company as often as reasonably necessary.
- (4) Premium finance companies shall be subject to the provisions of KRS 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

➔Section 1412. KRS 304.30-070 is amended to read as follows:

The **commissioner**~~executive director~~ shall have the authority to make and enforce such reasonable rules and regulations as may be necessary to make effective the provisions of this subtitle and to establish the manner in which licensees shall conduct their business, but such rules and regulations shall not be contrary to nor inconsistent with the provisions of this subtitle.

➔Section 1413. KRS 304.32-045 is amended to read as follows:

- (1) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle, possessed of admitted assets in excess of all liabilities at least equal to the original surplus required of a domestic mutual insurance company transacting the same kind or kinds of business may, at its option and without reincorporation, adopt and become subject to the provisions of Subtitle 24 of this chapter governing domestic mutual insurers in lieu of this subtitle; provided, however, that upon becoming subject to the provisions of Subtitle 24 of this chapter, as hereinafter provided, such companies may continue to provide services to their present or like services to future members and subscribers and may make provision for the payment for health care services directly to hospitals or other agencies or institutions or persons rendering such health care service or related services or may make direct payment to the member or subscriber.
- (2) Any nonprofit hospital, medical-surgical, dental and health service corporation subject to the provisions of this subtitle may adopt and become subject to the provisions of Subtitle 24 of this chapter by the adoption of a resolution by its board of directors declaring the election of said nonprofit hospital, medical-surgical, dental and health service corporation to become subject to the provisions of Subtitle 24 of this chapter governing domestic mutual insurers, and after the adoption of such resolution the board of directors shall adopt such amendments to the articles of incorporation and bylaws of the nonprofit hospital, medical-surgical, dental and health service corporation as shall be necessary and file the same with the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Insurance of the Commonwealth of Kentucky. Upon such filing, said nonprofit hospital, medical-surgical, dental and health service corporation shall no longer be subject to the provisions of this subtitle, but shall be subject to Subtitle 24 of this chapter governing domestic mutual insurers and shall honor all legitimate claims presented by its member policyholders under the terms and conditions of its policy who have incurred claims in any private hospital with acute care in the State of Kentucky as long as the hospital is duly licensed and certified by the State of Kentucky; provided, however, that group certificate holders may also be members of the insurer, if so specified in the bylaws of the insurer; and further provided that the conversion of a nonprofit hospital, medical-surgical, dental and health service corporation, subject to this subtitle, into a domestic mutual insurance company shall not impair the rights or obligations of the nonprofit hospital, medical-surgical, dental and health service corporation or its members on any contract heretofore or hereafter made.

➔Section 1414. KRS 304.32-050 is amended to read as follows:

- (1) Whenever any number of persons shall associate to form a corporation for any of the purposes in KRS 304.32-030, they shall submit proposed articles of incorporation in triplicate to the **commissioner**~~executive director~~ for examination. After being approved by the **commissioner**~~executive director~~ and the Attorney General, the articles shall be filed in the office of the Secretary of State, who shall issue a certificate of incorporation pursuant to the provisions of KRS Chapter 273.

- (2) When not less than the amount required by KRS 304.32-140 is deposited with the **commissioner**~~[executive director]~~, he *or she* shall cause an examination to be made either by *the commissioner*~~[himself]~~ or some disinterested person, especially appointed by him *or her* for the purpose, who shall certify that the corporation has complied with the provisions of this subtitle. The certificate shall be filed in the office of the **commissioner**~~[executive director]~~, who shall issue a certificate of authority to the corporation.
- (3) Whenever any such corporation shall desire to amend its articles of incorporation, it shall file its articles of amendment with the **commissioner**~~[executive director]~~ before filing them with the Secretary of State. When the **commissioner**~~[executive director]~~ shall find the articles of amendment to have been legally adopted, the articles of amendment shall be filed with the Secretary of State.

➔Section 1415. KRS 304.32-090 is amended to read as follows:

- (1) Corporations subject to the provisions of this subtitle doing business in this state on June 18, 1970, or which thereafter do business in this state, shall make and file annually with the **commissioner**~~[executive director]~~, on or before the first day of March of each year, a statement under oath upon a form to be prescribed by the **commissioner**~~[executive director]~~, stating the amount of all membership dues, or subscriber fees, collected in this state by the corporation during the year ending the last day of December next preceding; the amounts actually paid during the year for hospital, medical-surgical, dental and other health services for the subscribers or members of the corporation, and the amounts placed in established reserves for cases billed but not yet paid, unreported and unbilled cases, retroactive cost adjustments, and membership dues or fees paid in advance but not yet earned.
- (2) The **commissioner**~~[executive director]~~ shall require that domestic companies subject to this subtitle file quarterly statements according to the form and instructions approved by the National Association of Insurance Commissioners.

➔Section 1416. KRS 304.32-110 is amended to read as follows:

No corporation subject to the provisions of this subtitle shall transact any business in this state unless it shall first procure from the **commissioner**~~[executive director]~~ a certificate of authority stating that the requirements of the laws of this state have been complied with and authorizing it to do business. The certificate of authority shall expire on the last day of February of each year and shall be renewed annually if the corporation has continued to comply with the provisions of this subtitle.

➔Section 1417. KRS 304.32-120 is amended to read as follows:

When the annual statement of a corporation subject to the provisions of this subtitle shall have been filed and all fees due from the corporation shall have been paid, the corporation's certificate of authority to do business in this state shall automatically be extended until such time as the **commissioner**~~[executive director]~~ refuses to relicense the corporation.

➔Section 1418. KRS 304.32-130 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall not issue or renew a certificate of authority to any corporation operating or proposing to operate a nonprofit hospital, medical-surgical, dental, or other health service plan unless:

- (1) The subscription or membership certificates which the corporation offers to its subscribers or members, together with a schedule of the dues and fees to be paid by subscribers or members, or the formula for developing dues or fees, has been filed with the **commissioner**~~[executive director]~~ in accordance with the provisions of KRS 304.32-160.
- (2) The schedule of the dues and fees to be paid by subscribers or members is one which will enable the corporation to meet the expenses of the hospital, medical-surgical, and other health services which are made available to its subscribers or members without impairing the guarantee fund required by KRS 304.32-140, and one which will not result in an accumulation of excess reserves over and above reserves established for claims in process, unreported and unbilled claims, retroactive cost adjustment to the purveyors of hospital, medical-surgical, and other health services and membership dues or fees received in advance but not yet earned. So long as a corporation's unencumbered reserve or surplus over and above the required reserves specified in this section do not exceed a sum equal to one-half (1/2) of the corporation's total membership dues or subscription fees received during the immediate preceding calendar year, the unencumbered reserve or surplus shall not be deemed an excessive accumulation for the purposes of this section.

➔Section 1419. KRS 304.32-140 is amended to read as follows:

- (1) No corporation subject to provisions of this subtitle shall be permitted to do any business in this state unless, in addition to the other requirements of law, it shall have and maintain liquid reserves in an amount not less than five percent (5%) of the corporation's subscription income collected in the preceding year not exceeding two million dollars (\$2,000,000), plus two and one-half percent (2.5%) of income exceeding two million dollars (\$2,000,000) but not exceeding ten million dollars (\$10,000,000), plus one percent (1%) of income exceeding ten million dollars (\$10,000,000); but in no event shall reserves be less than five hundred thousand dollars (\$500,000). All corporations subject to the provisions of this subtitle shall place on deposit with the **commissioner**~~{executive director}~~ a guarantee fund of cash or approved securities in an amount determined by this formula, but not less than five hundred thousand dollars (\$500,000) nor more than one million five hundred thousand dollars (\$1,500,000). Any amount of liquid reserves required by this subsection in excess of one million five hundred thousand dollars (\$1,500,000) shall be maintained by the corporation at all times, but shall not be required to be placed on deposit, provided that the corporation shall be allowed a period of five (5) years after July 15, 1982, to establish the liquid reserves and deposit the guarantee fund with the **commissioner**~~{executive director}~~. A corporation subject to the provisions of this subtitle shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the **commissioner**~~{executive director}~~.
- (2) The cash or securities representing the guarantee fund required by this section shall be acceptable to the **commissioner**~~{executive director}~~ and the securities shall be negotiable securities.
- (3) The investments of a corporation subject to the provisions of this subtitle shall be the same kind of investments which life insurance companies are authorized to have.

➔Section 1420. KRS 304.32-160 is amended to read as follows:

- (1) On or after June 18, 1970, no corporation subject to the provisions of this subtitle shall deliver or issue for delivery in this state any subscription certificate or membership certificate describing health benefits available, or any indorsement, rider, or application which becomes a part thereof, or the schedule of rates, dues, fees, or other periodic charges, to be paid by subscribers or members, until a copy of such form has been filed with and approved by the **commissioner**~~{executive director}~~.
- (2) At the expiration of thirty (30) days the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the **commissioner**~~{executive director}~~, or a hearing has been scheduled by order of the **commissioner**~~{executive director}~~. In the event that a hearing is held, the thirty (30) day waiting period shall begin anew after the close of such hearing. Approval of any such form by the **commissioner**~~{executive director}~~ shall constitute a waiver of any unexpired portion of such waiting period. The **commissioner**~~{executive director}~~ may extend by not more than an additional thirty (30) day period within which **the commissioner**~~{he}~~ may so affirmatively approve or disapprove any such form, by giving notice to the insurer of such extension before expiration of the initial thirty (30) day period. At the expiration of any such period as so extended, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The **commissioner**~~{executive director}~~ may at any time withdraw any such approval. Any notice of the **commissioner**~~{executive director}~~ withdrawing a previous approval shall state the grounds therefor and the particulars thereof in such detail as reasonable to inform the insurer thereof. Any such withdrawal of a previously approved form shall be effective at the expiration of such period, not less than thirty (30) days after the giving of the notice of withdrawal, as the **commissioner**~~{executive director}~~ shall in such notice prescribe.
- (3) The **commissioner's**~~{executive director's}~~ order disapproving any form or withdrawing previous approval shall state the grounds for disapproval or withdrawal.
- (4) The **commissioner**~~{executive director}~~ may, by order, exempt from the requirements of this section for so long as he **or she** deems proper, any document or form specified in the order, to which in his **or her** opinion this section may not practicably be applied, or the filing and approval of which are, in his **or her** opinion, not desirable or necessary for the protection of the public.

➔Section 1421. KRS 304.32-210 is amended to read as follows:

- (1) Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of KRS 304.2-210, 304.2-220, 304.2-230, 304.2-240, 304.2-250, 304.2-260, 304.2-270, 304.2-280, 304.2-290, 304.2-300, and Subtitle 2 of this chapter for determining financial condition, market conduct, and business practice.

- (2) Each corporation subject to the provisions of this subtitle may own and invest or have invested any of its funds in its principal office building not to exceed an amount which would reduce its surplus, exclusive of the investment, below \$50,000, unless approved by the **commissioner**~~[executive director]~~.

➔Section 1422. KRS 304.32-240 is amended to read as follows:

Any individual subscriber or member of a corporation subject to the provisions of this subtitle who believes himself **or herself** to be aggrieved by any act or omission of a corporation or its officers, trustees, directors, agents, or representatives, may file a statement in writing of his **or her** grievance in the office of the **commissioner**~~[executive director]~~, and the **commissioner**~~[executive director]~~ in his **or her** discretion may make an investigation of the grievance. Investigation by the **commissioner**~~[executive director]~~ shall not act as a bar to any suit in a court of competent jurisdiction instituted by any member or subscriber, or as a bar to any defense by the corporation.

➔Section 1423. KRS 304.32-250 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable rules and regulations not inconsistent with the provisions of this subtitle that **the commissioner**~~[he]~~ deems necessary for the proper administration of this subtitle.

➔Section 1424. KRS 304.32-260 is amended to read as follows:

Nothing contained in this subtitle shall be construed to affect or apply to hospitals, or other licensed health care institutions, nor to any individuals, partnerships, associations, or corporations which are the direct purveyors of health services; nor shall it be construed to limit in any way the rights of hospitals, or other licensed health care institutions or purveyors of health services to establish methods of payment directly with purchasers of their services; but the **commissioner**~~[executive director]~~ may require from any institution or purveyor of medical services information that will enable him **or her** to determine whether arrangements for payment of medical services are subject to the provisions of this subtitle.

➔Section 1425. KRS 304.32-270 is amended to read as follows:

Nonprofit hospital, medical-surgical, dental, and health service corporations shall be subject to the provisions of this subtitle, and to the following provisions of this code, to the extent applicable and not in conflict with the express provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- **Commissioner of the Department of Insurance**~~[Executive Director]~~;
- (3) Subtitle 7 -- Investments;
- (4) Subtitle 8 -- Administration of Deposits;
- (5) Subtitle 12 -- Trade Practices and Frauds;
- (6) Subtitle 25 -- Continuity of Management;
- (7) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (8) Subtitle 18 -- KRS 304.18-110, 304.18-120 -- Group Conversion and KRS 304.18-045;
- (9) Subtitle 4 -- Fees and Taxes;
- (10) Subtitle 99 -- Penalties;
- (11) Subtitle 14 -- KRS 304.14-500 to 304.14-560;
- (12) Subtitle 17A -- Health Benefit Plans;
- (13) Subtitle 17B -- Kentucky Access;
- (14) Subtitle 9 -- Agents, Consultants, Solicitors and Adjusters; and
- (15) Subtitle 3 -- Authorization of Insurers and General Requirements.

➔Section 1426. KRS 304.32-315 is amended to read as follows:

Any private employer doing business in this state who provides for his employees, on a self-insured basis, hospital or surgical benefits shall be subject to KRS 304.14-135. Failure to accept forms prescribed by the **commissioner**~~[executive director]~~ shall be punishable pursuant to KRS 304.99-010.

➔Section 1427. KRS 304.32-320 is amended to read as follows:

Any private employer doing business in this state who provides for his *or her* employees on a self-insured basis hospital or surgical benefits shall notify the **Department**~~Office~~ of Insurance of the existence of the program within sixty (60) days of June 17, 1978. Any employer doing business in this state who implements for his *or her* employees on a self-insured basis a plan for providing hospital or surgical benefits shall notify the **Department**~~Office~~ of Insurance not less than thirty (30) days prior to implementing such plan, and shall include in the notice the name of any outside third-party administrator. Any change in third-party administrators shall be reported to the **Department**~~Office~~ of Insurance within thirty (30) days of the change. The **Department**~~Office~~ of Insurance shall make this information available upon request.

➔Section 1428. KRS 304.33-010 is amended to read as follows:

- (1) Short title. This subtitle may be cited as the "Insurers Rehabilitation and Liquidation Law."
- (2) Construction. No limitation of powers. This subtitle shall not be interpreted to limit the powers granted the **commissioner**~~executive director~~ by other provisions of the law.
- (3) Liberal construction. This subtitle shall be liberally construed to effect the purpose stated in subsection (4) of this section.
- (4) Purpose. The purpose of this subtitle is the protection of the interests of insureds, creditors, and the public generally, with minimum interference with the normal prerogative of proprietors, through:
 - (a) Early detection of any potentially dangerous condition in an insurer, and prompt application of appropriate corrective measures, neither unduly harsh nor subject to the kind of publicity that would needlessly damage or destroy the insurer;
 - (b) Improved methods for rehabilitating insurers, by enlisting the advice and management expertise of the insurance industry;
 - (c) Enhanced efficiency and economy of liquidation, through the consolidation of matters relating to the liquidation under the supervision of a single court so as to avoid divergent rulings by a multiplicity of judicial tribunals and through clarification and specification of the law, to minimize legal uncertainty and litigation;
 - (d) Equitable apportionment of any unavoidable loss;
 - (e) Lessening the problems of interstate rehabilitation and liquidation by facilitating cooperation between states in the liquidation process, and by extension of the scope of personal jurisdiction over debtors of the insurer outside this state;
 - (f) Regulation of the insurance business by the impact of the law relating to delinquency procedures and substantive rules on the entire insurance business; and
 - (g) Provision for a comprehensive scheme for the supervision, rehabilitation, and liquidation of insurance companies and those subject to this subtitle as part of the regulation of the business of insurance, insurance industry, and insurers in this state. Proceedings in cases of insurer insolvency and delinquency shall be deemed an integral aspect of the business of insurance and are of vital public interest and concern.
- (5) All persons who voluntarily transact business with an insurer which is subsequently the subject of a delinquency proceeding under this subtitle shall be conclusively presumed to have transacted business with the intent that the provisions of this subtitle would control if there is any delinquency proceeding in this state.
- (6) If there is a delinquency proceeding under this subtitle, the provisions of this subtitle shall govern those proceedings, and all conflicting contractual provisions contained in any contract between the insurer which is subject to the delinquency proceeding and any third party shall be deemed subordinated to the provisions of this subtitle. However, notwithstanding the foregoing, in any delinquency proceeding commenced against an insurer after July 15, 1996, nothing in this subtitle shall be construed to subordinate or restrict the rights of parties to submit their disputes to arbitration pursuant to a contractual arbitration clause contained in a reinsurance agreement.

➔Section 1429. KRS 304.33-030 is amended to read as follows:

For the purposes of this subtitle:

- (1) "Agent" means all persons who have collected or are holding premiums or other assets of the insurer, including, but not limited to, brokers, intermediaries, managing general agents, underwriting managers, and reinsurance managers, and any other persons who have entered into a fiduciary relationship with the insurer subject to delinquency proceedings, including, but not limited to, persons holding licenses under Subtitles 9, 32, 38, and 43 of KRS Chapter 304.
- (2) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of *the Department of Insurance* of this state.
- (3) "Receiver" means receiver, liquidator, rehabilitator, or conservator, as the context requires.
- (4) "Insurer" has the meaning defined in Subtitle 1 of this chapter. For purposes of this subtitle, all other persons included under KRS 304.33-020 shall be deemed to be insurers.
- (5) "Delinquency proceeding" means any proceeding commenced against an insurer for the purpose of liquidating, rehabilitating, reorganizing, or conserving such insurer, and any summary proceeding under KRS 304.33-110 to 304.33-130, inclusive.
- (6) "State" has the meaning defined in Subtitle 1 of this chapter.
- (7) "Foreign country" means territory not in any state.
- (8) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, the state in which the insurer has, at the commencement of delinquency proceedings, the largest amount of its assets held in trust and on deposit for the benefit of policyholders and creditors in the United States.
- (9) "Ancillary state" means any state other than a domiciliary state.
- (10) "Reciprocal state" means any state other than this state in which in substance and effect subsection (1) of KRS 304.33-200, subsections (1) and (3) of KRS 304.33-530, KRS 304.33-540, and KRS 304.33-560 to 304.33-590, inclusive, are in force, and in which provisions are in force requiring that the ~~commissioner~~~~[executive director]~~ be the receiver of a delinquent insurer, and in which some provision exists for the avoidance of fraudulent conveyances and preferential transfers.
- (11) "General assets" means all property, real, personal or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security or benefit of specified persons or limited classes of persons, and as to specifically encumbered property the term includes all such property or its proceeds in excess of the amount necessary to discharge the sums secured thereby, except as otherwise expressly provided in this subtitle. Assets held in trust and on deposit for the security or benefit of all policyholders or all policyholders and creditors, in more than a single state, shall be treated as general assets.
- (12) "Reinsurance intermediary" means any person who acts as a broker in soliciting, negotiating, or procuring the making of any reinsurance contract or binder, or acts as an agent in accepting any reinsurance contract or binder on behalf of an insurer.
- (13) "Court" means the Franklin Circuit Court.
- (14) "Preferred claim" means any claim with respect to which the law accords priority of payment from the general assets of the insurer.
- (15) "Special deposit claim" means any claim secured by a deposit made pursuant to law for the security or benefit of one (1) or more limited classes of persons, but not including any claim secured by general assets.
- (16) "Secured claim" means any claim secured by mortgage, trust deed, pledge, deposit as security, escrow or otherwise, but not including special deposit claims or claims against general assets including, but not limited to, claims of setoff, counterclaim, or recoupment against obligations to pay premiums to the insurer. The term also includes claims which have become liens upon specific assets by reason of judicial process, except where they have been invalidated.
- (17) "Premium" has the meaning set forth in Subtitle 14 of this chapter.
- (18) "Insolvency" means that the insurer is unable to pay its debts or meet its obligations as they mature or that its assets do not exceed its liabilities plus the greater of:

- (a) Any capital and surplus required by law to be constantly maintained, or
 - (b) Its authorized and issued capital stock. For purposes of this subsection, "assets" includes one-half (1/2) of the maximum total assessment liability of the policyholders of the insurer, and "liabilities" includes reserves required by law. For policies issued on the basis of unlimited assessment liability, the maximum total liability, for purposes of determining solvency only, shall be deemed to be that amount that could be obtained if there were one hundred percent (100%) collection of an assessment at the rate of ten (10) mills.
- (19) "Fair consideration" is given for property or an obligation:
- (a) When in exchange for such property or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or services are rendered or obligation is incurred or an antecedent debt is satisfied; or
 - (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared to the value of the property or obligation obtained.
- (20) "Creditor" is a person having any claim, whether matured or unmatured, liquidated or unliquidated, secured or unsecured, absolute, fixed or contingent.
- (21) "Transfer" includes the sale and every other method, direct or indirect, of disposing of or of parting with property or with an interest therein or with the possession thereof or of fixing a lien upon property or upon an interest therein, absolutely or conditionally, voluntarily or involuntarily, by or without judicial proceedings. The retention of a security title to property delivered to a debtor shall be deemed a transfer suffered by the debtor.
- (22) "Doing business" has the meaning designated in Subtitle 1.
- (23) "Guaranty association" means the Kentucky Insurance Guaranty Association, the Kentucky Life and Health Insurance Guaranty Association and any other similar entity now or hereafter created by the Legislature of this state for the payment of claims of insolvent insurers. "Foreign guaranty association" means any similar entities now in existence in, or hereafter created by the legislature of, any other state.

➔Section 1430. KRS 304.33-040 is amended to read as follows:

- (1) Actions by **~~commissioner~~**~~[executive director]~~. Except as provided in subsection (2) of this section, and subsection (1) of KRS 304.33-230, no delinquency proceeding shall be commenced under this subtitle by anyone other than the **~~commissioner~~**~~[executive director]~~ and no court shall have jurisdiction to entertain, hear or determine any proceeding commenced by any other person.
- (2) Action by judgment creditors:
 - (a) The judgment creditors of three (3) or more unrelated judgments may commence proceedings under the conditions and in the manner prescribed in this subsection, by serving notice upon the **~~commissioner~~**~~[executive director]~~ and the insurer of intention to file a petition for liquidation under KRS 304.33-190 or 304.33-520. Each of the judgments must:
 - 1. Have been rendered against the insurer by a court in this state having jurisdiction over the subject matter and the insurer;
 - 2. Have been entered more than sixty (60) days before the service of notice;
 - 3. Not have been paid in full;
 - 4. Not be the subject of a valid contract between the insurer and any judgment creditor for payment of the judgment, unless the contract has been breached by the insurer; and
 - 5. Not be a judgment on which an appeal or review is pending.
 - (b) If any one (1) of the judgments in favor of a petitioning creditor remains unpaid for thirty (30) days after service of the notice, and the **~~commissioner~~**~~[executive director]~~ has not then filed a petition for liquidation, the creditor may file in the name of the **~~commissioner~~**~~[executive director]~~ a verified petition for liquidation of the insurer under KRS 304.33-190 or 304.33-520 alleging the conditions stated in this subsection. The **~~commissioner~~**~~[executive director]~~ shall be served and joined in the action.

- (3) Exclusiveness of proceedings.
- (a) The court shall have exclusive jurisdiction to entertain, hear, or determine all matters in any way relating to any delinquency proceeding under this subtitle, including, but not limited to, all disputes involving purported assets of the insurer.
 - (b) Notwithstanding the provisions of paragraph (a) of this subsection, the court may authorize the receiver to seek injunctive or other appropriate relief from other courts, either within or without this state, if, in the opinion of the court, this action will be an aid to any delinquency proceeding.
 - (c) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this subtitle. No provisions in this subtitle shall be construed to preclude the court from, on its own motion, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules or to prevent an abuse of process.
- (4) Change of venue. Venue for proceedings arising under this subtitle shall be laid initially as specified in the sections providing for such proceedings. All other actions and proceedings initiated by the receiver may be commenced and tried where the delinquency proceedings are then pending, or where venue would be laid by KRS Chapter 452 or other applicable law. All other actions and proceedings against the receiver shall be commenced and tried in the county where the delinquency proceedings are pending. At any time upon motion of any party, venue may be changed by order of the court or the presiding judge thereof to any other Circuit Court in this state, as the convenience of the parties and witnesses and the ends of justice may require. This subsection relates only to venue and is not jurisdictional.
- (5) Personal jurisdiction, grounds for. In addition to other grounds for jurisdiction provided by the law of this state, a court of this state having jurisdiction of the subject matter shall have jurisdiction over a person served in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state:
- (a) If the person served is obligated to the insurer in any way as an incident to any agency or brokerage arrangement that may exist or has existed between the insurer and the agent or broker, in any action on or incident to the obligation;
 - (b) If the person served is a reinsurer who has at any time issued a contract of reinsurance to an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action on or incident to the reinsurance contract;
 - (c) If the person served is or has been an officer, manager, trustee, organizer, promoter or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from the relationship with the insurer;
 - (d) If the person served is or was at the time of the institution of the delinquency proceedings holding assets in which the receiver claims an interest on behalf of the insurer;
 - (e) If the person served has filed a claim against the insurer under the provisions of KRS 304.33-360;
 - (f) If the person served is otherwise amenable to the exercise of personal jurisdiction by the courts of this state under the provisions of the due process clause of the Fourteenth Amendment to the United States Constitution; or
 - (g) If the person served is obligated to the insurer in any way in any action on or incident to the obligation.
- (6) Service of process.
- (a) If personal jurisdiction is authorized by this section, service of process may be made on the person, or any agent of the person, in the county of this state where he *or she* may be found, or on the Secretary of State who, for this purpose, shall be deemed to be the statutory agent of the person.
 - (b) The clerk of the court in which the action is brought shall issue a summons against the defendant named in the complaint. The clerk shall execute the summons by sending by certified mail a true copy to the Secretary of State and shall also mail with the summons an attested copy of the complaint. The Secretary of State shall, within seven (7) days of receipt thereof in his *or her* office, mail the copy of the summons and complaint to the defendant at the address given in the complaint. The letter shall be posted by certified mail, return receipt requested, and shall bear the return address of the Secretary of

State. The clerk shall make the usual return to the court, and, in addition, the Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his *or her* return the registry receipt, if any. Summons shall be deemed to be served upon the return of the Secretary of State and the action shall proceed as provided in the Rules of Civil Procedure.

- (c) The clerk mailing the summons to the Secretary of State shall mail to him *or her*, at the same time, a fee of ten dollars (\$10), which shall be taxed as costs in the action.

- (7) Forum non conveniens. If the court on motion of any party finds that any action commenced under subsection (5) of this section should as a matter of substantial justice be tried in a forum outside this state, the court may enter an order to stay further proceedings on the action in this state.

➔Section 1431. KRS 304.33-070 is amended to read as follows:

- (1) Duty to cooperate. Any officer, manager, trustee or agent of any insurer, and any other person with executive authority over or in charge of any segment of the insurer's affairs or in possession of property to which the ~~commissioner~~~~executive director~~ has a claim shall cooperate with the ~~commissioner~~~~executive director~~, or anyone acting on behalf of the ~~commissioner~~~~executive director~~, in any delinquency proceeding. "To cooperate" includes, but is not limited to, the following:
 - (a) To reply promptly in writing to any inquiry from the ~~commissioner~~~~executive director~~ requesting such a reply; and
 - (b) To make available and deliver to the ~~commissioner~~~~executive director~~ any books, accounts, documents, or other records, or information or property of or pertaining to the insurer and in his *or her* possession, custody or control.
- (2) Duty not to obstruct. No person shall obstruct or interfere with the ~~commissioner~~~~executive director~~ in the conduct of any delinquency proceeding.
- (3) Any person who fails to cooperate with or obstructs the efforts of the ~~commissioner~~~~executive director~~ in the conduct of any delinquency proceeding shall have denied any claims the person has filed pursuant to KRS 304.33-360 and shall also be subject to such other sanctions as the court may impose.
- (4) Right to defend. This section shall not render it illegal to resist by legal proceedings the petition for liquidation or other delinquency proceedings, or other orders.

➔Section 1432. KRS 304.33-080 is amended to read as follows:

In any proceeding under this subtitle the ~~commissioner~~~~executive director~~ and his *or her* deputies shall be responsible on their official bonds for the faithful performance of their duties. If the court deems it desirable for the protection of the assets, it may at any time require an additional bond from the ~~commissioner~~~~executive director~~ or his *or her* deputies.

➔Section 1433. KRS 304.33-100 is amended to read as follows:

Every proceeding commenced before June 18, 1970, is deemed to have commenced under this subtitle for the purpose of conducting the proceeding thereafter, except that in the discretion of the ~~commissioner~~~~executive director~~ the proceeding may be continued, in whole or in part, as it would have been continued had this subtitle not been enacted.

➔Section 1434. KRS 304.33-105 is amended to read as follows:

Every proceeding heretofore commenced under the laws in effect before July 13, 1990, shall be deemed to have commenced under this subtitle for the purpose of conducting the proceeding henceforth, except that in the discretion of the ~~commissioner~~~~executive director~~ the proceeding may be continued, in whole or in part, as it would have been continued had this subtitle not been enacted.

➔Section 1435. KRS 304.33-110 is amended to read as follows:

- (1) Whenever the ~~commissioner~~~~executive director~~ has reasonable cause to believe, and determines that any insurer has committed or engaged in, or is committing or engaging in or is about to commit or engage in any act, practice, or transaction that would subject it to formal delinquency proceedings under this subtitle, ~~the commissioner~~~~he~~ may make and serve upon the insurer and any other persons involved an emergency order in accordance with KRS 13B.125, other than seizure orders under KRS 304.33-120, as is reasonably necessary to

correct, eliminate, or remedy the conduct, condition, or ground. If the emergency order is for a restoration of or addition to capital, it shall be carried out as provided in KRS 304.24-350.

- (2) The ***commissioner***~~[executive director]~~ may apply for and any court of general jurisdiction may grant, restraining orders, temporary and permanent injunctions, and other orders as are deemed necessary to enforce an emergency order.

➔Section 1436. KRS 304.33-115 is amended to read as follows:

The ***commissioner***~~[executive director]~~, ***the commissioner's***~~[his]~~ special deputies, and all others appointed to act on ***the commissioner's***~~[his]~~ behalf in connection with any delinquency proceedings under this subtitle shall not be liable for any acts or omissions done in good faith and within the scope of their authority during the course of the delinquency proceedings, including, but not limited to, the settlement of disputed claims, and shall be immune from any civil or criminal liability that might otherwise be incurred or imposed based upon the acts or omissions.

➔Section 1437. KRS 304.33-120 is amended to read as follows:

- (1) Issuance. Upon the filing by the ***commissioner***~~[executive director]~~ in any Circuit Court in this state of a verified petition alleging any ground that would justify a court order for a formal delinquency proceeding against an insurer under this subtitle and that the interests of policyholders or creditors will be endangered by delay, and setting out the order deemed necessary by the ***commissioner***~~[executive director]~~, the court may issue forthwith, ex parte and without a hearing, the requested order which may (a) direct the ***commissioner***~~[executive director]~~ to take possession and control of all or a part of the property, books, accounts, documents and other records of an insurer and of the premises occupied by it for the transaction of its business, and (b) until further order of the court, enjoin the insurer and its officers, managers, agents, and employees from disposition of its property and from transaction of its business except with the written consent of the ***commissioner***~~[executive director]~~.
- (2) Duration. The court shall specify in the order what its duration shall be, which shall be such time as the court deems necessary for the ***commissioner***~~[executive director]~~ to ascertain the condition of the insurer. On motion of either party or on its own motion, the court may hold such hearings as it deems desirable after such notice as it deems appropriate, and may extend, shorten or modify the terms of the seizure order. The court shall vacate the seizure order if the ***commissioner***~~[executive director]~~ fails to commence a formal proceeding under this subtitle after having had a reasonable opportunity to do so. The issuance of an order of the court pursuant to a formal proceeding under this subtitle vacates the seizure order.
- (3) Anticipatory breach. Entry of a seizure order under this section shall not constitute an anticipatory breach of any contract of the insurer.

➔Section 1438. KRS 304.33-130 is amended to read as follows:

- (1) Confidentiality of ***commissioner's***~~[executive director's]~~ hearings. The ***commissioner***~~[executive director]~~ shall hold all hearings in summary proceedings privately unless the insurer requests a public hearing, in which case the hearing shall be public.
- (2) Confidentiality of court hearings. The court may hold all hearings in summary proceedings and judicial reviews thereof privately in chambers, and shall do so on request of the insurer proceeded against.
- (3) Records. In all summary proceedings and judicial reviews thereof, all records of the company, other documents, and all ***Department***~~[Office]~~ of Insurance files and court records and papers, so far as they pertain to or are a part of the record of the summary proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith, unless the court, after hearing arguments from the parties in chambers, shall order otherwise, or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the court shall be held by him ***or her*** in a confidential file.
- (4) Parties. If at any time it appears to the court that any person whose interest is or will be substantially affected by an order did not appear at the hearing and has not been served, the court may order that notice be given and the proceedings be adjourned to give him ***or her*** opportunity to appear on such terms as may be just.

➔Section 1439. KRS 304.33-140 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may apply by verified petition to the court for an order directing ***the commissioner***~~[him]~~ to rehabilitate a domestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:
- (a) Any ground on which ***the commissioner***~~[he]~~ may apply for an order of liquidation under KRS 304.33-190, whenever ***the commissioner***~~[he]~~ believes that the insurer may be successfully rehabilitated without substantial increase in the risk of loss to creditors of the insurer or to the public.
 - (b) That the ***commissioner***~~[executive director]~~ has reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer, that if established would endanger assets in an amount threatening the solvency of the insurer.
 - (c) That any one (1) of the following circumstances has occurred and the ***commissioner***~~[executive director]~~ has reasonable cause to believe that the insurer is insolvent or that assets are endangered in an amount threatening the solvency of the insurer:
 - 1. That information coming into the ***commissioner's***~~[executive director's]~~ possession has disclosed substantial and not adequately explained discrepancies between the insurer's records and the most recent annual report or other official company reports;
 - 2. That the insurer has failed to remove any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found by the ***commissioner***~~[executive director]~~ after notice and hearing to be dishonest or untrustworthy in a way affecting the insurer's business;
 - 3. That control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in one (1) or more persons found by the ***commissioner***~~[executive director]~~ after notice and hearing to be dishonest or untrustworthy;
 - 4. That any person who in fact has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, has refused to be examined under oath by the ***commissioner***~~[executive director]~~ concerning its affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed promptly and effectively to terminate the employment and status of the person and all his *or her* influence on management;
 - 5. That the insurer has refused to submit its books, accounts, documents, or other records to the reasonable examination or inspection of the ***commissioner***~~[executive director]~~ or ***the commissioner's***~~[his]~~ authorized representative.
 - (d) That the insurer is or is about to become insolvent.
 - (e) That the insurer is engaging in a systematic practice of reaching settlements with and obtaining releases from policyholders or third-party claimants and then unreasonably delaying payment of or failing to pay the agreed upon settlements.
 - (f) That the insurer is in such condition that the further transaction of business would be hazardous, financially or otherwise, to its policyholders, its creditors, or the public.
 - (g) That within the previous twelve (12) months the insurer has systematically attempted to compromise with its creditors on the ground that it is financially unable to pay its claims in full.
 - (h) That without first obtaining the written consent of the ***commissioner***~~[executive director]~~, the insurer has transferred, or attempted to transfer, substantially its entire property or business, or has entered into any transaction the effect of which is to merge, consolidate, or reinsure substantially its entire property or business in or with the property or business of any other person.
 - (i) That the insurer or its property has been or is the subject of an application for the appointment of a receiver, trustee, custodian, conservator, or sequestrator or similar fiduciary of the insurer or its property otherwise than as authorized under this subtitle, and that such appointment has been made or is imminent, and that such appointment might oust the courts of this state of jurisdiction or prejudice orderly delinquency proceedings under this subtitle.
 - (j) That within the previous year the insurer has willfully violated its charter or articles of incorporation or any insurance law or regulation of this state, or having become aware within the previous year of an

unintentional violation has failed to take all reasonable steps to remedy the situation resulting from the violation and to prevent future violations.

- (k) That the directors of the insurer are deadlocked in the management of the insurer's affairs and that the members or shareholders are unable to break the deadlock and that irreparable injury to the insurer, its creditors or its policyholders is threatened by reason thereof.
 - (l) That the insurer has failed to file its annual report or other report within the time allowed by law, and after written demand by the **commissioner**~~{executive director}~~ has failed to give an adequate explanation immediately.
 - (m) That two-thirds (2/3) of the board of directors, or the holders of a majority of the shares entitled to vote, or a majority of members or policyholders of an insurer subject to control by its members or policyholders, consent to rehabilitation under this subtitle.
- (2) Upon the issuance of an order directing the **commissioner**~~{executive director}~~ to rehabilitate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the rehabilitation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the rehabilitation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

➔Section 1440. KRS 304.33-150 is amended to read as follows:

- (1) Appointment of rehabilitator. An order to rehabilitate the business of a domestic insurer, or an alien insurer domiciled in this state, shall appoint the **commissioner**~~{executive director}~~ and his **or her** successors in office rehabilitator and shall direct the rehabilitator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The filing or recording of the order with any county clerk in the state shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.
- (2) Any order issued under this section shall require accountings to the court by the rehabilitator. Accountings shall be at such intervals as the court specifies in its order, but no less frequently than semiannually. Each accounting shall include a report concerning the rehabilitator's opinion as to the likelihood that a plan under KRS 304.33-160(5) will be prepared by the rehabilitator and the timetable for doing so.
- (3) Anticipatory breach. Entry of an order of rehabilitation shall not constitute an anticipatory breach of any contracts of the insurer, and it shall not be grounds for revocation or cancellation of any contracts of the insurer.

➔Section 1441. KRS 304.33-160 is amended to read as follows:

- (1) Special deputy~~{director}~~. The **commissioner**~~{executive director}~~ as rehabilitator shall appoint one (1) or more special deputies, who are active or retired senior executives from a successful insurer, and who shall have all the powers and responsibilities of the rehabilitator granted under this section, and the **commissioner**~~{executive director}~~ may employ such counsel, clerks, and assistants as deemed necessary. The compensation of the special deputy, counsel, clerks, and assistants and all expenses of taking possession of the insurer and of conducting the proceedings shall be fixed by the **commissioner**~~{executive director}~~, with the approval of the court and shall be paid out of the funds or assets of the insurer. The persons appointed under this section shall serve at the pleasure of the **commissioner**~~{executive director}~~. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the **commissioner**~~{executive director}~~ may advance the costs so incurred out of any appropriation for the maintenance of the **Department**~~{Office}~~ of Insurance. Any amounts so advanced for expenses of administration shall be repaid to the **commissioner**~~{executive director}~~ for the use of the **Department**~~{Office}~~ of Insurance out of the first available money of the insurer.
- (2) General power. The rehabilitator may take action as he **or she** deems necessary or appropriate to reform and revitalize the insurer. He **or she** shall have all the powers of the directors, officers, and managers, whose authority shall be suspended, except as they are redelegated by the rehabilitator. He **or she** shall have full power to direct and manage, to hire and discharge employees subject to any contract rights they may have, and to deal with the property and business of the insurer.
- (3) Advice from experts. The rehabilitator may consult with and obtain formal or informal advice and aid of insurance experts.

- (4) Pursuit of insurer's claims against insiders. If the rehabilitator finds that there has been criminal or tortious conduct or breach of any contractual or fiduciary obligation detrimental to the insurer by any officer, manager, agent, employee, or other person, he *or she* may pursue all appropriate legal remedies on behalf of the insurer.
- (5) Reorganization plan. The rehabilitator may prepare a plan for the reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer. Upon application of the rehabilitator for approval of the plan, and after the notice and hearing as the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. If it is approved, the rehabilitator shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the equities of policyholders of the insurer, if all rights of shareholders are first extinguished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights upon policies, for such period and to such an extent as are necessary.
- (6) Fraudulent transfers. The rehabilitator shall have the power to avoid fraudulent transfers under KRS 304.33-290 and 304.33-300.

➔Section 1442. KRS 304.33-190 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ may apply by petition to the Circuit Court for Franklin County or for the county in which the principal office of the insurer is located for an order directing him *or her* to liquidate a domestic insurer or an alien insurer domiciled in this state on any one (1) or more of the following grounds:
 - (a) Any ground on which ~~the commissioner~~~~he~~ may apply for an order of rehabilitation under KRS 304.33-140, whenever he *or she* believes that attempts to rehabilitate the insurer would substantially increase the risk of loss to its creditors, its policyholders or the public, or would be futile, or that rehabilitators would serve no useful purpose;
 - (b) That the insurer has commenced, or within the previous year has attempted to commence, voluntary liquidation otherwise than under the insurance laws of this state;
 - (c) That the holders of two-thirds (2/3) of the shares entitled to vote, or two-thirds (2/3) of the members or policyholders entitled to vote in an insurer controlled by its members or policyholders, have consented to a petition.
- (2) Upon the issuance of an order directing the ~~commissioner~~~~executive director~~ to liquidate a domestic insurer, the court shall have exclusive jurisdiction over all matters relating to the liquidation, including, but not limited to, the proper scope and application of the provisions of this subtitle to the liquidation as well as all interpretation and enforceability of all contracts of insurance to which the insurer is a party.

➔Section 1443. KRS 304.33-200 is amended to read as follows:

- (1) Order to liquidate. An order to liquidate the business of a domestic insurer shall appoint the ~~commissioner~~~~executive director~~ and his *or her* successors in office liquidator and shall direct the liquidator forthwith to take possession of the assets of the insurer and to administer them under the orders of the court. The liquidator shall be vested by operation of law with the title to all of the property, contracts, and rights of action and all of the books and records of the insurer ordered liquidated, wherever located, as of the date of the filing of the petition for liquidation. He *or she* may recover and reduce the same to possession except that ancillary receivers in reciprocal states shall have, as to assets located in their respective states, the rights and powers which are prescribed in subsection (3) of KRS 304.33-540 for ancillary receivers appointed in this state as to assets located in this state. The filing or recording of the order with any county clerk in this state shall impart the same notice as a deed, bill of sale, or other evidence of title duly filed or recorded with that county clerk.
- (2) Fixing of rights.
 - (a) Upon issuance of the order, the rights and liabilities of any such insurer and of its creditors, policyholders, shareholders, members, and all other persons interested in its estate are fixed as of the date of filing of the petition for liquidation, except as provided in KRS 304.33-210 and 304.33-380.
 - (b) Entry of an order of liquidation shall not constitute an anticipatory breach of any contracts of the insurer, and it shall not be grounds for rescission, revocation, or cancellation of any contracts of the insurer in force as of the date of liquidation, except as provided in KRS 304.33-210.

- (3) Alien insurer. An order to liquidate the business of an alien insurer domiciled in this state shall be in the same terms and have the same legal effect as an order to liquidate a domestic insurer, except that the assets and the business in the United States shall be the only assets and business included under the order.
- (4) Declaration of insolvency. At the time of petitioning for an order of liquidation, or at any time thereafter, the ~~commissioner~~~~[executive director]~~ may petition the court to declare the insurer insolvent, and after such notice and hearing as it deems proper, the court may make the declaration.

➔Section 1444. KRS 304.33-220 is amended to read as follows:

The ~~commissioner~~~~[executive director]~~ may petition for an order dissolving the corporate existence of a domestic insurer or the United States branch of an alien insurer domiciled in this state at the time ~~the commissioner~~ ~~he~~ applies for a liquidation order. If the court issues a liquidation order, it also shall order dissolution if the ~~commissioner~~~~[executive director]~~ has petitioned for it. The court shall order dissolution of the corporation upon petition by the ~~commissioner~~~~[executive director]~~ at any time after a liquidation order has been granted. If the dissolution has not previously occurred, it shall be effected by operation of law upon the discharge of the liquidator.

➔Section 1445. KRS 304.33-230 is amended to read as follows:

- (1) Petition for federal receiver. Whenever in the ~~commissioner's~~~~[executive director's]~~ opinion, liquidation of a domestic insurer or an alien insurer domiciled in this state would be facilitated by a federal receivership, and when any ground exists upon which the ~~commissioner~~~~[executive director]~~ might petition the court for an order of rehabilitation or liquidation under KRS 304.33-140 or 304.33-190, or if an order of rehabilitation or liquidation has already been entered, the ~~commissioner~~~~[executive director]~~ may request the *insurance* commissioner or other willing resident of another state to petition any appropriate federal District Court for the appointment of a federal receiver. The ~~commissioner~~~~[executive director]~~ may intervene in any such action to support or oppose the petition, and may accept appointment as the receiver if he *or she* is so designated. So much of this subtitle shall apply to the receivership as can be made applicable and is appropriate. Upon motion of the ~~commissioner~~~~[executive director]~~, the courts of this state shall relinquish all jurisdiction over the insurer for purposes of rehabilitation or liquidation.
- (2) Compliance with federal requirements. If the ~~commissioner~~~~[executive director]~~ is appointed receiver under this section, he *or she* shall comply with any requirements necessary to give him *or her* title to and control over the assets and affairs of the insurer.

➔Section 1446. KRS 304.33-240 is amended to read as follows:

The liquidator shall report to the court monthly, or at other intervals specified by the court, on the progress of the liquidation in whatever detail the court orders. The liquidator may:

- (1) Appoint a special deputy to act for him *or her* under this subtitle, and, subject to the court's approval, determine his *or her* compensation. The special deputy shall have all powers of the liquidator granted by this section. The special deputy shall serve at the pleasure of the liquidator.
- (2) Appoint or engage employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel he *or she* deems necessary to assist in the liquidation.
- (3) Fix the compensation of persons under subsection (2) of this section, subject to the control of the court.
- (4) Defray all expenses of taking possession of, conserving, conducting, liquidating, disposing of or otherwise dealing with the business and property of the insurer. If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the liquidator may advance the costs so incurred out of any available appropriation. Any amounts so paid shall be deemed expense of administration and shall be repaid for the credit of the ~~Department~~~~[Office]~~ of Insurance out of the first available moneys of the insurer.
- (5) Hold hearings, subpoena witnesses and compel their attendance, administer oaths, examine any person under oath, and compel any person to subscribe to his *or her* testimony after it has been correctly reduced to writing, and in connection therewith require the production of any books, papers, record, or other documents which he *or she* deems relevant to the inquiry.
- (6) Collect all debts and moneys due and claims belonging to the insurer, wherever located, and for this purpose institute timely action in other jurisdictions to marshal the assets of the insurer; forestall garnishment and attachment proceedings against such debts; do such other acts as are necessary or expedient to collect,

conserve or protect its assets or property, including sell, compound, compromise or assign for purposes of collection, subject to court approval and upon such terms and conditions as ~~the liquidator~~^{he} deems best, any disputed claims; and pursue any creditor's remedies available to enforce his ~~or her~~ claims. In lieu of collecting funds representing unearned premium of a policyholder which are in the possession of the insurer's agent with respect to the kinds of direct insurance protected under KRS 304.36-030, the liquidator may authorize the use of such funds to replace the insurance coverage terminated pursuant to KRS 304.33-210, upon receipt from the agent of appropriate notice of such replacement of the insurance coverage with an insurer within sixty (60) days after the date of the liquidation order.

- (7) Audit the books and records of all agents of the insurer insofar as these records relate to the business activities of the insurer.
- (8) Conduct public and private sales of the property of the insurer in a manner prescribed by the court.
- (9) Use assets of the estate to transfer policy obligations to a solvent assuming insurer, if the transfer can be arranged without prejudice to applicable priorities under KRS 304.33-430.
- (10) Acquire, hypothecate, encumber, lease, improve, sell, transfer, abandon, or otherwise dispose of or deal with any property of the insurer at its market value or upon such terms and conditions as are fair and reasonable, except that no transaction involving property the market value of which exceeds ten thousand dollars (\$10,000) shall be concluded without express permission of the court. ~~The liquidator~~^{He} also may execute, acknowledge, and deliver any deeds, assignments, releases, and other instruments necessary or proper to effectuate any sale of property or other transaction in connection with the liquidation. In cases where real property sold by the liquidator is located other than in the county where the liquidation is pending, the liquidator shall cause to be filed with the county clerk for the county in which the property is located a certified copy of the order appointing him ~~or her~~.
- (11) Borrow money, subject to court approval, on the security of the insurer's assets or without security and execute and deliver all documents necessary to that transaction for the purpose of facilitating the liquidation.
- (12) Enter into such contracts as are necessary to carry out the order to liquidate, and affirm or disavow any contracts to which the insurer is a party.
- (13) Continue to prosecute and institute in the name of the insurer or in his ~~or her~~ own name any suits and other legal proceedings, in this state or elsewhere, and abandon the prosecution of claims he ~~or she~~ deems unprofitable to pursue further. If the insurer is dissolved under KRS 304.33-220, he ~~or she~~ may apply to any court in this state or elsewhere for leave to substitute himself ~~or herself~~ for the insurer as plaintiff.
- (14) Prosecute any action which may exist in behalf of the creditors, members, policyholders, or shareholders of the insurer against any officer of the insurer, or any other person.
- (15) Remove any records and property of the insurer to the offices of the ~~commissioner~~^{executive director} or to such other place as is convenient for the purposes of efficient and orderly execution of the liquidation.
- (16) Deposit in one (1) or more banks in this state such sums as are required for meeting current administration expenses and dividend distributions.
- (17) File any necessary documents for record in the office of any county clerk or record office in this state or elsewhere where property of the insurer is located.
- (18) Assert all defenses available to the insurer as against third persons, including statutes of limitations, statutes of frauds, and the defense of usury. A waiver of any defense by the insurer after a petition for liquidation has been filed shall not bind the liquidator.
- (19) Exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member, including any power to avoid any transfer or lien that may be given by law and that is not included within KRS 304.33-290 to 304.33-310, inclusive.
- (20) Intervene in any proceeding wherever instituted that might lead to the appointment of a receiver or trustee, and act as the receiver or trustee whenever the appointment is offered.
- (21) Enter into agreements with any receiver or commissioner of any other state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both states.
- (22) Exercise all powers now held or hereafter conferred upon receivers by the laws of this state not inconsistent with this subtitle.

- (23) The enumeration in this section of the powers and authority of the liquidator is not a limitation upon him *or her*, nor does it exclude his *or her* right to do such other acts not herein specifically enumerated or otherwise provided for as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation.

➔Section 1447. KRS 304.33-250 is amended to read as follows:

- (1) (a) Notice required; General requirements. The liquidator shall give notice of the liquidation order as soon as possible by first-class mail and either by telegram or telephone to the insurance commissioner of each jurisdiction in which the insurer is licensed to do business, by first-class mail and by telephone to the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims of this state if the insurer is or has been an insurer of workers' compensation, by first-class mail to all insurance agents having a duty under KRS 304.33-260, and by first-class mail at the last known address to all persons known or reasonably expected to have claims against the insurer, including all policyholders. He *or she* also shall publish a notice, under KRS Chapter 424, in a newspaper of general circulation in the county in which the liquidation is pending and in Franklin County, the last publication to be not less than three (3) months before the earliest deadline specified in the notice under subsection (2) of this section;
 - (b) Special requirements. Notice to agents shall inform them of their duties under KRS 304.33-260 and inform them what information they must communicate to insureds. Notice to policyholders shall include notice of impairment and termination of coverage under KRS 304.33-210. When it is applicable, notice to policyholders shall include:
 1. Notice of withdrawal of the insurer from the defense of any case in which the insured is interested; and
 2. Notice of the right to file a claim under subsection (2) of KRS 304.33-390;
 - (c) Notice under subsection (1)(a) of this section to agents of the insurer and to potential claimants who are policyholders or insureds shall include, where applicable, notice that guaranty association or foreign guaranty association coverage may be available for all or part of certain claims, and that policyholders or certificate holders may be entitled to continuation of coverage through the guaranty association. The notice shall also include as an insert a separate notice from any guaranty association or foreign guaranty association obligated to provide coverage, if the notice is made available to the liquidator on a timely basis;
 - (d) Reports and further notice. Within fifteen (15) days of the date of entry of the order, the liquidator shall report to the court what notice has been given. The court may order such additional notice as it deems appropriate.
- (2) Notice respecting claims filing. Except as otherwise established by the liquidator with approval of the court, notice to potential claimants under subsection (1) of this section shall require claimants to file with the liquidator their claims together with proper proofs thereof under KRS 304.33-370, on or before a date the liquidator specifies in the notice, which shall be not less than six (6) months nor more than a reasonable time specified in the court's order, except that the liquidator need not require persons claiming unearned premium and persons claiming cash surrender values or other investment values in life insurance and annuities to file a claim. The liquidator may specify different dates for the filing of different kinds of claims.
 - (3) Notice conclusive. If notice is given in accordance with this section, all persons to whom this notice is directed shall be bound by the terms and provisions of the liquidation order and all further orders and notices similarly served on them, and the distribution of the assets of the insurer under this subtitle shall be conclusive with respect to all claimants, whether or not they received notice.

➔Section 1448. KRS 304.33-270 is amended to read as follows:

- (1) Termination of actions against insurer by order appointing liquidator. Upon issuance of any order appointing the ~~commissioner~~~~executive director~~ liquidator of a domestic insurer or of an alien insurer domiciled in this state, no actions may be instituted against the insurer or the liquidator without approval of the court and all actions and all proceedings against the insurer whether in this state or elsewhere shall be abated and the liquidator shall not intervene in them, except as provided in this subsection. Whenever in the liquidator's judgment an action in this state has proceeded to a point where fairness or convenience would be served by its continuation to judgment, he *or she* may apply to the court for leave to defend or to be substituted for the insurer, and if the court gives him *or her* leave, the action shall not be abated. Whenever in the liquidator's

judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, with approval of the court *the liquidator*~~he~~ may intervene in the action. The liquidator may defend any action in which he *or she* intervenes under this section at the expense of the estate of the insurer.

- (2) Statute of limitations on claims by insurer. The liquidator may, within two (2) years subsequent to the entry of an order for liquidation or within such further time as applicable law permits, institute an action or proceeding on behalf of the estate of the insurer upon any cause of action against which the period of limitation fixed by applicable law has not expired at the time of the filing of the petition upon which such order is entered. Where, by any agreement, a period of limitation is fixed for instituting a suit or proceeding upon any claim or for filing any claim, proof of claim, proof of loss, demand, notice or the like, or where in any proceeding, judicial or otherwise, a period of limitation is fixed, either in the proceeding or by applicable law, for taking any action, filing any claim or pleading or doing any act, and where in any such case the period had not expired at the date of the filing of the petition, the liquidator may, for the benefit of the estate, take any such action or do any such act, required of or permitted to the insurer, within a period of sixty (60) days subsequent to the entry of an order for liquidation, or within such further period as is permitted by the agreement, or in the proceeding or by applicable law, or within such further period as is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.
- (3) Statutes of limitations on claims against insurer. The time between the filing of a petition for liquidation against an insurer and the denial of the petition shall not be considered to be a part of the time within which any action may be commenced against the insurer. Any action against the insurer that might have been commenced when the petition was filed may be commenced for at least sixty (60) days after the petition is denied.

➔Section 1449. KRS 304.33-300 is amended to read as follows:

- (1) Effect of petition: real property. After a petition for rehabilitation or liquidation, a transfer of any of the real property of the insurer made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred. The recording of a copy of the petition for or order of rehabilitation or liquidation with the county clerk in the county where any real property in question is located shall be constructive notice of the commencement of a proceeding in rehabilitation or liquidation. The exercise by a court of the United States or any state of jurisdiction to authorize or effect a judicial sale of real property of the insurer within any county in any state shall not be impaired by the pendency of such a proceeding unless the copy is recorded in the county prior to the consummation of the judicial sale.
- (2) Effect of petition: personal property. After a petition for rehabilitation or liquidation and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted:
 - (a) A transfer of any of the property of the insurer, other than real property, made to a person acting in good faith shall be valid against the receiver if made for a present fair equivalent value or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid therefor, for which amount the transferee shall have a lien on the property so transferred.
 - (b) A person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property or any part thereof to the insurer or upon his *or her* order, with the same effect as if the petition were not pending.
 - (c) A person having actual knowledge of the pending rehabilitation or liquidation shall be deemed not to act in good faith unless he *or she* has reasonable cause to believe that the petition is not well founded.
 - (d) A person asserting the validity of a transfer under this section shall have the burden of proof. Except as elsewhere provided in this section, no transfer by or in behalf of the insurer after the date of the petition for liquidation by any person other than the liquidator shall be valid against the liquidator.
- (3) Every person receiving any property from the insurer or any benefit thereof which is a fraudulent transfer under this section shall be personally liable therefor and shall be bound to account to the liquidator.
- (4) Negotiability. Nothing in this subtitle shall impair the negotiability of currency or negotiable instruments.

➔Section 1450. KRS 304.33-460 is amended to read as follows:

- (1) Unclaimed funds. All unclaimed funds subject to distribution remaining in the liquidator's hands when *the liquidator~~he~~* is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member or other person who is unknown or cannot be found or who is under disability with no person legally competent to receive his *or her* distributive share, shall be deposited with the State Treasurer, and shall be paid over without interest except in accordance with KRS 304.33-430 to the person entitled thereto or his *or her* legal representative upon proof satisfactory to the State Treasurer of his *or her* right thereto. Any amount on deposit not claimed within six (6) years from the discharge of the liquidator is deemed abandoned and shall become property of the state. The State Treasurer shall at the end of each fiscal year transfer these amounts to the common school fund.
- (2) Withheld funds. All funds withheld under KRS 304.33-390 and not distributed shall upon discharge of the liquidator be deposited with the State Treasurer and paid by him *or her* in accordance with KRS 304.33-390. Any sums remaining which under KRS 304.33-390 would revert to the undistributed assets of the insurer shall be transferred to the State Treasurer and become the property of the state under subsection (1) of this section unless the *commissioner~~executive director~~* petitions the court to reopen the liquidation under KRS 304.33-480.

➔Section 1451. KRS 304.33-480 is amended to read as follows:

After the liquidation proceeding has been terminated and the liquidator discharged, the *commissioner~~executive director~~* or other interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall so order.

➔Section 1452. KRS 304.33-490 is amended to read as follows:

Whenever it appears to the *commissioner~~executive director~~* that the records of any insurer in process of liquidation or completely liquidated are no longer useful, *the commissioner~~he~~* may recommend to the court what records should be retained for future reference and what should be disposed of. The court shall enter an order thereon. The *commissioner~~executive director~~* shall keep all records the court orders preserved, in accordance with KRS 304.2-150.

➔Section 1453. KRS 304.33-500 is amended to read as follows:

The court in which the proceeding is pending may as it deems desirable, cause audits to be made of the books of the *commissioner~~executive director~~* relating to any receivership established under this subtitle, and a report of each audit shall be filed with the *commissioner~~executive director~~* and with the court. The books, records and other documents of the receivership shall be made available to the auditor at any time without notice. The expense of each audit shall be considered a cost of administration of the receivership.

➔Section 1454. KRS 304.33-510 is amended to read as follows:

- (1) Grounds for petition. If a domiciliary liquidator has not been appointed, the *commissioner~~executive director~~* may apply to the Franklin Circuit Court by petition for an order directing him *or her* to conserve the property of an alien insurer not domiciled in this state or a foreign insurer on any one (1) or more of the following grounds:
 - (a) Any of the grounds in KRS 304.33-140;
 - (b) Any of the grounds in KRS 304.33-190;
 - (c) That any of its property has been sequestered by official action in its domiciliary state, or in any other state;
 - (d) That enough of its property has been sequestered in a foreign country to give reasonable cause to fear that the insurer is or may become insolvent;
 - (e) That
 1. Its certificate of authority to do business in this state has been revoked or that none was ever issued, and
 2. There are residents of this state with outstanding claims or outstanding policies.

- (2) Terms of order. The court may issue the order in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
- (3) Transformation to liquidation or ancillary receivership. The conservator may at any time petition for and the court may grant an order under KRS 304.33-520 to liquidate the assets of a foreign or alien insurer under conservation or, if appropriate, for an order under KRS 304.33-540 to be appointed ancillary receiver.
- (4) Order to return to insurer. The conservator may at any time petition the court for an order terminating conservation of an insurer. If the court finds that the conservation is no longer necessary, it shall order that the insurer be restored to possession of its property and the control of its business. The court may also make such finding and issue such order at any time upon its own motion.

➔Section 1455. KRS 304.33-520 is amended to read as follows:

- (1) Ground for petition. If no domiciliary receiver has been appointed, the ~~commissioner~~~~executive director~~ may apply to the Franklin Circuit Court by petition for an order directing ~~the commissioner~~~~him~~ to liquidate the assets found in this state of a foreign insurer or an alien insurer not domiciled in this state, on any of the following grounds:
 - (a) Any of the grounds in KRS 304.33-140;
 - (b) Any of the grounds in KRS 304.33-190;
 - (c) Any of the grounds in KRS 304.33-510.
- (2) Terms of order. If it appears to the court that the best interests of creditors, policyholders and the public so require, the court may issue an order to liquidate in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
- (3) Conversion to ancillary proceeding. If a domiciliary liquidator is appointed in a reciprocal state while a liquidation is proceeding under this section, the liquidator under this section shall thereafter act as ancillary receiver under KRS 304.33-540. If a domiciliary liquidator is appointed in a nonreciprocal state while a liquidation is proceeding under this section, the liquidator under this section may petition the court for permission to act as ancillary receiver under KRS 304.33-540.
- (4) Federal receivership. On the same grounds as are specified in subsection (1) of this section, the ~~commissioner~~~~executive director~~ may petition any appropriate federal District Court to be appointed receiver to liquidate that portion of the insurer's assets and business over which the court will exercise jurisdiction; or any lesser part thereof that the ~~commissioner~~~~executive director~~ deems desirable for the protection of the policyholders and creditors in this state. The ~~commissioner~~~~executive director~~ may accept appointment as federal receiver if another person files a petition.

➔Section 1456. KRS 304.33-530 is amended to read as follows:

- (1) Property rights and title: reciprocal state. The domiciliary liquidator of an insurer domiciled in a reciprocal state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state. The date of vesting shall be the date of the filing of the petition, if that date is specified by the domiciliary law for the vesting of property in the domiciliary state; otherwise, the date of vesting shall be the date of entry of the order directing possession to be taken. The domiciliary liquidator shall have the immediate right to recover balances due from agents and to obtain possession of the books, accounts and other records of the insurer located in this state. **The domiciliary liquidator**~~He~~ also shall have the right to recover the other assets of the insurer located in this state, subject to subsection (3) of KRS 304.33-540.
- (2) Property rights and title: state not a reciprocal state. If a domiciliary liquidator is appointed for an insurer not domiciled in a reciprocal state, the ~~commissioner~~~~executive director~~ of this state shall be vested by operation of law with the title to all of the property, contracts and rights of action, and all of the books, accounts and other records of the insurer located in this state, at the same time that the domiciliary liquidator is vested with title in the domiciling state. The ~~commissioner~~~~executive director~~ of this state may petition for a conservation or liquidation order under KRS 304.33-510 or 304.33-520, or for an ancillary receivership under KRS 304.33-540, or after approval by the Franklin County Circuit Court, may transfer title to the domiciliary liquidator, as the interests of justice and the equitable distribution of the assets require.

- (3) Filing claims. Claimants residing in this state may file claims with the liquidator or ancillary receiver, if any, in this state or with the domiciliary liquidator, if the domiciliary law permits. The claims must be filed on or before the last date fixed for the filing of claims in the domiciliary liquidation proceedings.

➔Section 1457. KRS 304.33-540 is amended to read as follows:

- (1) Appointment of ancillary receiver in this state. If a domiciliary liquidator has been appointed for an insurer not domiciled in this state, the ***commissioner***~~[executive director]~~ shall file a petition with the Franklin Circuit Court requesting appointment as ancillary receiver in this state:
- (a) If ***the commissioner***~~[he]~~ finds that there are sufficient assets of the insurer located in this state to justify the appointment of an ancillary receiver;
 - (b) If ten (10) or more persons resident in this state having claims against the insurer file a petition with the ***commissioner***~~[executive director]~~ requesting appointment of an ancillary receiver; or
 - (c) If the protection of creditors or policyholders in this state so requires.
- (2) Terms of order. The court may issue an order appointing an ancillary receiver in whatever terms it deems appropriate. The filing or recording of the order with any county clerk in this state imparts the same notice as a deed, bill of sale or other evidence of title duly filed or recorded with that county clerk.
- (3) Property rights and title: ancillary receivers in this state. When a domiciliary liquidator has been appointed in a reciprocal state the ancillary receiver appointed in this state under subsection (1) of this section shall have the sole right to recover all the assets of the insurer in this state not already recovered by the domiciliary liquidator, except that the domiciliary liquidator shall be entitled to and have the sole right to recover balances due from agents and the books, accounts and other records of the insurer. The ancillary receiver shall have the right to recover balances due from agents and books, accounts and other records of the insurer, if such action is necessary to protect the assets because of inaction by the domiciliary liquidator. The ancillary receiver shall, as soon as practicable, liquidate from their respective securities those special deposit claims and secured claims which are proved and allowed in the ancillary proceedings in this state, and shall pay the necessary expenses of the proceedings. ***The ancillary receiver***~~[He]~~ shall promptly transfer all remaining assets to the domiciliary liquidator. Subject to this section, the ancillary receiver and his ***or her*** deputies shall have the same powers and be subject to the same duties with respect to the administration of assets as a liquidator of an insurer domiciled in this state.
- (4) Property rights and title: foreign ancillary receivers. When a domiciliary liquidator has been appointed in this state, ancillary receivers appointed in reciprocal states shall have, as to assets and books, accounts and other records located in their respective states, corresponding rights and powers to those prescribed in subsection (3) of this section for ancillary receivers appointed in this state.

➔Section 1458. KRS 304.33-550 is amended to read as follows:

The ***commissioner***~~[executive director]~~ in his ***or her*** sole discretion may institute proceedings under KRS 304.33-110 or 304.33-120 at the request of the commissioner or other appropriate official of the domiciliary state of any foreign or alien insurer having property located in this state.

➔Section 1459. KRS 304.35-010 is amended to read as follows:

- (1) As used in this subtitle:
- (a) "Casualty insurance" has the meaning set forth in KRS 304.5-070; and
 - (b) "Property insurance" has the meaning set forth in KRS 304.5-050.
- (2) All insurers licensed to write property or casualty insurance in this Commonwealth on a direct basis shall, subject to approval and regulation by the ***commissioner***~~[executive director]~~ of insurance, establish and maintain a "FAIR" (fair access to insurance requirements) plan and establish and maintain a reinsurance association and formulate and from time to time amend the plan and articles of association and rules and regulations in connection therewith, and assess and share on a fair and equitable basis all expenses, income, and losses incident to such "FAIR" plan and reinsurance association in a manner consistent with the provisions of this subtitle.

➔Section 1460. KRS 304.35-030 is amended to read as follows:

- (1) The "FAIR" plan and articles of association shall make provision for a reinsurance association having authority on behalf of its members as their agent to cause to be issued property and casualty insurance policies, to reinsure in whole or in part any such policies, and to cede any such reinsurance. The plan and articles of association shall provide, among other things, for the lines of business to be written, policy forms to be used, perils to be covered, geographical area of coverage, compensation and commissions, assessments of members (which assessments annually shall not exceed one percent (1%) of any such member's net direct premium written on a voluntary basis in this state during the preceding year), participation in the writings, expenses, income, and losses in the proportion each member's property and casualty premiums written bear to the aggregate property and casualty premiums voluntarily written by all members, the administration of the plan and association, and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements.
- (2) If the **commissioner**~~[executive director]~~, in the fulfillment of the duties imposed on him *or her* by KRS 304.13-041, determines that a reasonable degree of competition does not exist in the market for any lines of insurance, within the definitions of KRS 304.5-050 (property insurance) and KRS 304.5-070 (casualty insurance), or either of them, and issues an order to that effect, the **commissioner**~~[executive director]~~ shall order the governing committee to promptly amend the plan to include such line or lines of business unless, in the **commissioner's**~~[executive director's]~~ opinion, an effective residual market mechanism as defined in KRS 304.13-011(8) is already then functioning to provide basic insurance requirements to worthy applicants for reasonable amounts of coverage under such line or lines of insurance with insurers licensed to do business in this state. For accounting and rate-making purposes, the **commissioner**~~[executive director]~~ may require the plan to provide for the establishment and maintenance of separate accounts for any line included in the plan pursuant to this section.

➔Section 1461. KRS 304.35-040 is amended to read as follows:

- (1) The Reinsurance Association shall be governed by a committee consisting of seven (7) persons to be appointed by the **commissioner**~~[executive director]~~ of insurance. The **commissioner**~~[executive director]~~ shall appoint two (2) persons representing insurers chartered under the laws of the Commonwealth of Kentucky, one (1) person representing an insurer that is neither chartered under the laws of the Commonwealth of Kentucky nor affiliated with one (1) of the national insurance trade associations, one (1) person representing an insurer from each of the following three (3) associations: American Insurance Association, National Association of Mutual Insurance Companies, the Property Casualty Insurers Association of America, and one (1) licensed insurance agent.
- (2) The "FAIR" plan shall maintain a formulated plan and articles consistent with this subtitle. The governing committee of the association may, on its own initiative or shall at the request of the **commissioner**~~[executive director]~~, amend the plan and articles, subject to approval by the **commissioner**~~[executive director]~~.
- (3) The governing committee of the association shall, on or before April 1 of each year, file with the **commissioner**~~[executive director]~~, on such forms as the **commissioner**~~[executive director]~~ requires, an accounting of the plan's operations during the preceding calendar year together with its financial condition, and its underwriting experience as to each separate account maintained therein, as of the end of such year. The **commissioner**~~[executive director]~~ may require interim accountings on a quarterly basis or examine the affairs of the association when, in his *or her* opinion, such action is necessary to determine the continued solvency of the Reinsurance Association.
- (4) If at any time the **commissioner**~~[executive director]~~ determines that the Reinsurance Association is or may become unable to meet its financial obligations during the current year, the **commissioner**~~[executive director]~~ shall order the governing committee to levy appropriate assessments within the limitations of KRS 304.35-030(1) against all members.

➔Section 1462. KRS 304.35-050 is amended to read as follows:

Any person aggrieved by any action or decision of the governing committee may appeal to the **commissioner**~~[executive director]~~ of insurance within thirty (30) days from the date of the action or the decision. The **commissioner**~~[executive director]~~ shall, after a hearing conducted in accordance with KRS Chapter 13B, issue a final order approving the action or decision or disapproving the action or decision with respect to the matter which is the subject of appeal.

➔Section 1463. KRS 304.35-105 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall request, receive and transmit the names and addresses of all commercial real property policy applicants to the "FAIR" plan to the state fire marshal.

➔ Section 1464. KRS 304.36-050 is amended to read as follows:

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

- (1) "Affiliate" means a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year immediately preceding the date that the insurer becomes an insolvent insurer.
- (2) "Association" means the Kentucky Insurance Guaranty Association created under KRS 304.36-060.
- (3) "Claimant" means any insured making a first-party claim or any person instituting a liability claim, provided that no person who is an affiliate of the insolvent insurer may be a claimant.
- (4) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the *Department of Insurance of Kentucky*.
- (5) "Control" means the possession, direct or indirect, of power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of any other person. This presumption may be rebutted by a showing that control does not exist in fact.
- (6) (a) "Covered claim" means an unpaid claim, including one for unearned premiums, submitted by a claimant, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this subtitle applies issued by an insurer, if the insurer becomes an insolvent insurer after June 16, 1972, and:
 1. The claimant or insured is a resident of this state at the time of the insured event, provided that for entities other than an individual, the residence of a claimant, insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or
 2. The claim is a first-party claim for damage to property with a permanent location in this state.
 (b) "Covered claim" shall not include the following:
 1. Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;
 2. Any amount sought as a return of premium under any retrospective rating plan or dividends plan;
 3. Legal expenses for policyholders who were not Kentucky residents on the date of the insured event;
 4. Legal expenses for policyholders who were Kentucky residents at the time of the insured event if the legal expenses exceed the association's statutory cap;
 5. Any first-party claim by an insured whose net worth exceeds twenty-five million dollars (\$25,000,000) on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer, provided that an insurer's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;
 6. Any first-party claim by an insured that is an affiliate of an insolvent insurer; or
 7. Any amount awarded as punitive or exemplary damages.
- (7) "Insolvent insurer" means:
 - (a) An insurer licensed to transact insurance in this state either at the time the policy was issued or when the insured event occurred;
 - (b) Against whom a final order of liquidation, with a finding of insolvency, has been entered by a court of competent jurisdiction in the company's state of domicile after June 16, 1972; and

- (c) With respect to which no order, decree, or finding relating to the solvency of the insurer, whether preliminary or temporary in nature or otherwise has been issued by a court of competent jurisdiction or by any insurance ~~executive director or~~ commissioner, insurance office or department or similar official or body before June 16, 1972, or which was in fact insolvent before June 16, 1972, and the de facto insolvency was known by the chief insurance regulatory official of the state of its domicile.
- (8) "Member insurer" means:
- (a) Any person who writes any kind of insurance to which this subtitle applies under KRS 304.36-030, including the exchange of reciprocal or inter-insurance contracts; and
 - (b) Any person who is licensed to transact insurance in this state. For purposes of determining a withdrawing member's assessment liability, an insurer shall cease to be a member insurer effective on the day following the termination or expiration of his *or her* license to transact the kinds of insurance to which this subtitle applies. However, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied prior to the termination or expiration of the insurer's license and assessments levied after the termination or expiration, that relate to any insurer that became an insolvent insurer prior to the termination or expiration of the insurer's license.
- (9) "Net direct written premiums" means direct gross premiums written, or in the case of an insurer organized under KRS Chapter 299, assessments, membership fees, and policy fees levied and collected in this state, less returns thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.
- (10) "Ocean marine insurance" includes any form of insurance, regardless of name, label, or marketing designation of the insurance policy, that insures against maritime perils or risks and other related perils or risks, that are usually insured against by traditional marine insurance such as hull and machinery, marine builders risk, and marine protection and indemnity. These perils and risks insured against include without limitation loss, damage, or expense or legal liability of the insured for loss, damage, or expense arising out of or incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft, or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness, or death or for loss or damage to the property of the insured or another person. "Ocean marine insurance" includes that coverage written in accordance with the following:
- (a) The Jones Act (46 U.S.C. sec. 688);
 - (b) The Longshore and Harbor Workers' Compensation Act D (33 U.S.C. secs. 901 et seq.); or
 - (c) Any other similar federal statutory enactment, or any endorsement or policy affording protection and indemnity coverage.
- (11) "Insured event," in an occurrence policy and claims-made policy, means the act that gave rise to the claim.
- ➔Section 1465. KRS 304.36-070 is amended to read as follows:
- (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the *commissioner*~~executive director~~. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the *commissioner*~~executive director~~. If no members are selected within sixty (60) days after June 16, 1972, the *commissioner*~~executive director~~ may appoint the initial members of the board of directors.
 - (2) In approving selections to the board, the *commissioner*~~executive director~~ shall consider among other things whether all member insurers are fairly represented.
 - (3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.
- ➔Section 1466. KRS 304.36-080 is amended to read as follows:
- (1) The association shall:
 - (a) Be obligated to the extent of the covered claims existing prior to the order of liquidation and arising within thirty (30) days after the order of liquidation, or before the policy expiration date if less than thirty (30) days after the order of liquidation, or before the insured replaces the policy or on request

effects cancellation, if ~~the insured~~ *he* does so within thirty (30) days of the order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

1. The full amount of a covered claim for benefits arising from a workers' compensation insurance policy purchased to satisfy the requirements of KRS 342.340;
 2. An amount not exceeding ten thousand dollars (\$10,000) per policy for a covered claim for the return of unearned premium; or
 3. An amount not exceeding three hundred thousand dollars (\$300,000) per claimant for all other covered claims.
- (b) Not be obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer under the policy or coverage from which the claim arises. Notwithstanding any other provisions of this subtitle, a covered claim shall not include a claim filed with the association after the earlier of twelve (12) months after the date of the order of liquidation, or the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer and shall not include any claim filed with the association or a liquidator for protection afforded under the insured's policy for incurred but not reported losses. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit. Notwithstanding any other provisions of this subtitle, except in the case of a claim for benefits under workers' compensation coverage, any obligation of the association to any and all persons shall cease when ten million dollars (\$10,000,000) shall have been paid in the aggregate by the association and any one (1) or more associations similar to the association of any other state or states or any property/casualty security fund that obtains contributions from insurers on a preinsolvency basis to or on behalf of any insured and its affiliates on covered claims or allowed claims arising under the policy or policies of any one (1) insolvent insurer. For purposes of this section, the term "affiliate" shall mean a person who directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with another person. If the claimant has a covered claim or allowed claim against the association or any associations similar to the association or any property and casualty insurance security fund of another states, under the policy or policies of any one (1) insolvent insurer, the association may establish a plan to allocate amounts payable by the association in a manner as the association in its discretion deems equitable;
- (c) Be deemed the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent, including, but not limited to, the right to pursue and retain salvage and subrogation recoverable on paid covered claim obligations;
- (d) Assess insurers amounts necessary to pay the obligations of the association under paragraph (a) of this subsection subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under KRS 304.36-130 and other expenses authorized by this subtitle. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than thirty (30) days before it is due. No member insurer may be assessed in any year an amount greater than two percent (2%) of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one (1) year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order which it may deem reasonable including the payment of claims as such are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital and surplus below required minimums. Such payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company,

credited against future assessments. Each member insurer serving as a servicing facility may set off against any assessment authorized payments made on covered claims and expenses incurred in the payment of such claims by such member insurer;

- (e) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims;
- (f) Notify such persons as the **commissioner**~~[executive director]~~ directs under KRS 304.36-100(2)(a);
- (g) Handle claims through its employees or through one (1) or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the **commissioner**~~[executive director]~~, but such designation may be declined by a member insurer; and
- (h) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this subtitle.

(2) The association may:

- (a) Appear in, defend, and appeal any action on a claim brought against the association;
- (b) Employ or retain such persons as are necessary to handle claims and perform other duties of the association;
- (c) Borrow funds necessary to effect the purposes of this subtitle in accord with the plan of operation;
- (d) Sue or be sued;
- (e) Negotiate and become a party to such contracts as are necessary to carry out the purpose of this subtitle;
- (f) Perform such other acts as are necessary or proper to effectuate the purpose of this subtitle; and
- (g) Refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if, at the end of any calendar year, the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

➔Section 1467. KRS 304.36-090 is amended to read as follows:

- (1) (a) The association shall submit to the **commissioner**~~[executive director]~~ a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the **commissioner**~~[executive director]~~.
- (b) If the association fails to submit a suitable plan of operation within ninety (90) days following June 16, 1972, or if at any time thereafter the association fails to submit suitable amendments to the plan, the **commissioner**~~[executive director]~~ shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the **commissioner**~~[executive director]~~ or superseded by a plan submitted by the association and approved by the **commissioner**~~[executive director]~~.
- (2) All member insurers shall comply with the plan of operation.
- (3) The plan of operation shall:
 - (a) Establish the procedures whereby all the powers and duties of the association under KRS 304.36-080 will be performed.
 - (b) Establish procedures for handling assets of the association.
 - (c) Establish the amount and method of reimbursing members of the board of directors under KRS 304.36-070.
 - (d) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of such claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.
 - (e) Establish regular places and times for meetings of the board of directors.

- (f) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors.
 - (g) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the **commissioner**~~{executive director}~~ within thirty (30) days after the action or decision.
 - (h) Establish the procedures whereby selections for the board of directors will be submitted to the **commissioner**~~{executive director}~~.
 - (i) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under KRS 304.36-080(1)(d) and (2)(c), are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the **commissioner**~~{executive director}~~, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.
- (5) The plan of operation may establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent, and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator.

➔Section 1468. KRS 304.36-100 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ shall:
- (a) Notify the association of the existence of an insolvent insurer not later than three (3) days after he *or she* receives notice of the determination of the insolvency.
 - (b) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.
- (2) The **commissioner**~~{executive director}~~ may:
- (a) Require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this subtitle. Such notification shall be by mail at their last known address, where available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.
 - (b) Suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the **commissioner**~~{executive director}~~ may levy a fine on any member insurer which fails to pay an assessment when due. Such fine shall not exceed five percent (5%) of the unpaid assessment per month, except that no fine shall be less than one hundred dollars (\$100) per month.
 - (c) Revoke the designation of any servicing facility if *the commissioner*~~{he}~~ finds claims are being handled unsatisfactorily.

➔Section 1469. KRS 304.36-130 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies:

- (1) It shall be the duty of the board of directors, upon majority vote, to notify the **commissioner**~~{executive director}~~ of any information indicating any member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (2) The board of directors may, upon majority vote, request that the **commissioner**~~{executive director}~~ order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty (30) days of the receipt of such request, the **commissioner**~~{executive director}~~ shall begin such examination. The examination may be conducted as a

National Association of Insurance Commissioners examination or may be conducted by such persons as the **commissioner**~~{executive director}~~ designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the **commissioner**~~{executive director}~~ from complying with subsection (3). The **commissioner**~~{executive director}~~ shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the **commissioner**~~{executive director}~~ but it shall not be open to public inspection prior to the release of the examination report to the public.

- (3) It shall be the duty of the **commissioner**~~{executive director}~~ to report to the board of directors when **the commissioner**~~{he}~~ has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.
- (4) The board of directors may, upon majority vote, make reports and recommendations to the **commissioner**~~{executive director}~~ upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer. Such reports and recommendations shall not be considered public documents.
- (5) The board of directors may, upon majority vote, make recommendations to the **commissioner**~~{executive director}~~ for the detection and prevention of insurer insolvencies.
- (6) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association, and submit such report to the **commissioner**~~{executive director}~~.

➔Section 1470. KRS 304.36-140 is amended to read as follows:

The association shall be subject to examination and regulation by the **commissioner**~~{executive director}~~. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the **commissioner**~~{executive director}~~.

➔Section 1471. KRS 304.36-170 is amended to read as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the **commissioner**~~{executive director}~~, or **the commissioner's**~~{his}~~ representatives for any action taken by them in the performance of their powers and duties under this subtitle.

➔Section 1472. KRS 304.37-010 is amended to read as follows:

As used in this subtitle, the following terms shall have the respective meanings set forth, unless the context shall otherwise require:

- (1) The term "**commissioner**~~{executive director}~~" shall mean the **commissioner**~~{executive director}~~ of insurance or the **Department**~~{Office}~~ of Insurance, as appropriate.
- (2) "Insurer" includes every person engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts of insurance.
- (3) An "insurance holding company system" consists of two (2) or more affiliated persons, one (1) or more of which is an insurer.
- (4) An "affiliate", or person "affiliated" with a specific person, is a person that directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.
- (5) A "person" is an individual, a corporation, a partnership, an association, a joint stock company, an unincorporated organization, any similar entity, or any combination of the foregoing acting in concert, but shall not include any bank in its fiduciary capacity or securities broker performing no more than the usual and customary broker's function.
- (6) A "subsidiary" of a specified person is an affiliate controlled by the person directly or indirectly through one (1) or more intermediaries.
- (7) The term "voting security" shall include any security convertible into or evidencing a right to acquire a voting security.

- (8) The terms "control," "controlling," "controlled by," and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a loan contract or commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by KRS 304.37-020(12) that control does not exist in fact. The ***commissioner***~~[executive director]~~ may determine, after forwarding all persons in interest notice and opportunity to be heard and making specific findings of fact to support the determination, that control exists in fact, notwithstanding the absence of a presumption to that effect.

➔Section 1473. KRS 304.37-020 is amended to read as follows:

- (1) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the ***commissioner***~~[executive director]~~, except a foreign or alien insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this section. For an alien insurer, the domiciliary state shall be deemed to be its state of entry. Any insurer which is subject to registration under this section shall register within sixty (60) days after June 16, 1972, or fifteen (15) days after it becomes subject to registration, whichever is later, and annually thereafter by April 1 of each year for the previous calendar year, unless the ***commissioner***~~[executive director]~~ for good cause shown extends the time for registration, and then within the extended time. The ***commissioner***~~[executive director]~~ may require any authorized insurer which is a member of a holding company system which is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurer with the insurance regulatory authority of its domiciliary jurisdiction.
- (2) Every insurer subject to registration shall file a registration statement on a form provided by the ***commissioner***~~[executive director]~~, which shall contain current information about:
- (a) The capital structure, general financial condition, ownership, and management of the insurer and any person controlling the insurer;
 - (b) The identity of every member of the insurance holding company system;
 - (c) The following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its affiliates:
 - 1. Loans to, other investments in, or purchases, sales, or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;
 - 2. Purchases, sales, or exchanges of assets;
 - 3. Transactions not in the ordinary course of business;
 - 4. Guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered in the ordinary course of the insurer's business;
 - 5. All management and service contracts and all cost-sharing arrangements;
 - 6. All reinsurance agreements;
 - 7. Dividend and other distributions to shareholders; and
 - 8. Consolidated tax allocation agreements;
 - (d) Any pledge of the insurer's stock, including stock of any subsidiary or controlling affiliate for a loan made to any member of the insurance holding company system; and
 - (e) Other matters concerning transactions between registered insurers and any affiliates as may be included from time to time in any registration forms adopted or approved by the ***commissioner***~~[executive director]~~.

- (3) It shall not be necessary to disclose information on the registration statement filed pursuant to subsection (2) of this section if the information is not material for the purposes of this section. Unless the **commissioner**~~executive director~~ by administrative regulation or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one-half of one percent (0.5%) or less of an insurer's admitted assets as of the thirty-first day of December next preceding shall not be deemed material for purposes of this section.
- (4) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the **commissioner**~~executive director~~ within thirty (30) days~~(30)~~ after the end of the month in which it learns of each change or addition.
- (5) All registration statements shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement.
- (6) Subject to KRS 304.37-030(5), each registered insurer shall report to the **commissioner**~~executive director~~ all dividends and other distributions to shareholders within fifteen (15) business days following the dividend or distribution declaration.
- (7) Any person within an insurance holding company system subject to registration shall be required to provide complete and accurate information to an insurer, if the information is reasonably necessary to enable the insurer to comply with the provisions of this subtitle.
- (8) The **commissioner**~~executive director~~ shall terminate the registration of any insurer which demonstrates that it no longer is a member of an insurance holding company system.
- (9) The **commissioner**~~executive director~~ may require or allow two (2) or more affiliated insurers subject to registration to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.
- (10) The **commissioner**~~executive director~~ may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of any affiliated insurer which is required to register under subsection (1) and to file all information and material required to be filed under this section.
- (11) The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the **commissioner**~~executive director~~ by administrative regulation or order shall exempt it from the provisions of this section.
- (12) Any person may file with the **commissioner**~~executive director~~ a disclaimer of affiliation with any authorized insurer or a disclaimer may be filed by the insurer or any member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between the persons and the insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under this section which may arise out of the insurer's relationship with the person unless and until the **commissioner**~~executive director~~ disallows the disclaimer. The **commissioner**~~executive director~~ shall disallow the disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.
- (13) The failure to file a registration statement or any amendment thereto required by this section within the time specified for the filing shall be a violation of this subtitle.

➔Section 1474. KRS 304.37-030 is amended to read as follows:

- (1) Material transactions by registered insurers with their affiliates shall be subject to the following standards:
 - (a) The terms shall be fair and reasonable;
 - (b) Charges or fees for services performed shall be reasonable;
 - (c) Expenses incurred and payment received shall be allocated to the insurer in conformity with consistently applied accounting practices;
 - (d) The books, accounts, and records of each party shall be maintained to clearly and accurately disclose the precise nature and details of the transactions; and

- (e) The insurer's surplus as regards policyholders, following any dividends or distributions to shareholder affiliates, shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.
- (2) (a) The following transactions involving a domestic insurer and any person in its holding company system shall not be entered into unless the insurer has notified the **commissioner**~~[executive director]~~ in writing of its intention to enter into the transaction at least thirty (30) days prior to the transaction, or a shorter period as the **commissioner**~~[executive director]~~ may permit, and the **commissioner**~~[executive director]~~ has not disapproved it within that time:
 - 1. Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments, if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding.
 - 2. Loans or extensions of credit to any person who is not an affiliate, if the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed, with respect to non-life insurers, the lesser of three percent (3%) of the insurer's admitted assets or twenty-five percent (25%) of surplus as regards policyholders, or, with respect to life insurers, three percent (3%) of the insurer's admitted assets, each as of December 31 next preceding.
 - 3. Reinsurance agreements or modifications in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five percent (5%) of the insurer's surplus as regards policyholders, as of December 31 next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one (1) or more affiliates of the insurer;
 - 4. All management agreements, service contracts, and all cost sharing arrangements; and
 - 5. Any material transactions, specified by regulation, which the **commissioner**~~[executive director]~~ determines may adversely affect the interests of the insurer's policyholders.
- (b) This subsection shall not authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.
- (c) A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with persons within the holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the **commissioner**~~[executive director]~~ determines that the separate transactions were entered into over any twelve (12) month period for avoidance purposes, **the commissioner**~~he~~ may exercise his **or her** authority under KRS 304.99-151.
- (d) The **commissioner**~~[executive director]~~, in reviewing transactions pursuant to this subsection, shall consider whether the transactions comply with the standards set forth in subsection (1) of this section and whether they may adversely affect the interests of policyholders.
- (e) The **commissioner**~~[executive director]~~ shall be notified within thirty (30) days of any investment of the domestic insurer in any one (1) corporation if the total investment in the corporation by the insurance holding company exceeds ten percent (10%) of the corporation's voting securities.
- (3) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not be relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer shall be managed so as to assure its separate operating identity consistent with this chapter.
- (b) Nothing in this section precludes a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one (1) or more other persons under arrangements which meet the standards of subsection (1) of this section.

- (4) The following factors, among others, shall be considered in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs:
- (a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
 - (b) The extent to which the insurer's business is diversified among the several lines of insurance;
 - (c) The number and size of risks insured in each line of business;
 - (d) The extent of the geographical dispersion of the insurer's insured risks;
 - (e) The nature and extent of the insurer's reinsurance program;
 - (f) The quality, diversification, and liquidity of the insurer's investment portfolio;
 - (g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
 - (h) The surplus as regards policyholders maintained by other comparable insurers;
 - (i) The adequacy of the insurer's reserves; and
 - (j) The quality and liquidity of investments in subsidiaries. The **commissioner**~~{executive director}~~ may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders if in his *or her* judgment the investment warrants.
- (5) No insurer subject to registration under KRS 304.37-020 shall pay any extraordinary dividend or make any other extraordinary distribution to its stockholders until thirty (30) days after the **commissioner**~~{executive director}~~ has received notice of the declaration thereof and has not within the period disapproved the payment, or the **commissioner**~~{executive director}~~ shall have approved the payment within the thirty (30) day period. For purposes of this section, an extraordinary dividend or distribution is any dividend or distribution which, together with other dividends or distribution made within the preceding twelve (12) months, exceeds the lesser of (a) ten percent (10%) of the insurer's surplus as regards policyholders as of December 31 next preceding, or (b) the net gain from operations of the insurer company, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve (12) month period ending December 31 next preceding, but shall not include pro rata distribution of any class of the insurer's own securities. Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution which is conditional upon the **commissioner's**~~{executive director's}~~ approval thereof, and the declaration shall confer no rights upon stockholders until the **commissioner**~~{executive director}~~ has approved the payment of the dividend or distribution or until the **commissioner**~~{executive director}~~ has not disapproved the payment within the thirty (30) day period referred to in this section.

➔Section 1475. KRS 304.37-040 is amended to read as follows:

- (1) Subject to the limitation contained in this section and in addition to the powers which the **commissioner**~~{executive director}~~ has under KRS Chapter 304 relating to the examination of insurers, the **commissioner**~~{executive director}~~ shall also have the power to order any insurer registered under KRS 304.37-020 to produce such records, books, or other information papers in the possession of the insurer or its affiliates as shall be necessary to ascertain the financial condition or legality of conduct of such insurer. In the event such insurer fails to comply with such order, the **commissioner**~~{executive director}~~ shall have the power to examine such affiliates to obtain such information.
- (2) The **commissioner**~~{executive director}~~ shall exercise his *or her* power under subsection (1) only if the examination of the insurer under KRS Chapter 304 is inadequate or the interests of the policyholders of such insurer may be adversely affected.
- (3) The **commissioner**~~{executive director}~~ may retain at the registered insurer's expense such attorneys, actuaries, accountants, and other experts not otherwise a part of the **commissioner's**~~{executive director's}~~ staff as shall be reasonably necessary to assist in the conduct of the examination under subsection (1). Any persons so retained shall be under the direction and control of the **commissioner**~~{executive director}~~ and shall act in a purely advisory capacity.
- (4) Each registered insurer producing for examination records, books, and papers pursuant to subsection (1) shall be liable for and shall pay the expense of such examination in accordance with the provisions of KRS Chapter 304.

➔Section 1476. KRS 304.37-050 is amended to read as follows:

All information, documents, and copies thereof obtained by or disclosed to the ***commissioner***~~[executive director]~~ by any other person in the course of an examination or investigation made pursuant to KRS 304.37-040 and all information reported pursuant to KRS 304.37-020, shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the ***commissioner***~~[executive director]~~ or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the ***commissioner***~~[executive director]~~, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event ***the commissioner***~~[he]~~ may publish all or any part thereof in such manner as ***the commissioner***~~[he]~~ may deem appropriate.

➔Section 1477. KRS 304.37-060 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may, upon notice and opportunity for all interested persons to be heard, issue such orders as shall be necessary to carry out the provisions of this subtitle.

➔Section 1478. KRS 304.37-070 is amended to read as follows:

Whenever it appears to the ***commissioner***~~[executive director]~~ that any person has committed a violation of this subtitle which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the ***commissioner***~~[executive director]~~ may proceed as provided in KRS Chapter 304 to take possession of the property of such domestic insurer and to conduct the business thereof.

➔Section 1479. KRS 304.37-080 is amended to read as follows:

Whenever it appears to the ***commissioner***~~[executive director]~~ that any person has committed a violation of this subtitle which makes the continued operation of an insurer contrary to the interest of policyholders or the public, the ***commissioner***~~[executive director]~~ may, after giving notice and an opportunity to be heard, determine to suspend, revoke, or refuse to renew such insurer's license or authority to do business in this state for such period as ***the commissioner***~~[he]~~ finds is required for the protection of policyholders or the public. Any such determination shall be accompanied by specific findings of fact and conclusions of law.

➔Section 1480. KRS 304.37-090 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall, if requested by any interested party served with notice as required herein, make a complete record of any testimony, evidence, and proceedings at any hearing conducted pursuant to this subtitle.

➔Section 1481. KRS 304.37-100 is amended to read as follows:

- (1) Any person aggrieved by any act, determination, rule, regulation, order, or any other action of the ***commissioner***~~[executive director]~~ pursuant to this subtitle, may file appropriate proceedings in the Franklin Circuit Court or other court of competent jurisdiction for proper relief.
- (2) The filing of an appeal pursuant to this section or other court proceeding shall not stay the application of such order or other action of the ***commissioner***~~[executive director]~~ unless the court, after giving notice to the parties and an opportunity to be heard, determines that such a stay would not be detrimental to the interest of policyholders, shareholders, creditors, or the public.
- (3) Any person aggrieved by any failure of the ***commissioner***~~[executive director]~~ to act or make a determination required by this subtitle may petition the Franklin Circuit Court for a mandatory injunction or other injunctive relief directing the ***commissioner***~~[executive director]~~ to act or make such determination forthwith.

➔Section 1482. KRS 304.37-110 is amended to read as follows:

- (1) Any domestic insurer, either by itself or in cooperation with one (1) or more persons, may organize or acquire one (1) or more subsidiaries engaged in the following kinds of business:
 - (a) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
 - (b) Acting as an insurance agent for its parent or any of its parent's insurer subsidiaries;

- (c) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;
 - (d) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
 - (e) Acting as a broker-dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
 - (f) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
 - (g) Rendering other services related to the operations of an insurance business, such as actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
 - (h) Ownership and management of assets which the parent corporation may own or manage if the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to these investments by the insurer. This paragraph shall not prohibit investments permitted under KRS 304.7-120;
 - (i) Acting as an administrative agent for a governmental instrumentality which is performing an insurance function;
 - (j) Financing of insurance premiums, agents, and other forms of consumer financing;
 - (k) Any other business activity determined by the **commissioner**~~executive director~~ to be reasonably ancillary to an insurance business; and
 - (l) Owning a corporation or corporations engaged or organized to engage exclusively in one (1) or more businesses specified in this section.
- (2) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under this chapter, a domestic insurer may also:
- (a) Invest, in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries, amounts which do not exceed the lesser of ten percent (10%) of the insurer's assets or fifty percent (50%) of the insurer's surplus as regards policyholders, if after these investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to meet its financial needs. In calculating the amount of these investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:
 - 1. Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities; and
 - 2. All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus, of a subsidiary subsequent to its acquisition or formation;
 - (b) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one (1) or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer, if each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in paragraph (a) of this subsection or in Subtitle 7 of KRS Chapter 304. For the purpose of this paragraph, "the total investment of the insurer" shall include:
 - 1. Any direct investment by the insurer in an asset; and
 - 2. The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary;
 - (c) With the approval of the **commissioner**~~executive director~~, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one (1) or more subsidiaries, if after the

investment the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

- (3) Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries made pursuant to subsection (2) of this section shall not be subject to any of the otherwise applicable restrictions or prohibitions contained in this chapter applicable to the investments of insurers.
- (4) Whether any investment pursuant to subsection (2) of this section meets the requirements shall be determined before the investment is made, by calculating the applicable investment limitations as though the investment had already been made, taking into account the then outstanding principal balance on all previous investments in debt obligations, and the value of all previous investments in equity securities as of the day they were made, net of any return of capital invested, not including dividends.
- (5) If an insurer ceases to control a subsidiary, it shall dispose of any investment made pursuant to this section within three (3) years of the time of the cessation of control, or within an extension of time as the **commissioner**~~executive director~~ may prescribe, unless at any time after the investment has been made, the investment has met the requirements for investment under any other provision of this chapter, and the insurer has notified the **commissioner**~~executive director~~.

➔Section 1483. KRS 304.37-120 is amended to read as follows:

- (1) No person other than the issuer shall make a tender offer for, a request or invitation for tenders of, enter into any agreement to exchange securities, seek to acquire, or acquire in the open market or otherwise, any voting security of a domestic insurer if, after the consummation, the person would, directly or indirectly, or by conversion, or by exercise of any right to acquire, be in control of the insurer. No person shall enter into an agreement to merge with or to acquire control of a domestic insurer or any person controlling a domestic insurer unless, at the time of the offer, request, or invitation is made, or any agreement is entered into, or prior to the acquisition of these securities if no offer or agreement is involved, the person has filed with the **commissioner**~~executive director~~ and has sent to the insurer, a statement containing the information required by this section and the offer, request, invitation, agreement, or acquisition has been approved by the **commissioner**~~executive director~~ in the manner prescribed in this section.
 - (a) For purposes of this section a domestic insurer shall include any person controlling a domestic insurer unless the person as determined by the **commissioner**~~executive director~~ is either directly or through its affiliates primarily engaged in business other than the business of insurance. However, the person shall file a preacquisition notification with the **commissioner**~~executive director~~ containing the information required in KRS 304.37-130(3)(a) thirty (30) days prior to the proposed effective date of the acquisition. The person who fails to file a preacquisition notification shall be subject to the penalty set out in KRS 304.99-151. For the purposes of this section, "person" shall not include any securities broker holding, in the usual and customary brokers function, less than twenty percent (20%) of the voting securities of an insurance company or of any person which controls an insurance company.
- (2) The statement to be filed with the **commissioner**~~executive director~~ under this section shall be made under oath or affirmation and shall contain the following information:
 - (a) The name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in subsection (1) of this section is to be effected; and
 1. If the person is an individual, his *or her* principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years; or
 2. If the person is not an individual, a report of the nature of its business operations during the past five (5) years or for a lesser period that the person and any predecessors have been in existence, an informative description of the business intended to be done by the person and the person's subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to these functions. The list shall include for each individual the information required by subparagraph 1. of this paragraph.
 - (b) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction in which funds were or are to be obtained for

merger or other acquisition of control, including any pledge of the insurer's stock, or the stock of any of its subsidiaries or controlling affiliates, and the identity of persons furnishing the consideration; but if a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing the statement so requests.

- (c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for a lesser period that the acquiring party and any predecessors have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.
- (d) Any plans or proposals which each acquiring party may have to liquidate the insurer, to sell its assets, or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management.
- (e) The number of shares of any security referred to in subsection (1) of this section which the acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section, and a statement as to the method used to determine the fairness of the proposal.
- (f) The amount of each class of any security referred to in subsection (1) of this section which is beneficially owned, or concerning any security referred to in subsection (1) of this section which there is a right to acquire beneficial ownership of by each acquiring party.
- (g) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (1) of this section in which any acquiring party is involved, such as transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. The description shall identify the persons with whom these contracts, arrangements, or understandings have been entered into.
- (h) A description of the purchase of any security referred to in subsection (1) of this section during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid.
- (i) A description of any recommendations to purchase any security referred to in subsection (1) of this section made during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party.
- (j) Copies of all tender offers for requests, or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (1) of this section, and of additional soliciting material distributed which relates.
- (k) The term of any agreement, contract, or understanding made with, or proposed to be made with any broker-dealer, as to solicitation of securities referred to in subsection (1) of this section for tender, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers with regard to subsection (1) of this section.
- (l) Any additional information as the **commissioner**~~executive director~~ may by regulation prescribe as necessary or appropriate for the protection of policyholders of the insurer or in the public interest.
- (m) If the person required to file the statement referred to in subsection (1) of this section is a partnership, limited partnership, syndicate, or other group, the **commissioner**~~executive director~~ may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or other group, and each person who controls the partner or member. If any partner, member, or person is a corporation, or the person required to file the statement referred to in subsection (1) of this section is a corporation, the **commissioner**~~executive director~~ may require that the information called for by paragraphs (a) to (l) of this subsection shall be given with respect to the corporation, each officer and director of the corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of the corporation.
- (n) If any material change occurs in the facts in the statement filed with the **commissioner**~~executive director~~ and sent to the insurer pursuant to this section, an amendment stating the change, with copies of all documents and other materials relevant to the change, shall be filed with the

commissioner~~[executive director]~~ and sent to the insurer within two (2) business days after the person learns of the change.

- (3) If any offer, request, invitation, agreement, or acquisition referred to in subsection (1) of this section is proposed to be made by means of a registration statement under the Securities Act of 1933, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in subsection (1) of this section may utilize those documents in furnishing the information required by the statement referred to in subsection (1) of this section.
 - (4) (a) The ***commissioner***~~[executive director]~~ shall approve any merger or other acquisition of control referred to in subsection (1) of this section unless, after a public hearing ***the commissioner***~~[he]~~ finds that:
 1. After the change of control, the domestic insurer referred to in subsection (1) of this section would not be able to satisfy the requirements for issuance of a certificate of authority to write the line or lines of insurance for which it is presently authorized;
 2. The effect of the merger or other acquisition of control would be substantially to lessen competition in insurance in Kentucky or tend to create a monopoly. In applying the competitive standard in this paragraph:
 - a. The informational requirements of KRS 304.37-130(3)(a) and the standards of KRS 304.37-130(4)(b) shall apply;
 - b. The merger or other acquisition shall not be disapproved if the ***commissioner***~~[executive director]~~ finds that any of the situations meeting the criteria provided by KRS 304.37-130(4)(c) exist; and
 - c. The ***commissioner***~~[executive director]~~ may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time;
 3. The financial condition of the acquiring party might jeopardize the financial stability of the insurer or prejudice the interest of its policyholders;
 4. The plans or proposals which the acquiring party has to liquidate the insurer, sell its assets, consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management are unfair and unreasonable to policyholders of the insurer and not in the public interest;
 5. The competence, experience, and integrity of persons who would control the operation of the insurer would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or
 6. The acquisition is likely to be hazardous or prejudicial to the insurance buying public.
 - (b) The public hearing required by this section shall be conducted as directed in Subtitle 2 of this chapter.
 - (c) The ***commissioner***~~[executive director]~~ may retain at the acquiring person's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the ***commissioner's***~~[executive director's]~~ staff that may be necessary to assist the ***commissioner***~~[executive director]~~ in reviewing the proposed acquisition of control.
- (5) The provisions of this section shall not apply to:
- (a) Any transaction which is subject to the provisions of KRS 304.24-390, dealing with the merger or consolidation of a domestic insurer; or
 - (b) Any offer, request, invitation, agreement, or acquisition which the ***commissioner***~~[executive director]~~, by order, shall exempt from the section as not having been made or entered into for the purpose of and not having the effect of changing or influencing the control of, a domestic insurer, or not comprehended within the purposes of this section; or
 - (c) Any acquisition of stock of a former mutual by an affiliate company that occurs in connection with the conversion of a mutual insurer to a stock insurer under KRS 304.24-600 to 304.24-625, provided that

no person acquires control of the parent company. For purposes of this paragraph, "former mutual" has the meaning provided in KRS 304.24-601.

- (6) The following shall be violations of this section:
- (a) The failure to file any statement, amendment, or other material required to be filed pursuant to subsection (1) or (2) of this section; or
 - (b) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the **commissioner**~~[executive director]~~ has given his **or her** approval.
- (7) The courts of this state shall have jurisdiction over every person not resident, domiciled, or authorized to do business in this state who files a statement with the **commissioner**~~[executive director]~~ under this section, and overall actions involving such person arising out of violations of this section. Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his **or her** true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of the violations of this section. Copies of all lawful process shall be served on the Secretary of State and transmitted to the person at his **or her** last known address by the Secretary of State in the same manner as service of process on foreign insurers.

➔Section 1484. KRS 304.37-130 is amended to read as follows:

- (1) The following definitions shall apply for the purposes of this section only:
- (a) "Acquisition" means any agreement, arrangement, or activity the consummation of which results in a person acquiring directly or indirectly the control of another person, such as the acquisition of voting securities, the acquisition of assets, bulk reinsurance, and mergers.
 - (b) An "involved insurer" includes an insurer which either acquires or is acquired, is affiliated with an acquirer or acquired, or is the result of a merger.
- (2) (a) This section applies to any acquisition in which there is a change of control of an insurer authorized to do business in Kentucky, except as set forth in paragraph (b) of this subsection.
- (b) This section shall not apply to the following:
- 1. An acquisition subject to approval or disapproval of the **commissioner**~~[executive director]~~ pursuant to KRS 304.37-120;
 - 2. A purchase of securities solely for the investment purposes so long as the securities are not used by voting or otherwise to cause or attempt to cause the substantial lessening of competition in any insurance market in Kentucky. If a purchase of securities results in a presumption of control under KRS 304.37-010(8), it is not solely for investment purposes unless the insurance regulatory official of the insurer's state of domicile accepts a disclaimer of control, or affirmatively finds that control does not exist, and the disclaimer action or affirmative finding is communicated by the domiciliary insurance regulatory official to the **commissioners**~~[executive directors]~~;
 - 3. If the acquisition of a person by another person when both persons are neither directly nor through affiliates primarily engaged in the business of insurance, if preacquisition notification is filed with the **commissioner**~~[executive director]~~ in accordance with subsection (3)(a) of this section thirty (30) days prior to the proposed effective date of the acquisition. However, the acquisition notification shall not be required for exclusion from this section if the acquisition would otherwise be excluded from this section by any other subparagraph of this paragraph;
 - 4. The acquisition of already affiliated persons;
 - 5. An acquisition if, as an immediate result of the acquisition:
 - a. The combined market share of the involved insurers would not exceed five percent (5%) of the total market;
 - b. There would be no increase in any market share; or
 - c. The combined market share of the involved insurers would not exceed twelve percent (12%) of the total market; and the market share would not increase by more than two percent (2%) of the total market.

For the purpose of this subparagraph (b)5., a market means direct written insurance premium in Kentucky for a line of business as contained in the annual statement required to be filed by insurers authorized to do business in Kentucky;

6. An acquisition for which a preacquisition notification would be required pursuant to this section due solely to the resulting effect on the ocean marine insurance line of business; and
 7. An acquisition of an insurer whose domiciliary insurance regulatory official affirmatively finds that the insurer is in failing condition, there is lack of feasible alternative to improving the condition, the public benefits of improving the insurer's condition through the acquisition exceed the public benefits that would arise from not lessening competition, and the findings are communicated by the domiciliary insurance regulatory official to the **commissioner**~~[executive director]~~.
- (3) An acquisition covered by subsection (2) of this section may be subject to an order pursuant to subsection (5) of this section or KRS 304.37-010 unless the acquiring person files a preacquisition notification and the waiting period has expired. The acquired person may file a preacquisition notification. The **commissioner**~~[executive director]~~ shall give confidential treatment to information submitted under this subsection in the same manner as provided in KRS 304.37-050.
- (a) The preacquisition notification shall be in the form and contain the information prescribed by the National Association of Insurance Commissioners relating to those markets which, under subsection (2)(b)5. of this section, cause the acquisition not to be exempted from the provisions of this section. The **commissioner**~~[executive director]~~ may require additional material and information **the commissioner**~~[he]~~ deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of subsection (4) of this section. The required information may include an opinion of an economist as to the competitive impact of the acquisition in Kentucky accompanied by a summary of the education and experience of the economist indicating his **or her** ability to render an informed opinion.
 - (b) The waiting period required shall begin on the date of receipt by the **commissioner**~~[executive director]~~ of a preacquisition notification and shall end on the earlier of the thirtieth day after the date of receipt, or termination of the waiting period by the **commissioner**~~[executive director]~~. Prior to the end of the waiting period, the **commissioner**~~[executive director]~~ may, on a one-time basis, require the submission of additional needed information relevant to the proposed acquisition; if the submission is required, the waiting period shall end on the earlier of the thirtieth day after receipt of the additional information by the **commissioner**~~[executive director]~~ or termination of the waiting period by the **commissioner**~~[executive director]~~.
- (4) (a) The **commissioner**~~[executive director]~~ may enter an order under subsection (5)(a) of this section with respect to an acquisition if there is substantial evidence that the effect of the acquisition may be to lessen substantially competition in any line of insurance in Kentucky or tend to create a monopoly, or if the insurer fails to file adequate information in compliance with subsection (3) of this section.
- (b) In determining whether a proposed acquisition would violate the competitive standard of paragraph (a) of this subsection, the **commissioner**~~[executive director]~~ shall consider the following:
1. Any acquisition covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standards:
 - a. If the market is highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4%	4% or more
10%	2% or more
15%	1% or more;
or	

- b. If the market is not highly concentrated and the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5%	5% or more
10%	4% or more
15%	3% or more
19%	1% or more.

A highly concentrated market means one in which the share of the four (4) largest insurers is seventy-five percent (75%) or more of the market. Percentages not shown in the tables are interpolated proportionately to the percentages that are shown. If more than two (2) insurers are involved, exceeding the total of the two (2) columns in the table is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection. For the purpose of this subparagraph, the insurer with the largest share of the market shall be deemed to be insurer A.

2. There is a significant trend toward increased concentration when the aggregate market share of any grouping of the largest insurers in the market, from the two (2) largest to the eight (8) largest, has increased by seven percent (7%) or more of the market over a period of time extending from any base year five (5) to ten (10) years prior to the acquisition up to the time of the acquisition. Any acquisition or merger covered under subsection (2) of this section involving two (2) or more insurers competing in the same market is prima facie evidence of violation of the competitive standard in paragraph (a) of this subsection if:
 - a. There is a significant trend toward increased concentration in the market;
 - b. One of the insurers involved is one of the insurers in a grouping of the large insurers showing the requisite increase in the market share; and
 - c. Another involved insurer's market is two percent (2%) or more.
 3. For the purposes of subsection (4)(b) of this section:
 - a. The term "insurer" includes any company or group of companies under common management, ownership or control;
 - b. The term "market" means the relevant product and geographical markets. In determining the relevant product and geographical markets, the **commissioner**~~executive director~~ shall give due consideration to factors such as the definitions or guidelines, if any, promulgated by the National Association of Insurance Commissioners and to information, if any, submitted by parties to the acquisition. In the absence of sufficient information to the contrary, the relevant product market is assumed to be the direct written insurance premium for a line of business, the line being that used in the annual statement required to be filed by insurers doing business in Kentucky, and the relevant geographical market is assumed to be Kentucky; and
 - c. The burden of showing prima facie evidence of violation of the competitive standard rests upon the **commissioner**~~executive director~~.
 4. Even though an acquisition is not prima facie violative of the competitive standard under paragraph (b) of this subsection, the **commissioner**~~executive director~~ may establish the requisite anticompetitive effect based upon other substantial evidence. Even though an acquisition is prima facie violative of the competitive standard under paragraph (b) of this subsection, a party may establish the absence of the requisite anticompetitive effect based upon other substantial evidence. Relevant factors in making this determination shall be such factors as market shares, volatility of ranking of market leaders, number of competitors, concentration, trend of concentration in the industry, and ease of entry into and exit from the market.
- (c) An order shall not be entered under subsection (5)(a) of this section if:

1. The acquisition will yield substantial economies of scale or economies in resource utilization that cannot be feasibly achieved in any other way, and the public benefits which would arise from the economies exceed the public benefits which would arise from not lessening competition; or
 2. The acquisition will substantially increase the availability of insurance, and the public benefits of the increase exceed the public benefits which would arise from not lessening competition.
- (5) (a) If an acquisition violates the standards of this section, the **commissioner**~~{executive director}~~ may enter an order:
1. Requiring an involved insurer to cease and desist from doing business in Kentucky with respect to the line or lines of insurance involved in the violation; or
 2. Denying the application of an acquired or acquiring insurer for a certificate of authority to do business in Kentucky.
- (b) The order referred to in paragraph (a) of this subsection shall be entered pursuant to a hearing held under Subtitle 2 of this chapter.

➔Section 1485. KRS 304.37-150 is amended to read as follows:

- (1) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of the provisions of this chapter or of any rule, administrative regulation, or order issued by the **commissioner**~~{executive director}~~ may be voted at any shareholders' meeting, or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding; but no action taken at the meeting shall be invalidated by the voting of the securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered. If an insurer or the **commissioner**~~{executive director}~~ has reason to believe that any security of the insurer has been or is about to be acquired in contravention of the provisions of this chapter or of any rule, administrative regulation, or order issued by the **commissioner**~~{executive director}~~, the insurer or the **commissioner**~~{executive director}~~ may apply to the Circuit Court for the county in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of KRS 304.37-130 or any other provision of this chapter, or any rule, administrative regulation, or order issued by the **commissioner**~~{executive director}~~ to enjoin the voting of any security so acquired, to void any vote of the security already cast at any meeting of shareholders, and for any other equitable relief as required by the nature of the case and the interest of the insurer's policyholders, creditors, shareholders, or the public.
- (2) In any case where a person has acquired or is proposing to acquire any voting securities in violation of this chapter or any rule, administrative regulation, or order issued by the **commissioner**~~{executive director}~~, the Circuit Court for Franklin County or the Circuit Court for the county in which the insurer has its principal place of business may, upon notice the court deems appropriate, upon the application of the insurer or the **commissioner**~~{executive director}~~ seize or sequester any voting securities of the insurer owned directly or indirectly by the person, and issue the appropriate order to effectuate the provisions of this subtitle.
- (3) Notwithstanding any other provisions of law, for the purposes of this chapter the situs of the ownership of the securities of domestic insurers shall be deemed to be in this state.

➔Section 1486. KRS 304.37-500 is amended to read as follows:

The following definitions shall apply to KRS 304.37-500 to 304.37-580:

- (1) "Interested person" means:
 - (a) Any affiliated person of a company;
 - (b) Any member of the immediate family of any natural person who is an affiliated person of a company;
 - (c) Any person or partner or employee of any person who at any time since the beginning of the last two (2) completed fiscal years of a company has acted as legal counsel for the company; or
 - (d) Any natural person whom the **commissioner**~~{executive director}~~ by order shall have determined to be an interested person by reason of having had, at any time since the beginning of the last two (2) completed

fiscal years of a company, a material business or professional relationship with a company or with the principal executive officer of the company;

- (2) "Intermediate holding company" means a holding company which is a subsidiary of a mutual insurance holding company and which either directly or through a subsidiary intermediate holding company has one (1) or more subsidiary reorganized insurance companies of which a majority of the voting shares of the capital stock would otherwise have been required by KRS 304.37-505, to be at all times owned by the mutual insurance holding company. The **commissioner**~~executive director~~ shall have jurisdiction over an intermediate holding company as if it were a mutual insurance holding company;
- (3) "Majority of the voting shares of the capital stock of the reorganized insurance company" means shares of the capital stock of the reorganized insurance company which carry the right to cast a majority of the votes entitled to be cast by all of the outstanding shares of the capital stock of the reorganized insurance company for the election of directors and on all other matters submitted to a vote of the shareholders of the reorganized insurance company. The ownership of a majority of the voting shares of the capital stock of the reorganized insurance company which are required by KRS 304.37-505 to be held by the mutual insurance holding company may be held by indirect ownership through one (1) or more intermediate holding companies in a corporate structure approved by the **commissioner**~~executive director~~, provided, however, that indirect ownership through one (1) or more intermediate holding companies shall not result in the mutual insurance holding company owning less than the equivalent of a majority of the voting shares of the capital stock of the reorganized insurance company;
- (4) "Mutual insurance holding company" means a holding company organized on the mutual plan and incorporated under the laws of Kentucky, resulting from the reorganization of a domestic mutual insurance company in accordance with KRS 304.37-505 and 304.37-510, with one (1) or more stock insurance holding company subsidiaries or stock insurance company subsidiaries;
- (5) "Plan of reorganization" means a plan to reorganize a domestic mutual insurance company by forming a mutual insurance holding company; and
- (6) "Stock offering" means any proposed sale, exchange, transfer or other change of ownership of stock or of securities convertible into or exchangeable or exercisable for stock; including, but not limited to, an initial public offering, private equity placement, or grants of stock options and other equity based compensation. For purposes of KRS 304.37-570, 304.37-575, and 304.37-580, "stock offering" shall not mean:
 - (a) An offering of preferred stock which is not convertible or exchangeable into common stock and which has no ordinary voting rights; or
 - (b) A transfer of stock between a mutual insurance holding company, an insurance company subsidiary of a mutual holding company, and an insurance company subsidiary of an intermediate holding company subsidiary to a mutual holding company.

➔Section 1487. KRS 304.37-505 is amended to read as follows:

- (1) A domestic mutual insurance company, upon approval of the **commissioner**~~executive director~~, may reorganize by forming an insurance holding company based upon a mutual plan and continuing the corporate existence of the reorganizing insurance company as a stock insurance company. The **commissioner**~~executive director~~, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interests of the policyholders are properly protected and that the plan of reorganization is fair and equitable to the policyholders, may approve the proposed plan of reorganization and may require as a condition of approval modification of the proposed plan of reorganization as the **commissioner**~~executive director~~ finds necessary for the protection of the policyholders' interests. A reorganization under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The **commissioner**~~executive director~~ shall retain jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.
- (2) All of the initial shares of the capital stock of the reorganized insurance company shall be issued to the mutual insurance holding company. The membership interests of the policyholders of the reorganized insurance company shall become membership interests in the mutual insurance holding company. Policyholders of the reorganized insurance company shall be members of the mutual insurance holding company in accordance with the articles of incorporation and bylaws of the mutual insurance holding company. The mutual insurance holding company shall at all times own a majority of the voting shares of the capital stock of the reorganized insurance company.

- (3) A domestic mutual insurance company, upon the approval of the ***commissioner***~~[executive director]~~, may reorganize by merging its policyholders' membership interests into a mutual insurance holding company formed under this section and continuing the corporate existence of the reorganizing insurance company as a stock insurance company subsidiary of the mutual insurance holding company. The ***commissioner***~~[executive director]~~, after a public hearing conducted in accordance with KRS Chapter 13B, if satisfied that the interests of the policyholders are properly protected and that the merger is fair and equitable to the policyholders, may approve the proposed merger and may require as a condition of approval modification of the proposed merger as the ***commissioner***~~[executive director]~~ finds necessary for the protection of the policyholders' interests. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7). The ***commissioner***~~[executive director]~~ shall retain jurisdiction over a mutual insurance holding company organized under this section to assure that policyholder interests are protected.
- (4) A merger of policyholders' membership interests in a mutual insurance company into a mutual insurance holding company shall be deemed to be a merger of the insurance companies under Subtitle 37 of KRS Chapter 304.

➔Section 1488. KRS 304.37-510 is amended to read as follows:

- (1) A foreign mutual insurance company may reorganize upon the approval of the ***commissioner***~~[executive director]~~ and in compliance with the requirement of any law or regulation which is applicable to the foreign mutual insurance company by merging its policyholders' membership interests into a mutual insurance holding company formed under KRS 304.37-505 and continuing the corporate existence of the reorganizing foreign mutual insurance company as a foreign stock insurance company subsidiary of the mutual insurance holding company. The ***commissioner***~~[executive director]~~, after a public hearing as provided in KRS 304.37-120(4)(b), may approve the proposed merger. A merger under this section is subject to KRS 304.37-120(1), (2), (3), (6), and (7).
- (2) The reorganizing foreign mutual insurance company may remain a foreign company after the merger and may be admitted to do business in this state. A foreign mutual insurance company which is a party to the merger may at the same time redomesticate in this state by complying with the applicable requirements of this state and its state of domicile. The provisions of KRS 304.37-120 shall apply to a merger authorized under this section.

➔Section 1489. KRS 304.37-515 is amended to read as follows:

A mutual insurance holding company resulting from the reorganization of a domestic mutual insurance company organized under KRS Chapter 271B shall be incorporated under KRS Chapter 271B. The articles of incorporation and any amendments to the articles of the mutual insurance holding company shall be subject to approval of the ***commissioner***~~[executive director]~~ and the Attorney General in the same manner as those of an insurance company.

➔Section 1490. KRS 304.37-520 is amended to read as follows:

A mutual insurance holding company is deemed to be an insurer subject to Subtitle 33 of this chapter and shall automatically be a party to any proceeding under Subtitle 33 of this chapter involving an insurance company which, as a result of a reorganization under KRS 304.37-505, is a subsidiary of the mutual insurance company. In any proceeding under Subtitle 33 of this chapter involving the reorganized insurance company, the assets of the mutual insurance holding company are deemed to be assets of the estate of the reorganized insurance company for purposes of satisfying the claims of the recognized insurance company's policyholders. A mutual insurance holding company shall not dissolve or liquidate without the approval of the ***commissioner***~~[executive director]~~ or as ordered by the court under Subtitle 33 of this chapter.

➔Section 1491. KRS 304.37-540 is amended to read as follows:

- (1) In addition to any other items required to be filed with the ***department***~~[office]~~ under this chapter, each mutual insurance holding company shall supply to the ***Department***~~[Office]~~ of Insurance, by March 1 of each year, an annual statement consisting of the following:
 - (a) An income statement;
 - (b) A balance sheet;
 - (c) A cash flow statement;

- (d) Complete information on the status of any closed block of business formed as a part of a plan or reorganization;
 - (e) An investment plan covering all assets; and
 - (f) A statement disclosing any intention to pledge, borrow against, alienate, hypothecate, or in any way encumber the assets of the mutual insurance holding company.
- (2) The aggregate pledges and encumbrances of a mutual holding company's assets shall not affect more than forty-nine percent (49%) of the company's stock in any subsidiary insurance holding company or subsidiary insurance company that resulted from a reorganization or merger.
 - (3) At least fifty percent (50%) of the generally accepted accounting practices net worth of a mutual insurance holding company shall be invested in insurance company subsidiaries.

➔Section 1492. KRS 304.37-545 is amended to read as follows:

No policyholder who is a member of a mutual insurance holding company shall receive because of a membership interest any payment of a policy credit, dividend, or other distribution unless the payment has been approved by the **commissioner**~~executive director~~. The **commissioner**~~executive director~~, after a public hearing, if satisfied the proposed payment is fair and equitable to policyholders who are members, may approve the proposed payment and may require as a condition of approval modification of the proposed payment as the **commissioner**~~executive director~~ finds necessary for the protection of policyholders.

➔Section 1493. KRS 304.37-550 is amended to read as follows:

The reorganizing or merging insurer shall file with the **commissioner**~~executive director~~ an application requesting approval of the proposed reorganization or merger. The application shall include the following:

- (1) A Form A filing as described in KRS 304.37-120 and the administrative regulations promulgated thereunder;
- (2) A plan of reorganization as described in KRS 304.37-555;
- (3) A plan to obtain the approval by a majority of two-thirds (2/3) of the participating policyholders in accordance with the applicant's articles of incorporation and bylaws. Policyholders must be provided with sufficient information to evaluate the merits of the proposed transaction, including a description of the purpose of the transaction, risks associated with the transaction, and alternatives considered. Policyholders shall be given not less than twenty (20) days' notice of any vote on approval of the reorganization;
- (4) A copy of the mutual insurance holding company's proposed articles of incorporation and bylaws specifying all membership rights;
- (5) The names, addresses, and occupational information of all corporate officers and members of the initial mutual insurance holding company board of directors;
- (6) Information sufficient to demonstrate that the financial condition of the applicant will not be diminished upon reorganization;
- (7) A copy of the proposed articles of incorporation and bylaws for any insurance company subsidiary or intermediate holding company subsidiary;
- (8) An index demonstrating where in the application information supplied in compliance with each of the foregoing provisions is found; and
- (9) Any other information requested by the **commissioner**~~executive director~~ at any time during the proceedings.

➔Section 1494. KRS 304.37-555 is amended to read as follows:

The reorganizing or merging insurer shall file a plan of reorganization, approved by the affirmative vote of a majority of its board of directors, for review and approval by the **commissioner**~~executive director~~. The plan shall provide the following:

- (1) Establishing a mutual insurance holding company with at least one (1) stock insurance company subsidiary or one (1) wholly owned intermediate holding company with a stock insurance subsidiary, the shares of which shall be held exclusively by the wholly owned intermediate holding company;
- (2) Protecting the immediate and long term interests of existing policyholders;

- (3) Ensuring immediate membership in the mutual insurance holding company of all existing policyholders of the reorganizing domestic mutual insurance company;
- (4) Providing for membership interest of future policyholders;
- (5) Describing the number of members of the board of directors of the mutual insurance holding company required to be policyholders;
- (6) Demonstrating that, in the event of proceedings under Subtitle 33 of KRS Chapter 304 involving a stock insurance company subsidiary of the mutual insurance holding company which resulted from the reorganization of a domestic mutual insurance company, the assets of the mutual insurance holding company will be available to satisfy the policyholder obligations of the stock insurance company;
- (7) Describing how any accumulation or prospective accumulation of earnings by the mutual insurance holding company, which is or would be in excess of that determined by the board of directors of the mutual insurance holding company to be necessary, shall inure to the exclusive benefit of the policyholders of its insurance company subsidiaries who are members;
- (8) Describing the nature and content of the annual report and financial statement to be sent to each member;
- (9) Describing the applicant's plan for a stock offering in accordance with the provisions of KRS 304.37-570; and
- (10) Describing other relevant matters the applicant deems appropriate.

➔Section 1495. KRS 304.37-560 is amended to read as follows:

The application and plan of reorganization submitted to the **commissioner**~~{executive director}~~ shall demonstrate that:

- (1) Policyholder interests are properly preserved and protected;
- (2) The plan is fair and equitable to policyholders; and
- (3) The financial condition of the applicant will not be diminished.

➔Section 1496. KRS 304.37-565 is amended to read as follows:

- (1) A public hearing required by KRS 304.37-505 and 304.37-510 shall be conducted as directed in Subtitle 2 of this chapter and KRS Chapter 13B.
- (2) In addition to any notice required by this chapter and KRS Chapter 13B, the **department**~~{office}~~ shall supplement any notice by newspaper publication and broadcast announcements, in accordance with KRS Chapter 424.
- (3) The **commissioner**~~{executive director}~~ may retain at the applicant's expense any attorneys, actuaries, accountants, investment bankers, or other experts not otherwise a part of the **commissioner's**~~{executive director's}~~ staff that may be necessary to assist the **commissioner**~~{executive director}~~ in reviewing the proposed application and plan of reorganization or merger.
- (4) Upon receipt of the application and plan of reorganization or merger, the **commissioner**~~{executive director}~~ shall submit any application to the Attorney General for examination. The Attorney General shall have access to the **commissioner's**~~{executive director's}~~ staff and all consultants retained by the **commissioner**~~{executive director}~~ for review of the application. The Attorney General may examine the application and plan or reorganization or merger for compliance with the standards in KRS 304.37-555. The Attorney General may submit written findings and a recommendation of approval, disapproval, or conditional approval of the application and plan or reorganization or merger to the **commissioner**~~{executive director}~~. Written findings and recommendations shall be delivered to the **commissioner**~~{executive director}~~ no later than five (5) days prior to the public hearing required by KRS 304.37-505 and 304.37-510 and shall be entered into the record at the hearing.
- (5) The **commissioner**~~{executive director}~~ shall at all times retain jurisdiction over the mutual insurance holding company and its intermediate holding company subsidiaries with stock insurance company subsidiaries.
- (6) Following the hearing required in KRS 304.37-505 and 304.37-510, the **commissioner**~~{executive director}~~ shall, by order, approve, conditionally approve, or deny an application. The **commissioner**~~{executive director}~~ may require, as a condition of approval of the proposed reorganization, modification of the proposed plan or reorganization as the **commissioner**~~{executive director}~~ finds necessary. The applicant shall accept required

modifications by filing appropriate amendments to the proposed plan of reorganization with the **commissioner**~~{executive director}~~ within thirty (30) days of the date of the order of the **commissioner**~~{executive director}~~ requiring modifications. If the applicant does not accept the required modifications by failing to file the required amendments to the proposed plan of reorganization within thirty (30) days, the proposed reorganization shall be deemed denied.

- (7) An approval or conditional approval of a plan of reorganization shall expire if the reorganization is not completed within one hundred eighty (180) days unless the time period is extended by the **commissioner**~~{executive director}~~ upon a showing of good cause.
- (8) The **commissioner**~~{executive director}~~ may revoke approval or conditional approval of an applicant's plan of reorganization if the **commissioner**~~{executive director}~~ finds the applicant has failed to comply with the plan of reorganization. The **commissioner**~~{executive director}~~ may compel completion of a plan of reorganization unless the plan is abandoned in its entirety. The **commissioner**~~{executive director}~~ shall retain jurisdiction over the applicant until a plan of reorganization has been completed.
- (9) Upon completion of all elements of a plan of reorganization and any conditions placed on the reorganization by the **commissioner**~~{executive director}~~, the applicant shall provide a notice of and documentation of completion to the **commissioner**~~{executive director}~~.
- (10) Within twelve (12) months after the **commissioner**~~{executive director}~~ receives the notice specified in subsection (9) of this section, the **commissioner**~~{executive director}~~ shall examine the affairs, transactions, accounts, records, and assets of the mutual holding company, reorganized insurer, and its affiliated persons for compliance with the plan of reorganization and for protection of policyholder interests.

➔Section 1497. KRS 304.37-570 is amended to read as follows:

- (1) No stock offering by a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance holding company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company shall occur without the prior approval of the **commissioner**~~{executive director}~~. The **commissioner's**~~{executive director's}~~ approval may be obtained only through an application and hearing process.
- (2) Every application for approval of a stock offering shall contain the following information:
 - (a) A description of the stock intended to be offered by the applicant, including a description of all shareholder rights;
 - (b) The total number of shares authorized to be issued, the estimated number of shares the applicant requests permission to offer, and the intended date or range of dates for the offering;
 - (c) A justification for a uniform planned offering price or a justification of the method by which the offering price will be determined;
 - (d) The name or names of any underwriter, syndicate member, or placement agent involved and, if known, the name or names of each entity, person, or group of persons to whom the stock offering is to be made who will control five percent (5%) or more of the total outstanding class of shares, and the manner in which the offer is to be tendered. If any entity or person is a corporation or business organization, the name of each member of its board of directors or equivalent management team shall be provided along with the name of each member of the board of directors of the offeror. Copies of any filings with the Securities and Exchange Commission disclosing intended acquisitions of the stock shall be included in the application;
 - (e) A description of stock subscription rights to be afforded members of the mutual insurance holding company in conjunction with the stock offering;
 - (f) A detailed description of all expenses to be incurred in conjunction with the stock offering;
 - (g) An explanation of how funds raised by the stock offering are to be used; and
 - (h) Any other information requested by the **commissioner**~~{executive director}~~.
- (3) No application regarding a planned stock offering shall be approved unless the plan contains provisions:

- (a) Requiring a majority of the members of the board of directors of the mutual insurance holding company to be persons who are not interested persons of the mutual insurance holding company or of any subsidiary or affiliated person of the company. The ***commissioner***~~*executive director*~~ may waive this requirement upon a showing of good cause based on clear and convincing evidence;
 - (b) For the mutual insurance holding company to adopt articles of incorporation prohibiting any waiver of dividends from stock subsidiaries except under conditions specified in its articles of incorporation and after approval of the waiver by the board of directors of the mutual insurance holding company and the ***commissioner***~~*executive director*~~;
 - (c) Requiring that the board of directors of any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary of a mutual holding company, or the insurance company subsidiary of an intermediate holding company shall include at least three (3) directors who are not interested persons of the mutual insurance holding company;
 - (d) Establishing, within the board of directors of the corporation offering stock, a pricing committee consisting exclusively of directors who are not interested persons who shall have sole responsibility for evaluating and approving the price of any stock offering;
 - (e) Establishing, within the board of directors of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, an executive compensation committee consisting exclusively of directors who are not interested persons, who shall have sole responsibility for evaluating and approving compensation for directors, officers, and employees;
 - (f) Establishing that for any committee of the mutual insurance holding company, any insurance company subsidiary of a mutual insurance holding company, any intermediate holding company subsidiary, and any insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company, at least two-thirds (2/3) of any committee having responsibility for making decisions affecting capital structure or mergers and acquisitions shall not be interested persons;
 - (g) Prohibiting officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates from the purchase or beneficial ownership of any shares of the stock offering, or issuance of stock options to or for the benefit of the officers, directors, and insiders for a period of at least six (6) months following the first date the offering was publicly and regularly traded. This paragraph shall not be construed to limit the rights of officers, directors, and insiders from exercising subscription rights generally accorded members of the mutual insurance holding company, except that, in accordance with any subscription rights, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or own, in the aggregate, more than one percent (1%) of the stock offering for a period of at least six (6) months following the first date the offering was publicly and regularly traded;
 - (h) For a period of two (2) years after the six (6) month period referred to in paragraph (g) of this section, the officers, directors, and insiders of the mutual insurance holding company and its subsidiaries and affiliates may not purchase or beneficially own, in the aggregate, more than five percent (5%) of the stock of the insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company; and
 - (i) Requiring that all members of the mutual insurance holding company are granted stock subscription rights in any initial stock offering. This requirement may be waived by the ***commissioner***~~*executive director*~~ upon a showing of good cause at public hearing. For purposes of this paragraph, good cause may only be found where the members of the mutual insurance holding company are given rights to participate in the appreciation of the stock offered that are comparable to stock subscription rights.
- (4) An insurance company subsidiary of a mutual insurance holding company, an intermediate holding company subsidiary of a mutual insurance company, or an insurance company subsidiary of an intermediate holding company subsidiary to a mutual insurance holding company may issue more than one (1) class of stock if:
- (a) At all times a majority of the voting stock is held by the mutual insurance holding company or its subsidiary; and

- (b) No class of common stock possesses greater dividend or other rights than the class held by the mutual insurance holding company or its subsidiary.
- (5) The **commissioner**~~[executive director]~~ shall hire, at the applicant's expense, attorneys, actuaries, accountants, investment bankers, and other experts as may reasonably be necessary to assist the **commissioner**~~[executive director]~~ in reviewing the application.
- (6) The **commissioner**~~[executive director]~~ shall, in the **commissioner's**~~[executive director's]~~ discretion, hold a public hearing in accordance with KRS Chapter 13B regarding any application for approval of a stock offering. Upon receipt of an application for approval of a stock offering which includes an initial offering of stock, the **commissioner**~~[executive director]~~ shall hold a public hearing at which all interested parties may appear and present evidence and argument regarding the applicant's planned offering. The **commissioner**~~[executive director]~~ shall provide the applicant adequate notice of the hearing so that the applicant can provide notice of the hearing to members of the mutual insurance holding company, in a manner approved by the **commissioner**~~[executive director]~~, not less than twenty (20) days prior to the hearing. Following the hearing, the **commissioner**~~[executive director]~~ may approve, conditionally approve, or deny the application. The **commissioner**~~[executive director]~~ may approve the plan if:
 - (a) The offering complies with these rules and other provisions of law;
 - (b) The method for establishing the price of a stock offering is consistent with generally accepted market or industry practices for establishing stock offering prices in similar transactions; and
 - (c) The plan and offering will not unfairly impact the interests of members of the mutual insurance holding company.
- (7) Nothing in this section shall be deemed to prohibit the filing of a registration statement with the Securities and Exchange Commissioner prior to or concurrently with the giving of notice to members.
 - (a) Notwithstanding subsections (1) to (6) of this section, a stock offering which is not an initial stock offering and which offers stock regularly traded on the New York Stock Exchange, the American Stock Exchange, or another exchange approved by the **commissioner**~~[executive director]~~, or designated on the national association of securities dealers automated quotations-national market system may be sold if a mutual insurance holding company, an insurance company subsidiary of a mutual insurance holding company, an intermediate holding company, or an insurance company subsidiary of an intermediate holding company intends to make a stock offering which would be governed by the provisions of KRS 304.37-500 to 304.37-580. The entity shall deliver to the **commissioner**~~[executive director]~~ not less than thirty (30) days prior to the offering a notice of the planned stock offering and information regarding the following:
 - 1. The total number of shares intended to be offered;
 - 2. The intended date of sale;
 - 3. Evidence that the stock is regularly traded on one (1) of the public exchanges noted in subsection (a) of this section; and
 - 4. A record of the trading pace and trading volume of the stock during the prior fifty-two (52) weeks.
 - (b) The **commissioner**~~[executive director]~~ shall be deemed to have approved the sale unless, within thirty (30) days following receipt of the notice, the **commissioner**~~[executive director]~~ issues an objection to the sale. If the **commissioner**~~[executive director]~~ issues an objection to the sale, the procedures set forth in subsection (2) of this section shall be followed to determine whether the **commissioner**~~[executive director]~~ approves the proposed sale;
 - (c) Approval of a stock offering obtained under either subsection (6) or (7) of this section shall expire ninety (90) days following the date of the approval or deemed approval, except as otherwise provided by the order of the **commissioner**~~[executive director]~~; and
 - (d) No prospectus, information, sales material, or sales presentation by the applicant, or by any representative, agent, or affiliate of the applicant shall contain a representation that the **commissioner's**~~[executive director's]~~ approval of a stock offering constitutes an endorsement of the price, price range, or any other information relating to the stock.

➔Section 1498. KRS 304.38-030 is amended to read as follows:

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

- (1) "**~~Commissioner~~**~~[Executive director]~~" means the **~~commissioner~~**~~[executive director]~~ of *the Department of Insurance*.
- (2) "Enrollee" means a person who has been enrolled in a health maintenance organization.
- (3) "Evidence of coverage" means any certificate, agreement, contract, or other document issued to an enrollee stating the health care services to which the enrollee is entitled. All coverages described in an evidence of coverage issued by a health maintenance organization are deemed to be "health benefit plans" to the extent defined in KRS 304.17A-005 unless exempted by the **~~commissioner~~**~~[executive director]~~.
- (4) "Health care services" means any services included in the furnishing to any individual of medical, optometric, or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services and goods for the purpose of preventing, alleviating, curing, or healing human illness, physical disability, or injury.
- (5) "Health maintenance organization" means any person who undertakes to provide, directly or through arrangements with others, health care services to individuals enrolled with such an organization on a per capita or a predetermined, fixed prepayment basis. A health maintenance organization is authorized to provide all health care services.
- (6) "Person" includes but is not limited to any individual, partnership, association, trust, or corporation.
- (7) "Provider" means a person or group of persons licensed to practice medicine, osteopathy, dentistry, podiatry, optometry, or another health profession in a state or licensed to act as a hospital or another health care facility.

➔Section 1499. KRS 304.38-035 is amended to read as follows:

No person shall in this state be, act as, or hold himself *or herself* out as a health maintenance organization unless he *or she* holds a certificate of authority as a health maintenance organization from the **~~commissioner~~**~~[executive director]~~.

➔Section 1500. KRS 304.38-040 is amended to read as follows:

- (1) A corporation, limited liability company, or partnership may apply to the **~~commissioner~~**~~[executive director]~~ for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the **~~commissioner~~**~~[executive director]~~ upon a form prescribed by *the commissioner*~~[him]~~ and shall set forth or be accompanied by:
 - (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B or evidence that no certificate of need is required by KRS Chapter 216B;
 - (b) Articles of incorporation, articles of organization, partnership agreement, or other applicable documents in quadruplicate, acknowledged and verified by the applicant;
 - (c) The initial bylaws, operating agreement, or other equivalent documents of the organization in triplicate, or any other similar documents;
 - (d) A statement which shall include describing the health maintenance organization:
 1. The health services to be offered;
 2. The financial risks to be assumed;
 3. The initial geographic area to be served;
 4. Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon;

5. The sources of working capital and funding;
 6. A description of the persons to be covered by the health maintenance organization;
 7. Any proposed reinsurance arrangements;
 8. Any proposed management, administrative, or cost-sharing arrangements; and
 9. A description of the health maintenance organization's proposed method of marketing;
- (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
 - (f) Any proposed evidence of coverage to be issued by the applicant to individuals, enrollees, groups, or other contract holders; and
- (g) Evidence of financial responsibility as provided in KRS 304.38-060.

➔Section 1501. KRS 304.38-050 is amended to read as follows:

- (1) No health maintenance organization shall deliver or issue for delivery in this state any contract describing health benefits available, or any endorsement, rider, or application which becomes a part thereof, or any amendments thereto or modifications thereof, or the schedule of fees or other periodic charges to be paid by enrollees, until a copy of the form has been filed with and approved by the **commissioner**~~executive director~~. Each form shall contain a complete and clear statement of:
 - (a) The health care services to which the enrollee is entitled;
 - (b) Any limitations on the services, kind of services, or benefits to be provided, including any deductible or copayment feature;
 - (c) Where and in what manner information is available as to how services may be obtained; and
 - (d) Any other provisions pertaining to the delivery of health care services.

Any schedule of fees or other periodic charges to be paid by enrollees submitted to and filed with the **commissioner**~~executive director~~ along with adequate supporting information to show that the charges or fees are not excessive, inadequate, or unfairly discriminatory.

- (2) At the expiration of sixty (60) days, the form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by order of the **commissioner**~~executive director~~, or a hearing has been scheduled by order of the **commissioner**~~executive director~~. In the event that a hearing is held, the sixty (60) day waiting period shall begin anew after the close of the hearing. Approval of the form by the **commissioner**~~executive director~~ shall constitute a waiver of any unexpired portion of the waiting period. The **commissioner**~~executive director~~ may extend by not more than an additional thirty (30) day period within which he *or she* may affirmatively approve or disapprove the form by giving notice to the insurer of the extension before expiration of the initial sixty (60) day period. At the expiration of the period as so extended, and in the absence of the prior affirmative approval or disapproval, the form shall be deemed approved. The **commissioner**~~executive director~~ may at any time withdraw the approval.
- (3) This section shall not apply to rate filings made under Subtitle 17A of this chapter.

➔Section 1502. KRS 304.38-060 is amended to read as follows:

Upon receipt of an application for issuance of a certificate of authority, the **commissioner**~~executive director~~ shall issue or deny the same. Issuance of a certificate of authority shall be granted only if the **commissioner**~~executive director~~ finds that the applicant has complied with KRS 304.38-040 and has paid the application fee, and the **commissioner**~~executive director~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the application are competent, trustworthy, and possess good reputations;
- (2) The health maintenance organization is financially responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the **commissioner**~~executive director~~ may consider:
 - (a) The financial soundness of the health maintenance organization's arrangements for health care services and the schedule of charges used in connection therewith;

- (b) The adequacy of working capital;
- (c) Any agreement with an insurer, a government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the health maintenance organization or its inability to meet its financial obligations;
- (d) Examples of any agreements with providers for the provision of health care services by provider type; and
- (e) Compliance with KRS 304.38-070 if the applicant is applying for a health maintenance organization certificate of authority as a guarantee that the obligations will be duly performed.

➔Section 1503. KRS 304.38-070 is amended to read as follows:

- (1) This subsection applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and
 - (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the **commissioner**~~[executive director]~~. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the **commissioner**~~[executive director]~~;
 - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
- (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for

Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:

- (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
- (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 - 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 - 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
 - 3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and
 - 4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
- (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 1504. KRS 304.38-073 is amended to read as follows:

Each health maintenance organization shall furnish to the ~~commissioner~~~~[executive director]~~ a deposit of cash or securities approved by the ~~commissioner~~~~[executive director]~~ in an amount not less than five hundred thousand dollars (\$500,000) so that the obligations to the enrollees shall be performed. A health maintenance organization may be required to furnish an additional deposit if the ~~commissioner~~~~[executive director]~~ determines, after a hearing, that an additional deposit is necessary for the protection of the health maintenance organization's enrollees.

➔Section 1505. KRS 304.38-075 is amended to read as follows:

- (1) Any health maintenance organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The health maintenance organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the ~~department~~~~[office]~~ for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.
- (2) If a health maintenance organization transfers risk to a provider:
 - (a) Not in compliance with the standards listed in its approved plan; or
 - (b) Prior to filing or receiving approval of its plan;

the ~~commissioner~~~~[executive director]~~ may require the health maintenance organization to retain additional reserves to cover the risk transferred.

➔Section 1506. KRS 304.38-090 is amended to read as follows:

Organizations subject to the provisions of this subtitle shall make and file with the ***commissioner***~~[executive director]~~ and the Kentucky Certificate of Need and Licensure Board annually before March 1 of each year, a statement under oath upon a form to be prescribed by the ***commissioner***~~[executive director]~~ covering the preceding year, and shall include (a) a financial statement of the organization, including a balance sheet, receipts, and disbursements for the preceding year; (b) the number of persons enrolled during the year, the number of enrollees as of the end of the year, the number of enrollments terminated during the year, and any other information relating to the operation of the health maintenance organization as may be prescribed by the ***commissioner***~~[executive director]~~ in order to enable the ***commissioner***~~[executive director]~~ to evaluate the performance of the health maintenance organization.

➔Section 1507. KRS 304.38-095 is amended to read as follows:

In his *or her* discretion, the ***commissioner***~~[executive director]~~ may require organizations subject to the provisions of this subtitle to comply with KRS 304.2-205.

➔Section 1508. KRS 304.38-100 is amended to read as follows:

The funds of a health maintenance organization shall be invested only in securities or other investments permitted by Subtitle 7 of Chapter 304 of the Kentucky Revised Statutes, or such other securities or investments as the ***commissioner***~~[executive director]~~ may permit.

➔Section 1509. KRS 304.38-130 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may suspend or revoke any certificate of authority issued to a health maintenance organization under this subtitle if the ***commissioner***~~[executive director]~~ finds that any of the conditions exist for which the ***commissioner***~~[executive director]~~ could suspend or revoke a certificate of authority as provided in Subtitles 2 and 3 of this chapter or if the ***commissioner***~~[executive director]~~ finds that any of the following conditions exist:
 - (a) The health maintenance organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under KRS 304.38-040, unless amendments to such submissions have been filed with and approved by the ***commissioner***~~[executive director]~~;
 - (b) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which do not comply with the requirements of KRS 304.38-050 or Subtitle 17A of this chapter;
 - (c) The health maintenance organization does not provide or arrange for health care services as approved by the ***commissioner***~~[executive director]~~ in KRS 304.38-050(1)(a);
 - (d) The certificate of need and licensure board certifies to the ***commissioner***~~[executive director]~~ that the health maintenance organization fails to meet the requirements of the board or that the health maintenance organization is unable to fulfill its obligations to furnish health care services;
 - (e) The health maintenance organization is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
 - (f) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (g) The continued operation of the health maintenance organization would be hazardous to its enrollees; or
 - (h) The health maintenance organization has otherwise failed to substantially comply with this subtitle.
- (2) If the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of the suspension, enroll any additional enrollees except newborn children or other newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.
- (3) If the certificate of authority of a health maintenance organization is revoked, the organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The ***commissioner***~~[executive director]~~ may, by written order, permit the further operation of the organization as the ***commissioner***~~[executive director]~~ may

find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage. If the ***commissioner***~~[executive director]~~ permits such further operation the health maintenance organization will continue to collect the periodic prepayments required of enrollees.

➔Section 1510. KRS 304.38-140 is amended to read as follows:

Any rehabilitation or liquidation of a health maintenance organization shall be conducted under the supervision of the ***commissioner***~~[executive director]~~ pursuant to and in accordance with Subtitle 33 of Chapter 304 of the Kentucky Revised Statutes.

➔Section 1511. KRS 304.38-150 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may promulgate reasonable rules and regulations not inconsistent with the provisions of this subtitle that he *or she* deems necessary for the proper administration of this subtitle.

➔Section 1512. KRS 304.38-180 is amended to read as follows:

- (1) No health maintenance organization, or representative thereof, may cause or knowingly permit the use of advertising or solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive.
- (2) No health maintenance organization shall cancel an enrollee's coverage, except for the failure to pay the charge for such coverage, or for such other reasons as may be promulgated in regulations issued by the ***commissioner***~~[executive director]~~.
- (3) Subtitle 12 of this chapter shall be construed to apply to health maintenance organizations and evidences of coverage, except to the extent that the ***commissioner***~~[executive director]~~ determines that the nature of health maintenance organizations and evidence of coverage under such sections is clearly inappropriate.

➔Section 1513. KRS 304.38-185 is amended to read as follows:

In his *or her* discretion, the ***commissioner***~~[executive director]~~ may include health maintenance organizations or designated types of health maintenance organizations doing business pursuant to this subtitle in coordination of benefits guidelines prescribed pursuant to KRS 304.18-085.

➔Section 1514. KRS 304.38-200 is amended to read as follows:

Health maintenance organizations shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1 -- Scope -- General Definitions and Provisions;
- (2) Subtitle 2 -- ***Commissioner of the Department of Insurance***~~[Executive Director]~~;
- (3) Subtitle 3 -- Authorization of Insurers and General Requirements;
- (4) Subtitle 4 -- Fees and Taxes;
- (5) Subtitle 5 -- Kinds of Insurance -- Limits of Risk -- Reinsurance;
- (6) Subtitle 6 -- Assets and Liabilities;
- (7) Subtitle 7 -- Investments;
- (8) Subtitle 8 -- Administration of Deposits;
- (9) Subtitle 9 -- Agents, Consultants, Solicitors, and Adjusters;
- (10) Subtitle 12 -- Trade Practices and Frauds;
- (11) Subtitle 14 -- The Insurance Contract;
- (12) Subtitle 17 -- Health Insurance Contracts;
- (13) Subtitle 17A -- Health Benefit Plans;
- (14) Subtitle 17B -- Kentucky Access;
- (15) Subtitle 17C -- Limited Health Service Benefit Plans;

- (16) Subtitle 18 -- Group and Blanket Health Insurance;
- (17) Subtitle 24 -- Domestic Stock and Mutual Insurers;
- (18) Subtitle 25 -- Continuity of Management;
- (19) Subtitle 26 -- Insider Trading of Equity Securities;
- (20) Subtitle 33 -- Insurers Rehabilitation and Liquidation;
- (21) Subtitle 37 -- Insurance Holding Company Systems;
- (22) Subtitle 47 -- Insurance Fraud; and
- (23) Subtitle 99 -- Penalties.

➔Section 1515. KRS 304.38A-010 is amended to read as follows:

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

- (1) "Enrollee" means an individual who is enrolled in a limited health services benefit plan;
- (2) "Evidence of coverage" means any certificate, agreement, contract, or other document issued to an enrollee stating the limited health services to which the enrollee is entitled. All coverages described in an evidence of coverage issued by a limited health service organization are deemed to be "limited health services benefit plans" to the extent defined in KRS 304.17C-010 unless exempted by the **commissioner**~~executive director~~;
- (3) "Limited health service" means dental care services, vision care services, mental health services, substance abuse services, chiropractic services, pharmaceutical services, podiatric care services, and such other services as may be determined by the **commissioner**~~executive director~~ to be limited health services. Limited health service shall not include hospital, medical, surgical, or emergency services except as these services are provided incidental to the limited health services set forth in this subsection;
- (4) "Limited health service contract" means any contract entered into by a limited health service organization with a policyholder to provide limited health services;
- (5) "Limited health service organization" means a corporation, partnership, limited liability company, or other entity that undertakes to provide or arrange limited health service or services to enrollees. A limited health service organization does not include a provider or an entity when providing or arranging for the provision of limited health services under a contract with a limited health service organization, health maintenance organization, or a health insurer; and
- (6) "Provider" means the same as defined in KRS 304.17A-005(23).

➔Section 1516. KRS 304.38A-020 is amended to read as follows:

No person may operate a limited health service organization in this state without obtaining and maintaining a certificate of authority from the **commissioner**~~executive director~~ pursuant to this section and KRS 304.38A-030, 304.38A-040, 304.38A-050, 304.38A-060, 304.38A-070, 304.38A-090, and 304.38A-110, except an insurer authorized to transact health insurance in this state.

➔Section 1517. KRS 304.38A-030 is amended to read as follows:

An application for a certificate of authority to operate a limited health service organization shall be filed with the **commissioner**~~executive director~~ on a form prescribed by the **commissioner**~~executive director~~. The application shall be verified by an officer or authorized representative of the applicant and shall set forth, or be accompanied by, the following:

- (1) A copy of the applicant's basic organizational document, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents and all amendments to these documents;
- (2) A copy of all bylaws, rules, and regulations, or similar documents, if any, regulating the conduct of the applicant's internal affairs;
- (3) A list of the names, addresses, official positions, and biographical information of the individuals who are responsible for conducting the applicant's affairs, including but not limited to all members of the board of

directors, board of trustees, executive committee, or other governing board or committee, the principal officers, and any person or entity owning or having the right to acquire ten percent (10%) or more of the voting securities of the applicant, and the partners or members in the case of a partnership or association. Such listing shall fully disclose the extent and nature of any contracts or arrangements between any individual who is responsible for conducting the applicant's affairs and the limited health service organization, including any possible conflicts of interest;

- (4) A complete biographical statement, on forms prescribed by the **department**~~[office]~~, with respect to each individual identified under this section;
- (5) A statement generally describing the applicant, its facilities, personnel, and the limited health services to be offered;
- (6) A copy of the form of any contract made, or to be made between the applicant and any person listed in subsection (3) of this section;
- (7) A copy of the form of any contract made or to be made between the applicant and any person, corporation, partnership, or other entity for the performance on the applicant's behalf of any functions including but not limited to marketing, administration, enrollment, investment management and provider agreements, subcontract agreements, and risk-sharing arrangements for the provision of limited health services to enrollees;
- (8) A copy of the applicant's most recent financial statements audited by independent certified public accountants. If the financial affairs of the applicant's parent company are audited by independent certified public accountants but those of the applicant are not, then a copy of the most recent audited financial statement of the applicant's parent company, certified by an independent certified public accountant, attached to which shall be consolidated financial statements of the applicant, shall satisfy this requirement unless the **commissioner**~~[executive director]~~ determines that additional or more recent financial information is required for the proper administration of this subtitle;
- (9) A copy of the applicant's financial plan, including a three (3) year projection of anticipated operating results with all material assumptions, a statement of the sources of working capital, and any other sources of funding and provisions for contingencies;
- (10) A description of the proposed method of marketing;
- (11) A statement acknowledging that all lawful process in any legal action or proceeding against the applicant on a cause of action arising in this state is valid if served in accordance with KRS 304.3-230;
- (12) A description of how the applicant will comply with KRS 304.38A-040 and 304.38A-080;
- (13) The fee for issuance of a certificate of authority provided in Subtitle 4 of this chapter; and
- (14) Such other information as the **commissioner**~~[executive director]~~ may reasonably require to make the determinations required by this subtitle.

➔Section 1518. KRS 304.38A-040 is amended to read as follows:

- (1) Following receipt of an application filed pursuant to KRS 304.38A-030, the **commissioner**~~[executive director]~~ shall review the application and notify the applicant of any deficiencies. The **commissioner**~~[executive director]~~ shall issue a certificate of authority to an applicant if the following conditions are met:
 - (a) The applicant has verified to the **commissioner**~~[executive director]~~ that it has an initial minimum worth of at least two hundred fifty thousand dollars (\$250,000);
 - (b) The requirements of KRS 304.38A-030 have been fulfilled;
 - (c) The individuals responsible for conducting the applicant's affairs are competent, trustworthy, and possess good reputations, and have had appropriate experience, training, or education;
 - (d) The applicant is financially responsible and may reasonably be expected to meet its obligations to enrollees and to prospective enrollees. In making his *or her* determination, the **commissioner**~~[executive director]~~ may consider:
 1. The financial soundness;
 2. The adequacy of surplus, working capital, other sources of funding, and provisions for contingencies;

3. Any agreement for paying the cost of the limited health services or for alternative coverage in the event of insolvency of the limited health service organization; and
4. The manner in which the requirements of KRS 304.38A-030 have been fulfilled; and
- (e) Any deficiencies identified by the **commissioner**~~[executive director]~~ have been corrected.
- (2) If the certificate of authority is denied, the **commissioner**~~[executive director]~~ shall notify the applicant and shall specify the reasons for denial in the notice. The limited health service organization shall have sixty (60) days from the date of receipt of the notice to request a hearing before the **commissioner**~~[executive director]~~ pursuant to KRS 304.2-310.
- (3) Each certificate of authority issued to a limited health service organization shall designate the type of services the limited health service organization is authorized to provide.

➔Section 1519. KRS 304.38A-060 is amended to read as follows:

- (1) A limited health service organization may add one (1) or more limited health services by:
 - (a) Filing the relevant information required by KRS 304.38A-030;
 - (b) Demonstrating compliance with KRS 304.38A-030 and 304.38A-080; and
 - (c) Obtaining approval from the **commissioner**~~[executive director]~~ prior to offering the additional limited health service.
- (2) If the filings are disapproved, the **commissioner**~~[executive director]~~ shall notify the limited health service organization and shall specify the reasons for disapproval in the notice. The limited health service organization shall have sixty (60) days from the date of receipt of the notice to request a hearing before the **commissioner**~~[executive director]~~ pursuant to KRS 304.2-310.

➔Section 1520. KRS 304.38A-070 is amended to read as follows:

A limited health service organization shall be subject to the provisions of this subtitle, and to the following provisions of this chapter, to the extent applicable and not in conflict with the expressed provisions of this subtitle:

- (1) Subtitle 1--Scope--General Definitions and Provisions;
- (2) Subtitle 2--Insurance **Commissioner**~~[Executive Director]~~;
- (3) Subtitle 3--Authorization of Insurers and General Requirements;
- (4) Subtitle 4--Fees and Taxes;
- (5) Subtitle 5--Kinds of Insurance--Limits of Risk--Reinsurance;
- (6) Subtitle 6--Assets and Liabilities;
- (7) Subtitle 7--Investments;
- (8) Subtitle 8--Administration of Deposits;
- (9) Subtitle 9--Agents, Consultants, Solicitors, and Adjusters;
- (10) Subtitle 12--Trade Practices and Frauds;
- (11) Subtitle 14--The Insurance Contract;
- (12) Subtitle 17--Health Insurance Contracts;
- (13) Subtitle 17C--Limited Health Services Benefit Plans;
- (14) Subtitle 18--Group and Blanket Health Insurance;
- (15) Subtitle 24--Domestic Stock and Mutual Insurers;
- (16) Subtitle 25--Continuity of Management;
- (17) Subtitle 26--Insider Trading of Equity Securities;
- (18) Subtitle 33--Insurers Rehabilitation and Liquidation;

- (19) Subtitle 37--Insurance Holding Company Systems;
- (20) Subtitle 47--Insurance Fraud; and
- (21) Subtitle 99--Penalties.

➔Section 1521. KRS 304.38A-080 is amended to read as follows:

- (1) Each limited health service organization shall at all times have and maintain a net worth of not less than one hundred twenty-five thousand dollars (\$125,000).
- (2) (a) Each limited health service organization shall deposit with the **commissioner**~~[executive director]~~ or with any organization or trustee acceptable to the **commissioner**~~[executive director]~~ through which a custodial or controlled account is utilized, cash, securities, or any combination of these or other measures that is acceptable to the **commissioner**~~[executive director]~~ in an amount equal to fifty thousand dollars (\$50,000).
- (b) The deposit shall be an admitted asset.
- (3) A limited health service organization shall at all times comply with the risk-based capital requirements for health organizations in administrative regulations promulgated by the **commissioner**~~[executive director]~~ for health maintenance organizations and other health organizations.

➔Section 1522. KRS 304.38A-090 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ may suspend or revoke the certificate of authority issued to a limited health service organization pursuant to this subtitle upon determining that any of the following conditions exist:
 - (a) The limited health service organization is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted pursuant to KRS 304.38A-030, unless amendments to the submissions have been filed with and approved by the **commissioner**~~[executive director]~~;
 - (b) The limited health service organization issues an evidence of coverage or schedule of charges for limited health services which does not comply with the requirements of Subtitle 17C of this chapter;
 - (c) The limited health service organization is unable to fulfill its obligations to furnish limited health services;
 - (d) The limited health service organization is not financially responsible and may reasonably be expected to be unable to meet its obligations to enrollees or prospective enrollees;
 - (e) The net worth of the limited health service organization is less than that required by KRS 304.38A-080 or the limited health service organization has failed to correct any deficiency in its net worth as required by the **commissioner**~~[executive director]~~;
 - (f) The continued operation of the limited health service organization would be hazardous to its enrollees; or
 - (g) The limited health service organization has otherwise failed to comply with this subtitle.
- (2) If the **commissioner**~~[executive director]~~ has cause to believe that grounds for the suspension or revocation of a certificate of authority exist, he or she shall notify the limited health service organization in writing specifically stating the grounds for suspension or revocation and fixing a time not more than sixty (60) days thereafter for a hearing on the matter in accordance with KRS Chapter 13B.
- (3) When the certificate of authority of a limited health service organization is revoked, the organization shall proceed immediately following the effective date of the order of revocation to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation whatsoever. The **commissioner**~~[executive director]~~ may, by written order, permit such further operation of the organization as he *or she* may find to be in the best interest of enrollees, to the end that enrollees will be afforded the greatest practical opportunity to obtain continuing limited health services.
- (4) A limited health service organization shall be subject to the provisions of KRS 304.2-210 to 304.2-300 and to the provisions of Subtitle 2 of this chapter for determining financial condition, market conduct, and business practices.

➔Section 1523. KRS 304.38A-100 is amended to read as follows:

- (1) Any limited health service organization that contracts with a provider or provider organization for the transfer of risk to the provider shall take reasonable steps to ensure the transferee is able to accept and manage the risk to be transferred. The limited health service organization shall submit a plan for evaluating a provider's or provider organization's ability to accept and manage risk to the ~~department[office]~~ for approval at least forty-five (45) days prior to the proposed date of the transfer of any risk.
- (2) If a limited health service organization transfers risk to a provider:
 - (a) Not in compliance with the standards listed in its approved plan; or
 - (b) Prior to filing or receiving approval of its plan,
 the ~~commissioner[executive director]~~ may require the limited health service organization to retain additional reserves to cover the risk transferred.

➔Section 1524. KRS 304.38A-110 is amended to read as follows:

- (1) A person issued a single service organization certificate of authority in accordance with KRS 304.38-065 and holding the certificate of authority on July 15, 2002, shall be converted to a limited health service organization as defined in KRS 304.38A-010. At the next renewal of the certificate of authority, the person shall be issued a certificate of authority to act as a limited health service organization if it meets the requirements for continuance of the certificate of authority. No certificate of authority to act as a single service organization shall be issued or renewed after July 15, 2002.
- (2) A single service organization holding a certificate of authority immediately prior to July 15, 2002, that is converted to a limited health service organization according to subsection (1) of this section shall continue to be required to meet the minimum net worth requirement of one hundred twenty-five thousand dollars (\$125,000) and shall comply with the risk-based capital requirements for health organizations in administrative regulations promulgated by the ~~commissioner[executive director]~~ for health maintenance organizations and other health organizations.

➔Section 1525. KRS 304.39-060 is amended to read as follows:

- (1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.
- (2)
 - (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.
 - (b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his *or her* acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).

- (c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.
- (3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his **or her** act or failure to act is intentional or done with ~~the~~~~his~~ realization that it creates a grave risk of harm.
- (4) Any person may refuse to consent to the limitations of his **or her** tort rights and liabilities as contained in this section. Such rejection must be in writing in a form to be prescribed by the ~~Department~~~~Office~~ of Insurance and must have been executed and filed with the ~~department~~~~office~~ at a time prior to any motor vehicle accident for which such rejection is to apply. Such rejection form together with a reasonable explanation thereof shall be furnished by the reparation obligor with each policy to each prospective insurance applicant. Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his **or her** legal guardian, conservator or ~~his~~ natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his **or her** tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.
- (5)
 - (a) Any rejection must be filed with the ~~Department~~~~Office~~ of Insurance and shall become effective on the date of its filing until revoked;
 - (b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and
 - (c) Any revocation shall be in writing and shall become effective upon the date of its filing with the ~~Department~~~~Office~~ of Insurance.
- (6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance ~~commissioner~~~~executive director~~ of his **or her** right to reject the limitations of ~~the~~~~his~~ tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.
- (7) Any rejection shall result in the full retention by the individual of his **or her** tort rights and ~~his~~ tort liabilities. Any person injured by a motor vehicle operator who has such rejection on file may claim ~~the~~~~his~~ full damages, including nonpecuniary damages, or, if such injured person has not rejected his **or her** own tort limitations, he **or she** may also claim basic reparation benefits from the appropriate security on the vehicle as established under KRS 304.39-050. If such provider of security is other than the one providing security for the operator who has rejected the limitations, such provider shall be subrogated to the rights of the injured person to the extent of reparation benefits paid against the owner and operator of the vehicle.
- (8) No person who has rejected the tort limitations under this section, except as provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic reparation benefits.
- (9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.

➔Section 1526. KRS 304.39-080 is amended to read as follows:

- (1) "Security covering the vehicle" is the insurance or other security so provided. The vehicle for which the security is so provided is the "secured vehicle."
- (2) "Basic reparation insurance" includes a contract, self-insurance, or other legal means under which the obligation to pay basic reparation benefits arises.
- (3) This Commonwealth, its political subdivisions, municipal corporations, and public agencies may continuously provide, pursuant to subsection (6) of this section, security for the payment of basic reparation benefits in

accordance with this subtitle for injury arising from maintenance or use of motor vehicles owned by those entities and operated with their permission.

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

➔Section 1527. KRS 304.39-100 is amended to read as follows:

- (1) An insurance contract which purports to provide coverage for basic reparation benefits or is sold with representation that it provides security covering a motor vehicle has the legal effect of including all coverages required by this subtitle.
- (2) An insurer authorized to transact or transacting business in this Commonwealth shall file with the **commissioner**~~executive director~~ of insurance as a condition of its continued transaction of business within this Commonwealth a form approved by the **commissioner**~~executive director~~ of insurance declaring that in any contract of liability insurance for injury, wherever issued, covering the ownership, maintenance or use of a motor vehicle other than motorcycles while the vehicle is in this Commonwealth shall be deemed to provide the basic reparation benefits coverage and minimum security for tort liabilities required by this subtitle, except a contract which provides coverage only for liability in excess of required minimum tort liability coverage. Any nonadmitted insurer may file such form.

➔Section 1528. KRS 304.39-117 is amended to read as follows:

- (1) Each insurer issuing an insurance contract which provides security covering a motor vehicle shall provide to the insured, in compliance with administrative regulations promulgated by the **department**~~office~~, written

proof in the form of an insurance card that the insured has in effect an insurance contract providing security in conformity with this subtitle.

- (2) The owner shall keep the card in his *or her* motor vehicle as prima facie evidence, except as provided in subsection (3) of this section, that the required security is currently in full force and effect, and shall show the card to a peace officer upon request.
- (3) On and after January 1, 2006, as to personal motor vehicles as defined in KRS 304.39-087, the card and the database created by KRS 304.39-087 shall be evidence to a peace officer who requests the card if the peace officer has access to the database through AVIS. If AVIS does not list the vehicle identification number of the personal motor vehicle as an insured vehicle, the peace officer may accept an insurance card as evidence that the required security is currently in full force and effect on the personal motor vehicle if the card was effective no more than forty-five (45) days before the date on which the peace officer requests the card.

➔Section 1529. KRS 304.39-150 is amended to read as follows:

Terms and conditions of contracts and certificates or other evidence of insurance coverage sold or issued in this Commonwealth providing motor vehicle tort liability, basic reparation, and added reparation insurance coverages, and of forms used by insurers offering these coverages, are subject to approval and regulation by the ~~commissioner~~~~executive director~~ of insurance. The ~~commissioner~~~~executive director~~ shall approve only terms and conditions consistent with the purposes of this subtitle and fair and equitable to all persons whose interests may be affected.

➔Section 1530. KRS 304.39-170 is amended to read as follows:

- (1) Reparation obligors providing basic reparation insurance in this Commonwealth may organize and maintain, subject to approval and regulation by the ~~commissioner~~~~executive director~~ of insurance, an assigned claims bureau and an assigned claims plan and adopt rules for their operation and for assessment of costs on a fair and equitable basis consistent with this subtitle. If they do not organize and continuously maintain an assigned claims bureau and an assigned claims plan in a manner considered by the ~~commissioner~~~~executive director~~ of insurance to be consistent with this subtitle, ~~the commissioner~~~~he~~ shall organize and maintain an assigned claims bureau and an assigned claims plan. Each reparation obligor providing basic reparation insurance in this Commonwealth shall participate in the assigned claims bureau and the assigned claims plan. Costs incurred shall be allocated fairly and equitably among the reparation obligors.
- (2) The assigned claims bureau shall promptly assign each claim and notify the claimant of the identity and address of the assignee of the claim. Claims shall be assigned so as to minimize inconvenience to claimants. The assignee thereafter has rights and obligations as if he *or she* had issued a policy of basic reparation insurance complying with this subtitle applicable to the injury or, in case of financial inability of a reparation obligor to perform its obligations, as if the assignee had written the applicable basic reparation insurance, undertaken the self-insurance, or lawfully obligated itself to pay reparation benefits.

➔Section 1531. KRS 304.39-290 is amended to read as follows:

- (1) There is created a nonprofit unincorporated legal entity to be known as the Kentucky Insurance Arbitration Association to provide a mechanism for the reimbursement, among reparation obligors of losses paid as basic or added reparation benefits, based solely on the law of torts without regard to subsections (1), (2), and (3) of KRS 304.39-060.
- (2) All basic reparation obligors shall be and remain members of the association as a condition of their authority to transact business in this Commonwealth.
- (3) The association shall perform its functions under a plan of operation established and approved under subsection (5) and shall exercise its powers through a board of directors established under subsection (4) hereof.
- (4) The board of directors of the association shall consist of not less than five (5) nor more than ten (10) persons serving terms as established in the plan of operation. They shall be selected by member obligors subject to the approval of the ~~commissioner~~~~executive director~~. If no members have been selected and approved prior to July 1, 1974, the ~~commissioner~~~~executive director~~ shall appoint the initial members of the board. In approving selections to the board, the ~~commissioner~~~~executive director~~ shall consider, among other things, whether all member obligors are fairly represented.

Each member of the board shall designate qualified experienced claimspersons from the member's company, who upon approval by the **commissioner**~~[executive director]~~, may serve as his **or her** alternates for the purpose of claims arbitration.

- (5) The association shall submit to the **commissioner**~~[executive director]~~ a plan of operation and any amendments thereto necessary, or suitable to assure the fair, reasonable, and equitable administration of the association. The plan shall become effective upon approval in writing by the **commissioner**~~[executive director]~~:
 - (a) All reparation obligors shall comply with the provisions of the plan of operation;
 - (b) The plan of operation shall:
 1. Establish procedures whereby all the powers and duties of the association will be performed;
 2. Establish minimum requirements for the initial submission of a case for reimbursement or arbitration;
 3. Establish minimum requirements beneath which reimbursements shall not be made in order that there be fair allocation of significant losses and the elimination of unnecessary costs in the reimbursement mechanism;
 4. Encourage voluntary reimbursement procedures between reparation obligors so that resort to arbitration shall be as infrequent as possible;
 5. Recognize that fair allocation of loss between commercial and noncommercial motor vehicles may require different minimum requirements than when the loss is between two (2) or more noncommercial vehicles;
 6. Establish regular places and times for meetings;
 7. Establish procedures for records to be maintained on all cases presented for arbitration and dispositions thereof;
 8. Establish procedures for compensation to reparation obligors for travel related expense and the fair value of the time devoted by their employees as a director or alternate in performance of duties for the association;
 9. Establish procedures for adequately and equitably financing the cost of the association among members; and
 10. Contain additional provisions necessary or proper for execution of the powers and duties of the association.
- (6) The association shall be subject to examination and regulation by the **commissioner**~~[executive director]~~:
 - (a) The board of directors shall submit to the **commissioner**~~[executive director]~~, not later than March 30 of each year, a report on its activities for the preceding calendar year;
 - (b) The board of directors shall promptly notify the **commissioner**~~[executive director]~~ whenever it appears that any member insurer has failed or refused to comply with an arbitration decision or has shown a protracted tendency to decline a significant number of meritorious claims presented to it prior to initiation of arbitration proceedings.
- (7) The association shall be exempt from payment of all fees, licenses, and taxes levied by this Commonwealth or any of its subdivisions except taxes on real or personal property.
- (8) There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, or the **commissioner**~~[executive director]~~ or his **or her** representative for any action taken by them in the performance of their powers and duties under this section.

➔Section 1532. KRS 304.39-300 is amended to read as follows:

The **commissioner**~~[executive director of insurance]~~ may adopt rules to provide effective administration of this subtitle which are consistent with the purposes of this subtitle and fair and equitable to all persons whose interests may be affected.

➔Section 1533. KRS 304.39-330 is amended to read as follows:

- (1) The rates for bodily injury liability in the amounts specified in KRS 304.39-110 combined with the rates for uninsured motorists coverage in equal amounts and for basic reparation benefits coverage shall be reduced by each insurer by not less than ten percent (10%) as of the effective date of this subtitle from the rates in effect for each such insurer immediately prior to such date for bodily injury liability in the amounts specified in KRS 304.39-110 combined with the rates for uninsured motorists coverage and the rates charged for one thousand dollars (\$1,000) per person medical expense coverage. Such reduced rates shall remain in effect for at least one (1) year, and thereafter shall not be increased without the approval of the **commissioner**~~executive director of insurance~~ after hearing. There shall be no exception to the requirements of this section unless the **commissioner**~~executive director~~ shall find that the use of such reduced rates required as to any insurer will result in rates which are inadequate under Chapter 304 of the Kentucky Revised Statutes.
- (2) The provisions of subsection (1) shall not apply to any policy covering a motor vehicle for which a person who would otherwise be a basic reparation insured has rejected the limitations upon his *or her* tort rights and liabilities in accordance with the provisions of KRS 304.39-060(4).

➔Section 1534. KRS 304.40-020 is amended to read as follows:

As used in KRS 304.40-030 to 304.40-140:

- (1) "Association" means the joint underwriting association established pursuant to the provisions of KRS 304.40-030 to 304.40-140.
- (2) "Medical malpractice insurance" means insurance as defined in KRS 304.5-070(1)(j).
- (3) "**Commissioner**~~Executive director~~" means the **commissioner**~~executive director~~ of *the Department of Insurance*.
- (4) "Net direct premiums" means gross direct premiums written on the lines of insurance set forth in KRS 304.40-030(1), as computed by the **commissioner**~~executive director of insurance~~, less return premiums for the unused or unabsorbed portions of premium deposits.

➔Section 1535. KRS 304.40-030 is amended to read as follows:

- (1) A temporary joint underwriting association is hereby created, consisting of all insurers authorized to write and engage in writing in this state on a direct basis the following lines of insurance, as reported in the companies' annual statements:
 - (a) Workers' compensation;
 - (b) Liability other than auto;
 - (c) Private passenger auto liability;
 - (d) Commercial auto liability;
 - (e) The liability portion of commercial multiperil policies; and
 - (f) Health insurance including prepaid hospital services contracts and group or blanket health insurance.

Every such insurer shall remain a member of the joint underwriting association as a condition of its authority to continue to transact such kinds of insurance in this state.

- (2) The implementation of the operation of the joint underwriting association shall become effective upon the order of the **commissioner**~~executive director~~. The **commissioner**~~executive director~~ shall not order the association to commence underwriting operations until he *or she*, after due hearing and investigation, has determined that medical malpractice insurance cannot be made available in the voluntary market for any of the categories defined in subsection (3)(a), (b), and (c) of this section. The joint underwriting association shall remain in effect for a period of no longer than two and one-half (2-1/2) years from the date that it commences underwriting operations.
- (3) For the purposes of the joint underwriting association, three (3) health care provider categories shall be established:
 - (a) Physicians and surgeons;
 - (b) Hospitals; and

- (c) All other licensed health care providers.

The **commissioner**~~{executive director}~~ shall hold separate hearings and conduct investigations on each of the three (3) categories of health care providers and determine for each category whether or not medical malpractice insurance is readily available in the voluntary market. If the **commissioner**~~{executive director}~~ finds that insurance is not readily available for any of the categories of health care providers, the joint underwriting association shall commence underwriting operations for that category.

KRS 304.40-030 to 304.40-140 shall not preclude any licensed health care provider from procuring medical malpractice insurance from the voluntary market.

If the **commissioner**~~{executive director}~~ determines at any time that medical malpractice insurance is readily available in the voluntary market for either (a) physicians and surgeons, (b) hospitals, or (c) all other licensed health care providers, the association shall thereby cease its underwriting operations for such category of medical malpractice insurance which **the commissioner**~~{he}~~ has determined is readily available in the voluntary market.

- (4) The association shall, pursuant to the provisions of KRS 304.40-030 to 304.40-140 and the plan of operation with respect to medical malpractice insurance, have the power on behalf of its members:
- (a) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limitations as specified in the plan of operation, but not to exceed one hundred thousand dollars (\$100,000) for each claimant under one (1) policy and one million dollars (\$1,000,000) for all claimants under one (1) policy in any one (1) year;
 - (b) To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
 - (c) To assume reinsurance from its members;
 - (d) To cede reinsurance; and
 - (e) To negotiate and obtain in the voluntary market medical malpractice insurance for any health care provider to whom the association has issued or caused to be issued a policy of medical malpractice insurance with the foregoing limits.

➔Section 1536. KRS 304.40-040 is amended to read as follows:

- (1) Within forty-five (45) days following the order of the **commissioner**~~{executive director}~~ implementing the operation of the association, the directors of the association shall submit to the **commissioner**~~{executive director}~~ for ~~{his}~~ review a proposed plan of operation, consistent with the provisions of this subtitle.
- (2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical malpractice insurance; and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.
- (3) The plan of operation shall be subject to approval by the **commissioner**~~{executive director}~~ after consultation with the members of the association, representatives of the public, and other affected individuals and organizations. If the **commissioner**~~{executive director}~~ disapproves all or any part of the proposed plan of operation, the directors shall within fifteen (15) days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the **commissioner**~~{executive director}~~ shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the **commissioner**~~{executive director}~~ shall become effective upon order of the **commissioner**~~{executive director}~~.
- (4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the **commissioner**~~{executive director}~~, or shall be made at the direction of the **commissioner**~~{executive director}~~.

➔Section 1537. KRS 304.40-050 is amended to read as follows:

- (1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the **commissioner**~~[executive director]~~ and either (a) **the commissioner**~~he~~ has approved it, or (b) thirty (30) days has lapsed and **the commissioner**~~he~~ has not disapproved it in accordance with KRS Chapter 304, Subtitle 14.
- (2) Cancellation of the association's policies shall be governed by the laws and regulations governing the cancellation of other policies of casualty insurance, except that the association may also cancel any of its policies in the event of nonpayment of any stabilization reserve fund charged, by mailing or delivering to the insured at the address shown on the policy, written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
- (3) The rates, rating plans, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to Chapter 304, Subtitle 13 of the Kentucky Revised Statutes, giving due consideration to the past and prospective loss and expense experience for medical malpractice insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association, and such other information as the **commissioner**~~[executive director]~~ may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The **commissioner**~~[executive director]~~ shall make available to the association the loss and expense experience of insurers previously writing medical malpractice insurance in this state.
- (4) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the **commissioner**~~[executive director]~~, under which the final premium for all policyholders of the association as a group will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium before retrospective adjustment for each policy issued by the association shall be established on the basis of the association's rates, rating plans, rating rules, rating classifications, and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in KRS 304.40-060(4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums for the business of the association are not excessive.
- (5) The **commissioner**~~[executive director]~~ shall examine the business of the association as often as he **or she** deems appropriate to assure that the group retrospective rating plan is being operated in a manner consistent with this section. If he **or she** finds that it is not being so operated, he **or she** shall issue an order to the association, specifying in what respects its operation is deficient and stating what corrective action shall be taken.
- (6) The association shall certify to the **commissioner**~~[executive director]~~ the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty (60) days after such certification, the **commissioner**~~[executive director]~~ shall authorize the members of the association to commence recoupment of their respective shares of the deficit by applying a surcharge to be determined by the association at a rate not to exceed two percent (2%) of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the **commissioner**~~[executive director]~~ as the values of its incurred losses become finalized, and the members of the association shall amend their recoupment procedure accordingly.
- (7) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (6) of this section, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in KRS 304.40-080. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection (6) of this section.

➔Section 1538. KRS 304.40-060 is amended to read as follows:

- (1) There is hereby created a stabilization reserve fund which shall be administered by three (3) directors, one (1) of whom shall be the **commissioner**~~[executive director]~~ or **the commissioner's**~~this~~ deputy. The remaining two (2) directors shall be appointed by the **commissioner**~~[executive director]~~. One (1) shall be a representative of the association; the other a representative of its policyholders. The directors shall serve without salary, but

shall be reimbursed for actual and necessary expenses incurred in the performance of their duties when approved by the *commissioner*~~[executive director]~~.

- (2) Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-third (1/3) of each premium payment due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.
- (3) The association shall promptly pay to the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by KRS 304.40-050.
- (4) All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The trustee may invest the trust fund, subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The trust fund shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan authorized by KRS 304.40-050. Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If the trust fund is finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

➔Section 1539. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary care medicine and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313;
 - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
 - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
 - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services.
 - (b) The *Department*~~[Office]~~ of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
 1. Name and address of the charitable health care provider;

2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
 3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
 4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;
 5. A copy of the registration filed with the Cabinet for Health and Family Services under KRS 216.941; and
 6. A copy of the medical malpractice policy, declaration page, and any other documentation the **commissioner**~~executive director~~ may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.
- (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
 - (d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the **department**~~office~~ for transmittal to the general fund.
- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance for the charitable health care services provided, and that meet the terms for eligibility established pursuant to this section.
 - (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
 - (6) The **Department**~~Office~~ of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the **Department**~~Office~~ of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
 - (7) The Cabinet for Health and Family Services shall make available to the **Department**~~Office~~ of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
 - (8) The **Department**~~Office~~ of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health and Family Services under KRS 216.941.

➔Section 1540. KRS 304.40-080 is amended to read as follows:

All insurers which are members of the association shall participate in its writings, expenses, servicing, allowance, management fees, and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the **commissioner**~~executive director~~.

➔Section 1541. KRS 304.40-090 is amended to read as follows:

The association shall be governed by a board of thirteen (13) directors. Five (5) directors shall be elected by the insurance companies which are members of the association, at a meeting of the member companies at a time and place designated by the **commissioner**~~executive director~~, by cumulative voting of the member companies, whose vote shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. One (1) of these five (5) directors shall be from a member company domiciled in Kentucky. The

~~commissioner~~~~[executive director]~~ shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association; one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital Association; one (1) who is a licensed resident property and casualty agent in Kentucky; and three (3) knowledgeable members of the public at large, who have no interest in any of the foregoing categories. The ~~commissioner~~~~[executive director]~~ or ~~the commissioner's~~~~[his]~~ designee shall serve as a director.

➔Section 1542. KRS 304.40-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to KRS 304.40-030 to 304.40-140, or their representatives, or any affected insurer, may appeal to the ~~commissioner~~~~[executive director]~~ within thirty (30) days after any rule, action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- (2) All final orders of the ~~commissioner~~~~[executive director]~~ made pursuant to this subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 1543. KRS 304.40-110 is amended to read as follows:

The association shall file in the office of the ~~commissioner~~~~[executive director]~~ annually, on or before the first day of each March, a statement containing information with respect to its transaction, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the ~~commissioner~~~~[executive director]~~. The ~~commissioner~~~~[executive director]~~ may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

➔Section 1544. KRS 304.40-120 is amended to read as follows:

The ~~commissioner~~~~[executive director]~~ shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in KRS Chapter 304, subtitle 2. The expenses of such examinations shall be paid by the association in the manner prescribed by that subtitle.

➔Section 1545. KRS 304.40-130 is amended to read as follows:

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the ~~commissioner~~~~[executive director]~~ or ~~the commissioner's~~~~[his]~~ authorized representatives or any other person or organization, for any statements or actions made in good faith by them during any proceedings or concerning any matters within the scope of KRS 304.40-030 to 304.40-140.

➔Section 1546. KRS 304.40-260 is amended to read as follows:

As used in KRS 304.40-250 to 304.40-320, the following words and terms shall be defined as follows:

- (1) "Health care provider" means any physician, osteopath, dentist, podiatrist, nurse or nurse's assistant, certified registered nurse anesthetist, physical or occupational therapist, or psychologist, licensed to practice health care in this state; any hospital, medical clinic, medical foundation, health maintenance organization, extended care facility, intermediate care facility, nursing home, emergency treatment center, outpatient medical or surgical center, frontier nursing service, or any other facility or service licensed under any act of this state to provide health care within this state; or any officer, director, employer agent thereof; and any corporation, partnership or sole proprietorship which directly provides medical services to its employees;
- (2) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~ of *the Department of Insurance*;
- (3) "Patient" means a natural person who receives health care from a licensed health care provider under a contract, express or implied;
- (4) "Claimant" means the patient or spouse, parent, guardian, trustee, or other authorized agent of the patient;
- (5) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act or omission proximately causing injury or damage to another;

- (6) "Malpractice" means any tort or breach of contract based on health care or professional services rendered, or which should have been rendered, by a health care provider to the patient;
- (7) "Health care" means any act, or treatment performed or furnished, or which should have been performed or furnished, by any health care provider to a patient during that patient's care, treatment, or confinement for a physical or mental condition;
- (8) "Malpractice insurer" means any insurance authority or any insurance company properly engaged in the practice of writing malpractice liability insurance under authority of the **commissioner**~~[executive director]~~ of insurance.

➔Section 1547. KRS 304.40-310 is amended to read as follows:

- (1) All malpractice claims settled or adjudicated to final judgment against a health care provider shall be reported to the **commissioner**~~[executive director]~~ of insurance by the malpractice insurer of the health care provider or the health care provider if self-insured, within sixty (60) days following final settlement or disposition of the claim. The report to the **commissioner**~~[executive director]~~ shall recite the following:
 - (a) Name and address of health care provider involved;
 - (b) Name and address of claimant;
 - (c) Nature of the claim;
 - (d) Damages asserted and alleged injury; and
 - (e) The amount of any settlement or judgment.
- (2) The **commissioner**~~[executive director]~~ of insurance shall forward the name of every health care provider against whom a settlement is made or judgment is rendered to the appropriate licensure board or regulatory agency for review of the fitness of the health care provider to practice his **or her** profession.
- (3)
 - (a) At any time before a jury is empanelled or before a trial is commenced by a court without a jury, no settlement or other compromise of any claim for malpractice shall be effective between a claimant and the fund unless the proposed settlement or other compromise shall have been approved by the **commissioner**~~[executive director]~~.
 - (b) The **commissioner**~~[executive director]~~ shall prescribe by rule the procedure for submission of settlements or other compromises involving the fund.
 - (c) If the **commissioner**~~[executive director]~~ shall disapprove a proposed settlement or other compromise involving the fund, the claimant may thereafter pursue his **or her** interests in a court of appropriate jurisdiction and the action of the **commissioner**~~[executive director]~~ shall not be admissible upon any trial of the action.
 - (d) Notwithstanding the provisions of KRS 413.140, when an offer to compromise or settle has been filed with the **commissioner**~~[executive director]~~ the statute of limitations made and provided for the commencement of an action for malpractice shall not bar any such action until ninety (90) days after notice to the parties of the **commissioner's**~~[executive director's]~~ disapproval of any proposed settlement or other compromise.

➔Section 1548. KRS 304.41-020 is amended to read as follows:

As used in this subtitle:

- (1) "Association" means the Joint Underwriting Association established pursuant to the provisions of this subtitle.
- (2) "Legal professional liability insurance" means insurance as defined in KRS 304.5-070(1)(j).
- (3) "**Commissioner**~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of **the Department of Insurance**.
- (4) "Net direct premiums" means gross direct premiums written on the lines of insurance set forth in KRS 304.41-030(1) as computed by the **commissioner**~~[executive director]~~ of insurance, less return premiums for the unused or unabsorbed portions of premium deposits.

➔Section 1549. KRS 304.41-030 is amended to read as follows:

- (1) A temporary Joint Underwriting Association is created, consisting of all insurers authorized to write and engage in writing in the Commonwealth on a direct basis the following lines of insurance, as reported in the companies' annual statements:
- (a) Workers' compensation;
 - (b) Liability other than auto;
 - (c) Private passenger auto liability;
 - (d) Commercial auto liability; and
 - (e) The liability portion of commercial multi-peril policies.

Every such insurer shall remain a member of the Joint Underwriting Association as a condition of its authority to continue to transact such kinds of insurance in the Commonwealth.

- (2) The implementation of the operation of the Joint Underwriting Association shall become effective upon the order of the **commissioner**~~[executive director]~~. The **commissioner**~~[executive director]~~ shall not order the association to commence underwriting operations until **the commissioner**~~[he]~~, after due hearing and investigation, has determined that legal professional liability insurance cannot be made available in the voluntary market. The Joint Underwriting Association shall remain in effect for a period of no longer than two and one-half (2 1/2) years from the date that it commences underwriting operations.

This subtitle shall not preclude any attorney at law from procuring legal professional liability insurance from the voluntary market.

If the **commissioner**~~[executive director]~~ determines at any time that legal professional liability insurance is readily available in the voluntary market, the association shall thereby cease its underwriting operations.

- (3) The association shall, pursuant to the provisions of this subtitle and the plan of operation with respect to legal professional liability insurance, have the power on behalf of its members:
- (a) To issue, or to cause to be issued, policies of insurance to applicants, including incidental coverages and subject to limitations as specified in the plan of operation, but not to exceed five hundred thousand dollars (\$500,000) for each claimant under one (1) policy and one million dollars (\$1,000,000) for all claimants under one (1) policy in any one (1) year;
 - (b) To underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;
 - (c) To assume reinsurance from its members;
 - (d) To cede reinsurance; and
 - (e) To negotiate and obtain in the voluntary market legal professional liability insurance with limits in excess of the foregoing limits for any attorney-at-law to whom the association has issued or caused to be issued a policy of legal professional liability insurance.

➔Section 1550. KRS 304.41-040 is amended to read as follows:

- (1) Within forty-five (45) days following the order of the **commissioner**~~[executive director]~~ implementing the operation of the association, the directors of the association shall submit to the **commissioner**~~[executive director]~~ for his **or her** review a proposed plan of operation, consistent with the provisions of this subtitle.
- (2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of legal professional liability insurance; and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers or other servicing arrangements and procedures for determining amounts of insurance to be provided by the association.
- (3) The plan of operation shall be subject to approval by the **commissioner**~~[executive director]~~ after consultation with the members of the association, representatives of the public, and other affected individuals and organizations. If the **commissioner**~~[executive director]~~ disapproves all or any part of the proposed plan of

operation, the directors shall within fifteen (15) days submit for review an appropriate revised plan of operation or part thereof. If the directors fail to do so, the **commissioner**~~[executive director]~~ shall promulgate a plan of operation or part thereof, as the case may be. The plan of operation approved or promulgated by the **commissioner**~~[executive director]~~ shall become effective upon order of the **commissioner**~~[executive director]~~.

- (4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the **commissioner**~~[executive director]~~, or shall be made at the direction of the **commissioner**~~[executive director]~~.

➔Section 1551. KRS 304.41-050 is amended to read as follows:

- (1) All policies issued by the association shall be written for the term of one (1) year. The directors of the association may elect to issue policies on an occurrence basis or a claims made basis. No policy form shall be used by the association unless it has been filed with the **commissioner**~~[executive director]~~ and either (a) **the commissioner**~~[he]~~ has approved it, or (b) thirty (30) days has lapsed and **the commissioner**~~[he]~~ has not disapproved it in accordance with KRS Chapter 304, Subtitle 14.
- (2) Cancellation of the association's policies shall be governed by the laws and regulations governing the cancellation of other policies of casualty insurance, except that the association may also cancel any of its policies in the event of nonpayment of any stabilization reserve fund charge, by mailing or delivering to the insured at the address shown on the policy, written notice stating when not less than ten (10) days thereafter cancellation shall be effective.
- (3) The rates, rating plan, rating rules, rating classifications and territories applicable to the insurance written by the association and statistics relating thereto shall be subject to KRS Chapter 304, Subtitle 13, giving due consideration to the past and prospective loss and expense experience for legal professional liability insurance written and to be written in this state, trends in the frequency and severity of losses, the investment income of the association, and such other information as the **commissioner**~~[executive director]~~ may require. All rates shall be on an actuarially sound basis, giving due consideration to the group retrospective rating plan and the stabilization reserve fund, and shall be calculated to be self-supporting. The **commissioner**~~[executive director]~~ shall make available to the association the loss and expense experience of insurers previously writing legal professional liability insurance in this state.
- (4) All policies issued by the association shall be subject to a nonprofit group retrospective rating plan to be approved by the **commissioner**~~[executive director]~~, under which the final premium for all policyholders of the association as a group will be equal to the administrative expenses, loss and loss adjustment expenses and taxes, plus a reasonable allowance for contingencies and servicing. Policyholders shall be given full credit for all investment income, net of expenses and a reasonable management fee on policyholder supplied funds. The standard premium before retrospective adjustment for each policy issued by the association shall be established on the basis of the association's rates, rating plans, rating rules, rating classifications, and territories then in effect. The maximum final premium for all policyholders of the association as a group shall be limited as provided in KRS 304.41-060(4). Since the business of the association is subject to the nonprofit group retrospective rating plan required by this subsection, there shall be a presumption that the rates filed and premiums for the business of the association are not excessive.
- (5) The **commissioner**~~[executive director]~~ shall examine the business of the association as often as he **or she** deems appropriate to assure that the group retrospective rating plan is being operated in a manner consistent with this section. If **the commissioner**~~[he]~~ finds that it is not being so operated, he **or she** shall issue an order to the association, specifying in what respects its operation is deficient and stating what corrective action shall be taken.
- (6) The association shall certify to the **commissioner**~~[executive director]~~ the estimated amount of any deficit remaining after the stabilization reserve fund has been exhausted in payment of the maximum final premium for all policyholders of the association. Within sixty (60) days after such certification, the **commissioner**~~[executive director]~~ shall authorize the members of the association to commence recoupment of their respective shares of the deficit by applying a surcharge to be determined by the association at a rate not to exceed two percent (2%) of the annual premiums on future policies affording those kinds of insurance which form the basis for their participation in the association under procedures established by the association. The association shall amend the amount of its certification of deficit to the **commissioner**~~[executive director]~~ as the values of its incurred losses become finalized, and the members of the association shall amend their recoupment procedure accordingly.

- (7) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (6) of this section, all members shall, on a temporary basis, contribute to the financial requirements of the association in the manner provided for in KRS 304.41-080. Any such contribution shall be reimbursed to the members by recoupment as provided in subsection (6) of this section.

➔Section 1552. KRS 304.41-060 is amended to read as follows:

- (1) There is hereby created a stabilization reserve fund which shall be administered by three (3) directors, one (1) of whom shall be the **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ deputy. The remaining two (2) directors shall be appointed by the **commissioner**~~[executive director]~~. One (1) shall be a representative of the association; the other a representative of its policyholders. The directors shall serve without salary, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties when approved by the **commissioner**~~[executive director]~~.
- (2) Each policyholder shall pay to the association a stabilization reserve fund charge equal to one-third (1/3) of each premium payment due for insurance through the association. Such charge shall be separately stated in the policy. The association shall cancel the policy of any policyholder who fails to pay the stabilization reserve fund charge.
- (3) The association shall promptly pay to the trustee of the fund all stabilization reserve fund charges which it collects from its policyholders and any retrospective premium refunds payable under the group retrospective rating plan authorized by KRS 304.41-050(4).
- (4) All moneys received by the fund shall be held in trust by a corporate trustee selected by the directors. The trustee may invest the trust fund, subject to the approval of the directors. All investment income shall be credited to the fund. All expenses of administration of the fund shall be charged against the fund. The trust fund shall be used solely for the purpose of discharging when due any retrospective premium charges payable by policyholders of the association under the group retrospective rating plan authorized by KRS 304.41-050(4). Payment of retrospective premium charges shall be made by the directors upon certification to them by the association of the amount due. If the trust fund is finally exhausted in payment of retrospective premium charges, all liability and obligations of the association's policyholders with respect to the payment of retrospective premium charges shall thereupon terminate and shall be conclusively presumed to have been discharged. Any moneys remaining in the fund after all such retrospective premium charges have been paid shall be returned to policyholders under procedures authorized by the directors.

➔Section 1553. KRS 304.41-080 is amended to read as follows:

All insurers which are members of the association shall participate in its writings, expenses, servicing, allowance, management fees, and losses in the proportion that the net direct premiums of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer with the **commissioner**~~[executive director]~~.

➔Section 1554. KRS 304.41-090 is amended to read as follows:

The association shall be governed by a board of thirteen (13) directors. Five (5) directors shall be elected by the insurance companies which are members of the association, at a meeting of the member companies at a time and place designated by the **commissioner**~~[executive director]~~, by cumulative voting of the member companies, whose vote shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. One (1) of these five (5) directors shall be from a member company domiciled in Kentucky. The **commissioner**~~[executive director]~~ shall appoint seven (7) directors, one (1) named by the Kentucky Medical Association; one (1) named by the Kentucky Bar Association; one (1) named by the Kentucky Hospital Association; one (1) who is a licensed resident property and casualty agent in Kentucky; and three (3) knowledgeable members of the public at large, who have no interest in any of the foregoing categories. The **commissioner**~~[executive director]~~ or **the commissioner's**~~[his]~~ designee shall serve as a director.

➔Section 1555. KRS 304.41-100 is amended to read as follows:

- (1) Any applicant to the association, any person insured pursuant to this subtitle, or their representatives, or any affected insurer, may appeal to the **commissioner**~~[executive director]~~ within thirty (30) days after any rule,

action, or decision by or on behalf of the association, with respect to those items the plan of operation defines as appealable matters. Upon appeal, an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

- (2) All final orders of the ***commissioner***~~[executive director]~~ made pursuant to this subtitle are subject to appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

➔Section 1556. KRS 304.41-110 is amended to read as follows:

The association shall file in the office of the ***commissioner***~~[executive director]~~ annually, on or before the first day of each March, a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the ***commissioner***~~[executive director]~~. The ***commissioner***~~[executive director]~~ may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

➔Section 1557. KRS 304.41-120 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall make an examination into the affairs of the association at least annually. Such examination shall be conducted and the report thereon filed in the manner prescribed in KRS Chapter 304, Subtitle 2. The expenses of such examinations shall be paid by the association in the manner prescribed by that said subtitle.

➔Section 1558. KRS 304.41-130 is amended to read as follows:

There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, the ***commissioner***~~[executive director]~~ or ***the commissioner's***~~[his]~~ authorized representatives or any other person or organization, for any statements or actions made in good faith by them during any proceedings or concerning any matters within the scope of this subtitle.

➔Section 1559. KRS 304.42-050 is amended to read as follows:

As used in this subtitle:

- (1) "Account" means either of the three (3) accounts created under KRS 304.42-060.
- (2) "Association" means the Kentucky Life and Health Insurance Guaranty Association created under KRS 304.42-060.
- (3) "Authorized assessment" or the term "authorized" when used in the context of assessments means a resolution by the board of directors has been passed whereby an assessment will be called immediately or in the future from member insurers for a specific amount. An assessment is authorized when the resolution is passed.
- (4) "Benefit plan" means a specific employee, union, or association of natural persons benefit plan.
- (5) "Called assessment" or the term "called" when used in the context of assessments means that a notice has been issued by the association to member insurers requiring that an authorized assessment be paid within the time frame set forth within the notice. An authorized assessment becomes a called assessment when notice is mailed by the association to member insurers.
- (6) "***Commissioner***~~[Executive director]~~" means the ***commissioner***~~[executive director]~~ of ***the Department of Insurance*** of this state.
- (7) "Contractual obligation" means any obligation under a policy or contract or a certificate under a group policy or contract, or portion thereof, for which coverage is provided under KRS 304.42-030.
- (8) "Covered policy" means any policy or contract or portion of a policy or contract for which coverage is provided under KRS 304.42-030.
- (9) "Extracontractual claims" include but are not limited to claims relating to bad faith in the payment of claims, punitive or exemplary damages, and attorneys' fees and costs.
- (10) "Impaired insurer" means a member insurer which, after June 17, 1978, is not an insolvent insurer and is placed under an order of rehabilitation or conservation by a court of competent jurisdiction.
- (11) "Insolvent insurer" means a member insurer which after June 17, 1978, is placed under an order of liquidation by a court of competent jurisdiction with a finding of insolvency.

- (12) "Member insurer" means any insurer authorized to transact in this state any kind of insurance for which coverage is provided under KRS 304.42-030, and includes any insurer whose certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, but does not include:
- (a) A nonprofit hospital, medical-surgical, dental, and health service corporation, as defined by Subtitle 32 of this chapter;
 - (b) A health maintenance organization;
 - (c) A fraternal benefit society;
 - (d) A mandatory state pooling plan;
 - (e) An assessment or cooperative insurer or any entity that operates on an assessment basis;
 - (f) An insurance exchange;
 - (g) Any entity similar to the above;
 - (h) Health insurance where such insurance is written by a member of the Kentucky Insurance Guaranty Association; or
 - (i) A limited health service organization.
- (13) "Moody's corporate bond yield average" means the monthly average corporates as published by Moody's Investors Service, Inc., or any successor thereto.
- (14) "Owner" of a policy or contract and "policy owner" and "contract owner" mean the person who is identified as the legal owner under the terms of the policy or contract or who is otherwise vested with legal title to the policy or contract through a valid assignment completed in accordance with the terms of the policy or contract and properly recorded as the owner on the books of the insurer. The terms "owner," "contract owner," and "policy owner" do not include persons with a mere beneficial interest in a policy or contract.
- (15) "Premiums" means amounts or considerations, by whatever name called, received on covered policies or contracts less returned premiums, considerations, and deposits, and less dividends and experience credits. "Premiums" does not include amounts or considerations received for any policies or contracts or for the portions of policies or contracts for which coverage is not provided under KRS 304.42-030(2), except that assessable premium shall not be reduced on account of KRS 304.42-030(2)(b)3. Relative to interest limitations and KRS 304.42-030(3)(b) relating to limitations with respect to one (1) individual and one (1) contract owner. "Premiums" shall not include with respect to multiple nongroup policies of life insurance owned by one (1) owner, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, premiums in excess of one million dollars (\$1,000,000) with respect to these policies or contracts, regardless of the number of policies or contracts held by the owner.
- (16) "Person" means any individual, corporation, limited liability company, partnership, association, governmental body or entity, or voluntary organization.
- (17) "Plan sponsor" means:
- (a) The employer in the case of a benefit plan established or maintained by a single employer;
 - (b) The employee organization in the case of a benefit plan established or maintained by an employee organization; or
 - (c) In a case of a benefit plan established or maintained by two (2) or more employers or jointly by one (1) or more employers and one (1) or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan.
- (18) (a) "Principal place of business" of a plan sponsor or a person other than a natural person means the single state in which the natural persons who establish policy for the direction, control, and coordination of the operations of the entity as a whole primarily exercise the function, determined by the association in its reasonable judgment by considering the following factors:
- 1. The state in which the primary executive and administrative headquarters of the entity is located;

2. The state in which the principal office of the chief executive officer of the entity is located;
3. The state in which the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
4. The state in which the executive or management committee of the board of directors or similar governing person or persons of the entity conducts the majority of its meetings;
5. The state from which the management of the overall operations of the entity is directed; and
6. In the case of a benefit plan sponsored by affiliated companies comprising a consolidated corporation, the state in which the holding company or controlling affiliate has its principal place of business as determined using the above factors.

However, in the case of a plan sponsor, if more than fifty percent (50%) of the participants in the benefit plan are employed in a single state, that state shall be deemed to be the principal place of business of the plan sponsor.

- (b) The principal place of business of a plan sponsor of a benefit plan described in subsection (17)(c) of this section shall be deemed to be the principal place of business of the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the benefit plan that, in lieu of a specific or clear designation of a principal place of business, shall be deemed to be the principal place of business of the employer or employee organization that has the largest investment in the benefit plan or question.
- (19) "Receivership court" means the court in the insolvent or impaired insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation of the insurer.
- (20) "Resident" means any person to whom a contractual obligation is owed and who resides in this state on the date when a member insurer is determined to be an impaired or insolvent insurer, whichever occurs first. A person may be a resident of only one (1) state, which in the case of a person other than a natural person shall be its principal place of business. Citizens of the United States that are either residents of foreign countries or residents of United States possessions, territories, or protectorates that do not have an association similar to the association created by this subtitle shall be deemed residents of the state of domicile of the insurer that issued the policies or contracts.
- (21) "Structured settlement annuity" means an annuity purchased in order to fund periodic payments for a plaintiff or other claimant in payment for or with respect to personal injury suffered by the plaintiff or other claimant.
- (22) "State" means a state, the District of Columbia, Puerto Rico, and a United States possession, territory, or protectorate.
- (23) "Supplemental contract" means a written agreement entered into for the distribution of proceeds under a life, health, or annuity policy or contract.
- (24) "Unallocated annuity contract" means any annuity contract or group annuity certificate which is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate.

➔Section 1560. KRS 304.42-060 is amended to read as follows:

- (1) There is created a nonprofit legal entity to be known as the Kentucky Life and Health Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under KRS 304.42-100 and shall exercise its powers through a board of directors established under KRS 304.42-070. For purposes of administration and assessment, the association shall maintain three (3) accounts:
 - (a) The health insurance account;
 - (b) The life insurance account; and
 - (c) The annuity account.
- (2) The association shall come under the immediate supervision of the ~~commissioner~~^{executive director} and shall be subject to the applicable provisions of the insurance laws of this state.

➔Section 1561. KRS 304.42-070 is amended to read as follows:

- (1) The board of directors of the association shall consist of not less than five (5) nor more than nine (9) member insurers serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the **commissioner**~~[executive director]~~. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the **commissioner**~~[executive director]~~. To select the initial board of directors, and initially organize the association, the **commissioner**~~[executive director]~~ shall give notice to all member insurers of the time and place of the organizational meeting. In determining voting rights at the organizational meeting each member insurer shall be entitled to one (1) vote in person or by proxy. If the board of directors is not selected within sixty (60) days after notice of the organizational meeting, the **commissioner**~~[executive director]~~ may appoint the initial members.
- (2) In approving selections or in appointing members to the board, the **commissioner**~~[executive director]~~ shall consider, among other things, whether all member insurers are fairly represented.
- (3) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board shall not otherwise be compensated by the association for their services.

➔Section 1562. KRS 304.42-080 is amended to read as follows:

- (1) If a member insurer is an impaired insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer and that are approved by the **commissioner**~~[executive director]~~:
 - (a) Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer; or
 - (b) Provide such monies, pledges, loans, notes, guarantees, or other means as are proper to effectuate paragraph (a) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under paragraph (a) of this subsection.
- (2) If a member insurer is an insolvent insurer, the association shall, in its discretion, either:
 - (a)
 1. Guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or
 2. Assure payment of the contractual obligations of the insolvent insurer; and
 3. Provide such monies, pledges, loans, notes, guarantees, or other means as are reasonably necessary to discharge such duties; or
 - (b) Provide benefits and coverages in accordance the following provisions:
 1. With respect to life and health insurance policies and annuities, assure payment of benefits for premiums identical to the premiums and benefits (except for terms of conversion and renewability) that would have been payable under policies or contracts of the insolvent insurer, for claims incurred:
 - a. With respect to group policies and contracts, not later than the earlier of the next renewal date under such policies or contracts or forty-five (45) days, but in no event less than thirty (30) days, after the date on which the association becomes obligated with respect to such policies or contracts;
 - b. With respect to nongroup policies, contracts, and annuities not later than the earlier of the next renewal date (if any) under such policies or contracts or one (1) year, but in no event less than thirty (30) days, from the date on which the association becomes obligated with respect to such policies or contracts;
 2. Make diligent efforts to provide all known insureds or annuitants for nongroup policies and contracts, or group policy owners with respect to group policies and contracts thirty (30) days' notice of the termination under subparagraph 1. of this paragraph of the benefits provided;

3. With respect to individual health and life insurance policies, and annuities covered by the association, make available to each known insured or annuitant, or owner if other than the insured or annuitant, and with respect to an individual formerly insured or formerly and annuitant under a group policy who is not eligible for replacement group coverage, make available substitute coverage on an individual basis in accordance with the provisions of subparagraph 4. of this paragraph, if the insureds or annuitants had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy or annuity in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class;
 4.
 - a. In providing substitute coverage required under subparagraph 3. of this paragraph the association may offer either to reissue the terminated coverage or to issue an alternative policy.
 - b. Alternative or reissued policies shall be offered without requiring evidence of insurability, and shall not provide for any waiting period or exclusion that would not have applied under the terminated policy.
 - c. The association may reinsure any alternative or reissued policy.
 5.
 - a. Alternative policies adopted by the association shall be subject to approval by the domiciliary insurance commissioner or receivership court. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.
 - b. Alternative policies shall contain at least the minimum statutory provisions required in this state and provide benefits that shall not be unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates which it shall adopt. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but shall not reflect any changes in the health of the insured after the original policy was last underwritten.
 - c. Any alternative policy issued by the association shall provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.
 6. If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval by the domiciliary insurance commissioner or by the receivership court;
 7. The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy shall cease on the date such coverage or policy is replaced by another similar policy by the policy owner, the insured, or the association;
- (3) When proceeding under subsection (2)(b) of this section with respect to any policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with KRS 304.42-030(2)(b)3.
 - (4) Nonpayment of premiums within thirty-one (31) days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract for substitute coverage shall terminate the association's obligations under such policy or coverage under this subtitle with respect to such policy or coverage, except with respect to any claims incurred or any net cash surrender value which may be due in accordance with the provisions of this subtitle.
 - (5) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer shall belong to and be payable at the direction of the association, and the association shall be liable for unearned premiums due to policy or contract owners arising after the entry of such order.
 - (6) The protection provided by this subtitle shall not apply where any guaranteed protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

- (7) In carrying out its duties under subsection (2) of this section, the association may:
- (a) Subject to approval by a court in this state, impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement, if the association finds that the amounts which can be assessed under this subtitle are less than the amounts needed to assure full and prompt performance of the association's duties under this subtitle, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to render the imposition of such permanent policy or contract liens to be in the public interest; and
 - (b) Subject to approval by a court in this state, impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value. In addition, in the event of a temporary moratorium or moratorium charge imposed by the receivership court on payment of cash values or policy loans, or on any other right to withdraw funds held in conjunction with policies or contracts, out of the assets of the impaired or insolvent insurer, the association may defer the payment of cash values, policy loans, or other rights by the association for the period of the moratorium or moratorium charge imposed by the receivership court, except for claims covered by the association to be paid in accordance with a hardship procedure established by the liquidator or rehabilitator and approved by the receivership court.
- (8) A deposit in this state, held under law or required by the **commissioner**~~executive director~~ for the benefit of creditors, including policy owners, not turned over to the domiciliary liquidator upon the entry of a final order of liquidation or order approving a rehabilitation plan of an insurer domiciled in this state or in a reciprocal state, shall be promptly paid to the association. The association:
- (a) Shall be entitled to retain a portion of any amount so paid to it equal to the percentage determined by dividing the aggregate amount of policy owners' claims related to that insolvency for which the association has provided statutory benefits by the aggregate amount of all policy owners' claims in this state related to that insolvency; and
 - (b) Shall remit to the domiciliary receiver the amount so paid to the association and retained in accordance with paragraph (a) of this subsection. Any amount so paid to the association less the amount retained by it in accordance with paragraph (a) of this subsection shall be treated as a distribution of estate assets under KRS 304.33-440 or similar provision of the state of domicile of the impaired or insolvent insurer.
- (9) If the association fails to act within a reasonable period of time with respect to an insolvent insurer as provided in subsection (2) of this section, the **commissioner**~~executive director~~ shall have the powers and duties of the association under this subtitle with respect to the insolvent insurer.
- (10) The association may render assistance and advice to the **commissioner**~~executive director~~, upon his *or her* request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of any impaired or insolvent insurer.
- (11) The association shall have standing to appear or intervene before any court or agency in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this subtitle or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association shall also have the right to appear or intervene before a court or agency in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over any person or property against whom the association may have rights through subrogation or otherwise.
- (12) (a) Any person receiving benefits under this subtitle shall be deemed to have assigned the rights under, and any causes of action against any person for losses arising under, resulting from, or otherwise relating to, the covered policy or contract to the association to the extent the benefits received because of this subtitle, whether benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of such rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or

annuitant as a condition precedent to the receipt of any right or benefits conferred by this subtitle upon such person.

- (b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this subtitle.
 - (c) In addition to paragraphs (a) and (b) of this subsection, the association shall have all common law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or owner, beneficiary, or payee of a policy or contract with respect to such policy or contract, including without limitation, in the case of a structured settlement annuity, any rights of the owner, beneficiary, or payee of the annuity, to the extent of benefits received under this subtitle against a person originally or by succession responsible for the losses arising from the personal injury relating to the annuity or payment therefor.
 - (d) If the preceding provisions of this subsection are invalid or ineffective with respect to any person or claim for any reason, the amount payable by the association with respect to the related covered obligations shall be reduced by the amount realized by any other person with respect to the person or claim that is attributable to the policies or portion thereof covered by the association.
 - (e) If the association has provided benefits with respect to a covered obligation and a person recovers amounts as to which the association has rights as described in the preceding paragraphs of this subsection, the person shall pay to the association the portion of the recovery attributable to the policies or portion thereof covered by the association.
- (13) In addition to the rights and powers elsewhere in this subtitle, the association may:
- (a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this subtitle;
 - (b) Sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under KRS 304.42-090 and to settle claims or potential claims against it;
 - (c) Borrow money to effect the purposes of this subtitle; any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;
 - (d) Employ or retain such persons as are necessary or appropriate to handle the financial transactions of the association, and to perform such other functions as may become necessary or proper under this subtitle;
 - (e) Take such legal action as may be necessary or appropriate to avoid or recover payment of improper claims;
 - (f) Exercise, for the purposes of this subtitle and to the extent approved by the ~~commissioner~~~~executive director~~, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform its obligations under this subtitle;
 - (g) Organize itself as a corporation or in other legal form permitted by the laws of the state;
 - (h) Request information from a person seeking coverage from the association in order to aid the association in determining its obligations under this subtitle with respect to the person, and the person shall promptly comply with the request; and
 - (i) Take other necessary or appropriate action to discharge its duties and obligations under this subtitle or to exercise its powers under this subtitle.
- (14) The association may join an organization of one (1) or more other state associations of similar purposes, to further the purposes and administer the powers and duties of the association.
- (15) (a) At any time within one (1) year after the date on which the association becomes responsible for the obligations of a member insurer, the association may elect to succeed to the rights and obligations of the member insurer that accrue on or after that date and that relate to contracts covered in whole or in part by the association, under any one (1) or more indemnity reinsurance agreements entered into by the member insurer as a ceding insurer and selected by the association. The association may not exercise any such election with respect to a reinsurance agreement if the receiver, rehabilitator, or liquidator of

the member insurer has previously and expressly disaffirmed the reinsurance agreement. The election shall be effected by a notice to the receiver, rehabilitator, or liquidator and to the affected reinsurer. If the association makes an election, subparagraphs 1. to 4. of this paragraph shall apply with respect to the agreements selected by the association:

1. The association shall be responsible for all unpaid premiums due under the agreements for periods both before and after the date, and shall be responsible for the performance of all other obligations to be performed after the coverage date, in each case which relate to contracts covered, in whole or in part, by the association. The association may charge contracts covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association.
 2. The association shall be entitled to any amounts payable by the reinsurer under the agreements with respect to losses or events that occur in periods after the coverage date and that relate to contracts covered by the association, in whole or in part. Upon receipt of any such amounts the association shall be obliged to pay to the beneficiary under the policy or contract on account of which the amounts were paid a portion of the amount equal to the excess of:
 - a. The amount received by the association, over
 - b. The benefits paid by the association on account of the policy or contract less the retention of the impaired or insolvent member insurer applicable to the loss or event.
 3. Within thirty (30) days following the association's election, the association and each indemnity reinsurer shall calculate the net balance due to or from the association under each such reinsurance agreement as of the date of the association's election, which calculation shall give full credit to all items paid by either the member insurer or its receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period between the coverage date and the date of the association's election. Either the association or indemnity reinsurer shall pay the net balance due the other within five (5) days of the completion of the calculation. If the receiver, rehabilitator, or liquidator has received any amounts due the association under subparagraph 2. of this paragraph, the receiver, rehabilitator, or liquidator shall remit those amounts to the association as promptly as practicable.
 4. If the association, within sixty (60) days of the election, pays the premiums due for periods both before and after the coverage date that relate to contracts covered by the association in whole or in part, the insurer shall not be entitled to terminate the reinsurance agreements insofar as the agreements relate to contracts covered by the association in whole or in part and shall not be entitled to set off any unpaid premium due for periods prior to the coverage date against amounts due the association.
- (b) If the association transfers its obligations to another insurer, and if the association and the other insurer agree, the other insurer shall succeed to the rights and obligations of the association under paragraph (a) of this subsection effective as of the date agreed upon by the association and the other insurer and regardless of whether the association has made the election referred to in paragraph (a) of this subsection if:
1. The indemnity reinsurance agreements automatically terminate for new reinsurance unless the indemnity reinsurer and the other insurer agree to the contrary;
 2. The obligations described in subparagraph 2. of paragraph (a) of this subsection no longer apply on and after the date the indemnity reinsurance agreement is transferred to the third party insurer; and
 3. The association has not previously expressly determined in writing that it will not exercise the election referred to in paragraph (a) of this subsection.
- (c) The provisions of this subsection shall supersede the provisions of any law of this state or of any affected reinsurance agreements that provide for or require any payment of reinsurance proceeds, on account of losses or events that occur in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the insolvent member insurer. The receiver, rehabilitator, or liquidator shall remain

entitled to any amounts payable by the reinsurer under the reinsurance agreements with respect to losses or events that occur in periods prior to the coverage date, subject to applicable setoff provisions.

- (d) Except as otherwise expressly provided in this subsection, nothing in this subsection shall alter or modify the terms and conditions of the indemnity reinsurance agreements of the insolvent member insurer. Nothing in this subsection shall abrogate or limit any rights of any reinsurer to claim that it is entitled to rescind a reinsurance agreement. Nothing in this subsection shall give a policy owner or beneficiary an independent cause of action against an indemnity reinsurer that is not otherwise set forth in the indemnity reinsurance agreement.
- (16) The board of directors of the association shall have discretion and may exercise reasonable business judgment to determine the means by which the association is to provide the benefits of this subtitle in an economical and efficient manner.
- (17) If the association has arranged or offered to provide the benefits of this subtitle to a covered person under a plan or arrangement that fulfills the association's obligations under this subtitle, the person shall not be entitled to benefits from the association in addition to or other than those provided under the plan or arrangement.
- (18) Venue in a suit against the association under this subtitle shall be in Franklin County. The association shall not be required to give an appeal bond in an appeal that relates to a cause of action arising under this subtitle.

➔Section 1563. KRS 304.42-090 is amended to read as follows:

- (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty (30) days after prior written notice to the member insurers and shall accrue interest at eight percent (8%) per annum on and after the due date.
- (2) There shall be two (2) classes of assessments:
 - (a) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses. Class A assessments may be authorized and called whether or not related to a particular impaired or insolvent insurer;
 - (b) Class B assessments shall be authorized and called to the extent necessary to carry out the powers and duties of the association under KRS 304.42-080 with regard to an impaired or insolvent insurer.
- (3)
 - (a) The amount of any Class A assessment shall be determined by the board and may be authorized and called on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. The total of all non-pro rata assessments shall not exceed one hundred fifty dollars (\$150) per member insurer in any one (1) calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
 - (b) Class B assessments against member insurers for each account shall be in the proportion that the premiums received on business in this state by each assessed member insurer on policies or contracts covered by each account for the three (3) most recent calendar years for which information is available preceding the year in which the insurer became insolvent, or in the case of assessment with respect to an impaired insurer, the three (3) most recent calendar years for which information is available preceding the year in which the insurer became impaired, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
 - (c) Assessments for funds to meet the requirements of the association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this subtitle. Classification of assessments under subsection (2) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible. The association shall notify each member insurer of its anticipated pro rata share of an authorized assessment not yet called within one hundred eighty (180) days after the assessment is authorized.
- (4) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual

obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section. Once the conditions that caused a deferral have been removed or rectified, the member shall pay all assessments that were deferred under a repayment plan approved by the association.

- (5) (a) Subject to the provisions of paragraph (b) of this subsection, the total of all assessments authorized by the association with respect to a member insurer for each account shall not in any one (1) calendar year exceed two percent (2%) of the insurer's average annual premiums received in this state on the policies and contracts covered by the account during the three (3) calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the association in any other account, does not provide in any one (1) year in any other account an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this subtitle.
- (b) If two (2) or more assessments are authorized in one (1) calendar year with respect to insurers that become impaired or insolvent in different calendar years, the average annual premiums for purposes of the aggregate assessment percentage limitation referenced in paragraph (a) of this subsection shall be equal and limited to the higher of the three (3) year average annual premiums for the applicable account as calculated under this section.
- (c) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one (1) or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.
- (6) The board may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each insurer to that account, the amount by which the assets of the account exceed the amount the board finds is necessary to carry out during the coming year the obligations of the association with regard to that account, including assets accruing from assignment, subrogation, net realized gains and income from investments. A reasonable amount may be retained in any account to provide funds for the continuing expenses of the association and for future losses claims.
- (7) It shall be proper for any member insurer, in determining its premium rates and policy owner dividends as to any kind of insurance within the scope of this subtitle, to consider the amount reasonably necessary to meet its assessment obligations under this subtitle.
- (8) The association shall issue to each insurer paying an assessment under this subtitle, other than a Class A assessment, a certificate of contribution, in a form prescribed by the **commissioner**~~executive director~~, for the amount of the assessment so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or dates of issue. A certificate of contribution may be shown by the insurer in its financial statement as an asset in such form and for such amount, if any, and period of time as the **commissioner**~~executive director~~ may approve.
- (9) (a) A member insurer that wishes to protest all or part of an assessment shall pay when due the full amount of the assessment as set forth in the notice provided by the association. The payment shall be available to meet association obligations during the pendency of the protest or any subsequent appeal. Payment shall be accompanied by a statement in writing that the payment is made under protest and setting forth a brief statement of the grounds for the protest.
- (b) Within sixty (60) days following the payment of an assessment under protest by a member insurer, the association shall notify the member insurer in writing of its determination with respect to the protest unless the association notifies the member insurer that additional time is required to resolve the issues raised by the protest.
- (c) Within thirty (30) days after a final decision has been made, the association shall notify the protesting member insurer in writing of that final decision. Within sixty (60) days of receipt of notice of the final decision, the protesting member insurer may appeal the final action to the **commissioner**~~executive director~~, in accordance with KRS 304.42-110(3).
- (d) In the alternative to rendering a final decision with respect to a protest based on a question regarding the assessment base, the association may refer protests to the **commissioner**~~executive director~~ for a final decision, with or without a recommendation from the association.

- (e) If the protest or appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company. Interest on a refund due a protesting member shall be paid at the rate actually earned by the association.
- (10) The association may request information of member insurers in order to aid in the exercise of its power under this section and member insurers shall promptly comply with a request.

➔Section 1564. KRS 304.42-100 is amended to read as follows:

- (1)
 - (a) The association shall submit to the **commissioner**~~[executive director]~~ a plan of operation and any amendments thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the **commissioner**~~[executive director]~~;
 - (b) If the association fails to submit a suitable plan of operation within one hundred eighty (180) days following June 17, 1978, or if at any time thereafter the association fails to submit suitable amendments to the plan, the **commissioner**~~[executive director]~~ shall, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this subtitle. Such rules shall continue in force until modified by the **commissioner**~~[executive director]~~ or superseded by a plan submitted by the association and approved by the **commissioner**~~[executive director]~~.
- (2) All member insurers shall comply with the plan of operation.
- (3) The plan of operation shall, in addition to requirements enumerated elsewhere in this subtitle:
 - (a) Establish procedures for handling the assets of the association;
 - (b) Establish the amount and method of reimbursing members of the board of directors under KRS 304.42-070;
 - (c) Establish regular places and times for meetings of the board of directors;
 - (d) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;
 - (e) Establish the procedures whereby selections for the board of directors will be made and submitted to the **commissioner**~~[executive director]~~;
 - (f) Establish any additional procedures for assessments under KRS 304.42-090;
 - (g) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.
- (4) The plan of operation may provide that any or all powers and duties of the association, except those under paragraph (c) of subsection (10) of KRS 304.42-080 and 304.42-090, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two (2) or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the **commissioner**~~[executive director]~~, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this subtitle.

➔Section 1565. KRS 304.42-110 is amended to read as follows:

In addition to the duties and powers enumerated elsewhere in this subtitle:

- (1) The **commissioner**~~[executive director]~~ shall:
 - (a) Upon request of the board of directors, provide the association with a statement of the premiums in the appropriate states for each member insurer;
 - (b) When an impairment is declared and the amount of the impairment is determined, serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer shall constitute notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand shall not excuse the association from the performance of its powers and duties under this subtitle; and

- (c) In any liquidation or rehabilitation proceeding involving a domestic insurer, be appointed as the liquidator or rehabilitator. If a foreign or alien member insurer is subject to a liquidation proceeding in its domiciliary jurisdiction or state of entry, the ***commissioner***~~[executive director]~~ may be appointed conservator.
- (2) The ***commissioner***~~[executive director]~~ may suspend or revoke, after notice and hearing conducted in accordance with KRS Chapter 13B, the certificate of authority to transact insurance in this state of any member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative the ***commissioner***~~[executive director]~~ may levy a forfeiture on any member insurer which fails to pay an assessment when due. A forfeiture shall not exceed five percent (5%) of the unpaid assessment per month, but no forfeiture shall be less than one hundred dollars (\$100) per month.
- (3) Any final action of the board of directors or the association may be appealed to the ***commissioner***~~[executive director]~~ by any member insurer if the appeal is taken within sixty (60) days of its receipt of notice of the action being appealed. Any final order of the ***commissioner***~~[executive director]~~ shall be subject to judicial review as set forth in Subtitle 2 of this chapter and KRS Chapter 13B.
- (4) The liquidator, rehabilitator, or conservator of any impaired insurer may notify all interested persons of the effect of this subtitle.

➔Section 1566. KRS 304.42-120 is amended to read as follows:

To aid in the detection and prevention of insurer insolvencies or impairments:

- (1) It shall be the duty of the ***commissioner***~~[executive director]~~:
 - (a) To notify the commissioners of all of the other states, territories of the United States and the District of Columbia when he *or she* takes any of the following actions against a member insurer:
 - 1. Revocation of license;
 - 2. Suspension of license;
 - 3. Makes any formal order that such company restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policy owners or creditors.

Such notice shall be mailed to all commissioners within thirty (30) days following the action taken or the date on which such action occurs;
 - (b) To report to the board of directors when he *or she* has taken any of the actions set forth in paragraph (a) of this subsection or has received a report from any other commissioner indicating that any such action has been taken in another state. Such report to the board of directors shall contain all significant details of the action taken or the report received from another commissioner;
 - (c) To report to the board of directors when he *or she* has reasonable cause to believe from any examination, whether completed or in process, of any member insurer that such insurer may be an impaired or insolvent insurer;
 - (d) To furnish to the board of directors the NAIC insurance regulatory information system information developed by the National Association of Insurance Commissioners, and the board may use the information contained therein in carrying out its duties and responsibilities under this section. Such report and the information contained therein shall be kept confidential by the board of directors until such time as made public by the ***commissioner***~~[executive director]~~ or other lawful authority.
- (2) The ***commissioner***~~[executive director]~~ may seek the advice and recommendations of the board of directors concerning any matter affecting his *or her* duties and responsibilities regarding the financial condition of member companies and companies seeking admission to transact insurance business in this state.
- (3) The board of directors may, upon majority vote, make reports and recommendations to the ***commissioner***~~[executive director]~~ upon any matter germane to the solvency, liquidation, rehabilitation or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. Such reports and recommendations shall not be considered public documents.

- (4) The board of directors may, upon majority vote, notify the **commissioner**~~{executive director}~~ of any information indicating any member insurer may be an impaired or insolvent insurer.
- (5) The board of directors may, upon majority vote, make recommendations to the **commissioner**~~{executive director}~~ for the detection and prevention of insurer insolvencies.

➔Section 1567. KRS 304.42-130 is amended to read as follows:

- (1) A member insurer, other than a nonprofit hospital, medical, surgical, dental, or health service corporation, may offset its tax liability to this state imposed against it under KRS 136.320(3) and (4), 136.330, 136.340, or 136.350, whichever may be applicable, against the assessment described in subsection (8) of KRS 304.42-090 to the extent of twenty percent (20%) of the amount of the assessment for each of the five (5) calendar years following the year in which the assessment was paid. If a member insurer should cease doing business, all uncredited assessments may be credited against its tax liability for the year in which it ceases doing business.
- (2) Any sums acquired by refund, pursuant to KRS 304.42-090(6), from the association which have theretofore been written off by contributing insurers and offset against taxes as provided in this section, and are not then needed for purposes of this subtitle, shall be paid by the association to the **commissioner**~~{executive director}~~ and by **the commissioner**~~{him}~~ deposited with the State Treasurer for credit to the general fund of this state.

➔Section 1568. KRS 304.42-150 is amended to read as follows:

The association shall be subject to examination and regulation by the **commissioner**~~{executive director}~~. The board of directors shall submit to the **commissioner**~~{executive director}~~, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the **commissioner**~~{executive director}~~ and a report of its activities during the preceding calendar year. Upon the request of a member insurer, the association shall provide the member insurer with a copy of the report.

➔Section 1569. KRS 304.42-170 is amended to read as follows:

There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents or employees, the association or its agents or employees, members of the board of directors, or the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ representatives, for any action taken by them in the performance of their powers and duties under this subtitle. Immunity shall extend to the participation in any organization of one (1) or more other state associations of similar purposes and to any such organization and its agents or employees.

➔Section 1570. KRS 304.44-010 is amended to read as follows:

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

- (1) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of Insurance;
- (2) "Mine subsidence" means the collapse of underground coal mines resulting in direct damage to a structure. It does not include loss caused by earthquake, landslide, water seepage, volcanic eruption, or collapse of storm, and sewer drains;
- (3) "Mine subsidence insurance fund" or "fund" means the fund established by this subtitle and administered as determined by the **department**~~{office}~~;
- (4) "Policy" means a contract of insurance providing mine subsidence insurance;
- (5) "Premium" means the gross rate charged policyholders for insurance provided by this subtitle;
- (6) "Structure" means any dwelling, building, or fixture permanently affixed to realty, but does not include land, trees, plants, or crops; and
- (7) "Administrator" means the organization designated by the **commissioner**~~{executive director}~~ of the department to administer the fund.

➔Section 1571. KRS 304.44-020 is amended to read as follows:

- (1) There is hereby established a fund to be known as the "Mine Subsidence Insurance Fund." The fund shall be operated pursuant to this subtitle. The **commissioner**~~{executive director}~~ of the **department**~~{office}~~ shall determine how the fund shall be administered. In the discretion of the **commissioner**~~{executive director}~~, the fund may be administered by the Reinsurance Association, established by KRS 304.35-010, or by the **department**~~{office}~~;

- (2) The administrator shall make available through the fund insurance coverage against losses arising out of or due to mine subsidence within this state as to any structure within this state;
- (3) The moneys in the fund shall be derived from premiums for subsidence insurance collected pursuant to this subtitle;
- (4) Premiums for subsidence insurance shall be established by the administrator which shall periodically review the premium level and the experience data applicable to operation of the fund and make changes as required; and
- (5) Premiums shall be established at a rate or within a schedule of rates sufficient to satisfy all foreseeable claims upon the fund during the period of coverage, giving due consideration to relevant loss or claim experience or trends, to cover normal costs of operation of the fund by the administrator and provide a reasonable reserve fund for unexpected contingencies. Deviation from the premium set by the administrator shall not be allowed.

➔Section 1572. KRS 304.44-130 is amended to read as follows:

These provisions establishing the mine subsidence insurance fund shall not be implemented until federal money is received by the ~~department~~~~office~~ for administration costs and a reserve. However, the ~~department~~~~office~~ may take any preliminary action to prepare for implementation when federal money is received.

➔Section 1573. KRS 304.45-020 is amended to read as follows:

As used in this subtitle:

- (1) "~~Commissioner~~~~Executive director~~" means the ~~commissioner~~~~executive director~~ of the Kentucky ~~Department~~~~Office~~ of Insurance or the insurance supervisor of another state;
- (2) "Completed operations liability" means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by:
 - (a) Any person who performs that work; or
 - (b) Any person who hires an independent contractor to perform that work, but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;
- (3) "Domicile," for the purposes of determining the state in which a purchasing group is domiciled, means:
 - (a) For a corporation, the state in which the purchasing group is incorporated; and
 - (b) For an unincorporated entity, the state of its principal place of business;
- (4) "Hazardous financial condition" means a condition in which, based on its present or reasonably anticipated financial condition, a risk retention group, although not yet financially impaired or insolvent, is unlikely to be able:
 - (a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or
 - (b) To pay other obligations in the normal course of business;
- (5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risks which is determined to be insurance under the laws of this state;
- (6) "Liability":
 - (a) Means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of:
 1. Any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations; or
 2. Any activity of any state or local government, or any agency or political subdivision thereof; but
 - (b) Does not include personal risk liability or an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. secs. 51 et seq.);

- (7) "Personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage arising from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section;
- (8) "Plan of operation or a feasibility study" means an analysis which presents the expected activities and results of a risk retention group, including, at a minimum:
- (a) Information sufficient to verify that its members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;
 - (b) For each state in which it intends to operate, the coverages, deductibles, coverage limits, rates, and rating classification system for each kind of insurance the group intends to offer;
 - (c) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;
 - (d) Pro forma financial statements and projections;
 - (e) Appropriate opinions by a qualified, independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and to prevent a hazardous financial condition;
 - (f) Identification of management, underwriting, and claim procedures, marketing methods, managerial oversight methods, and investment policies; and
 - (g) Such other matters as may be prescribed by the **commissioner**~~executive director~~ for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered;
- (9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such person when the incident giving rise to the claim occurred;
- (10) "Purchasing group" means any group which:
- (a) Has as one (1) of its purposes the purchase of liability insurance on a group basis;
 - (b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (c) of this subsection;
 - (c) Is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
 - (d) Is domiciled in any state;
- (11) "Risk retention group" means any corporation or other limited liability association:
- (a) Whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;
 - (b) Which is organized for the primary purpose of conducting the activity described under paragraph (a) of this subsection;
 - (c) Which:
 - 1. Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or
 - 2. Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before such date, had certified to the **commissioner**~~executive director~~ of at least one (1) state that it satisfied the capitalization requirements of such state, except that any such group shall be considered to be a risk retention group only if it has engaged in business continuously since such date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability (as

such terms were defined under the Product Liability Risk Retention Act of 1981 prior to the date of the enactment of the Liability Risk Retention Act of 1986);

- (d) Which does not exclude any person from membership in the group solely to provide for members of such group a competitive advantage over such person;
 - (e) Which:
 - 1. Has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or
 - 2. Has as its sole owner an organization which has as its members only persons who comprise the membership of the risk retention group and as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;
 - (f) Whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and
 - (g) Whose activities do not include the provision of insurance other than:
 - 1. Liability insurance for assuming and spreading all or any portion of the liability of its group members; and
 - 2. Reinsurance with respect to the liability of any other risk retention group or any members of such other group which is engaged in businesses or activities so that such group or member meets the requirement described in paragraph (f) of this subsection from membership in the risk retention group and which provides such reinsurance; and
 - (h) The name of which includes the phrase "risk retention group;"
- (12) "State" means any state of the United States or the District of Columbia.

➔Section 1574. KRS 304.45-030 is amended to read as follows:

- (1) A risk retention group shall, pursuant to the provisions of this chapter, be chartered and licensed to write only liability insurance pursuant to this subtitle, and, except as otherwise provided in this subtitle, shall comply with all of the laws, regulations, and requirements applicable to such insurers chartered and licensed in this state and with KRS 304.45-040 to the extent such requirements are not a limitation on laws, regulations, or requirements of this state.
- (2) Notwithstanding any other provision to the contrary, all risk retention groups chartered in this state shall file with the ~~department~~~~office~~ and the National Association of Insurance Commissioners (NAIC), an annual statement in a form prescribed by the NAIC and completed in accordance with the NAIC instructions and the NAIC accounting practices and procedures manual.
- (3) Before it may offer insurance in any state, each risk retention group shall also submit for approval to the ~~commissioner~~~~executive director~~ of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional kinds of liability insurance. The group shall not offer any additional kinds of liability insurance in this state or any other state until a revision of such plan or study is approved by the ~~commissioner~~~~executive director~~.
- (4) At the time of filing its application for charter, the risk retention group shall provide to the ~~commissioner~~~~executive director~~ in summary form the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded, and the states in which the group intends to operate. Upon receipt of the information, the ~~commissioner~~~~executive director~~ shall forward such information to the National Association of Insurance Commissioners. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of KRS 304.45-040 and all other sections of this subtitle.

- (5) A risk retention group shall, within ten (10) days, notify the ***commissioner***~~[executive director]~~ of any changes in the identity of those individuals who provide administrative services or otherwise influence or control the activities of the group, the coverages afforded, and the states in which the group operates.
- (6) A risk retention group chartered and licensed in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers any other kind of liability insurance other than product liability or completed operations liability insurance.

➔Section 1575. KRS 304.45-040 is amended to read as follows:

Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

- (1) Before offering insurance in this state, a risk retention group shall submit to the ***commissioner***~~[executive director]~~:
 - (a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, date of chartering and licensing, its principal place of business, and such other information, including information on its membership, as the ***commissioner***~~[executive director]~~ of this state may require to verify that the risk retention group is qualified under KRS 304.45-020(11);
 - (b) A copy of its plan of operations or a feasibility study and revisions of such plan or study submitted to its state of domicile, but the provision relating to the submission of a plan of operation or a feasibility study shall not apply as to any kind or classification of liability insurance which was defined in the Product Liability Risk Retention Act of 1981 before October 27, 1986, and was offered before such date by any risk retention group which had been chartered and operating for not less than three (3) years before such date; and
 - (c) A statement of registration which designates the Secretary of State as its agent for the purpose of receiving service of legal documents or process.
- (2) Any risk retention group doing business in this state shall submit to the ***commissioner***~~[executive director]~~:
 - (a) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;
 - (b) A copy of each financial, market conduct, or other examination of the risk retention group as certified by the ***commissioner***~~[executive director]~~ or public official conducting the examination;
 - (c) Upon request by the ***commissioner***~~[executive director]~~, a copy of any audit performed with respect to the risk retention group; and
 - (d) Such information as may be required to verify its continuing qualification as a risk retention group under KRS 304.45-020(11).
- (3) A risk retention group shall, within ten (10) days, notify the ***commissioner***~~[executive director]~~ of any changes in any of the information required in subsections (1) and (2).
- (4) Any risk retention group shall submit to an examination by the ***commissioner***~~[executive director]~~ to determine its financial condition if the ***commissioner***~~[executive director]~~ of the jurisdiction in which the group is chartered and licensed has not initiated an examination or does not initiate an examination within sixty (60) days after a request by the ***commissioner***~~[executive director]~~ of this state. Any such examination shall be coordinated to avoid unjustified repetition and conducted in an expeditious manner and in accordance with the National Association of Insurance Commissioners' examiner handbook. Such examinations shall be conducted in accordance with KRS 304.2-210 to 304.2-300.
- (5) Any application used or any policy issued by a risk retention group shall contain in ten (10) point boldface type the following legend:

THIS POLICY IS ISSUED BY YOUR RISK RETENTION GROUP. YOUR RISK RETENTION GROUP MAY NOT BE SUBJECT TO ALL OF THE INSURANCE LAWS AND REGULATIONS OF YOUR STATE. STATE INSURANCE INSOLVENCY GUARANTY FUNDS ARE NOT AVAILABLE FOR YOUR RISK RETENTION GROUP.

- (6) In the solicitation or sale of insurance, a risk retention group shall not:
 - (a) Solicit or sell insurance to any person who is not eligible for membership in such group; and
 - (b) Solicit or sell insurance issued by, or otherwise operate, a risk retention group that is in a hazardous financial condition or is financially impaired.
- (7) No risk retention group shall be allowed to do business in this state if an insurance company is directly or indirectly a member or owner of such risk retention group, except if all members of the risk retention group are insurance companies.
- (8) A risk retention group shall not offer insurance policy coverage prohibited by statute or regulation or declared unlawful by the highest court of this state.
- (9) A risk retention group not chartered in this state and doing business in this state shall comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by a **commissioner**~~executive director~~ if there has been a finding of financial impairment after an examination under subsection (4) of this section.
- (10) A risk retention group registered in this state as a product liability risk retention group under the provisions of KRS Chapter 304 in effect prior to July 13, 1990, may continue to act as such without complying with this subtitle as long as it complies with the provisions of KRS Chapter 304 in effect prior to July 13, 1990. The exception provided in this subsection shall cease to apply to any product liability risk retention group which offers kinds of liability insurance other than product liability or completed operations liability insurance.

➔Section 1576. KRS 304.45-060 is amended to read as follows:

- (1) A purchasing group which intends to do business in this state shall, prior to doing business, furnish notice to the **commissioner**~~executive director~~ which shall:
 - (a) Identify the state in which the purchasing group is domiciled;
 - (b) Specify the kinds and classification of liability insurance which the purchasing group intends to purchase;
 - (c) Identify the insurance company or companies from which the purchasing group intends to purchase its insurance and the domicile or domiciles of such insurance company or insurance companies;
 - (d) Specify the method by which and the person or persons, if any, through whom insurance will be offered to its members whose risks are resident or located in this state;
 - (e) Identify the principal place of business of the purchasing group; and
 - (f) Provide such other information as may be required by the **commissioner**~~executive director~~ to verify that the purchasing group is qualified under KRS 304.45-020(10) and is otherwise in compliance with the laws of this state.
- (2) A purchasing group shall, within ten (10) days, notify the **commissioner**~~executive director~~ of any changes in any of the items set forth in subsection (1).
- (3) The purchasing group shall register with and designate the Secretary of State as its agent solely for the purpose of receiving legal documents or process, except that such requirement shall not apply in the case of a purchasing group:
 - (a) Which in any state of the United States:
 - 1. Was domiciled before April 1, 1986; and
 - 2. Is domiciled on and after October 27, 1986;
 - (b) Which:

1. Before October 27, 1986, purchased insurance from an insurer licensed in any state; and
 2. Since October 27, 1986, purchased its insurance from an insurer licensed in any state;
 - (c) Which was a purchasing group under the requirements of the Product Liability Risk Retention Act of 1981 (P.L. 97-45) before October 27, 1986; and
 - (d) Which does not purchase insurance that was not authorized for purposes of an exemption under that act, as in effect before October 27, 1986.
- (4) Any purchasing group which was doing business in this state prior to July 13, 1990, shall, within thirty (30) days after July 13, 1990, furnish notice to the **commissioner**~~[executive director]~~ pursuant to the provisions of this subtitle and furnish the information required pursuant to this subtitle.

➔Section 1577. KRS 304.45-080 is amended to read as follows:

- (1) All risk retention groups and insurers providing liability insurance to purchasing groups shall be subject to taxation and shall be deemed to be insurers for the purpose of assessing and collecting taxes on premiums. All risk retention groups and insurers issuing liability insurance policies to purchasing groups shall be subject to the taxes set forth in KRS 91A.080 and 136.340 and the surcharge imposed by KRS 136.392.
- (2) All persons involved in the solicitation, negotiation, or procurement of liability insurance from a risk retention group or from an insurer issuing a liability insurance group to a purchasing group shall cooperate in the reporting and payment of taxes on premiums for risks located in this state.
- (3) Failure of risk retention groups, insurers issuing liability insurance policies to purchasing groups, and any person involved in the solicitation, negotiation, or procurement of liability insurance from a risk retention group or from an insurer issuing a liability insurance policy to a purchasing group to pay taxes in accordance with this section or to cooperate in accordance with this section is a ground for suspension or revocation of certificates of authority, licenses, or permission to do business in this state, imposition of civil penalties, or both. The **commissioner**~~[executive director]~~ may take any action necessary to assure that applicable premium taxes are paid to the appropriate taxing authorities.

➔Section 1578. KRS 304.45-110 is amended to read as follows:

- (1) A risk retention group doing business in this state shall be subject to all applicable unfair claims settlement practices laws and regulations as provided in KRS 304.3-200, 304.12-220, and 304.12-230.
- (2) The **commissioner**~~[executive director]~~ is authorized to make use of any of the powers established under the insurance statutes and regulations of this state to enforce the laws of this state so long as those powers are not specifically preempted by the Product Liability Risk Retention Act of 1981 (P.L. 97-45) and the Liability Risk Retention Act of 1986 (P.L. 99-563), 15 U.S.C. secs. 3901 et seq. This includes, but is not limited to, the **commissioner's**~~[executive director's]~~ administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders, and impose penalties. Without regard to any investigation, administrative proceedings, or litigation, the **commissioner**~~[executive director]~~ can rely on the procedural law and regulations of the state. The injunctive authority of the **commissioner**~~[executive director]~~ in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction.

➔Section 1579. KRS 304.45-140 is amended to read as follows:

The **commissioner**~~[executive director]~~ shall apply the fees set forth in KRS 304.4-010 to risk retention groups. Subtitle 4 of this chapter applies to this subtitle.

➔Section 1580. KRS 304.45-150 is amended to read as follows:

The **commissioner**~~[executive director]~~ may promulgate reasonable regulations necessary for, or as an aid to the effectuation of, this subtitle.

➔Section 1581. KRS 304.47-010 is amended to read as follows:

As used in Subtitle 47 of this chapter, unless the context requires otherwise:

- (1) "Insurer" means any person, entity, organization, or reinsurer, including fraternal benefit societies as defined in Subtitle 29 of this chapter, nonprofit hospital, medical-surgical, dental, and health service corporation as defined in Subtitle 32 of this chapter, health maintenance organization as defined in Subtitle 38 of this chapter, prepaid dental plan organization as defined in Subtitle 43 of this chapter, or unauthorized insurer as defined in

Subtitle 11 of this chapter, subject to regulation by or registration with the ~~Department~~~~Office~~ of Insurance under this chapter, and any "carrier," "self-insurer," or "insurance carrier" as defined by KRS Chapter 342.

- (2) "Insurance policy" or "policy" means any individual or group policy, including those defined by KRS Chapter 342, certificate, or contract of an insurer as defined in subsection (1) of this section including reinsurance affecting the rights of any Kentucky resident or bearing a reasonable relation to Kentucky regardless of whether delivered or issued for delivery in Kentucky.
- (3) "Insured" means any person who is a named insured or beneficiary under a policy as defined in subsection (2) of this section or a person who is not a named insured or beneficiary under a policy due to the fraudulent action of another, but who in good faith believes himself *or herself* to be an insured or beneficiary.
- (4) "Law enforcement agency" means any federal, state, county, or consolidated police or law enforcement department and any prosecuting official of the federal, state, county, local, or consolidated government.
- (5) "Statement" includes, but is not limited to, any notice, statement, proof of loss, bill of lading, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or physician record or report, X-ray, test result, or other evidence of loss, injury, or expense. A statement may be in any form, including oral, written, and electronic transmissions.
- (6) "Division" means the Division of Insurance Fraud Investigation of the Kentucky ~~Department~~~~Office~~ of Insurance, its employees, or authorized representatives.
- (7) "Criminal syndicate" means five (5) or more persons collaborating to promote or engage in any fraudulent insurance act, as set forth in KRS 304.47-020(1), on a continuing basis.

➔Section 1582. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including but not limited to matters relating to workers' compensation:
 - (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
 - (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - (d) Knowingly and with intent to defraud or deceive, receives money for the purpose of purchasing insurance, and fails to obtain insurance;
 - (e) Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
 - (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;
 - (g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
 - (h) Engages in unauthorized insurance, as defined in KRS 304.11-030;
 - (i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the ~~commissioner~~~~executive~~

~~director~~, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:

1. The rating of an insurance policy;
 2. The financial condition of an insurer;
 3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
 4. A document filed with the ~~commissioner~~~~executive director~~;
- (j) Knowingly and with intent to defraud or deceive, engages in any of the following:
1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
 2. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer; or
- (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to three hundred dollars (\$300), and shall be punished by:
1. Imprisonment for not more than one (1) year;
 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of three hundred dollars (\$300), a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
1. Imprisonment for not less than one (1) nor more than five (5) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;
 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.
- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.

- (3) Any person damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
- (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

➔Section 1583. KRS 304.47-025 is amended to read as follows:

- (1) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, and who knowingly engages or participates in the business of insurance in this Commonwealth, shall be guilty of a Class D felony.
- (2) Any insurer that knowingly permits the participation in the business of insurance in this Commonwealth by a person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, shall be guilty of a criminal violation.
- (3) Any person who has been convicted of any felony offense involving dishonesty or a breach of trust, or who has been convicted of a fraudulent insurance act under this subtitle, may engage in the business of insurance in this Commonwealth if he or she has received written consent from the **commissioner**~~executive director~~, and that consent specifically refers to this subsection.

➔Section 1584. KRS 304.47-030 is amended to read as follows:

- (1) All applications shall contain a statement in a form approved by the **Department**~~Office~~ of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (2) All claim forms shall contain a statement in a form approved by the **Department**~~Office~~ of Insurance that clearly states in substance the following: "Any person who knowingly and with intent to defraud any insurance company or other person files a statement of claim containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime."
- (3) Fraud warning statements shall not be required on applications or claim forms used by reinsurers.

➔Section 1585. KRS 304.47-040 is amended to read as follows:

- (1) There is created within the **Department**~~Office~~ of Insurance a Division of Insurance Fraud Investigation~~which shall include a Workers' Compensation Branch~~.
- (2)
 - (a) The **commissioner**~~executive director~~ shall appoint qualified persons to serve as special investigators for the Division of Insurance Fraud Investigation who shall have general police powers including the power to arrest, and they shall possess all of the common law and statutory powers, privileges, and immunities of sheriffs, and their jurisdiction shall be coextensive with the state.
 - (b) The **division staff also** ~~executive director shall appoint appropriate staff for the Workers' Compensation Branch which~~ shall include, at a minimum, three (3) special investigators, one (1) attorney, and one (1) administrative assistant. The **positions**~~appointments~~ authorized by this paragraph shall be in addition to the staff employed by the division as of December 12, 1996.
- (3) The special investigator may:
 - (a) Administer oaths and affirmations;
 - (b) Order the attendance of witnesses or proffering of information and documentation;
 - (c) Collect evidence; and

- (d) Make arrests for criminal violations established as a result of its investigations. The general laws applicable to arrests by sheriffs of the Commonwealth shall also be applicable to special investigators, who may:
1. Execute arrest warrants and search warrants for the criminal violations revealed as a result of their investigations;
 2. Serve subpoenas issued for the examination, investigation, and trial of all offenses determined by their investigations; and
 3. Arrest upon probable cause without warrant any person found in the act of violating any of the provisions of applicable laws.
- (4) The division may implement its powers if, based upon its own inquiries or as a result of information received, it has reason to believe that a person has engaged in, is engaging in, or is about to engage in a fraudulent insurance act.
- (5) If the information the division seeks to obtain is located outside the state, the person so requested may make it available to the division or its representative to examine at the place where it is located. The division may designate representatives, including officials of the state in which the matter is located, to inspect the information on the division's behalf, and it may respond to similar requests from officials of other states.
- (6) It shall be unlawful for any person to resist an arrest authorized by this subtitle or in any manner to interfere, either by abetting or assisting this resistance or otherwise interfering, with special investigators employed by the **commissioner**~~{executive director}~~ under this subtitle in the duties imposed upon them by law, and shall be punishable as provided in KRS 520.090.
- (7) The **commissioner**~~{executive director}~~ may obtain any evidence for use in criminal investigations according to KRS 304.2-340.

➔Section 1586. KRS 304.47-050 is amended to read as follows:

- (1) Any person, other than those specified in subsection (2) of this section, having knowledge or believing that a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under the subtitle is being or has been committed may send to the division a report of information pertinent to this knowledge of or belief and any additional relevant information the **commissioner**~~{executive director}~~ may request.
- (2) The following individuals having knowledge or believing that a fraudulent insurance act or any other act or practice which may constitute a felony or misdemeanor under this subtitle is being or has been committed shall send to the division a report or information pertinent to the knowledge or belief and additional relevant information that the **commissioner**~~{executive director}~~ or **the commissioner's**~~{his}~~ employees or agents may require:
- (a) Any professional practitioner licensed or regulated by the Commonwealth, except as provided by law;
 - (b) Any private medical review committee;
 - (c) Any insurer, agent, or other person licensed under this chapter; and
 - (d) Any employee of the persons named in paragraphs (a) to (c) of this subsection.
- (3) The division or its employees or agents shall review this information or these reports and select the information or reports that, in the judgment of the division, may require further investigation. The division shall then cause an investigation of the facts surrounding the information or report to be made to determine the extent, if any, to which a fraudulent insurance act or any other act or practice which, upon conviction, constitutes a felony or misdemeanor under this subtitle is being committed.
- (4) The **Department**~~{Office}~~ of Workers' Claims shall provide the division access to all relevant information the **commissioner**~~{executive director}~~ may request.
- (5) The division shall report any alleged violations of law which the investigations disclose to the appropriate licensing agency and the Commonwealth's attorney, Attorney General, or other prosecuting agency having jurisdiction with respect to a violation. If prosecution by the Commonwealth's attorney, Attorney General, or other prosecuting agency is not begun within sixty (60) days of the report, the prosecuting attorney shall inform the division of the reasons for the lack of prosecution. In addition to filing a report with the appropriate

prosecuting agency, the ***commissioner***~~[executive director]~~ may, through the Attorney General, prosecute violations of this subtitle in the Circuit Court of the county in which the alleged wrongdoer resides or has his ***or her*** principal place of business, in the Circuit Court of the county in which the fraudulent insurance act has been committed, or, with consent of the parties, in the Franklin Circuit Court.

- (6) Notwithstanding the provisions of subsections (1) to (5) of this section, any person having knowledge or believing that a fraudulent insurance act or any other act that may be prohibited under this subtitle is being or has been committed, may notify any law enforcement agency of his or her knowledge or belief and provide information relevant to the act, as may be requested by that agency, including, but not limited to, insurance policy information including the application for insurance, policy premium payment records, history of previous claims made by the insured, and other information relating to the investigation of the claim, including statements of any person, proofs of loss, and notice of loss. Reporting to any other agency does not relieve those listed in subsection (2) of this section of their mandatory duty to report to the division.
- (7) If the information referred to in this section is specifically requested by the division, any other law enforcement agency, or a prosecuting attorney, the insurer shall provide certified copies of the requested information within ten (10) business days of the request or as soon thereafter as reasonable.
- (8) In the absence of malice, fraud, or gross negligence, no insurer or agent authorized by an insurer to act on its behalf, law enforcement agency, the ***Department***~~[Office]~~ of Workers' Claims, their respective employees, or an insured shall be subject to any civil liability for libel, slander, or related cause of action by virtue of filing reports or for releasing or receiving any information pursuant to this subsection.

➔Section 1587. KRS 304.47-055 is amended to read as follows:

- (1) Documents, materials, or other information in the possession or control of the ***commissioner***~~[executive director]~~ that is provided according to this subtitle shall be confidential by law and privileged, and shall not be subject to the Kentucky Open Records Act, KRS 61.872 to KRS 61.884. These documents, materials, or other information shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless, after notice to the ***commissioner***~~[executive director]~~ and a hearing, a court of competent jurisdiction determines the ***commissioner***~~[executive director]~~ would not be unnecessarily hindered. However, the ***commissioner***~~[executive director]~~ may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the ***commissioner's***~~[executive director's]~~ official duties.
- (2) Neither the ***commissioner***~~[executive director]~~ nor any person who received documents, materials, or other information while acting under the authority of the ***commissioner***~~[executive director]~~ shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to subsection (1) of this section.
- (3) In order to assist in the performance of the ***commissioner's***~~[executive director's]~~ duties, the ***commissioner***~~[executive director]~~:
 - (a) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsections (1) and (2) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with local, state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 - (b) May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential and privileged any documents, materials, or information received with notice or the understanding that it is confidential and privileged under the laws of the jurisdiction that is the source of the documents, materials, or information;
 - (c) May enter into agreements governing the sharing and use of information including the furtherance of any regulatory or legal action brought as part of the recipient's official duties.

- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the **commissioner**~~[executive director]~~ under this subtitle or as a result of sharing as authorized in subsection (3) of this section.

➔Section 1588. KRS 304.47-060 is amended to read as follows:

- (1) In the absence of malice, fraud, or gross negligence, a person shall not be subject to civil liability for libel, slander, or any other relevant tort by virtue of filing reports or furnishing other information required by this chapter or requested by the division or its authorized representative. No civil cause of action of any nature shall arise against the person:
- (a) For any information relating to suspected fraudulent insurance acts furnished to or received from law enforcement officials, their agents, or employees;
 - (b) For any information relating to suspected fraudulent insurance acts furnished to or received from other persons subject to the provisions of this subtitle, including those designated by KRS 304.47-080;
 - (c) For any information furnished to or received from the **Department**~~[Office]~~ of Workers' Claims, its agents, or employees; or
 - (d) For any information furnished in reports to the **commissioner**~~[executive director]~~ or the National Association of Insurance Commissioners.
- (2) The **commissioner**~~[executive director]~~ or any employee or agent of the **Department**~~[Office]~~ of Insurance shall not be subject to civil liability for libel, slander, or any other relevant tort. No civil cause of action shall exist against these persons by virtue of the execution of official activities or duties of the **commissioner**~~[executive director]~~ or the division or by virtue of the publication of any report or bulletin related to the official activities or duties of the **commissioner**~~[executive director]~~.
- (3) This subtitle shall not abrogate or modify any common law or statutory privilege or immunity enjoyed by any person.

➔Section 1589. KRS 304.47-070 is amended to read as follows:

All costs of administration and operation of the division shall be borne by the **Department**~~[Office]~~ of Insurance. Any money or other property that is awarded to the division as costs of investigation or as a fine shall be credited to the **Department**~~[Office]~~ of Insurance, and the money shall be used to help finance the division.

➔Section 1590. KRS 304.48-020 is amended to read as follows:

- (1) "Administrator" means an individual, partnership, corporation, association, or other legal entity engaged by a liability self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day-to-day management of the group.
- (2) "Bona fide association" as used in KRS 304.48-030 shall mean an association which has a substantial noninsurance purpose or has other characteristics of stability in finances and membership.
- (3) "**Commissioner**~~[Executive director]~~" means the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Insurance.
- (4) "Deceptive" means an act, practice, or statement which has the tendency or capacity to deceive, without regard to whether there is an intent to deceive or whether any person has suffered loss or injury as a result of the act, practice, or statement.
- (5) "Governmental entity" means the Commonwealth of Kentucky, other states, or the United States, their political subdivisions, municipal corporations, or public agencies.
- (6) "Insolvent" or "insolvency" means the inability of a liability self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liability over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.
- (7) "Liability self-insurance group" means a group described in KRS 304.48-030.
- (8) "Person" includes, but is not limited to, any individual, partnership, association, trust, or corporation.
- (9) "Qualified actuary" means a member of the American Academy of Actuaries or a fellow of the Casualty Actuarial Society.

- (10) "Service company" means a person or entity which provides services not provided by the administrator, including, but not limited to, claims adjustment, safety engineering, compilation of statistics in preparation of contribution and assessments, loss, and tax reports, preparation of other required self-insurance reports, development of members' contributions, assessments, and fees, and administration of a claim fund.
- (11) "Unfair" refers to an act, practice, or statement which is unconscionable.
- (12) "Agent" means any person directly or indirectly associated with such organization who engages in solicitation or enrollment of persons for profit or pecuniary gain in a liability self-insurance group.

➔Section 1591. KRS 304.48-040 is amended to read as follows:

No person shall in this state be, act as, or hold himself *or herself* out as a liability self-insurance group unless he *or she* holds a certificate of filing from the **commissioner**~~{executive director}~~. All certificates of filing issued by the **commissioner**~~{executive director}~~ prior to July 15, 1994, shall remain in full force and effect unless revoked or suspended by the **commissioner**~~{executive director}~~ pursuant to KRS 304.48-220.

➔Section 1592. KRS 304.48-050 is amended to read as follows:

A proposed liability self-insurance group shall file with the **commissioner**~~{executive director}~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of five dollars (\$5). Each application for a certificate of filing shall be submitted to the **commissioner**~~{executive director}~~ upon a form prescribed by *the commissioner* ~~{him}~~ and shall set forth or be accompanied by:

- (1) The group's name, location of its principal office, date of organization, name and address of each member (if known at the time of application; if unknown, a description of the group to be solicited for membership), and identification of its fiscal year;
- (2) A copy of the articles of association;
- (3) A copy of agreements with the administrator and with any service company;
- (4) A copy of the bylaws of the proposed group;
- (5) A copy of the agreement between the group and each member jointly and severally binding the group and each member thereof to comply with the provisions of this subtitle and the decision of the trustees for operation of the liability self-insurance group. If the liability self-insurance group is composed of governmental entities and received its certificate of filing prior to the enactment of this section, the agreement may provide that it does not jointly and severally bind group members to pay the debts of others. Liability self-insurance groups may limit group members' joint and several liability and the limits shall be established in terms of members' annual contributions;
- (6) Designation of the initial board of trustees and administrator; and
- (7) The address where books and records of the group will be maintained at all times.

➔Section 1593. KRS 304.48-060 is amended to read as follows:

Upon receipt of an application for issuance for a certificate of filing, the **commissioner**~~{executive director}~~ shall issue or deny the same. Issuance of a certificate of filing shall be granted only if the **commissioner**~~{executive director}~~ finds that the applicant has complied with KRS 304.48-050, has paid the application fee, and the **commissioner**~~{executive director}~~ is satisfied that the following conditions are met:

- (1) The persons responsible for the conduct of the affairs of the liability self-insurance group are competent, trustworthy, and possess good reputation;
- (2) The liability self-insurance group is financially responsible and may reasonably be expected to meet its obligations to participants and prospective participants. In making this determination, the **commissioner**~~{executive director}~~ may consider:
 - (a) The adequacy of working capital;
 - (b) Any agreement with an insurer, a government, or any other organization for insuring the payment of liability claims or the provision for automatic applicability of an alternative coverage in the event of discontinuance of the self-insurance group; and

(c) Compliance with KRS 304.48-070, as a guarantee that the obligations will be duly performed.

➔Section 1594. KRS 304.48-070 is amended to read as follows:

- (1) This section applies to a group applying for and holding a certificate of filing as a liability self-insurance group.
- (2) To obtain and to maintain its certificate of filing a liability self-insurance group shall have sufficient financial strength to pay all public or professional liabilities covered by the group, including known claims and expenses and incurred but not reported claims and expenses.
- (3) The ***commissioner***~~{executive director}~~, if not satisfied with the financial strength of a liability self-insurance group, may require any or all of the following of a liability self-insurance group:
 - (a) Security in the form and amount prescribed by the ***commissioner***~~{executive director}~~ as follows:
 1. A surety bond issued by a corporate surety authorized to transact business in the Commonwealth of Kentucky; or
 2. Any financial security endorsement issued as part of an acceptable excess insurance contract issued by an authorized insurer may be used to meet all or part of the security requirement. The bond or financial security endorsement shall be for the benefit of the insured creditors solely to pay claims and associated expenses and shall be payable upon the failure of the group to pay professional or public liability claims it is legally obligated to pay. The ***commissioner***~~{executive director}~~ may establish and adjust the requirements for the amount of security based on differences among groups in their size, types or business, years in existence, or other relevant factors.
 - (b) Specific and aggregate excess insurance in a form, in an amount, and issued by an insurer acceptable to the ***commissioner***~~{executive director}~~.
 - (c) A fidelity bond for the administrator and a fidelity bond for the service company in forms and amounts prescribed by the ***commissioner***~~{executive director}~~. The ***commissioner***~~{executive director}~~ may require the service company providing claim service to furnish a performance bond in a form and amount prescribed by the ***commissioner***~~{executive director}~~.

➔Section 1595. KRS 304.48-090 is amended to read as follows:

The funds of a liability self-insurance group shall be invested only in securities or other investments permitted by subtitle 7 of this chapter, or such other securities or investments as the ***commissioner***~~{executive director}~~ may permit by administrative regulation.

➔Section 1596. KRS 304.48-110 is amended to read as follows:

The ***commissioner***~~{executive director}~~ or any person authorized by him *or her* shall have power to examine the financial condition, affairs, and management of any liability self-insurance group subject to the provisions of this subtitle. ***The commissioner***~~{He}~~ shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to its affairs, transactions, or conditions. ***The commissioner***~~{He}~~ shall so examine each liability self-insurance group subject to the provisions of this subtitle not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-210 to 304.2-290.

➔Section 1597. KRS 304.48-130 is amended to read as follows:

- (1) A certificate of filing remains in effect until terminated at the request of the group or suspended or revoked by the ***commissioner***~~{executive director}~~ pursuant to KRS 304.48-220.
- (2) The ***commissioner***~~{executive director}~~ shall not grant the request of the liability self-insurance group to terminate its certificate of filing unless the group has filed with the ***commissioner***~~{executive director}~~ a statement describing what arrangements, if any, have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.
- (3) Subject to filing with the ***commissioner***~~{executive director}~~, a liability self-insurance group may merge with another liability self-insurance group. As a result of any merger, the resulting liability self-insurance group shall assume in full all obligations of the constituent groups.

➔Section 1598. KRS 304.48-140 is amended to read as follows:

- (1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the liability self-insurance group or by other laws of the Commonwealth. Except for liability self-insurance groups formed by governmental entities, the trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, such as assuring that there is adequate funding to cover professional or public liabilities, assuring that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.
- (2) The board of trustees shall:
 - (a) Maintain responsibility for all moneys collected or disbursed from the group;
 - (b) Maintain minutes of its meetings and make the minutes available to the **commissioner**~~executive director~~; and,
 - (c) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
- (3) The board of trustees shall not:
 - (a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the **commissioner**~~executive director~~; or
 - (b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group. However, a liability self-insurance group formed by governmental entities may borrow moneys in the name of the group.
- (4) In its discretion, the liability self-insurance group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.

➔Section 1599. KRS 304.48-170 is amended to read as follows:

- (1) All liability self-insurance groups shall file with the **commissioner**~~executive director~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the **commissioner**~~executive director~~ and shall include:
 - (a) Actuarially-appropriate reserves for:
 1. Known claims and expenses associated therewith.
 2. Claims incurred but not reported and any expenses associated therewith.
 3. Unearned contributions and assessments.
 4. Bad debts, which reserves shall be known as liabilities.
 - (b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (2) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- (3) The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the **commissioner**~~executive director~~.

➔Section 1600. KRS 304.48-180 is amended to read as follows:

Liability self-insurance groups shall file with the **commissioner**~~executive director~~ their rates, underwriting guidelines, evidence of coverage, and any changes therein. The filing shall be accompanied by a filing fee of five dollars (\$5) per filing.

➔Section 1601. KRS 304.48-220 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ may suspend or revoke any certificate of filing issued to a liability self-insurance group under this subtitle if ***the commissioner***~~[he]~~ finds that any of the following conditions exist:
 - (a) The liability self-insurance group is operating significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, unless amendments to the submissions have been filed with and approved by the ***commissioner***~~[executive director]~~;
 - (b) The liability self-insurance group is no longer financially responsible and may reasonably be expected to be unable to meet its obligations to participants or prospective participants;
 - (c) The liability self-insurance group, or any person at its direction, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner;
 - (d) The liability self-insurance group has engaged in any unfair or deceptive practices under its certificate of filing;
 - (e) The liability self-insurance group has failed to correct a violation of this subtitle or the administrative regulations adopted thereunder, within a reasonable time period established by the ***commissioner***~~[executive director]~~ in administrative regulations.
- (2) A certificate of filing shall be suspended or revoked only after compliance with the hearing procedure set forth in KRS 304.2-310 to 304.2-370.
- (3) When a certificate of filing of a liability self-insurance group is suspended, the group shall not, during the period of suspension, enroll any new participants and shall not engage in any advertising or solicitation.
- (4) If the certificate of filing of a liability self-insurance group is revoked, the group shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of the organization. It shall engage in no further advertising or solicitation. The ***commissioner***~~[executive director]~~ may, by written order, prevent further operation of the group as he *or she* may find to be in the best interest of the participants, to the end that the participants will be afforded the greatest practical opportunity to obtain liability coverage elsewhere. If the ***commissioner***~~[executive director]~~ permits further operation, the liability self-insurance group shall continue to collect the contributions and assessments required of participants.

➔Section 1602. KRS 304.48-230 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may promulgate reasonable administrative regulations not inconsistent with the provisions of this subtitle that ***the commissioner***~~[he]~~ deems necessary for the proper administration of this subtitle. Nothing in this subtitle nor any administrative regulation adopted under the authority of this subtitle shall require any liability self-insurance group formed by public entities or its members, to take any action in violation of the Constitution of the Commonwealth of Kentucky.

➔Section 1603. KRS 304.48-240 is amended to read as follows:

- (1) No person shall make any deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.
- (2) Liability self-insurance groups shall not engage in unfair claims settlement practices and shall:
 - (a) Respond to claimant inquiries within fifteen (15) working days.
 - (b) Respond to ***Department***~~[Office]~~ of Insurance inquiries concerning claims within fifteen (15) working days.
 - (c) Complete the investigation of losses within thirty (30) days from the date the group has notice of a loss. An additional thirty (30) day period may be taken if reasonably necessary and upon written notice to the claimant.
 - (d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations, a policy, or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which the time limit shall expire and affect the claimant's rights.

(e) Not commit any other unfair or deceptive act or practice relating to claim settlement.

- (3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices under its certificate of filing from the **commissioner**~~[executive director]~~.

➔Section 1604. KRS 304.48-250 is amended to read as follows:

- (1) If the assets of a liability insurance group are at any time insufficient to enable the group to discharge its legal liabilities, other obligations, and to maintain the required reserves under this subtitle, the group shall immediately levy an assessment upon its members for the amount necessary to make up the deficiency.
- (2) If there is a deficiency in any fund year, the deficiency shall be made up immediately, from the following:
 - (a) Surplus from a fund year other than the current fund year after prior notice of the transfer has been given to the **commissioner**~~[executive director]~~;
 - (b) Administrative funds;
 - (c) Assessment of membership; or
 - (d) Alternate methods as the **commissioner**~~[executive director]~~ may direct or approve.
- (3) If a liability self-insurance group fails to assess its members within thirty (30) days to make up a deficit, the **commissioner**~~[executive director]~~ shall order it to do so. This subsection shall not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability.
- (4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the **commissioner**~~[executive director]~~ orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which the assessment is made, or within a longer period of time as may be permitted by the **commissioner**~~[executive director]~~, the group shall be determined to be insolvent.

➔Section 1605. KRS 304.48-260 is amended to read as follows:

- (1) After a hearing or upon agreement by the liability self-insurance group, the **commissioner**~~[executive director]~~ may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a liability self-insurance group, or both, for:
 - (a) Violations of this subtitle or administrative regulations adopted thereunder;
 - (b) Obtaining a certificate of filing by unfair or deceptive means;
 - (c) Operating in a financially hazardous manner;
 - (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
 - (e) Unfair or deceptive business practices.
- (2) The **commissioner**~~[executive director]~~, in his **or her** discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any liability self-insurance group upon the commencement of the following proceedings:
 - (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1606. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.

- (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.
- (3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the ~~commissioner~~~~executive director~~.
- (4) "Consortium" means any legal association of individuals, corporations, partnerships, or associations that has been in continuous existence for at least one (1) year, the member organizations of which collectively, or which does itself:
 - (a) Own, control, or hold with power to vote all of the outstanding voting securities of a consortium captive insurer incorporated as a stock insurer; or
 - (b) Have complete voting control over a consortium captive insurer incorporated as a mutual insurer; or
 - (c) The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.
- (5) "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and their affiliated companies.
- (6) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the ~~commissioner~~~~executive director~~.
- (7) "Industrial insured" means an insured as defined in KRS 304.11-020(1).
- (8) "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
- (9) "Industrial insured group" means any group that meets either of the following criteria:
 - (a) Any group of industrial insureds that collectively:
 - 1. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;
 - 2. Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or
 - 3. Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or
 - (b) Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other limited liability association.
- (10) "Member organization" means any individual, corporation, partnership, or association that belongs to a consortium.
- (11) "Parent" means a corporation, partnership, or individual that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.
- (12) "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
- (13) "Controlled unaffiliated business" means any company:
 - (a) That is not in the corporate system of a parent and affiliated companies;
 - (b) That has an existing contractual relationship with a parent or affiliated company; and
 - (c) Whose risks are managed by a pure captive insurer in accordance with KRS 304.49-170.
- (14) "Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the ~~commissioner~~~~executive director~~ on companies transacting the business

of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.

- (15) "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.
- (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the **commissioner**~~executive director~~ to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.
- (17) "Branch operations" means any business operations of a branch captive insurer in Kentucky.
- (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.
- (19) "Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.
- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.
- (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.
- (22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the **commissioner**~~executive director~~. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
- (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the **commissioner**~~executive director~~ to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.
- (24) "Sponsored captive insurer" means any captive insurer:
 - (a) In which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;
 - (b) That is formed or issued a certificate of authority under the provisions of this subtitle;
 - (c) That insures the risks of separate participants through contract; and
 - (d) That segregates each participant's liability through one (1) or more protected cells.

➔Section 1607. KRS 304.49-020 is amended to read as follows:

- (1) Any captive insurer, when permitted by its articles of incorporation, charter, or other organizational document, may apply to the **commissioner**~~executive director~~ for a certificate of authority to engage in any and all kinds of insurance defined in Subtitle 5 of this chapter; provided, however, that:
 - (a) No pure captive insurer may insure any risks other than those of its parent and affiliated companies or controlled unaffiliated business;
 - (b) No consortium captive insurer may insure any risks other than those of the member organizations of its consortium and their affiliated companies;
 - (c) No industrial insured captive insurer may insure any risks other than those of the industrial insureds that comprise the industrial insured group and their affiliated companies;
 - (d) No captive insurer may provide personal motor vehicle or homeowner's insurance coverage or any component thereof;
 - (e) No captive insurer may accept or cede reinsurance except as provided in KRS 304.49-110;

- (f) No captive insurer that is issued an initial certificate of authority on or after July 1, 2006, shall directly provide workers' compensation insurance; however, any captive insurer may provide excess workers' compensation insurance to its parent and affiliated companies, unless prohibited by the laws of the state having jurisdiction over the transaction. Any captive insurer may reinsure workers' compensation of a qualified self-insured plan of its parent and affiliated companies;
 - (g) Any captive insurer which insures risks described in KRS 304.5-020 and 304.5-040 shall comply with all applicable state laws;
 - (h) No branch captive insurer may write any business in Kentucky except insurance or reinsurance of the employee benefit business of its parent and affiliated companies which is subject to the provisions of the Employee Retirement Income Security Act of 1974, as amended; and
 - (i) No sponsored captive insurer may insure any risks other than those of its participants.
- (2) No captive insurer shall do any insurance business in Kentucky unless:
- (a) It first obtains from the **commissioner**~~[executive director]~~ a certificate of authority authorizing it to do insurance business in Kentucky;
 - (b) Its board of directors, or in the case of a reciprocal insurer, its subscribers' advisory committee, holds at least one (1) meeting each year in Kentucky; and
 - (c) It maintains its principal place of business in Kentucky or, in the case of a branch captive insurer, maintains the principal place of business for its branch operations in Kentucky.
- (3) Before receiving a certificate of authority, a captive insurer formed as a corporation shall file with the **commissioner**~~[executive director]~~ a certified copy of its charter and bylaws, a statement under oath of its president and secretary showing its financial condition, and any other statements or documents required by the **commissioner**~~[executive director]~~;
- (4) Before receiving a certificate of authority, a captive insurer formed as a reciprocal insurer shall:
- (a) File with the **commissioner**~~[executive director]~~ a certified copy of the power of attorney of its attorney-in-fact, a certified copy of its subscribers' agreement, a statement under oath of its attorney-in-fact showing its financial condition, and any other statements or documents required by the **commissioner**~~[executive director]~~; and
 - (b) Submit to the **commissioner**~~[executive director]~~ a sample of the coverages, deductibles, coverage limits, and rates, together with any additional information required by the **commissioner**~~[executive director]~~. In the event of any subsequent material change in any item in the samples, the reciprocal captive insurer shall submit to the **commissioner**~~[executive director]~~ for approval an appropriate revision. The reciprocal captive insurer shall not offer any coverage until the forms are approved by the **commissioner**~~[executive director]~~. The reciprocal captive insurer shall not use any initial rate until it is approved by the **commissioner**~~[executive director]~~ and shall inform the **commissioner**~~[executive director]~~ of any material change in rates within thirty (30) days of the adoption of the change.
- (5) In addition to the information required by subsection (3) or (4) of this section, each applicant captive insurer shall file with the **commissioner**~~[executive director]~~ evidence of the following:
- (a) The amount and liquidity of its assets relative to the risks to be assumed;
 - (b) The adequacy of the expertise, experience, and character of the person or persons who will manage it;
 - (c) The overall soundness of its plan of operation;
 - (d) The adequacy of the loss prevention programs of its parent, member organizations, or industrial insureds as applicable; and
 - (e) Any other factors deemed relevant by the **commissioner**~~[executive director]~~ in ascertaining whether the proposed captive insurer will be able to meet its policy obligations.
- (6) In addition to the information required by subsections (3), (4), and (5) of this section, each applicant-sponsored captive insurer shall file with the **commissioner**~~[executive director]~~ the following:

- (a) A business plan demonstrating how the applicant will account for the loss and expense experience of each protected cell at a level of detail found to be sufficient by the ***commissioner***~~[executive director]~~ and how it will report the experience to the ***commissioner***~~[executive director]~~;
 - (b) A statement acknowledging that all financial records of the sponsored captive insurer, including records pertaining to any protected cells, shall be made available for inspection or examination by the ***commissioner***~~[executive director]~~;
 - (c) All contracts or sample contracts between the sponsored captive insurer and any participants; and
 - (d) Evidence that expenses shall be allocated to each protected cell in a fair and equitable manner.
- (7) All portions of license applications reasonably designated confidential by the applicant, and all examination reports, preliminary examination reports, working papers, recorded information, other documents, and any copies of any of the foregoing, produced or obtained by or submitted or disclosed to the ***commissioner***~~[executive director]~~ related to an examination pursuant to this subtitle shall, unless the prior written consent of the captive insurer to which it pertains has been obtained, be given confidential treatment, and shall not be subject to civil subpoena, made public by the ***commissioner***~~[executive director]~~, or provided or disclosed to any other person at any time except to:
- (a) The insurance department of any state, country, or alien jurisdiction; or
 - (b) To a law enforcement official or agency of the Commonwealth of Kentucky, any other state, or alien jurisdiction, as long as the official or agency agrees in writing to hold it confidential and in a manner consistent with this section.
- (8) Each captive insurer shall pay to the ***commissioner***~~[executive director]~~ a nonrefundable fee as stated in KRS 304.4-010 for examining, investigating, and processing its application for certificate of authority. The ***commissioner***~~[executive director]~~ is authorized to retain legal, financial, and examination services from outside the ***department***~~[office]~~ to assist in examining and investigating the applicant, the reasonable cost of which may be charged against the applicant. In addition, each captive insurer shall pay a certificate of authority fee for the year of registration and a renewal fee for each year thereafter.

➔Section 1608. KRS 304.49-040 is amended to read as follows:

- (1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:
 - (a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);
 - (b) In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);
 - (c) In the case of an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000);
 - (d) In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000);
 - (e) In the case of an agency captive insurer, not less than five hundred thousand dollars (\$500,000); and
 - (f) In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars (\$250,000), or another amount determined by the ***commissioner***~~[executive director]~~.
- (2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of one million dollars (\$1,000,000).
- (3) The ***commissioner***~~[executive director]~~ may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (4) Capital and surplus may be in the form of cash or an irrevocable letter of credit issued by a bank approved by the ***commissioner***~~[executive director]~~ and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System, or other assets as may be approved by the ***commissioner***~~[executive director]~~.
- (5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the ***commissioner***~~[executive director]~~ shall require that a separate trust fund, funded by an

irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the **commissioner**~~[executive director]~~ may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

➔Section 1609. KRS 304.49-050 is amended to read as follows:

No captive insurer may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in KRS 304.24-320 and 304.24-330 without the prior approval of the **commissioner**~~[executive director]~~. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the **commissioner**~~[executive director]~~.

➔Section 1610. KRS 304.49-060 is amended to read as follows:

- (1) A pure captive insurer or a sponsored captive insurer shall be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.
- (2) A consortium captive insurer or an industrial insured captive insurer may be:
 - (a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or
 - (b) Incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its consortium; or
 - (c) Organized as a reciprocal insurer in accordance with Subtitle 27 of this chapter.
- (3) A special purpose captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership;
 - (f) Formed as a statutory trust; or
 - (g) Such other person approved by the **commissioner**~~[executive director]~~, other than a natural person in his or her individual capacity.
- (4) A sponsored captive insurer may be:
 - (a) Incorporated as a stock corporation;
 - (b) Incorporated as a nonstock corporation;
 - (c) Formed as a limited liability company;
 - (d) Formed as a partnership;
 - (e) Formed as a limited partnership; or
 - (f) Formed as a statutory trust.
- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have not less than three (3) incorporators or two (2) organizers.

- (7) In the case of a captive insurer, the **commissioner**~~{executive director}~~ shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the **commissioner**~~{executive director}~~ shall consider:
- (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;
 - (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and
 - (c) Any other aspects the **commissioner**~~{executive director}~~ deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- (9) Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:
- (a) The **commissioner**~~{executive director}~~ may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and
 - (b) The **commissioner**~~{executive director}~~ may waive or modify the requirements for public notice and hearing in accordance with rules which the **commissioner**~~{executive director}~~ may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the **commissioner**~~{executive director}~~ may cancel the hearing.
- (10) Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.
- (11) In addition to the provisions of subsection (10) of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.
- (12) The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.
- (13) The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.
- (14) Each owner of an agency captive insurer shall be licensed as an insurance producer.
- ➔Section 1611. KRS 304.49-070 is amended to read as follows:
- (1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.
 - (2) On or before March 1 of each year, each captive insurer shall submit to the **commissioner**~~{executive director}~~ a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the **commissioner**~~{executive director}~~ approves the use of statutory accounting principles or international accounting standards, with any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the **commissioner**~~{executive director}~~ for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the **commissioner**~~{executive director}~~. Any captive insurer whose use of statutory accounting principles is approved by the **commissioner**~~{executive director}~~ may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the

captive insurer permitted under this subtitle and, subject to the ***commissioner's***~~[executive director's]~~ approval, to make its reports under this section consistent with the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the ***commissioner***~~[executive director]~~ through administrative regulation. A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205, with additional information or modification as the ***commissioner***~~[executive director]~~ may prescribe. The ***commissioner***~~[executive director]~~ shall by administrative regulation propose the forms in which captive insurers shall report.

- (3) Any pure captive insurer or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in KRS 304.49-010(9)(a) may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.
- (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the ***commissioner***~~[executive director]~~ a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the ***commissioner***~~[executive director]~~ is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the ***commissioner***~~[executive director]~~ may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

➔Section 1612. KRS 304.49-080 is amended to read as follows:

- (1) Any insurer holding a certificate of authority issued under this subtitle shall be subject to provisions of KRS 304.2-210 to 304.2-300 and provisions of Subtitle 2 of this chapter for determining market conduct and business practices. However, the ***commissioner***~~[executive director]~~ upon application, in his *or her* discretion, may extend the period between examinations, provided the captive insurer is subject to a comprehensive annual audit during that period, of a scope satisfactory to the ***commissioner***~~[executive director]~~, by independent auditors approved by the ***commissioner***~~[executive director]~~.
- (2) The examination for a branch captive insurer shall be of branch business and branch operations only, as long as the branch captive insurer provides annually to the ***commissioner***~~[executive director]~~ a certificate of compliance, or its equivalent, issued by or filed with the licensing authority of the jurisdiction in which the branch captive insurer is formed, and demonstrates to the ***commissioner's***~~[executive director's]~~ satisfaction that it is operating in sound financial condition in accordance with all applicable laws and regulations of that jurisdiction.
- (3) As a condition for issuance of a certificate of authority to a branch captive insurer, the foreign captive insurer shall grant authority to the ***commissioner***~~[executive director]~~ for examination of the affairs of the foreign captive insurer in the jurisdiction in which the foreign captive insurer is formed.

➔Section 1613. KRS 304.49-100 is amended to read as follows:

- (1) A consortium captive insurer, sponsored captive insurer, and an industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(9)(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the ***commissioner***~~[executive director]~~ may approve the use of alternative reliable methods of valuation and rating.
- (2) No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the ***commissioner***~~[executive director]~~ may prohibit or limit any investment that threatens the solvency or liquidity of any such company.
- (3) Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the ***commissioner***~~[executive director]~~ and shall be evidenced by a note in a form approved by the ***commissioner***~~[executive director]~~.
- (4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.

➔Section 1614. KRS 304.49-140 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may establish and from time to time amend administrative regulations relating to captive insurance companies that are necessary to enable the ***commissioner***~~[executive director]~~ to carry out the provisions of KRS 304.49-010 to 304.49-230.

➔Section 1615. KRS 304.49-170 is amended to read as follows:

The ***commissioner***~~[executive director]~~ shall promulgate administrative regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurer.

➔Section 1616. KRS 304.49-180 is amended to read as follows:

- (1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.
- (2) Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.
- (3) In the case of a conversion authorized under subsection (1) of this section:
 - (a) The conversion shall be accomplished under any reasonable plan and procedure approved by the ***commissioner***~~[executive director]~~, but the ***commissioner***~~[executive director]~~ shall not approve any plan of conversion unless the plan:
 1. Satisfies the provisions of subsection (2) of this section;
 2. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the ***commissioner***~~[executive director]~~ may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the ***commissioner***~~[executive director]~~ may cancel the hearing;
 3. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
 4. Is approved:
 - a. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - b. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - (b) The ***commissioner***~~[executive director]~~ shall approve the plan of conversion if the ***commissioner***~~[executive director]~~ finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7);
 - (c) If the ***commissioner***~~[executive director]~~ approves the plan, the ***commissioner***~~[executive director]~~ shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;
 - (d) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the ***commissioner***~~[executive director]~~, the conversion shall be effective; and
 - (e) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.
- (4) A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:
 - (a) The plan of merger shall satisfy the provisions of subsection (2) of this section;

- (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;
- (c) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;
- (d) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;
- (e) The **commissioner**~~[executive director]~~ may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);
- (f) The **commissioner**~~[executive director]~~ shall approve the articles of merger if the **commissioner**~~[executive director]~~ finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7). If the **commissioner**~~[executive director]~~ approves the articles of merger, the **commissioner**~~[executive director]~~ shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;
- (g) Notwithstanding KRS 304.49-040, the **commissioner**~~[executive director]~~ may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and
- (h) An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.

➔Section 1617. KRS 304.49-190 is amended to read as follows:

- (1) One (1) or more sponsors may form a sponsored captive insurer under KRS 304.49-010 to 304.49-230.
- (2) A sponsored captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230 may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:
 - (a) The shareholders of a sponsored captive insurer shall be limited to its participants and sponsors;
 - (b) Each protected cell shall be accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss, dividends, or other distributions to participants, and any other factors provided in the participant contract or required by the **commissioner**~~[executive director]~~;
 - (c) The assets of a protected cell shall not be chargeable with liabilities arising out of any other insurance business the sponsored captive insurer may conduct;
 - (d) No sale, exchange, or other transfer of assets may be made by the sponsored captive insurer between or among any of its protected cells without the consent of the protected cells;
 - (e) No sale, exchange, transfer of assets, dividend, or distribution may be made from a protected cell to a sponsor or participant without the **commissioner's**~~[executive director's]~~ approval and, in no event, shall such approval be given if the sale, exchange, transfer, dividend, or distribution would result in insolvency or impairment with respect to a protected cell;
 - (f) Each sponsored captive insurer shall annually file with the **commissioner**~~[executive director]~~ those financial reports required by the **commissioner**~~[executive director]~~, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
 - (g) Each sponsored captive insurer shall notify the **commissioner**~~[executive director]~~, in writing, within ten (10) business days, of any protected cell that is insolvent or otherwise unable to meet its claim or expense obligations; and
 - (h) No participant contract shall take effect without the **commissioner's**~~[executive director's]~~ prior written approval, and the addition of each new protected cell and withdrawal of any participant of any existing protected cell shall constitute a change in the business plan requiring the **commissioner's**~~[executive director's]~~ prior written approval.

➔Section 1618. KRS 304.49-220 is amended to read as follows:

- (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all premium receipts on business written by the captive insurer during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000), and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurer during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.
- (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all assumed reinsurance premium receipts during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of two hundred twenty-five thousandths of one percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (1) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.
- (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.
- (4) Two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurer.
- (5) For the purposes of this section, common ownership and control shall mean:
 - (a) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and
 - (b) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.
- (6) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the company.
- (7) The tax provided for in this section shall constitute all taxes collectible under the laws of Kentucky from any captive insurer, and the taxes imposed under this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district except as provided in KRS 136.320(6) and (7).
- (8) The Kentucky Department of Revenue shall annually distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the **Department**~~Office~~ of Insurance for the regulation of captive insurance companies under KRS 304.49-010 to 304.49-230.

➔Section 1619. KRS 304.49-222 is amended to read as follows:

- (1) A captive insurer shall engage a manager who is a resident of this state.
- (2) The captive manager shall maintain the books and records of the captive insurer's business, transactions, and affairs at a location that is in this state or shall make them available to the **commissioner**~~executive director~~ at a location that is in this state.
- (3) The captive manager shall promptly notify the **commissioner**~~executive director~~ of any failure of the captive insurer to comply with this section.

- (4) The ***commissioner***~~[executive director]~~ may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this subtitle.

➔Section 1620. KRS 304.49-224 is amended to read as follows:

The ***commissioner***~~[executive director]~~ may promulgate administrative regulations to set minimum standards for the formation, structure, examination, and operation of a special purpose captive insurer or an agency captive insurer.

➔Section 1621. KRS 304.49-226 is amended to read as follows:

- (1) If there is any material change in the financial condition or management of a captive insurer, the captive insurer shall notify the ***commissioner***~~[executive director]~~, in writing, within ten (10) business days of the change.
- (2) No captive insurer shall voluntarily take any of the following material actions without providing the ***commissioner***~~[executive director]~~ at least thirty (30) days' prior written notice and receiving the ***commissioner's***~~[executive director's]~~ approval of the action within the thirty (30) day period:
 - (a) The dissolution of the captive insurer;
 - (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurer;
 - (c) Any incurrence of material indebtedness by the captive insurer;
 - (d) Any making of a material loan or other material extension of credit by the captive insurer;
 - (e) Any payment or distribution that materially reduces capital and surplus;
 - (f) Any merger or consolidation to which the captive insurer is a constituent party;
 - (g) Any conversion of the captive insurer to another business form;
 - (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or
 - (i) Any material amendment of the organizational documents of the captive insurer.

➔Section 1622. KRS 304.49-228 is amended to read as follows:

A sponsored captive insurer may establish and maintain one (1) or more protected cells to insure risks of one (1) or more participants, subject to the following conditions:

- (1) The owners of a sponsored captive insurer shall be limited to its participants and sponsors, provided that a sponsored captive insurer may issue nonvoting securities or interests to other persons on terms approved by the ***commissioner***~~[executive director]~~;
- (2) The assets of each protected cell shall be held and accounted for separately on the books and records of the sponsored captive insurer to reflect the financial condition and results of operations of the protected cell, net income or loss of the protected cell, dividends or other distributions to participants of the protected cell, and other factors regarding the protected cell as may be provided in the applicable participant contract or required by the ***commissioner***~~[executive director]~~;
- (3) The assets of a protected cell shall not be chargeable with liabilities of any other protected cell or, unless otherwise agreed in the applicable participant contract, of the sponsored captive insurer generally;
- (4) No sale or transfer of assets, or dividend or other distribution, may be made with respect to a protected cell by such sponsored captive insurer without the consent of the participants of each affected protected cell;
- (5) No sale, exchange, or transfer of assets, or dividend or other distribution, other than a payment to a sponsor in accordance with the applicable participant contract, may be made with respect to a protected cell to a sponsor or a participant without the ***commissioner's***~~[executive director's]~~ approval;
- (6) Each sponsored captive insurer shall annually file with the ***commissioner***~~[executive director]~~ financial reports as the ***commissioner***~~[executive director]~~ shall require, which shall include, without limitation, accounting statements detailing the financial experience of each protected cell;
- (7) Each sponsored captive insurer shall notify the ***commissioner***~~[executive director]~~, in writing, within ten (10) business days of any protected cell that has become insolvent or is otherwise unable to meet its claim or expense obligations;

- (8) No participant contract shall take effect without the *commissioner's*~~{executive director's}~~ prior written approval. The addition of each new protected cell and withdrawal of any participant or termination of any existing protected cell shall constitute a change in the plan of operation of the sponsored captive insurer requiring the *commissioner's*~~{executive director's}~~ prior written approval; and
- (9) (a) The business written by a sponsored captive insurer, with respect to each protected cell, shall be:
1. Fronted by an insurance company licensed under the laws of this state or any other state;
 2. Reinsured by a reinsurer authorized or approved by this state;
 3. Secured by a trust fund in this state for the benefit of policyholders and claimants; or
 4. Funded by an irrevocable letter of credit or other arrangement that is approved in writing by the *commissioner*~~{executive director}~~.
- (b) The amount of security provided shall be no less than the reserves associated with those liabilities which are neither fronted nor reinsured, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums for business written through the protected cell.
- (c) The *commissioner*~~{executive director}~~ may, for any reason, require the sponsored captive insurance company to increase the funding of any security arrangement established under this subsection in order to protect claimants or potential claimants.
- (d) If the form of security is a letter of credit, the letter of credit shall be established, issued, or confirmed by a financial institution chartered by or licensed or otherwise authorized to do banking business in this state, or by any other financial institution approved by the *commissioner*~~{executive director}~~.
- (e) A trust maintained pursuant to this subsection shall be established in a form and upon such terms as approved by the *commissioner*~~{executive director}~~.

➔Section 1623. KRS 304.49-230 is amended to read as follows:

This subtitle shall not apply to any foreign captive insurer lawfully transacting the business of insurance in Kentucky prior to July 14, 2000, unless the foreign captive insurer petitions the *commissioner*~~{executive director}~~ requesting that this subtitle be applicable to the foreign captive insurer.

➔Section 1624. KRS 304.50-010 is amended to read as follows:

- (1) The *commissioner*~~{executive director}~~ may authorize twenty (20) or more employers with common interests or membership in a bona fide trade association, or two (2) or more governmental entities, to enter into agreements to pool their liabilities under KRS Chapter 342 for the purpose of qualifying as a workers' compensation self-insured group under this subtitle and KRS 342.350.
- (2) The *commissioner*~~{executive director}~~ shall promulgate administrative regulations as necessary to govern admission, certification, and regulation of workers' compensation self-insured groups as authorized by this section and KRS 342.350. The *commissioner*~~{executive director}~~ shall take any and all action necessary to effectuate the provisions of this subtitle. The *commissioner*~~{executive director}~~ shall be responsible for maintaining records obtained or prepared in association with this oversight.
- (3) The Governor may assign the regulatory authority under this subtitle to another board or agency pursuant to KRS 12.028.
- (4) Except as specifically provided in this subtitle, no other provision of this chapter shall apply to a workers' compensation self-insured group.

➔Section 1625. KRS 304.50-015 is amended to read as follows:

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

- (1) "Adjuster" means any person required to be licensed as an adjuster under Subtitle 9 of this chapter, who for a fee or compensation investigates or settles claims arising under contracts issued by a workers' compensation self-insured group on behalf of either the group member or the group.

- (2) "Administrator" means an individual or legal entity engaged by a self-insured group's board of trustees to carry out the policies established by the self-insured group's board of trustees and provide day-to-day management of the self-insured group.
- (3) "Agent" means an individual or business entity required to be licensed by the **Department**~~{Office}~~ of Insurance under Subtitle 9 of this chapter, to sell or solicit applications for insurance or to negotiate insurance contracts.
- (4) "Aggregate excess insurance" means insurance which provides that the excess insurer pays on behalf of or reimburses a self-insurer for its payment of benefits on claims incurred during a policy period in excess of the retention amount to the excess insurer's limit of liability.
- (5) "Assessment" means a levy made on members of the group to fund deficiencies.
- (6) "Bona fide trade association" means an association of employers created for a noninsurance trade purpose and which has been operating in the Commonwealth for at least two (2) years prior to its sponsorship of a self-insured group.
- (7) "Certificate of filing" means the certificate issued to a workers' compensation self-insured group to indicate that it has complied with the provisions of this subtitle which are prerequisites to its operation.
- (8) "Common interests" means employers that are engaged in similar activities, share common standard industrial classification codes and common risk factors.
- (9) "Consultant" means an individual, required to be licensed under Subtitle 9 of this chapter, who as an independent contractor in relation to his *or her* client, for fee or compensation other than from a workers' compensation self-insured group, in any manner advises or purports to advise any person actually or prospectively a member of such a group concerning coverage, advisability, rights, or interests under the contract or relative to the retention, exchange, surrender, or exercise of rights thereunder.
- (10) "Coverage form" means coverage contract forms, endorsements, applications, indemnity agreements, clauses, riders, and all other documents regarding coverage.
- (11) "Deficiency" means that the self-insured group's assets are insufficient to enable the group to discharge its legal liabilities and other obligations and maintain the reserves required under this subtitle, or that the group has a negative members' fund balance.
- (12) "Deficit" means the amount of any deficiency in the self-insured group or group self-insurance fund.
- (13) "Dividends" means disbursements from surplus funds to group members in accordance with a plan filed with, and approved by, the **commissioner**~~{executive director}~~.
- (14) "Earned premium" means the prorated portion of the full, actual premium charged to the group members that is applicable to the group's accounting period or fiscal year.
- (15) "Employee" means those persons covered under the provisions of KRS 342.640 and those persons voluntarily covered under KRS 342.660.
- (16) "Employer" means an employer mandatorily subject to and required to comply with the provisions of KRS Chapter 342, and those voluntarily covering excluded employees pursuant to KRS 342.660.
- (17) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of the Kentucky **Department**~~{Office}~~ of Insurance.
- (18) "Fiscal agent" means a person or legal entity, other than a service organization or employees or agents of a service organization, designated by the trustees to receive, invest, and disburse the self-insured group's funds.
- (19) "Forms" means coverage contract forms, endorsements, applications, indemnity agreements, clauses, riders, articles of association, articles of incorporation, trust agreements or bylaws of the proposed group, and all other documents regarding coverage and membership.
- (20) "Governmental entities" means cities, counties, urban-county governments, charter county governments, consolidated local governments, school districts, and other political subdivisions of the Commonwealth, and their boards, agencies, authorities, and commissions.
- (21) "Group members" means employers who have joined a self-insured group.

- (22) "Group self-insurance fund" means the contractual arrangement whereby twenty (20) or more employers with common interests or two (2) or more governmental entities associate to jointly self-insure their workers' compensation liability.
- (23) "Insolvent" or "insolvency" means the inability of a self-insured group to pay its outstanding lawful obligations as they mature in the regular course of business, or to hold sufficient assets to prospectively pay all incurred workers' compensation benefits when due.
- (24) "Insurance producer" means an individual or business entity required to be licensed under Subtitle 9 of this chapter to sell, solicit, or negotiate insurance. "Insurance producer" includes agent, consultant, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, and, for a workers' compensation self-insured group, a third-party administrator.
- (25) "Person" includes, but is not limited to, any individual, partnership, association, limited liability company, trust, or corporation.
- (26) "Premium" means the amount of money charged each member of the self-insured group to fund the obligations and expenses of the self-insured group.
- (27) "Qualified actuary" means an associate or fellow of the Casualty Actuarial Society.
- (28) "Rate" means the expected value of the future cost of insurance per exposure unit which accounts for the treatment of losses, expenses, and profit prior to any application of individual risk variations based on loss or expense considerations, but does not include minimum premium.
- (29) "Self-insured group" means a group self-insurance fund.
- (30) "Self-insurance year" means the annual period of certification of the self-insured group authorized under KRS 304.50-010 and 342.350.
- (31) "Service organization" means a person or entity that provides services to a self-insured group and includes claims adjustment, safety engineering, statistical compilation, preparation of premium charges, loss and tax reports or other reports required by the ~~commissioner~~~~executive director~~, administration of the self-insured group, marketing services, placement of excess insurance, development of member payroll audits, administration of investments, or legal assistance.
- (32) "Specific excess insurance" means an insurance policy which insures the amount of a claim from one (1) occurrence involving one (1) or more employees or employers in the same occurrence or incident of exposure in excess of a specified dollar amount to a stated limit.
- (33) "Supplementary rating information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fees, rating rules, or any similar information needed to determine the applicable rate or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the self-insured group decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to a workers' compensation self-insured group.
- (34) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any other data relied on by the filer, descriptions of methods used in making the rates, and any other information required by the ~~commissioner~~~~executive director~~.
- (35) "Surplus funds" means the excess of the self-insured group's assets over its liabilities.
- (36) "Trustees" means persons elected by the group members or appointed by the board of directors of the sponsoring trade association or association of governmental entities to oversee the administration of the self-insured group.

➔Section 1626. KRS 304.50-020 is amended to read as follows:

The provisions of this subtitle apply to a group or bona fide trade association of employers subject to the provisions of KRS Chapter 342, which may include employers voluntarily complying with the provisions of KRS Chapter 342, who join together to self-insure against workers' compensation risks. Any workers' compensation self-insured group operating under a certificate of filing as of March 1, 2005, shall have one (1) year from that date to comply with the provisions of this subtitle, to the extent that these provisions differ from prior requirements in KRS Chapter 342 and

the administrative regulations promulgated thereunder. Extensions of time may be granted for good cause shown at the discretion of the ***commissioner***~~[executive director]~~.

➔Section 1627. KRS 304.50-025 is amended to read as follows:

- (1) Except for an activity arising in the creation of a workers' compensation self-insured group, a person or entity shall not issue a binder or certificate of insurance for workers' compensation coverage unless the workers' compensation self-insured group has been certified to do so by the ***commissioner***~~[executive director]~~. A certification issued by the ***commissioner***~~[executive director]~~ shall remain in effect until revoked or modified by the ***commissioner***~~[executive director]~~ in accordance with KRS 304.50-140.
- (2) All certificates of filing issued by the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims prior to March 1, 2005, shall remain in full force and effect, unless revoked or suspended by the ***commissioner***~~[executive director]~~ in accordance with KRS 304.50-140. The ***commissioner***~~[executive director]~~ shall issue replacement certificates of filing within thirty (30) days of March 1, 2005.

➔Section 1628. KRS 304.50-030 is amended to read as follows:

- (1) A proposed workers' compensation self-insured group seeking initial certification shall file with the ***commissioner***~~[executive director]~~ an application for a certificate of filing accompanied by a nonrefundable filing fee of six hundred dollars (\$600). An application for initial certification as a workers' compensation self-insured group shall be filed on a form approved by the ***commissioner***~~[executive director]~~ by:
 - (a) A group of twenty (20) or more employers having common interests or membership in a bona fide trade association. Any group member having more than fifty percent (50%) common ownership shall constitute one (1) group member; or
 - (b) Two (2) or more governmental entities.
- (2) Each initial application shall set forth or be accompanied by:
 - (a) The self-insured group's name, location of its principal office, date of organization, name and address of each group member, if known at the time of application, or if unknown, a description of the members to be solicited for membership, and identification of its fiscal year;
 - (b) A copy of the articles of association, articles of incorporation, trust agreement, or bylaws of the proposed self-insured group, including a description of the time and method by which premiums shall be determined, assessed, and collected during regular operations and in the event of insolvency of the self-insured group;
 - (c) A copy of any agreements with an administrator, service organization, and fiscal agent, including third-party administrators and consultants;
 - (d) A copy of the agreement between the self-insured group and each member jointly and severally binding the group and each member of the group to comply with the provisions of this subtitle and the decisions of the trustees relating to the operation of the self-insured group;
 - (e) A description of the group members' common interests or a description of the bona fide trade association, including date of organization, articles of incorporation, and a history of the association's activities;
 - (f) The managed care and utilization review plans, if any, established under KRS Chapter 342 for the self-insured group;
 - (g) A copy of each instrument by which the self-insured group or its agent or consultant has made a commitment to pay for a past or future good or service;
 - (h) Identification by name, address, and term of the initial board of trustees, administrator, and service organization together with an attested statement that a pecuniary or personal conflict does not exist between the official duties of the trustees, administrators, and service organizations and the interests of the members;
 - (i) The name of the custodian and the address where the self-insured group's books and records will be kept;
 - (j) Specimen of the proposed policy and certificate of insurance for the specific and aggregate excess coverage, clearly stating any deductible or retention amount;

- (k) Copies of security deposits and fidelity bonds required under this subtitle;
 - (l) A proposed schedule of projected annual premium rates and any factor or plan by which rates may be modified. Experience modification factors shall be calculated according to the rules of the advisory organization designated by the **commissioner**~~executive director~~ in accordance with Subtitle 13 of this chapter;
 - (m) Financial statements for initial group members audited by a certified public accountant, and signed by an owner or officer of each member, demonstrating a combined net worth of not less than ten million dollars (\$10,000,000) for the group, except for governmental entities, and the financial condition of each member;
 - (n) A feasibility study prepared by a qualified actuary demonstrating the overall adequacy and soundness of the proposed plan of operation for the self-insured group; and
 - (o) A three (3) year financial projection including income statements, balance sheets, statements of cash flow, and all material assumptions relating to the financial projection for the self-insured group.
- (3) (a) Except as provided in paragraph (b) of this subsection, the premium of one (1) group member shall not exceed twenty percent (20%) of the estimated total premium for the workers' compensation self-insured group.
 - (b) If the group consists of two (2) or more governmental entities, the premium of one (1) group member shall not exceed sixty percent (60%) of the estimated total premium for the self-insured group.
- (4) The first year's premium for the initial certification of the self-insured group shall not be less than one million dollars (\$1,000,000). Verification shall be presented that twenty-five percent (25%) of the initial estimated premium has been paid and deposited with the self-insured group's fiscal agent.
 - (5) The initial application shall be filed a minimum of ninety (90) days prior to the proposed inception date of the self-insured group.

➔Section 1629. KRS 304.50-035 is amended to read as follows:

Certification as a workers' compensation self-insured group shall be granted only if the **commissioner**~~executive director~~ finds that the applicant has complied with the provisions of this subtitle, paid the application fee, and met the following conditions:

- (1) All persons responsible for the conduct of the affairs of the workers' compensation self-insured group are financially stable and experienced in the administration of a workers' compensation self-insured group;
- (2) The workers' compensation self-insured group is financially responsible and has demonstrated the ability to meet all of its obligations to participants and prospective participants and injured workers as required in KRS Chapter 342. In making this determination, the **commissioner**~~executive director~~ may consider:
 - (a) The adequacy of working capital; and
 - (b) The applicant's compliance with all requirements of this subtitle, including but not limited to:
 - 1. The adequacy of the funding mechanisms;
 - 2. The existence and adequacy of appropriate excess insurance;
 - 3. The participating members' financial strength;
 - 4. The stability of the membership;
 - 5. The risks of the industry;
 - 6. The experience of management and all persons responsible for the conduct of the affairs of the workers' compensation self-insured group; and
 - 7. An initial and ongoing minimum surplus funds requirement of not less than one million dollars (\$1,000,000), except for a workers' compensation self insured group currently operating under a plan approved by the **commissioner**~~executive director~~ pursuant to KRS 304.50-135 or a remedial action plan approved by the predecessor regulatory agency prior to August 3, 2004.

➔Section 1630. KRS 304.50-040 is amended to read as follows:

- (1) A certificate of filing shall remain in effect until terminated at the request of the self-insured group or suspended or revoked by the **commissioner**~~[executive director]~~ in accordance with the provisions of this subtitle.
- (2) The **commissioner**~~[executive director]~~ shall not grant the request of a workers' compensation self-insured group to terminate its certificate of filing unless the group has filed with the **commissioner**~~[executive director]~~ a statement describing arrangements that have been made to pay obligations of the group, including both known claims and expenses and incurred but not reported claims and expenses.
- (3) Subject to the approval of the **commissioner**~~[executive director]~~, a workers' compensation self-insured group may merge with another workers' compensation self-insured group. As a result of any merger, the resulting workers' compensation self-insured group shall assume in full all obligations of the constituent groups.

➔Section 1631. KRS 304.50-045 is amended to read as follows:

- (1) To obtain and maintain a certificate of filing, a workers' compensation self-insured group shall have sufficient financial strength to pay all benefits for compensation required by KRS Chapter 342 for risks covered by the group, including known claims and expenses and incurred but not reported claims and expenses.
- (2)
 - (a) The trustees and administrators shall provide a fidelity bond to the **commissioner**~~[executive director]~~ in the amount of not less than three hundred thousand dollars (\$300,000), which may be subject to a deductible not exceeding ten thousand dollars (\$10,000), for each trustee, each administrator and the administrator's employees.
 - (b) The fiscal agent shall provide a fidelity bond to the trustees of not less than fifty percent (50%) or one million dollars (\$1,000,000), whichever is lower, of the funds to be handled by the fiscal agent. This requirement shall be waived if the fiscal agent is a national bank.
 - (c) The service organization shall provide a fidelity bond to the trustees of not less than two (2) times the amount of the revolving fund.
 - (d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this subsection, the trustees may secure a fidelity blanket bond in an amount not less than fifty percent (50%) of the self-insured group's premium or two million dollars (\$2,000,000), whichever is lower. The fidelity blanket bond shall include the trustees, the administrator, the service organization, personnel of the service organization, and the fiscal agent, unless the fiscal agent is a national bank.

➔Section 1632. KRS 304.50-050 is amended to read as follows:

- (1) The group shall provide security deposits to the **commissioner**~~[executive director]~~ on a form prescribed by the **commissioner**~~[executive director]~~ in an amount not less than two hundred fifty thousand dollars (\$250,000), ten percent (10%) of the annual premium, or ten percent (10%) of the reserve requirement as established in the most recent audited statement of financial condition on file with the **commissioner**~~[executive director]~~, whichever is greater.
- (2) The trustees may file cash, cash equivalents, or United States Treasuries as security deposit or a bank letter of credit on a form or forms prescribed by the **commissioner**~~[executive director]~~, in satisfaction of the security deposit requirement. Notwithstanding any other provision of law to the contrary, the deposit required under this section shall be under trust agreements to which depositories, a self-insured group, and the **commissioner**~~[executive director]~~ are parties. The **commissioner**~~[executive director]~~ may at any time inventory assets on deposit for any self-insured group. Assets shall not be removed or deposited in or from the bank or trust company in which the assets are deposited, except upon a written order, approved by the **commissioner**~~[executive director]~~, of at least two (2) officers authorized for such purpose by the workers' compensation group self-insurance fund's board of directors or other governing body, except that assets may be deposited or removed under the direction and upon the order of a court of competent jurisdiction, and in the presence of the **commissioner**~~[executive director]~~. Deposit assets shall be valued at market.
- (3)
 - (a) Unless a fund fails to cure a deficiency, is insolvent, subject to a delinquency proceeding, or is in default as to taxes or other charges due under state law, a group self-insurance fund shall be entitled:
 1. To collect and receive interest, dividends, and payments accruing upon assets held on deposit for its account.

2. From time to time, to exchange and substitute for any such assets, other assets eligible for deposits.
- (b) If the group self-insurance fund fails to cure a deficiency when required, is insolvent, subject to delinquency proceedings, or is in default as to taxes or other charges due to the Commonwealth under law, the ***commissioner***~~[executive director]~~ shall collect such interest, dividends, and payments and add them to the group self-insurance fund's deposit.
- (4) (a) Any required deposit shall be released, in addition to circumstances already provided for in the following instances only:
 1. Upon extinguishment of substantially all liabilities of the group self-insurance fund for the security for which the deposit is held;
 2. If the deposit is no longer required under this subtitle; or
 3. Upon proper order of a court of competent jurisdiction, the deposit shall be released to the receiver, conservator, rehabilitator, or liquidator of the group self-insurance fund.
- (b) No release of a deposit shall be made except on application to and written order of the ***commissioner***~~[executive director]~~ made upon proof satisfactory to the ***commissioner***~~[executive director]~~ of the existence of one (1) of the grounds required in paragraph (a) of this subsection. The ***commissioner***~~[executive director]~~ shall not have any personal liability for any such release of any deposit or part thereof so ordered by the ***commissioner***~~[executive director]~~ in good faith.
- (5) (a) A proposed custodian bank or trust company for security deposits shall be approved by the ***commissioner***~~[executive director]~~ and shall be under a custodial agreement approved by the ***commissioner***~~[executive director]~~.
- (b) An approved custodian bank or trust company shall possess the following qualifications:
 1. The custodian bank or trust company's custodial functions for the self-insured group shall be carried out under its trust department;
 2. The custodian bank or trust company shall be audited annually by independent certified public accountants, and the audit report, related financial statements, and report on internal controls shall be available to the self-insured group and the ***commissioner***~~[executive director]~~;
 3. The custodian bank or trust company shall be organized under the laws recognizing that the custodied securities are special deposits rather than general deposits, remain the specific property of the self-insured group, and are not subject to any creditor relationship of the custodian bank or trust company;
 4. The custodian bank or trust company shall maintain blanket coverage relating to its custodial functions with limits to or exceeding those suggested by the American Bankers Association;
 5. The custodian bank or trust company's capital and surplus shall equal or exceed twenty-five million dollars (\$25,000,000) unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus shall equal or exceed ten million dollars (\$10,000,000); and
 6. The custodian bank or trust company has demonstrated sufficient experience in handling custodial accounts.
- (6) The ***commissioner***~~[executive director]~~ shall publish a list of banks or trust companies for the security deposits or letter of credit as proposed by the group self-insurance fund.

➔Section 1633. KRS 304.50-055 is amended to read as follows:

- (1) A workers' compensation self-insured group shall establish plans for premium payment, determination and collection of assessments, and for declaration and payment of dividends or other disbursements, which shall be filed for prior approval with the ***commissioner***~~[executive director]~~. Any change in the plans for premium payment, assessments, or dividends shall be filed for prior approval with the ***commissioner***~~[executive director]~~. Approval of plans for assessments and dividends does not constitute approval of any particular assessment or dividend by the ***commissioner***~~[executive director]~~.

- (2) Prior to the inception of each group member's self-insurance year, the trustees shall collect from that member at least twenty-five percent (25%) of the estimated premium for the ensuing year, except that in the case of a self-insured group formed by governmental entities twenty-five percent (25%) of the estimated premium for the ensuing year shall be collected no later than thirty (30) days after the beginning of the self-insured group's self-insurance year. The balance of the estimated premium shall be collected in either quarterly or monthly installments as set forth in the enabling documents described in KRS 304.50-030(2)(b) or 304.50-060(2)(b). Each group member's payroll shall be audited annually and an adjustment to premium shall be made accordingly.
- (3) A disbursement from a workers' compensation self-insured group fund shall be for a purpose related to the self-insured group. A dividend shall not be approved or paid until at least thirty-six (36) months after the expiration of the self-insurance year and shall be paid from surplus funds not required for payment of claims or other liabilities. The dividends shall be paid or credited to members according to the reasonable classifications the trustees may establish. A dividend shall not be paid which unfairly discriminates between members of the same classifications. A dividend plan shall specify whether past group members are eligible for the dividend. Payment of a dividend under a dividend plan shall not be made unless the self-insured group has notified the **commissioner**~~{executive director}~~ of its intent to make a dividend payment at least thirty (30) days prior to the payment, and the **commissioner**~~{executive director}~~ has not disapproved the payment within that time.
- (4) The formula to be used for collection of assessments shall be determined by the trustees and approved by the **commissioner**~~{executive director}~~. Assessments shall be fair and equitable and shall not unfairly discriminate between members of the same classification.
- (5) A trustee, fiscal agent, or service organization shall not utilize an asset of the self-insured group for a purpose unrelated to workers' compensation. The trustees shall maintain cash or cash equivalent accounts as may be prudently necessary to pay expenses without having to liquidate long-term investments.
- (6) The trustees may invest funds in:
 - (a) United States Government bonds, United States Treasury notes, Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;
 - (b) Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor;
 - (c) Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor;
 - (d) Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;
 - (e) Certificates of deposit if issued by a duly chartered commercial bank;
 - (f) At the time of purchase, equity securities actively traded on the New York or NASDAQ Stock Exchanges or other registered national securities exchanges with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the **commissioner**~~{executive director}~~.
 1. An investment in an individual equity holding shall not represent at the time of purchase more than five percent (5%) of the total market value of the security.
 2. At the time of purchase, investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the self-insured group reflected on the most recent quarterly or annual statement of financial condition on file with the **commissioner**~~{executive director}~~;
 - (g) Corporate bonds if:
 1. The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;
 2. At the time of purchase, the corporate bond investments do not exceed twenty-five percent (25%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the **commissioner**~~{executive director}~~; and

3. The bond has a minimum rating of "A" by Standard and Poor; and
- (h) At the time of purchase, mutual funds and exchange traded funds if the investments do not exceed twenty percent (20%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the **commissioner**~~{executive director}~~.
- (7) Of the aggregate investments made by the trustees of the self-insured group under this section:
 - (a) Not less than fifty percent (50%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in subsection (6)(a) to (e) of this section; and
 - (b) A minimum of five percent (5%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.
- (8) The **commissioner**~~{executive director}~~ may permit variation from the requirements of this section for good cause.

➔Section 1634. KRS 304.50-060 is amended to read as follows:

- (1) The information and reports required by this section shall be filed by the self-insured group with the **commissioner**~~{executive director}~~ on an annual basis.
- (2) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the self-insured group shall file:
 - (a) Copies of all fidelity bonds, security deposits, and letters of credit;
 - (b) Any material change in the administration of the group, including any change in the organizational documents, change in the administrator, or a change in the service organization or fiscal agent;
 - (c) An attested statement relating to conflicts of interest and compliance with KRS 304.50-105; and
 - (d) Any other information the **commissioner**~~{executive director}~~ may require.
- (3) Within ten (10) days before the expiration of each self-insurance year, the self-insured group shall file proof of:
 - (a) Specific excess insurance coverage for the ensuing year; and
 - (b) Aggregate excess insurance coverage for the ensuing year unless such coverage is exempted or waived under KRS 304.50-120(1).
- (4) Within one hundred twenty (120) days from the end of the self-insured group's fiscal year, the group shall file the statement of financial condition required by KRS 304.50-110 and any other relevant financial information requested by the **commissioner**~~{executive director}~~. Within forty-five (45) days from the end of each fiscal quarter, the self-insured group shall file a statement of financial condition along with an acknowledgment signed by the board of trustees or its authorized agent indicating that the statement has been presented to the board and any other relevant financial information requested by the **commissioner**~~{executive director}~~, including a balance sheet, and income and cash flow statement, on a form prescribed by the **commissioner**~~{executive director}~~.
- (5) Upon the request of a group member, a self-insured group shall make available the statement of financial condition required in KRS 304.50-110.

➔Section 1635. KRS 304.50-065 is amended to read as follows:

A workers' compensation self-insured group shall notify the **commissioner**~~{executive director}~~ immediately of any material change in the information required to be filed under this subtitle or in the manner of its compliance with KRS Chapter 342.

➔Section 1636. KRS 304.50-075 is amended to read as follows:

The **commissioner**~~{executive director}~~ or his or her designee shall have power to examine the financial condition, affairs, and management of any workers' compensation self-insured group subject to the provisions of this subtitle. He or she shall have free access to all the books, papers, and documents relating to the business of the organization, and may summon witnesses and administer oaths and affirmations in the examination of the directors, trustees, officers, agents, representatives, or employees of any group, or any person in relation to the workers' compensation self-

insured group's affairs, transactions, or conditions relating to workers' compensation. The ~~commissioner~~~~executive director~~ shall examine each workers' compensation self-insured group not less frequently than every four (4) years. Information and other data obtained through the examination shall be subject to the provisions of KRS 304.2-230 to 304.2-290. All examination expenses shall be borne by the self-insured group being examined.

➔Section 1637. KRS 304.50-085 is amended to read as follows:

- (1) Each self-insured group shall be operated by a board of trustees. Except for a self-insured group formed by governmental entities, the board of trustees for each self-insured group shall consist of at least two (2) but not more than twenty (20) persons selected in the manner prescribed in the bylaws of the self-insured group or other laws of the Commonwealth.
- (2) The board of trustees shall:
 - (a) Be residents of Kentucky or officers of corporations authorized to do business in Kentucky;
 - (b) Administer the operations of the workers' compensation self-insured group ensuring that there is adequate funding to pay compensation required by KRS Chapter 342, that all claims are paid promptly and processed to conclusion, and that all necessary precautions are taken to safeguard the assets of the group;
 - (c) Maintain responsibility for all moneys collected or disbursed from the group;
 - (d) Maintain minutes of its meetings and make the minutes available to the ~~commissioner~~~~executive director~~ and group members;
 - (e) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the self-insured group;
 - (f) Develop rates and collect premium and assessments; and
 - (g) Invest the self-insured group's funds.
- (3) The board of trustees shall not:
 - (a) Extend credit to individual group members for payment of premiums or assessments, except in accordance with payment plans filed with the ~~commissioner~~~~executive director~~;
 - (b) Permit the loan of any moneys to or borrow any moneys from the self-insured group or in the name of the group, except that a workers' compensation self-insured group formed by governmental entities may borrow moneys in the name of the group; or
 - (c) Have a direct or indirect pecuniary interest in a service organization.
- (4)
 - (a) The trustees may contract with a service organization, an administrator, or a fiscal agent to carry out the administration of the workers' compensation self-insured group.
 - (b) A service organization and its employees and agents shall be duly licensed to perform those functions for which a license is required under Kentucky law.
 - (c) A revolving fund of not more than twenty percent (20%) of estimated premiums may be established for use by a service organization for the payment of claims.
- (5) In its discretion, the workers' compensation self-insured group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.

➔Section 1638. KRS 304.50-090 is amended to read as follows:

- (1) An employer joining a workers' compensation self-insured group after the group has been issued a certificate of filing shall submit an application for membership to the board of trustees or its administrator and enter into an indemnity agreement. Membership shall not take effect earlier than each member's date of application. The application for membership and its approval shall be maintained as permanent records of the board of trustees. The board of trustees shall require each member to execute a joint and several liability agreement, or other annual ratification or affirmation of indemnity, upon each renewal.
- (2) The self-insured group shall be considered an individual employer for all purposes of taxation and the individual members of the group shall not be exposed to tax liability other than liability existing as a result of the indemnity agreement with the other group members and the self-insured group.

- (3) At the discretion of the trustees, the self-insured group may include the Kentucky employees of foreign (out-of-state) employers.
- (4) Individual members of a workers' compensation self-insured group shall be subject to expulsion, nonrenewal, or cancellation by the group by giving the member and the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims thirty (30) days advance notice. Such expulsion, nonrenewal, or cancellation shall be executed in accordance with the bylaws of the group and for reasons including but not limited to:
 - (a) Adverse claims experience;
 - (b) Lack of cooperation with safety and loss prevention policies; or
 - (c) Failure to report payroll in accordance with the rules and rating plan of the self-insured group.
- (5) At least thirty (30) days prior to the due date, the trustees shall notify each group member of all premiums due, including adjustments. Failure by a member to pay the premium or assessments due prior to the due date may result in immediate cancellation from the group by the trustees. Ten (10) days advance notice of such cancellation shall be given to the member and the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims.
- (6) Individual group members may elect to withdraw from the group only upon sixty (60) days written notice to the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims and the trustees.
- (7) The trustees shall report to the ***commissioner***~~[executive director]~~ any person who behaves fraudulently as described in Subtitle 47 of this chapter.
- (8) A workers' compensation self-insured group shall pay all workers' compensation benefits required under KRS Chapter 342 for which each member incurs liability during its period of membership, including assessments. A member who elects to withdraw its membership or is terminated by a group remains liable for workers' compensation liabilities, obligations, and assessments during the terminated or withdrawn group member's period of membership. A group member shall not be relieved of its workers' compensation liabilities incurred, including assessments, during its period of membership, except through payment by the group or the member of these liabilities.
- (9) The insolvency or bankruptcy of a group member shall not relieve the workers' compensation self-insured group or any group member of liability for the payment of workers' compensation benefits incurred during the insolvent or bankrupt group member's period of membership.

➔Section 1639. KRS 304.50-100 is amended to read as follows:

- (1) If a self-insured group decides to dissolve its self-insured program, the trustees shall:
 - (a) File a detailed plan of dissolution with the ***commissioner***~~[executive director]~~ for prior approval;
 - (b) Provide sixty (60) days written notice by certified mail to the ***commissioner***~~[executive director]~~ and each group member;
 - (c) Pay approved dividends; and
 - (d) Establish arrangements for the continued payment and servicing of all outstanding claims, including incurred but not reported claims.
- (2) The ***commissioner***~~[executive director]~~ shall approve the plan unless the ***commissioner***~~[executive director]~~ determines it to be unlawful, unfair, inequitable, or prejudicial to the interests of the members or injured workers, or the plan does not fully discharge all obligations of the group.

➔Section 1640. KRS 304.50-110 is amended to read as follows:

- (1) In addition to reports required under KRS 304.50-060, each workers' compensation self-insured group shall file with the ***commissioner***~~[executive director]~~ an annual statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The annual financial statement shall be on a form approved by the ***commissioner***~~[executive director]~~ and in accordance with generally accepted accounting principles.

- (2) The annual financial statement shall include actuarially appropriate reserves for:
- (a) Known claims and expenses related to such claims;
 - (b) Claims incurred but not reported and any expenses associated such claims; and
 - (c) Unearned premiums, contributions, and assessments.
- (3) The annual financial statement shall also include an actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated with such claims. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (4) The following statements shall be included with the annual financial statement:
- (a) Balance sheet;
 - (b) Statement of gain or loss from operations;
 - (c) Statement of changes in financial position; and
 - (d) Notes to financial statements required by generally accepted accounting principles, which shall include a narrative explanation of all material transactions and balances of the self-insured group.
- (5) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a self-insured group.

➔Section 1641. KRS 304.50-115 is amended to read as follows:

- (1) A workers' compensation self-insured group shall file with the **commissioner**~~[executive director]~~ its rates and supplementary rating information and any changes made to its rates and supplementary information.
- (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the **commissioner**~~[executive director]~~ its existing rates and supplementary rating information.
 - (b) The initial rates and supplementary rating information of any workers' compensation self-insured group newly formed after March 1, 2005, shall not become effective until filed with and approved by the **commissioner**~~[executive director]~~.
 - (c) Any changes made to a workers' compensation self-insured group's rates or supplementary rating information shall be filed pursuant to KRS 304.13-053.
- (2) A workers' compensation self-insured group shall file with the **commissioner**~~[executive director]~~ its existing coverage forms and any changes made to such forms, in accordance with KRS 304.14-120.
- (a) Within one (1) year of March 1, 2005, each existing workers' compensation self-insured group shall place on file with the **commissioner**~~[executive director]~~ its existing coverage forms.
 - (b) The initial coverage forms of any workers' compensation self-insured group newly formed after March 1, 2005, shall not be used or delivered until filed with and approved by the **commissioner**~~[executive director]~~ pursuant to KRS 304.14-120.
 - (c) Any changes made to a workers' compensation self-insured group's coverage forms shall be filed in accordance with KRS 304.14-120.
 - (d) The **commissioner**~~[executive director]~~ shall disapprove any coverage form required to be filed under KRS 304.14-120, or withdraw any previous approval of such form, only on one (1) or more of the following grounds:
 - 1. If the coverage form is in any respect in violation of, or does not comply with, this subtitle or KRS Chapter 342.
 - 2. If the coverage form contains or incorporates by reference, where the incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.

3. If the coverage form has any title, heading, or other indication of its provisions which is misleading, or is printed in a size of type or manner of reproduction as to make the form substantially illegible.
- (3) Coverage form and rate filings shall be accompanied by a filing fee as set forth in KRS 304.4-010 and administrative regulations promulgated by the *commissioner*~~[executive director]~~. Filings shall be open to public inspection at any reasonable time. Copies may be obtained by any person on request and on payment of a fee specified in Subtitle 4 of this chapter.

➔Section 1642. KRS 304.50-120 is amended to read as follows:

- (1) The *commissioner*~~[executive director]~~ shall promulgate administrative regulations setting forth the requirements for aggregate excess insurance and the standards for granting a waiver, but a workers' compensation self-insured group shall not be required to purchase aggregate excess insurance if the group's fund balance is thirty percent (30%) or more of earned premiums.
- (2) Except for a worker's compensation self-insured group granted a waiver or exempted under subsection (1) of this section, the trustees shall purchase aggregate excess insurance.
- (3) The trustees shall purchase specific excess insurance coverage with a limit of at least twenty-five million dollars (\$25,000,000) per occurrence.
- (4) To be eligible to write excess liability coverage for a self-insured group, a casualty insurance company shall at all times maintain twenty-five million dollars (\$25,000,000) of minimum policyholder surplus.

➔Section 1643. KRS 304.50-125 is amended to read as follows:

- (1) In the computation of the retained liabilities of the self-insured group, reserves for claims or projected reserves for claims may be discounted for their present value if:
 - (a) The discounting is based upon the computation of a qualified actuary; and
 - (b) The computations and supporting documentation are filed annually in writing with the *commissioner*~~[executive director]~~.
- (2) Discounting shall be approved by the *commissioner*~~[executive director]~~ unless:
 - (a) The actuary is found to be unqualified by the *commissioner*~~[executive director]~~; or
 - (b) The computations and supporting documentation presented by the actuary are rejected based on the opinion of the *commissioner's*~~[executive director's]~~ qualified actuary.

➔Section 1644. KRS 304.50-130 is amended to read as follows:

- (1) Each member of a workers' compensation self-insured group shall receive written evidence of coverage by the group.
- (2) All evidences of coverage issued pursuant to this section shall contain coverage terms, conditions, and exclusions.
- (3) All evidences of coverage issued pursuant to this section by a self-insured group shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH IS REGULATED BY THE KENTUCKY ~~DEPARTMENT~~**OFFICE** OF INSURANCE AND HAS RECEIVED A CERTIFICATE OF FILING FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE COVERED BY THE SELF-INSURED GROUP INSURANCE GUARANTY ASSOCIATION, BUT ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION. GROUP MEMBERS SHALL BE ASSESSED IN THE EVENT OF INSOLVENCY OF THE WORKERS' COMPENSATION SELF-INSURED GROUP.
- (4) All evidences of coverage issued pursuant to this section by a workers' compensation self-insured group formed by governmental entities which have joint and several liability shall contain the following disclosure in prominent contrasting type: THIS COVERAGE HAS BEEN PLACED WITH A WORKERS' COMPENSATION SELF-INSURED GROUP WHICH HAS RECEIVED A CERTIFICATE OF FILING

FROM THE COMMONWEALTH OF KENTUCKY. CLAIMS AGAINST GROUP MEMBERS ARE NOT COVERED BY THE KENTUCKY INSURANCE GUARANTY ASSOCIATION.

➔Section 1645. KRS 304.50-135 is amended to read as follows:

- (1) If a workers' compensation self-insured group has a members' fund balance that is less than the minimum amount required by this subtitle of one million dollars (\$1,000,000) and not a negative members' fund balance reported on an annual financial filing or by a report on examination, then within thirty (30) days of the filing or report, the self-insured group shall file with the **commissioner**~~{executive director}~~ a written report that identifies the cause of the decrease in the fund balance, describes a plan for remedying the decrease in the fund balance, and identifies measures to be implemented to avoid similar future decreases in the fund balance. A report filed with the **commissioner**~~{executive director}~~ under this subsection may be approved, disapproved, or modified by the **commissioner**~~{executive director}~~. A self-insured group may cease operating under a report filed with the **commissioner**~~{executive director}~~ under this subsection after the self-insured group's members' fund balance is one million dollars (\$1,000,000) or greater and the **commissioner**~~{executive director}~~ has approved in writing the lifting of the terms of the report. A report filed with the **commissioner**~~{executive director}~~ under this subsection shall be deemed part of the self-insured group's organizational documents for purposes of KRS 304.50-060.
- (2) A workers' compensation self-insured group shall report any deficiency to the **commissioner**~~{executive director}~~ as soon as it is identified. A deficiency reported on an annual financial filing or by a report on examination shall be deemed a verified deficiency. If a workers' compensation self-insured group has a verified deficiency, the deficit amount shall be made up immediately from the following:
 - (a) Surplus funds from a fund year other than the current fund year after prior notice of the transfer has been given to the **commissioner**~~{executive director}~~;
 - (b) Implementation of the previously approved assessment plan; or
 - (c) Alternative methods as the **commissioner**~~{executive director}~~ may direct or approve that provide financial security in the form of surety, deposit, letter of credit, guarantee, or other assets or obligation.
- (3) If a workers' compensation self-insured group fails to remedy a deficit as required in subsection (2) of this section, the **commissioner**~~{executive director}~~ shall order the group to do so.
- (4) If a workers' compensation self-insured group fails to remedy a deficit or make the required assessment of its members within thirty (30) days after the **commissioner**~~{executive director}~~ orders the group to do so, the group shall be deemed to be in hazardous financial condition and insolvent, under Subtitle 33 of this chapter, and the **commissioner**~~{executive director}~~ may file a petition for delinquency proceedings, as defined in Subtitle 33 of this chapter, in Franklin Circuit Court.
- (5) The **commissioner**~~{executive director}~~ shall place a workers' compensation self-insured group into delinquency proceedings in accordance with the provisions of Subtitle 33 of this chapter if the workers' compensation self-insured group is in hazardous financial condition, insolvent or about to become insolvent, no longer financially responsible and may reasonably be expected to be unable to meet its obligations to members or prospective members, has failed to remedy a deficiency in a reasonable and timely manner, or any other grounds that are provided in Subtitle 33 of this chapter. A self-insured group shall be placed in delinquency proceedings as an insurer, pursuant to Subtitle 33 of this chapter.
- (6) The **commissioner**~~{executive director}~~ may approve bulk reinsurance or any other transfer of the book of business if he or she finds that it is in the best interests of the members and their employees.

➔Section 1646. KRS 304.50-140 is amended to read as follows:

- (1) After a hearing or upon agreement by the workers' compensation self-insured group, the **commissioner**~~{executive director}~~ may suspend or revoke the certificate of filing of a self-insured group, impose a civil penalty of up to ten thousand dollars (\$10,000) per violation, or both if the group:
 - (a) Operates significantly in contravention of its basic organizational document or in a manner contrary to that described in and reasonably inferred from any other information submitted under this subtitle, or administrative regulations relating to this subtitle, unless amendments to the submissions have been filed with and approved by the **commissioner**~~{executive director}~~ or there has been a significant and adverse change in the management of the self-insured group;

- (b) Or any person at the direction of the group advertises or merchandises its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner, or engages in unfair or deceptive practices as defined in Subtitle 12 of this chapter;
 - (c) Violates the provisions of this subtitle or administrative regulations adopted thereunder;
 - (d) Obtains a certificate of filing by unfair or deceptive means;
 - (e) Misappropriates, converts illegally, withholds, or refuses to pay upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled to such moneys by the group or its administrator; or
 - (f) Violated or failed to correct a violation of this subtitle or administrative regulations promulgated under this subtitle within a reasonable time period established by the **commissioner**~~{executive director}~~ in administrative regulations.
- (2) In addition, the **commissioner**~~{executive director}~~ may impose a civil penalty of up to ten thousand dollars (\$10,000) per day for continuing violations.
 - (3) The **commissioner**~~{executive director}~~ shall conduct a hearing under this section in accordance with Subtitle 2 of this chapter. The ruling of the **commissioner**~~{executive director}~~ may be appealed to Franklin Circuit Court in accordance with KRS 304.2-370. The **commissioner**~~{executive director}~~, during the pendency of an appeal or request for a hearing, may utilize the security deposit provided by the self-insured group to make payments of any workers' compensation benefits currently due.
 - (4) If the **commissioner**~~{executive director}~~ revokes a self-insured group's certification, the **commissioner**~~{executive director}~~ shall immediately notify the Kentucky group self-insurance guaranty fund as established in KRS 342.906(2).
 - (5) When a certificate of filing of a self-insured group is suspended, the group shall not, during the period of suspension, enroll any new participants or engage in any advertising or solicitation.
 - (6) If the certificate of filing of a self-insured group is revoked for reasons other than hazardous financial condition, the group shall proceed, immediately following the effective date of the order of revocation, to conclude its affairs and shall conduct no further business, except as may be essential to the orderly conclusion of the affairs of the group. The group shall engage in no further advertising or solicitation. The **commissioner**~~{executive director}~~ may, by written order, prevent further operation of the self-insured group if further operation is not deemed to be in the best interest of the members, and the self-insured group's members will be afforded the greatest practical opportunity to obtain workers' compensation coverage elsewhere. If the **commissioner**~~{executive director}~~ permits further operation, the workers' compensation self-insured group shall continue to collect the premiums and assessments required of its members.
 - (7) The **commissioner**~~{executive director}~~, in his or her discretion and without advance notice or a hearing, may suspend or revoke the certificate of filing of any workers' compensation self-insured group upon commencement of the following proceedings:
 - (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔Section 1647. KRS 304.50-150 is amended to read as follows:

- (1) A person shall not:
 - (a) Make any deceptive statement or omit material facts in connection with solicitation for membership in a workers' compensation self-insured group; or
 - (b) Guarantee the payment of dividends or use statements or words in, or in connection with, any coverage which imply that the payment of dividends is guaranteed to occur.
- (2) A workers' compensation self-insured group shall not engage in unfair business practices as defined by KRS Chapter 342, and shall:

- (a) Respond to an inquiry from the **commissioner**~~[executive director]~~ on matters other than workers' compensation claims within fifteen (15) working days of receipt of such inquiry; and
- (b) Respond to an inquiry from the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Workers' Claims on matters concerning workers' compensation claims within fifteen (15) working days of receipt of such inquiry.

➔Section 1648. KRS 304.50-160 is amended to read as follows:

Annually on or before the fifteenth day of December, the **commissioner**~~[executive director]~~ shall make a report to the Governor and the Interim Joint Committees of Banking and Insurance and Labor and Industry on the status of workers' compensation self-insured groups.

➔Section 1649. KRS 304.99-010 is amended to read as follows:

In addition to or in lieu of the specific penalties provided for by this code, any person who violates any provision of this code or who knowingly violates any proper order of the **commissioner**~~[executive director]~~ shall, upon conviction by a court of competent jurisdiction, be fined not less than one hundred dollars (\$100) or twice the amount of the gain from the commission of the violation, whichever is greater, be subject to revocation of certificate of authority or license, or both.

➔Section 1650. KRS 304.99-015 is amended to read as follows:

- (1) Any deputy director or any examiner who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who fails to immediately present a signed report of the facts to the **commissioner**~~[executive director]~~, or who violates any of the provisions of this chapter, shall forfeit his or her office or employment contract and shall be fined not less than one hundred dollars (\$100) nor more than two thousand dollars (\$2,000) for each offense.
- (2) Any **commissioner**~~[executive director]~~ who has knowledge of the statutory insolvency, or hazardous financial condition as defined by administrative regulation, of an authorized insurer, or that it is inexpedient to permit the authorized insurer to continue business, and who willfully fails to take the action prescribed by this chapter, or who violates any of the provisions of this chapter, shall forfeit his or her office and shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each offense.

➔Section 1651. KRS 304.99-020 is amended to read as follows:

- (1) For any violation of this code where the **commissioner**~~[executive director]~~ has the power to revoke or suspend a license or certificate of authority, **the commissioner**~~[he]~~ may in lieu thereof or in addition to such revocation or suspension impose a civil penalty against the violator in the case of an insurer, a fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization of not more than ten thousand dollars (\$10,000) per violation; in the case of an agent, surplus lines broker, rental vehicle agent or managing employee, specialty credit producer or managing employee, or reinsurance intermediary broker or manager of not more than one thousand dollars (\$1,000) per violation; in the case of an adjuster, administrator, life settlement broker, life settlement provider, or consultant of not more than two thousand dollars (\$2,000) per violation.
- (2) Such civil penalty may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.
- (3) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

➔Section 1652. KRS 304.99-025 is amended to read as follows:

If any consultant or agent is found by the **commissioner**~~[executive director]~~, after a hearing, to be in violation of KRS 304.9-350, the **commissioner**~~[executive director]~~ may, in addition to any applicable suspension, revocation, or refusal to continue the consultant's or agent's license, impose a fine in the amount of the consultant's or agent's fees or commissions associated with the sale of the product which is the subject of the violation.

➔Section 1653. KRS 304.99-060 is amended to read as follows:

- (1) (a) The owner of any vehicle who fails to have in full force and effect the security required by Subtitle 39 of this chapter shall:

1. Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or sentenced to not more than ninety (90) days in jail, or both;
 2. Have the registration of the motor vehicle revoked and the license plates of the vehicle suspended for a period of one (1) year or until such time as proof, in a form satisfactory to the **commissioner**~~[executive director]~~, is furnished that the security is then and will remain in effect; and
 3. For the second and each subsequent offense within any five (5) year period, have his **or her** operator's license revoked in accordance with KRS 186.560, and may be sentenced to one hundred and eighty (180) days in jail, or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.
- (b) Penalties under paragraph (a) of this subsection for the first offense are subject to conditional discharge, suspension, or other forms of reduction of penalty by judicial discretion upon production of proof of security.
 - (c) For the second and each subsequent offense, minimum fines, suspensions, and penalties under paragraph (a) of this subsection are subject to conditional discharge, suspension, or other forms of reduction of penalty, by judicial discretion only upon production of proof of security and a receipt showing that a premium for a minimum policy period of six (6) months has been paid.
 - (d) Upon expiration of the minimum six (6) month policy period, the court shall order the vehicle owner to appear before it to verify renewal of the security required by Subtitle 39 of this chapter by production of proof of security and a receipt showing that a premium for a minimum six (6) month policy period has been paid.
 - (e) Failure to appear shall result in the suspension of the vehicle owner's operator's license pursuant to KRS 186.570.
 - (f) Unless uninterrupted coverage is maintained, cancellation or expiration of the procured security before the end of the minimum six (6) month policy period shall be a Class B misdemeanor.
 - (g) Unless the requirement of paragraph (d) of this subsection is satisfied, the court shall revoke any conditional discharge, suspension, or other form of reduction of penalty granted under paragraph (c) of this subsection.
- (2) A person who operates a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter shall:
 - (a) Be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) or sentenced to not more than ninety (90) days in jail, or both; and
 - (b) For the second and each subsequent offense within any five (5) year period, have his **or her** operator's license revoked in accordance with KRS 186.560, and may be sentenced to not more than one hundred eighty (180) days in jail or fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500), or both.
 - (3) If the person who operates a motor vehicle without security on the motor vehicle as required by Subtitle 39 of this chapter is also the owner of the motor vehicle, the person shall be subject to penalties under both subsection (1) and subsection (2) of this section.

➔Section 1654. KRS 304.99-070 is amended to read as follows:

- (1) Any private employer who is subject to the provisions of KRS 304.32-300 and who fails to purchase a conversion health insurance policy as required by subsection (1) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), and each day that a private employer fails to purchase a conversion policy as required herein shall constitute a separate offense.
- (2) Any private employer who is subject to the provisions of KRS 304.32-320 and who fails to give to the **Department**~~[Office]~~ of Insurance the notice therein required shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each day that an employer fails to give notice after the date on which notice is required shall constitute a separate offense.

➔Section 1655. KRS 304.99-085 is amended to read as follows:

- (1) If any broker fails to file his *or her* annual statement as provided by KRS 304.10-170, he *or she* shall be liable for a fine of ten dollars (\$10) for each day of delinquency commencing with the first day of April.
- (2) If any broker fails to remit the tax provided by KRS 304.10-180, unless it is shown to the satisfaction of the ~~commissioner~~~~executive director~~ that the failure is due to reasonable cause, five percent (5%) of the tax found to be due by the ~~commissioner~~~~executive director~~ shall be added to the tax for each thirty (30) days or fraction thereof elapsing between the due date of the return and the date on which it was filed, but the total penalty shall not exceed twenty-five percent (25%) of the tax; provided, however, that in no case shall a penalty be less than twenty-five dollars (\$25).

➔Section 1656. KRS 304.99-090 is amended to read as follows:

If any insurance company, association, or exchange is found by the ~~commissioner~~~~executive director~~, after a hearing, to have committed any of the acts set out in subsections (1) and (2) of KRS 304.6-030, the ~~commissioner~~~~executive director~~ may require such company, association, or exchange to pay a fine not exceeding ten thousand dollars (\$10,000).

➔Section 1657. KRS 304.99-110 is amended to read as follows:

Any person violating KRS 304.12-140 shall be punished by a fine of not more than two hundred fifty dollars (\$250) or by imprisonment of not more than ninety (90) days, or both; and if he *or she* holds a license from the ~~commissioner~~~~executive director~~, he *or she* shall forfeit the same. The Circuit Court of Franklin County on complaint by any person that KRS 304.12-140 is being violated, may issue an injunction against such violation and may hold in contempt and punish therefor in case of disregard of such injunction.

➔Section 1658. KRS 304.99-120 is amended to read as follows:

The ~~commissioner~~~~executive director~~ may, if he *or she* finds that any person or organization has violated any provision of Subtitle 13, impose a penalty of not more than one thousand dollars (\$1,000) for each violation, but if *the commissioner*~~he~~ finds such violation to be willful he *or she* may impose a penalty of not more than five thousand dollars (\$5,000) for each such violation. Such penalties may be in addition to any other penalties provided by law.

➔Section 1659. KRS 304.99-123 is amended to read as follows:

- (1) In addition to any other penalty or remedy authorized by law, the ~~department~~~~office~~ may assess the following fines for noncompliance with KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123:
 - (a) A fine of one thousand dollars (\$1,000) per day or ten percent (10%) of the unpaid claim amount, whichever is greater, for each day that a claim remains unpaid in violation of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.
 - (b) Except for the late payment of claims under subsection (2) of this section, a fine of up to ten thousand dollars (\$10,000) where the ~~commissioner~~~~executive director~~ determines that an insurer has willfully and knowingly violated KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123 or has a pattern of repeated violations of KRS 304.17A-700 to 304.17A-730 and KRS 205.593, 304.14-135, and 304.99-123.
- (2) For purposes of paragraph (a) of subsection (1) of this section, an insurer is in compliance when:
 - (a) Ninety-five percent (95%) of the clean claims received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, were adjudicated within the claims payment timeframes in accordance with KRS 304.17A-702; and
 - (b) At least ninety percent (90%) of the total dollar amount for clean claims received by the insurer, its agent, or designee during each calendar quarter, excluding pharmaceutical claims, that were not denied or contested, was paid within the claims payment timeframes established in KRS 304.17A-702.

➔Section 1660. KRS 304.99-126 is amended to read as follows:

- (1) When a license issued under KRS 304.15-700 is suspended or revoked, the licensee, if the ~~commissioner~~~~executive director~~ directs, shall proceed, immediately following the effective date of the suspension or revocation to conclude the affairs it is transacting under its license. The licensee shall not solicit,

negotiate, advertise, or effectuate new contracts. The ~~department~~~~office~~ shall retain jurisdiction over the licensee and trust until all life contracts have been fulfilled or canceled or have expired.

- (2) During the suspension or revocation period in which the licensee is concluding existing contracts, the licensee shall continue to comply with KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section as if the license were in force.
- (3) Any person who violates any provisions of KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section shall be subject to civil fines by the ~~commissioner~~~~executive director~~ in an amount not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000). Each violation shall constitute a separate offense.
- (4) The ~~department~~~~office~~ shall refer violations to the Division of Insurance Fraud Investigation for further investigation, and, if appropriate, the Division of Insurance Fraud Investigation shall proceed as set forth in KRS 304.47-050(5).

➔Section 1661. KRS 304.99-130 is amended to read as follows:

- (1) A fraternal benefit society neglecting to file the annual statement in the form and within the time provided for in Subtitle 29 of this chapter shall forfeit one hundred dollars (\$100) for each day during which such neglect continues, and, upon notice by the ~~commissioner~~~~executive director~~ to that effect, its authority to do business in this state shall cease while such default continues.
- (2) Any person who willfully makes a false or fraudulent statement or statements in or relating to an application for membership or for the purpose of obtaining money from or a benefit in any fraternal benefit society, shall upon conviction be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisonment in the county jail of not less than thirty (30) days nor more than one (1) year, or both.
- (3) Any person who willfully makes a false or fraudulent statement in any verified report or declaration under oath required or authorized by Subtitle 29 of this chapter, or of any material fact or thing contained in a sworn statement concerning the death or disability of a member for the purpose of procuring payment of a benefit named in the certificate, shall be guilty of perjury and shall be subject to the penalties therefor prescribed by law.
- (4) Any person who solicits membership for, or in any manner assists in procuring membership in, any fraternal benefit society not licensed to do business in this state shall upon conviction be fined not less than one hundred dollars (\$100).

➔Section 1662. KRS 304.99-140 is amended to read as follows:

- (1) Any person who shall engage in the business of financing insurance premiums in this state without obtaining a license as provided by KRS 304.30-030(1) shall, upon conviction by a court of competent jurisdiction, be guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000) or be imprisoned not more than one (1) year, or both.
- (2) In lieu of or in addition to revoking or suspending the license of an insurance premium finance company for any of the causes enumerated in KRS 304.30-050, after a hearing as provided in KRS 304.30-050 the ~~commissioner~~~~executive director~~ may subject such company to a penalty of not more than one thousand dollars (\$1,000) for each offense.

➔Section 1663. KRS 304.99-150 is amended to read as follows:

- (1) Any person acting pursuant to Subtitle 45 of this chapter who violates any applicable provision of this chapter or other applicable insurance laws shall be subject to suspension or revocation of licenses, certificates of authority, or permission to do business in this state, imposition of civil penalties of up to ten thousand dollars (\$10,000) per violation, or both. The penalties prescribed in this subsection may be imposed through administrative proceedings in the ~~Department~~~~Office~~ of Insurance, an action, or such other proceedings specified by law. Any civil penalty not paid may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.
- (2) This section applies to Subtitle 45 of this chapter.

➔Section 1664. KRS 304.99-151 is amended to read as follows:

- (1) Any person who violates a cease and desist order of the **commissioner**~~[executive director]~~ under KRS 304.37-130(5) may, after notice and hearing and upon order of the **commissioner**~~[executive director]~~, be subject at the discretion of the **commissioner**~~[executive director]~~ to a civil penalty of not more than ten thousand dollars (\$10,000) for every day of violation, suspension, or revocation of the person's license or certificate of authority, or both.
- (2) Any insurer or other person who fails to make any filing required by KRS 304.37-120 and who also fails to demonstrate a good faith effort to comply with any filing requirement shall be subject to a civil penalty of not more than ten thousand dollars (\$10,000).

➔Section 1665. KRS 304.99-152 is amended to read as follows:

- (1) Any insurer failing, without just cause, to file any registration statement as required by Subtitle 37 of this chapter, shall be required, after notice and hearing, to pay a civil penalty of ten thousand dollars (\$10,000) for each day's delay to the **commissioner**~~[executive director]~~. The maximum civil penalty under this section shall be one hundred thousand dollars (\$100,000). The **commissioner**~~[executive director]~~ may reduce the civil penalty if the insurer demonstrates to the **commissioner**~~[executive director]~~ that the imposition of the penalty would constitute a financial hardship to the insurer.
- (2) Every director or officer of an insurance holding company system who knowingly violates, participates in, assents to, or who knowingly permits any of the officers or agents of the insurer to engage in transactions or make investments which have not been properly reported or submitted pursuant to KRS 304.37-020(1), 304.37-030(2), or 304.37-030(5), or which violate Subtitle 37 of this chapter, shall pay, in their individual capacities, a civil penalty of not more than five thousand dollars (\$5,000) per violation, after notice and hearing before the **commissioner**~~[executive director]~~. In determining the amount of the civil penalty, the **commissioner**~~[executive director]~~ shall take into account the appropriateness of the civil penalty with respect to the gravity of the violation, the history of previous violations, and other matters justice may require.
- (3) If it appears that any insurer subject to Subtitle 37 of this chapter, or any director, officer, employee, or agent has engaged in any transaction or entered into any contract which is subject to KRS 304.37-030 and which would not have been approved had approval been requested, the **commissioner**~~[executive director]~~ may order the insurer to cease and desist immediately any further activity under that transaction or contract. After notice and hearing, the **commissioner**~~[executive director]~~ may also order the insurer to void the contracts and restore the status quo if the action is in the best interest of the policyholders, creditors, or the public.
- (4) If it appears that any insurer or any director, officer, employee, or agent has committed a willful violation of Subtitle 37 of this chapter, the **commissioner**~~[executive director]~~ may cause criminal proceedings to be instituted in the Circuit Court for the county in which the principal office of the insurer is located, or if the insurer has no office in Kentucky, in the Franklin Circuit Court against the insurer or the responsible director, officer, employee, or agent. Any insurer which willfully violates Subtitle 37 of this chapter, may be fined not more than one hundred thousand dollars (\$100,000). Any individual who willfully violates Subtitle 37 of this chapter, may be fined in his *or her* individual capacity not more than one thousand dollars (\$1,000), be imprisoned for not more than one (1) to three (3) years, or both.
- (5) Any officer, director, or employee of an insurance holding company system who willfully and knowingly subscribes to or makes or causes to be made any false statements or false reports or false filings with the intent to deceive the **commissioner**~~[executive director]~~ in the performance of his *or her* duties under Subtitle 37 of this chapter, upon conviction, shall be imprisoned for not more than one (1) year or more than five (5) years, or fined ten thousand dollars (\$10,000), or both. Any fines imposed shall be paid by the officer, director, or employee in his *or her* individual capacity.

➔Section 1666. KRS 309.131 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Licensure for Professional Art Therapists that shall be attached to the **Office**~~[Division]~~ of Occupations and Professions in the ~~[Environmental and]~~ Public Protection Cabinet for administrative purposes. The board shall consist of five (5) members who are United States citizens and have been Kentucky residents for at least five (5) years prior to their appointment. The board membership shall be determined as follows:
 - (a) Four (4) members shall be professional art therapists who are licensed pursuant to KRS 309.133, and shall have engaged in art therapy practice for at least five (5) years. These members shall not hold any elected or appointed office in any professional organization of art therapy or closely related field during their tenure on the board; and

- (b) One (1) member shall represent the public. The public member shall not have been licensed or have practiced as a professional art therapist, nor have any significant financial interest, either direct or indirect, in the profession of art therapy.
- (2) All members of the board shall be appointed by the Governor for staggered terms of four (4) years.
- (3) The four (4) professional members shall be appointed from a list of eight (8) names submitted by the board of directors of the Kentucky Art Therapy Association, Inc., and the one (1) public member shall be a citizen at large. Each member shall hold office until a successor is appointed. Vacancies shall be filled in the same manner as original appointments. No board member shall serve more than two (2) consecutive terms.
- (4) Each board candidate shall be licensed as an art therapist prior to nomination and shall be actively engaged in the practicing or teaching of art therapy, except for the one (1) public member.
- (5) Members of the board shall receive no compensation, perquisite, or allowance.
- (6) The board shall elect annually from its membership a chairman, secretary, and other officers as necessary to carry out its duties.
- (7) The board shall meet at least two (2) times each year. Additional meetings may be called by the chairman, upon the written request of at least two (2) members of the board. A simple majority of the board members shall constitute a quorum of the board.

➔Section 1667. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency~~attached to the Division of Occupations and Professions for administrative and clerical purposes~~.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:
 - (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years prior to June 24, 2003, and who are residents of Kentucky;
 - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program; and
 - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
- (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
- (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.
- (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔Section 1668. KRS 310.040 is amended to read as follows:

- (1) The Kentucky Board of Licensure and Certification for Dietitians and Nutritionists is hereby created to be comprised of seven (7) members appointed by the Governor. Three (3) members shall be licensed dietitians, three (3) members shall be certified nutritionists and one (1) member shall be a public member who shall have no pecuniary interest in the nutrition field. Of the members from the nutrition field, one (1) shall represent hospitals, one (1) shall represent health care facilities other than hospitals, one (1) shall represent state or local nutritional programs or shall be in private practice and one (1) shall be a dietetic educator. Appointments may be made from a list of nominees submitted to the Governor by the Kentucky Dietetic Association, the

Kentucky Hospital Association, the Kentucky Association of Health Care Facilities, and the Kentucky Medical Association;

- (2) ~~The board shall be placed for administrative purposes under the Division of Occupations and Professions of the Environmental and Public Protection Cabinet.~~

- (3) Each member of the board shall serve for a term of four (4) years, except that for initial appointments, one (1) shall be for four (4) years, two (2) shall be for three (3) years, and two (2) shall be for two (2) years and one (1) shall be for one (1) year. No member shall serve more than two (2) consecutive terms and each member on July 15, 1994, shall serve on the board until his successor is appointed. Vacancies shall be filled by appointment of the Governor for the unexpired term.

- (3) ~~(4)~~ The board shall organize annually and elect one (1) of its members as chairman and one (1) of its members as secretary. A quorum of the board shall consist of four (4) members. The board shall meet at least quarterly and upon the call of the chairman, or at the request of two (2) or more members to the secretary of the board.

- (4) ~~(5)~~ Each member of the board shall receive compensation for services in an amount determined by the department, not to exceed one hundred dollars (\$100) dollars per meeting. The members shall be reimbursed for all travel expenses for attending the meetings of the board. The compensation of members and employees of the board shall be paid from the revolving fund established in KRS 310.041(7).

➔Section 1669. KRS 317A.110 is amended to read as follows:

- (1) The principal office of the board created by this chapter shall be located in such place as will enable the board to have access to records and technical assistance of the ~~Office~~**Division** of Occupations and Professions;
- (2) The ~~Office~~**Division** of Occupations and Professions shall give cooperation and technical advice and assistance to the board created by this chapter.

➔Section 1670. KRS 318.010 is amended to read as follows:

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

- (1) "~~Department~~**Office**" means ~~Department~~**Office** of Housing, Buildings and Construction;
- (2) "Journeyman plumber" means a person who engages or offers to engage, either as an occupation or otherwise, in the construction, installation, alteration, maintenance, repair, remodeling or removal, and replacement of plumbing under the supervision, direction, and responsibility of a master plumber;
- (3) "Master plumber" means a person who assumes responsible charge, supervision, or direction of journeyman plumbers, plumbers' apprentices, and other persons in the construction, installation, or alteration of plumbing or who engages in, offers to engage in, or advertises or otherwise represents that he is permitted or qualified to engage in the design, planning, superintending, contracting for, or responsible charge of plumbing;
- (4) "Plumbing" means the art of installing in buildings the pipes for distributing the water supply, the fixtures for using water and drainage pipes for removing waste water and sewage, together with fittings, appurtenances, and appliances of various kinds, all within or adjacent to the building. It shall not include the installation of on-site sewage disposal systems, except for the piping, fixtures, or other appurtenances needed within the building. It shall include:
 - (a) The water service pipe which forms the connection between the property line and the building, other than piping serving firefighting equipment;
 - (b) Private water supply systems;
 - (c) House sewers which convey the waste water and sewage from the building to the property line or other points of disposal, but not including sewers located between manholes and sewers extending five (5) feet from a main or manhole on private property;
 - (d) Storm sewers and rain water piping located within a building to a point two (2) feet outside of the building; and
 - (e) Medical gas piping;
- (5) "Public building" means any building intended for public use or built with public funds and includes but is not limited to the following: schools, industrial establishments, housing projects, restaurants, food-handling

establishments, private clubs, theaters including drive-ins, trailer coach parks, camping areas, hospitals, nursing homes, hotels, motels, tourist courts, rooming houses, boarding houses, and other establishments furnishing public sleeping accommodations;

- (6) "Maintenance man" means a person employed to maintain and keep plumbing in good repair;
- (7) "Apprentice" means a person in the process of learning the plumbing trade who assists and is under the personal supervision of a licensed master or licensed journeyman plumber;
- (8) "Farmstead" means a farm dwelling together with other farm buildings and structures incident to the operation and maintenance of the farm situated on ten (10) acres or more of land which is located outside the corporate limits of a municipality;
- (9) "Person" means any individual, public or private corporation, political subdivision, government agency, municipality, copartnership, association, firm, trust, estate, or other entity whatsoever;
- (10) "~~Commissioner~~~~[Executive director]~~" means the ~~commissioner~~~~[executive director]~~ of the ~~Department~~~~[Office]~~ of Housing, Buildings and Construction; and
- (11) "Code" means the Kentucky State Plumbing Code.

➔Section 1671. KRS 318.015 is amended to read as follows:

- (1) This chapter applies and shall be in full force and effect in all counties of the Commonwealth.
- (2) The state plumbing code promulgated by the ~~department~~~~[office]~~ under the provisions of this chapter applies and shall be in full force and effect for all public buildings regardless of location in the Commonwealth.
- (3) This chapter shall not apply to farmsteads.

➔Section 1672. KRS 318.030 is amended to read as follows:

- (1) No person shall engage in plumbing or engage in or work at the trade of plumbing:
 - (a) Unless he or she is the holder of a valid and effective active master plumber's license duly issued by the ~~department~~~~[office]~~ in accordance with the provisions of this chapter; or
 - (b) Unless he or she is the holder of a valid and effective journeyman plumber's license duly issued by the ~~department~~~~[office]~~ in accordance with the provisions of this chapter.
- (2)
 - (a) No person, firm, or corporation shall engage in plumbing or engage in or work at the trade of plumbing unless the person, firm, or corporation maintains general liability insurance in an amount not less than two hundred fifty thousand dollars (\$250,000) and submits proof of compliance with workers' compensation and unemployment insurance laws of the Commonwealth.
 - (b) Proof of insurance required in this subsection shall be submitted to the ~~department~~~~[office]~~ prior to issuance or renewal of the active master plumber license required under this chapter.
 - (c) No license shall be valid without insurance as required in this subsection, and insurance carriers shall notify the ~~department~~~~[office]~~ upon cancellation of the insurance of any licensee required to maintain insurance.
 - (d) The insurance required in this subsection shall not apply to an employee of a person, firm, or corporation engaged in plumbing as defined in this chapter.

➔Section 1673. KRS 318.040 is amended to read as follows:

- (1) An applicant for a master or journeyman plumber's license shall:
 - (a) Be at least eighteen (18) years of age;
 - (b) Be of good moral character;
 - (c) Be a citizen of the United States or be a resident alien who is authorized to work in the United States; and
 - (d) Possess all the other qualifications that may be prescribed by administrative regulations of the ~~commissioner~~~~[executive director]~~.

- (2) Except as otherwise provided in this chapter, no master or journeyman plumber's license shall be issued except upon a successful passage of an examination as prescribed by the **department**~~{office}~~.
- (3) Examinations for a license as a master plumber or journeyman plumber shall be conducted at times and places fixed by the regulations of the **commissioner**~~{executive director}~~. Applicants for an examination shall furnish the information required by the **commissioner**~~{executive director}~~ and shall receive from the **department**~~{office}~~ due notice of the time and place of the examination.
- (4) The **department**~~{office}~~ shall prepare or cause to be prepared under its supervision examinations consisting of written and practical tests with such questions and tests by which the **department**~~{office}~~ will determine:
 - (a) With respect to master plumber's license applicants, that applicants are qualified in view of the definitions, provisions, and purposes of this chapter to carry on responsibly, reasonably, and competently, the activities which a licensed master plumber is authorized to engage in by this chapter; and
 - (b) With respect to journeyman plumber's license applicants, their knowledge and competency to carry on the activities which a licensed journeyman plumber is authorized to engage in by this chapter.
- (5) The examination papers shall be preserved by the **department**~~{office}~~ for a period of one (1) year.
- (6) The **department**~~{office}~~ may issue a license to any person who holds a valid license in another state if that state has a statewide plumbing code and, in the opinion of the Plumbing Code Committee, the other state's examination is at least equal to that of Kentucky and the other state agrees to reciprocate with Kentucky.

➔Section 1674. KRS 318.050 is amended to read as follows:

Each application for a license as a master or journeyman plumber shall be accompanied by a reasonable fee as established by the **department**~~{office}~~.

➔Section 1675. KRS 318.054 is amended to read as follows:

- (1) The initial license for a master or journeyman plumber shall expire on the last day of the licensee's birth month in the following year. The **department**~~{office}~~ may reduce the license fee on a pro rata basis for initial licenses issued for less than twelve (12) months. Renewed licenses shall expire on the last day of the licensee's birth month of each year after the date of issuance of the renewed license.
- (2) The **department**~~{office}~~ shall require an applicant for renewal of a license to show evidence of completing the continuing education requirements set forth by the **department**~~{office}~~, with advice from the State Plumbing Code Committee, in its administrative regulations issued under KRS 318.130.
- (3) The **department**~~{office}~~ shall send each licensed master and journeyman plumber a notice advising them that the annual license renewal fee is due. The notice shall be sent to the licensee's last known address no later than thirty (30) days prior to the expiration of the license. The annual license renewal fee shall be a reasonable fee set by regulation of the **department**~~{office}~~. The fee for the renewal of a master plumber's license shall exceed the fee charged for a journeyman plumber's license.
- (4) Any master or journeyman plumber who fails to renew his license prior to expiration may have his license renewed upon payment of the required renewal fee, a revival fee, and upon showing the completion of continuing education requirements. The revival fee for a master plumber shall be five dollars (\$5) and for a journeyman plumber three dollars (\$3). If the renewal and revival fees are not paid one hundred eighty (180) days after the license expires, such licenses shall be automatically canceled by operation of law for nonpayment; provided, however, that such licenses may be reinstated upon payment of all delinquent renewal fees plus a revival fee of ten dollars (\$10) for a master plumber and six dollars (\$6) for a journeyman plumber. Upon presentation of proper evidence, the **department**~~{office}~~ may waive payment of any renewal or revival fee specified herein for persons serving on active duty in the Armed Forces of the United States.

➔Section 1676. KRS 318.064 is amended to read as follows:

The **department**~~{office}~~ may revoke or suspend any plumber's license issued by it upon proof that the licensee has:

- (1) Knowingly violated the provisions of this chapter or the Kentucky State Plumbing Code, or the rules and regulations of the **department**~~{office}~~;
- (2) Practiced fraud or deception in applying for or obtaining a license;

- (3) Is incompetent to perform services as a licensed master plumber or a licensed journeyman plumber;
- (4) Permitted his or her license to be used directly or indirectly by another to obtain or perform plumbing work or services; or
- (5) Is guilty of such other unprofessional or dishonorable conduct of a character likely to deceive or defraud the public.

➔Section 1677. KRS 318.066 is amended to read as follows:

- (1) No license shall be suspended or revoked by the ~~department~~~~office~~ unless a hearing has been conducted or an opportunity afforded therefor in accordance with KRS Chapter 13B.
- (2) A licensee aggrieved by a final order of the ~~department~~~~office~~ suspending or revoking a license may appeal therefrom to the Circuit Court of the county in which the principal office of the office is located in accordance with KRS Chapter 13B.

➔Section 1678. KRS 318.071 is amended to read as follows:

- (1) There is hereby created a State Plumbing Code Committee which shall be established within the ~~Department~~~~Office~~ of Housing, Buildings and Construction for administrative purposes. The State Plumbing Code Committee shall consist of seven (7) members, one (1) of whom shall be a builder member of the Home Builders Association of Kentucky, one (1) of whom shall be a member of the Association of General Contractors, one (1) of whom shall be a member of the Kentucky Master Plumbers Association, one (1) of whom shall be a member of the Kentucky Society of Professional Engineers (who shall have a background in sanitary engineering), one (1) of whom shall be a member of the American Institute of Architects, one (1) of whom shall be a member of the United Association of Journeyman Plumbers, and one (1) of whom shall be a member of the Mechanical Contractors Association. Each member of the State Plumbing Code Committee shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for all necessary expenses. The members of the committee shall be appointed by the Governor from lists of three (3) names submitted by the above mentioned organizations.
- (2) Each member shall be appointed for and hold office a term of two (2) years or until his or her successor is appointed and qualified.
- (3) At all times in the filling of vacancies of membership on the committee the balance of representation set out in subsection (1) shall be maintained.

➔Section 1679. KRS 318.074 is amended to read as follows:

The committee shall elect from its members one (1) to serve as chairman, one (1) as vice chairman, and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Housing, Buildings and Construction or his or her designee shall serve as ex officio member of the committee (without a vote) and secretary. The committee shall meet at least quarterly and upon special call by the chairman or the secretary.

➔Section 1680. KRS 318.077 is amended to read as follows:

The committee shall hold hearings, upon adequate notice to affected parties specifying the matters to be considered before the submission to the ~~commissioner~~~~executive director~~ of its suggested amendments to the code. No amendment of the code or any other related regulation shall be issued or promulgated by the ~~department~~~~office~~ without the prior review and comment of the committee under the requirements of KRS 198B.030(9) and (10) and 198B.040(11). Any person aggrieved by any rule, regulation, or amendment approved by the ~~department~~~~office~~, within 30 days after such action has become final, may appeal therefrom to the Circuit Court. For the purposes of this section, "persons aggrieved" shall include any person directly or indirectly injured or threatened with injury on account of any such regulation, rule, or amendment, whether or not such person was a party to the proceedings out of which the order, rule, regulation, or amendment arose.

➔Section 1681. KRS 318.080 is amended to read as follows:

- (1) In order to conduct examinations for persons to qualify as licensed master plumbers or journeyman plumbers, the ~~department~~~~office~~ shall appoint as examiners the following persons to a State Plumbers Examining Committee: An employee of the ~~department~~~~office~~ and three (3) other persons who shall be licensed either as master or journeyman plumbers. The ~~commissioner~~~~executive director~~ shall be an ex officio examiner and permanent commissioner of the committee. With the exception of the issuance of any order involving the

revocation, suspension or cancellation of a master or journeyman plumber's license, the ~~commissioner~~~~executive director~~ may delegate to a subordinate employee in the ~~department~~~~office~~ the power to be present and participate, including the right to vote, as his or her representative at any meeting, hearing or other proceeding of the State Plumbers Examining Committee. Plumber examiners shall serve at the pleasure of the ~~department~~~~office~~.

- (2) The ~~department~~~~office~~ shall appoint assistant plumber examiners who shall be qualified licensed master or journeyman plumbers who shall serve at the pleasure of the ~~department~~~~office~~. Assistant plumber examiners shall perform such duties as are delegated to them by the State Plumbers Examining Committee.
- (3) Plumber examiners and assistant plumber examiners shall receive no compensation for their services but shall be reimbursed for their necessary traveling expenses.

➔Section 1682. KRS 318.090 is amended to read as follows:

- (1) The ~~department~~~~office~~ shall appoint and assign plumbing inspectors to each county subject to the provisions of this chapter.
- (2) Each plumbing inspector shall have at least eight (8) years experience as a journeyman or master plumber. At the time of his or her appointment he or she shall be licensed in accordance with the provisions of this chapter.

➔Section 1683. KRS 318.100 is amended to read as follows:

No person shall advertise or hold himself or herself out as a licensed master or licensed journeyman plumber within the Commonwealth of Kentucky unless he or she is a holder of a license from the ~~department~~~~office~~ in accordance with the provisions of this chapter.

➔Section 1684. KRS 318.110 is amended to read as follows:

A company or individual principal may engage in the business of plumbing within any county of the Commonwealth if some person connected with such a company or individual principal in responsible charge of the plumbing work is a licensed master plumber. Any master plumber, in responsible charge of plumbing work for a company or individual engaged in the plumbing business, shall notify the ~~department~~~~office~~ at any time he or she commences or severs his or her connection with the company or individual principal.

➔Section 1685. KRS 318.130 is amended to read as follows:

In order to administer this chapter, the ~~department~~~~office~~ shall promulgate and thereafter from time to time may amend a code to be known as the Kentucky State Plumbing Code, regulating the construction, installation, and alteration of plumbing and plumbing fixtures and appliances, house sewers and private water supplies, and methods and materials to be used therein within this state, using as a minimum standard the basic principles of the National Plumbing Code Coordinating Committee, as evidenced by that committee's final report of 1951 with variations thereof or additions thereto as the committee considers are warranted by local, climatic, or other conditions. The code may also designate the number of plumbing fixtures for public buildings. The ~~department~~~~office~~ may adopt any other reasonable rule or regulation to administer this chapter if the rule or regulation has been subject to review and comment by the committee under the requirements of KRS 198B.030(9) and (10) and 198B.040(11). No rules or regulations so approved by the committee shall become effective except upon adoption by the ~~department~~~~office~~, in satisfaction of the requirements of KRS Chapter 13A. The ~~department~~~~office~~ shall furnish to the committee proposed amendments to the code for the committee's review and comment prior to their adoption by the ~~department~~~~office~~. The ~~department~~~~office~~ shall not promulgate any rules or regulations related to this chapter without granting the committee the opportunity to comment on the administrative regulation.

➔Section 1686. KRS 318.134 is amended to read as follows:

- (1) No person, firm, or corporation shall:
 - (a) Construct, install, or alter, or cause to be constructed, installed, or altered, any plumbing without first having procured a plumbing installation permit therefor from the ~~department~~~~office~~;
 - (b) Use or continue to use, or permit the use or continued use of, any plumbing constructed, installed, or altered under a plumbing installation permit issued therefor where the ~~department~~~~office~~ through a duly authorized inspector, employee, or agent, finds that the plumbing was not constructed, installed, or altered in accordance with such permit and the Kentucky State Plumbing Code.
- (2) All applications for plumbing installation permits shall be accompanied by plans and specifications of the proposed plumbing installation, location, and construction of the water supply system to be used. If an on-site

sewage disposal system that does not have a surface discharge is proposed, a valid on-site sewage disposal permit issued by the Cabinet for Health and Family Services or its designated agent shall accompany the application.

- (3) The **department{office}** shall fix a reasonable schedule of fees and charges to be paid for plumbing installation permits and the necessary inspections incident thereto. The **department{office}** shall also fix a reasonable schedule of fees and charges to be paid for necessary inspections of the construction, installation, or alteration of plumbing in public buildings.

➔Section 1687. KRS 318.136 is amended to read as follows:

All license fees, permit and inspection fees and charges, and other moneys collected by the **department{office}**, under the provisions of this chapter and the rules and regulations of the **department{office}** adopted hereunder, shall be paid into the State Treasury and credited to a trust and agency fund to be used by the **department{office}** in carrying out the provisions of this chapter. No part of this fund shall revert to the general fund of the Commonwealth. All moneys held in a trust and agency fund or other fund to the credit of the **department{office}** for the administration and enforcement of this chapter on June 16, 1960, are hereby transferred to the trust and agency fund herein created.

➔Section 1688. KRS 318.140 is amended to read as follows:

- (1) Any local government may, by ordinance, enact the Kentucky State Plumbing Code, regulating the construction, installation, or alteration of plumbing within such local government, providing for the issuance of plumbing installation permits and fixing permit and inspection fees. Two (2) or more local governments may, by ordinance of each local government, enact the plumbing code as described in this section which shall be jointly enforced and administered by said local governments within their boundaries. Agreements for joint enforcement shall conform to the provisions of KRS Chapter 65. The **department{office}** may authorize any such local government or combination of local governments to administer, carry out, and enforce the Kentucky State Plumbing Code and the rules and regulations of the **department{office}** relating thereto and to issue permits and make inspections thereunder within such local government, in which event a permit issued under the provisions of the local government plumbing code ordinance shall be deemed a permit issued by the **department{office}**; provided, however, that inspectors of the **department{office}** shall have concurrent jurisdiction with local government plumbing inspectors in the enforcement in such local governments of the Kentucky State Plumbing Code.
- (2) Any local government enacting a plumbing code ordinance may appoint and fix the compensation of local government plumbing inspectors. No person shall be eligible for appointment as a local government plumbing inspector unless he or she has at least eight (8) years' experience as a master or journeyman plumber. At the time of his or her appointment, he or she shall be licensed in accordance with the provisions of this chapter.
- (3) Nothing contained in this chapter shall be construed as prohibiting a local government from collecting occupational license fees from persons, firms, or corporations engaged in the plumbing business.

➔Section 1689. KRS 318.160 is amended to read as follows:

Except as otherwise provided by law or by regulation of the **department{office}**, no person shall construct, install, or extensively alter any plumbing, sewerage, or water supply system of any public building or establishment without having first obtained the approval of the **department{office}** in writing. Detailed plans and specifications of the proposed facility showing the plumbing system, sewage disposal system, and water supply system shall be submitted to the **department{office}** prior to the construction or alteration of the facility. In the event no public sewer is available, the plan shall include the proposed type of sewage disposal system. In the event a sewage subsoil drainage system is used, or some other type of on-site sewage disposal system that does not have a surface discharge, the application for construction, installation, or alteration of such system shall be submitted to the Cabinet for Health and Family Services or its designated agent. All other plans and specifications shall be submitted in triplicate to the **department{office}**. The **department{office}** shall notify the applicant in writing of the approval or disapproval of the plans. The construction, installation, or alteration shall be done in accordance with the approved plans.

➔Section 1690. KRS 318.170 is amended to read as follows:

For the purpose of enforcing the provisions of this chapter and the State Plumbing Code, officers, agents and inspectors of the **department{office}** shall have the power and authority to enter upon premises at all reasonable times for the purpose of making inspections, to interrogate all persons and to require the production of plumbing installation permits and other evidence. Officers, agents, and inspectors of the **department{office}** are empowered to issue a stop

order to any owner, agent, or occupant of real property whenever the plumbing thereon is found by the officer, agent or inspector of the ~~department{office}~~ to be in violation of this chapter or the State Plumbing Code.

➔Section 1691. KRS 318.180 is amended to read as follows:

- (1) Notwithstanding the existence or pursuit of any other remedy (civil or criminal) the ~~department{office}~~, or its officers, agents, or inspectors, are hereby authorized to institute and maintain actions to restrain and enjoin any violation of this chapter, the State Plumbing Code, or the rules and regulations of the ~~department{office}~~ relating thereto.
- (2) City, county and Commonwealth's attorneys, and the Attorney General, shall within their respective jurisdictions represent the ~~department{office}~~, its officers, agents, and inspectors, in the enforcement of the provisions of this chapter, the State Plumbing Code, and the rules and regulations of the ~~department{office}~~ relating thereto, but when the ~~department{office}~~ deems it necessary, it may employ, at its discretion, special attorneys to assist the ~~department{office}~~, or its officers, agents, or inspectors, and may pay reasonable compensation, fees and other costs from any unexpended plumbing funds.

➔Section 1692. KRS 318.190 is amended to read as follows:

- (1) The Circuit Court where the violation occurs shall have jurisdiction and venue in all civil and injunctive actions instituted by the ~~department{office}~~ for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder.
- (2) The Franklin Circuit Court shall hold concurrent jurisdiction and venue in all civil and injunctive actions instituted by the ~~department{office}~~, or upon the secretary's request by the Attorney General, for the enforcement of the provisions of KRS Chapter 318, the State Plumbing Code and the orders issued thereunder and other rules and regulations of the ~~department{office}~~.
- (3) The District Court where the violation occurs shall have jurisdiction and venue in all criminal actions for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder. The Franklin Circuit Court shall hold concurrent jurisdiction and venue on all appeals of criminal actions for the enforcement of the provisions of KRS Chapter 318 and the State Plumbing Code and the orders issued thereunder.

➔Section 1693. KRS 318.200 is amended to read as follows:

- (1) No water heating device shall be sold or offered for sale in the Commonwealth of Kentucky unless it contains a serial number on it. As used in this section, "water heating device" means any pressure vessel which heats, stores, and supplies potable water for domestic or commercial purposes other than for space heating.
- (2) All retailers, wholesalers, and installers selling or offering for sale a water heating device shall, within thirty (30) days of the date of sale, forward a list of names and addresses of purchasers along with the serial numbers of the devices purchased to the ~~department{office}~~ or to the appropriate agency of county or city government having jurisdiction.

➔Section 1694. KRS 329A.025 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 329A.010 to 329A.090 and shall evaluate the qualifications of applicants for licensure and issue licenses.
- (2) The board shall:
 - (a) Implement the provisions of KRS 329A.010 to 329A.090 through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A;
 - (b) Promulgate administrative regulations to establish fees which shall not exceed the amounts necessary to generate sufficient funds to effectively carry out and enforce the provisions of KRS 329A.010 to 329A.090;
 - (c) Promulgate by administrative regulation an examination to be administered at least twice annually to license applicants. The examination shall be designed to measure knowledge and competence in private investigating, including but not limited to the following subject areas:
 1. Federal and state constitutional principles;
 2. Court decisions related to activities which could result in liability for the invasion of privacy or other activities;

3. Eavesdropping and related offenses, assault and related offenses, search and seizure laws, and laws regarding unlawful access to a computer;
 4. General weapons use and concealed weapons laws;
 5. Additional state criminal laws and related procedures that are relevant to the practice of private investigating; and
 6. Additional subject areas as determined by the board; and
- (d) Promulgate by administrative regulation a code of professional practice and conduct that shall be based upon generally recognized principles of professional ethical conduct and be binding upon all licensees.
- (3) The board may:
- (a) Contract with the ~~Office~~~~Division~~ of Occupations and Professions within the ~~Environmental and~~ Public Protection Cabinet for the provision of administrative services;
 - (b) Employ any persons it deems necessary to carry on the work of the board. The board may define their duties and fix their compensation;
 - (c) Develop or sponsor at least six (6) hours of continuing professional education annually;
 - (d) Approve and certify a forty (40) hour training class covering the subject areas of the licensing examination;
 - (e) Renew licenses and require continuing professional education as a condition for renewal;
 - (f) Waive the examination requirement for any applicant licensed in a reciprocal state as prescribed in subsection (3)(m) of this section, who is licensed in good standing in that state and meets all of the other requirements of KRS 329A.035;
 - (g) Suspend or revoke licenses, impose supervisory or probationary conditions upon licensees, impose administrative disciplinary fines, or issue written admonishments or reprimands, or any combination thereof;
 - (h) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of KRS 329A.010 to 329A.090;
 - (i) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the board's functions;
 - (j) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one (1) particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B;
 - (k) Utilize mediation as a technique to resolve disciplinary matters;
 - (l) Seek injunctive relief in the Circuit Court of the county where the alleged unlawful practice occurred to stop the unlawful practice of private investigating by unlicensed persons or companies; and
 - (m) Negotiate and enter into reciprocal agreements with appropriate officials in other states to permit licensed investigation companies and private investigators who meet or exceed the qualifications established in KRS 329A.010 to 329A.090 to operate across state lines under mutually acceptable terms.

➔Section 1695. KRS 334.170 is amended to read as follows:

The ~~Office~~~~Division~~ of Occupations and Professions in the ~~Environmental and~~ Public Protection Cabinet shall provide administrative aid to the board to assist it in the discharge of its duties.

➔Section 1696. KRS 335.050 is amended to read as follows:

- (1) There is hereby created the Kentucky Board of Social Work, consisting of seven (7) members appointed by the Governor. One (1) member shall be a certified social worker under the provisions of KRS 335.010 to 335.160

and 335.990. One (1) member shall be a licensed social worker under the provisions of KRS 335.010 to 335.160 and 335.990. One (1) member shall be a licensed clinical social worker licensed under the provisions of KRS 335.010 to 335.160 and 335.990. Three (3) members shall be persons licensed by the board at any level, at the discretion of the Governor. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. With the exception of the citizen at large, each member shall be appointed from a list of names of qualified persons submitted by any interested parties. The Governor may request the submission of additional names.

- (2) Members of the board shall be appointed for terms of four (4) years except appointments to fill vacancies caused by a reason other than the expiration of a member's term. Upon recommendation of the board, made after notice and hearing, the Governor may remove any member of the board for incompetence, neglect of duty, or malfeasance in office.
- (3) All vacancies shall be filled by the Governor.
- (4) The board shall organize upon appointment and qualification of its members, and shall elect annually from its membership a chairman, vice chairman, and a secretary. The board shall meet as frequently as it deems necessary, but not less than two (2) times each year, at such times and places as the board designates. Additional meetings may be held upon call of the chairman or upon the written request of three (3) members of the board. Four (4) members of the board shall constitute a quorum.

~~{(5) The board may be attached, for administrative purposes, to the Division of Occupations and Professions in the Environmental and Public Protection Cabinet.}~~

➔Section 1697. KRS 335.325 is amended to read as follows:

The board may:

- (1) ~~Employ needed personnel and contract with the Division of Occupations and Professions within the Environmental and Public Protection Cabinet for the provision of administrative services;~~
- (2) Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;
- (3) Seek injunctive relief in Franklin Circuit Court to stop the unlawful practice of marriage and family therapy by unlicensed persons;
- (4) Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;
- (5) Suspend or revoke licenses or permits or impose supervisory or probationary conditions upon licensees or permit holders, or impose administrative disciplinary fines, issue written reprimands or admonishments, or any combination thereof;
- (6) Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations;
- (7) Enter into reciprocal agreements with boards of marriage and family therapy in other states having licensure qualifications and requirements that meet or exceed those provided in this chapter;
- (8) Organize itself into two (2) panels to separate the functions of inquiry and hearings. Each panel shall have the power to act as either an inquiry or hearing panel. No member serving on the inquiry panel shall serve on the hearing panel for any one particular case. Any final decision of the hearing panel shall be considered as the final decision of the board and the hearing panel may exercise all powers granted to the board pursuant to KRS Chapter 13B; and
- (9) Utilize mediation as a technique to resolve disciplinary matters.

➔Section 1698. KRS 335.615 is amended to read as follows:

The board shall meet at least twice a year, in the spring and the fall. The board shall elect a chair at the fall meeting who shall serve a one (1) year term. The board shall:

- (1) Approve or deny applications for certification submitted according to the provisions of KRS 335.600 to 335.699;

- (2) Approve the examination required of applicants for certification, provide for the administration and grading of the examination, and provide for other matters relating to certification in the profession of fee-based pastoral counseling as promulgated in administrative regulations;
- (3) Review the credentials of certificate holders to determine eligibility for certification renewal, including payment of fees authorized in KRS 335.625;
- (4) Certify those fee-based pastoral counseling applicants who satisfy the requirements of KRS 335.600 to 335.699, including payment of fees authorized in KRS 335.620;
- (5) Adopt a code of ethics for certified fee-based pastoral counselors by promulgation of administrative regulations;
- (6) Promulgate administrative regulations, in accordance with KRS Chapter 13A, to implement the purposes of KRS 335.600 to 335.699;
- (7) ~~Contract with the Division of Occupations and Professions within the Environmental and Public Protection Cabinet for the provision of administrative services;~~
- ~~(8)~~ Investigate suspected violations of KRS 335.600 to 335.699;
- ~~(8)~~~~(9)~~ Institute and maintain actions to restrain or enjoin persons who violate the certification provisions of KRS 335.600 to 335.699; and
- ~~(9)~~~~(10)~~ Submit an annual report to the Governor and to the Legislative Research Commission by January 1 of each year, listing all hearings conducted by the board, any decisions rendered, and a current roster of all certified fee-based pastoral counselors.

➔ Section 1699. KRS 336.010 is amended to read as follows:

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

- (1) "~~Secretary~~~~[Commissioner]~~" means *secretary*~~[commissioner]~~ of the ~~[Department of]~~Labor ~~[under the direction and supervision of the secretary of the Environmental and Public Protection]~~Cabinet; *and*
- (2) "~~Cabinet~~~~[Department]~~" means ~~[Department of]~~Labor *Cabinet*; ~~and~~
- ~~(3) "Secretary" means the secretary of the Environmental and Public Protection Cabinet.~~

➔ Section 1700. KRS 336.015 is amended to read as follows:

- (1) The *secretary*~~[commissioner]~~ of the ~~[Department of]~~Labor *Cabinet* shall have the duties, responsibilities, power, and authority relating to labor, wages and hours, occupational safety and health of employees, child labor, apprenticeship, workers' compensation, and all other matters previously under the jurisdiction of the *Department of* Labor~~[Cabinet]~~.
- (2) The ~~[Department of]~~Labor *Cabinet* shall consist of the Office of *the Secretary*~~[Occupational Safety and Health]~~, the *Department*~~[Office]~~ of *Workers' Claims*~~[Labor Management Relations and Mediation]~~, *and* the *Department*~~[Office]~~ of Workplace Standards~~[, and the Division of Administrative Services. Each of the offices shall be headed by an executive director and each division shall be headed by a division director. Executive directors and division directors shall be appointed by the secretary with the approval of the Governor as required by KRS 12.050].~~
- (3) The following agencies are attached to the *cabinet*~~[department]~~ for administrative purposes only:
 - (a) Kentucky Labor-Management Advisory Council;
 - (b) Kentucky *Occupational Safety and Health Review Commission*~~[Employees' Insurance Association]~~;
 - (c) State Labor Relations Board;
 - (d) Workers' Compensation Funding Commission;
 - (e) ~~[Workers' Compensation Advisory Council]~~;
 - ~~(f)~~ Occupational Safety and Health Standards Board;
 - ~~(f)~~~~(g)~~ Prevailing Wage Review Board;

- (g)~~(h)~~ Apprenticeship and Training Council;
- (h)~~(i)~~ Employers' Mutual Insurance Authority;
- (i)~~(j)~~ *Office of General Administration and Program Support for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet. The office is composed of the following divisions:*
 - 1. *Division of Human Resource Management;*
 - 2. *Division of Fiscal Management;*
 - 3. *Division of Budgets; and*
 - 4. *Division of Information Services*~~[Workers' Compensation Nominating Commission]~~; and
- (j)~~(k)~~ *Office of Inspector General for Shared Services, which shall be headed by an executive director appointed by the Governor in accordance with KRS 12.040 upon recommendation from the secretaries of the Energy and Environment Cabinet, the Labor Cabinet, and the Public Protection Cabinet*~~[Workers' Claims]~~.

➔Section 1701. KRS 336.020 is amended to read as follows:

- (1) The ~~Department~~~~[Office]~~ of Workplace Standards shall be headed by *a commissioner appointed by the Governor in accordance with KRS 12.040*~~[an executive director]~~ and shall be divided for administrative purposes into the Division of Employment Standards, Apprenticeship and *Mediation, the Division of Occupational Safety and Health Compliance, the Division of Occupational Safety and Health Education and Training*~~[,]~~ and the Division of Workers' Compensation Funds. *Each of these divisions shall be headed by a director appointed by the secretary and approved by the Governor in accordance with KRS 12.050.*
- (2) The ~~Department~~~~[Office]~~ of Workers' Claims shall be ~~headed~~~~[administered]~~ by *a commissioner who is nominated by the Workers' Compensation Nominating Commission, appointed by the Governor, and confirmed by the Senate in accordance with KRS 342.213 and 342.228. The department*~~[an executive director and]~~ shall be divided for administrative purposes into the *Office of Administrative Law Judges, the Office of General Counsel for Workers' Claims, the Division*~~[Divisions]~~ of Claims Processing~~[and Appeals]~~, *the Division of Information and Research, the Division of Security and Compliance, and the Division of Ombudsman and Workers' Compensation Specialist Services. The Office of Administrative Law Judges shall be headed by a chief administrative law judge appointed in accordance with KRS 342.230. Each division in the department shall be headed by a director appointed by the commissioner and approved by the Governor in accordance with KRS 12.050 and 342.230. The following agencies are attached to the Department of Workers' Claims for administrative purposes only:*
 - (a) *Workers' Compensation Board;*
 - (b) *Workers' Compensation Advisory Council; and*
 - (c) *Workers' Compensation Nominating Commission.*
- (3) The Office of *General Counsel for the Labor Cabinet*~~[Occupational Safety]~~ and ~~[Health shall be administered by an executive director and shall be divided for administrative purposes into]~~ the Division of *Management Services are attached to the Office of the Secretary of the Labor Cabinet*~~[Compliance and the Division of Education and Training]~~.

➔Section 1702. KRS 336.030 is amended to read as follows:

The ~~secretary~~~~[commissioner]~~, with the approval of the ~~[secretary of the Environmental and Public Protection Cabinet and the]~~ Governor, shall appoint necessary deputies, attorneys, statisticians, inspectors and other employees and fix their salaries according to law. These employees shall receive their actual necessary expenses.

➔Section 1703. KRS 336.040 is amended to read as follows:

- (1) The ~~[Department of]~~ Labor *Cabinet* shall exercise all administrative functions of the state concerned with employer-employee relationships, including the safety of workers and workers' compensation.
- (2) The ~~cabinet~~~~[department]~~ shall:
 - (a) Promote friendly and cooperative relations between employers and employees;

- (b) Accumulate and publish industrial statistics and aid and encourage the development of new industries and the expansion of existing industries in Kentucky;
- (c) Encourage, promote, and develop fair practices both by employers and employees; discourage and eliminate as far as practicable all unfair practices by either; and enforce laws relating to unfair practices;
- (d) Foster, promote, and develop the welfare of both wage earners and industries in Kentucky;
- (e) Improve working and living conditions of employees, and advance their opportunities for profitable employment; and
- (f) Inquire into the causes of accidental injuries and occupational diseases arising out of and in the course of employment, and advance measures for the prevention of accidents and occupational diseases and for the improvement of sanitary conditions in places of employment.

➔Section 1704. KRS 336.050 is amended to read as follows:

The ~~secretary~~~~commissioner~~ in person or by representative shall:

- (1) Investigate and ascertain the wages of all employees employed in this state.
- (2) Enter the place of business or employment of any employer of employees to examine and inspect all books, registers, payrolls, and other records that have a bearing upon the question of wages of employees and to ascertain whether the orders of the ~~secretary~~~~commissioner~~ are complied with; and
- (3) Require from the employer a full and correct statement in writing when the ~~secretary~~~~commissioner~~ or *the secretary's*~~his~~ representative considers it necessary, of the wages paid to all employees in his *or her* employment.
- (4) Upon complaint, prosecute any violation of any of the provisions of any law which it is his *or her* duty to administer or enforce. The ~~secretary~~~~commissioner~~ may enter into reciprocal agreements with the corresponding labor agency or official of any other state to collect in the other state claims assigned to the ~~secretary~~~~commissioner~~. To the extent allowed by a reciprocal agreement, the ~~secretary~~~~commissioner~~ may maintain actions in the courts of another state to collect claims and judgments for wages and assign claims and judgments to the agency or official of another state for collection. If a reciprocal agreement extends a like comity to cases arising in the Commonwealth, the ~~secretary~~~~commissioner~~ may maintain actions in the courts of the Commonwealth to collect claims and judgments for wages arising in the other state in the same manner and to the same extent that actions are authorized when arising in the Commonwealth.

➔Section 1705. KRS 336.060 is amended to read as follows:

- (1) In the conduct of an investigation or hearing, the ~~secretary~~~~commissioner~~ or any authorized deputy may issue subpoenas to compel the attendance of witnesses and parties and the production of books, papers, and records competent and relevant to the matter under investigation; administer oaths; examine witnesses under oath; take the verification or proof of written instruments; and take testimony, depositions, and affidavits to carry out any law over which the ~~cabinet~~~~department~~ has jurisdiction.
- (2) When a person fails to comply with a ~~cabinet~~~~departmental~~ subpoena, the Circuit Court of the county in which the person is found, resides, or has his principal place of business may, upon application of the ~~secretary~~~~commissioner~~, his *or her* authorized representatives, or the party requesting the subpoena, issue an order requiring compliance. In any proceeding brought under this section, the Circuit Court having issued said order of compliance may modify or set aside the subpoena.
- (3) Subpoenas issued under this section may be served by an inspector or other authorized representative of the ~~cabinet~~~~department~~, at any place in the state.

➔Section 1706. KRS 336.070 is amended to read as follows:

The ~~cabinet~~~~department~~ shall make investigations, collect and compile statistics and report on the conditions of industries, labor and unemployment, and upon all matters relating to employer-employee relations and working conditions. Complete permanent records shall be made of all investigations, showing date of examination, condition in which the establishment was found, and changes ordered.

➔Section 1707. KRS 336.080 is amended to read as follows:

The ~~secretary~~~~[commissioner]~~ may have inspected any place of employment affected by or subject to any law of this state relating to the employment of labor, except places of employment within the jurisdiction of the Department for Natural Resources. In the discharge of his *or her* duties, the ~~secretary~~~~[commissioner]~~ or *the secretary's*~~[his]~~ authorized deputy~~[,]~~ may enter places of employment at any reasonable time. Upon request, the ~~cabinet~~~~[department]~~ shall furnish to any employer a detailed report of any inspection in his *or her* place of business.

➔Section 1708. KRS 336.090 is amended to read as follows:

- (1) The ~~cabinet~~~~[department]~~ shall be furnished with a copy of all the laws and rulings of the secretary for health and family services affecting sanitary conditions in places of employment, not covered by the labor laws of the state, and shall report in writing to the state, county, or city health authorities any violations coming under the observation of its inspectors while visiting places of employment in the regular performance of their duty.
- (2) The inspectors shall be furnished with a copy of all the laws and rulings of the *Department*~~[Office]~~ of Housing, Buildings and Construction relating to fire hazards in places of employment, and shall report in writing to the state, county, or city authorities any violations coming under their observation while visiting places of employment in the regular performance of their duty.

➔Section 1709. KRS 336.100 is amended to read as follows:

Within one (1) month after any employer begins to occupy a factory, workshop, mill or other place of employment he *or she* shall notify the ~~cabinet~~~~[department]~~, in writing, of such occupancy. If the employer is a corporation, the notice shall state the legal title of the corporation and name of an agent upon whom service of summons can be made; and if a firm, the individual names of members of the firm and its legal title.

➔Section 1710. KRS 336.110 is amended to read as follows:

No person shall refuse or attempt to prevent the admission of any inspector of the ~~cabinet~~~~[department]~~ to any place which he *or she* is required by law to inspect, at any reasonable hour, or during the working hours of the persons employed there, or interfere with the performance of the official duties of any inspector.

➔Section 1711. KRS 336.120 is amended to read as follows:

The ~~secretary~~~~[commissioner]~~, with the approval of the Governor, may enter into cooperative agreements with appropriate agencies of the federal government, whereby Acts of Congress and regulations issued in pursuance thereof affecting the employment of labor within this state may be administered, supervised, inspected, and enforced by the ~~cabinet~~~~[department]~~. Similar agreements may be entered into by the ~~secretary~~~~[commissioner]~~ with the approval of the Governor, for the cooperation of federal agencies in the enforcement of state laws whose enforcement is vested in the ~~secretary~~~~[commissioner]~~.

➔Section 1712. KRS 336.140 is amended to read as follows:

The ~~secretary~~~~[commissioner]~~ may inquire into the causes of strikes, lockouts, and other disputes between employers and employees, and endeavor to effect an amicable settlement. He *or she* may create boards to which disputes between employers and employees may be submitted on request of both the employer and the employees for mediation. Where a joint wage agreement, existing between an employer and any labor organization, provides for the settlement of disputes, any disputes that arise shall be settled by the terms of the contract, and when so settled shall be binding and final upon the ~~secretary~~~~[commissioner]~~.

➔Section 1713. KRS 336.151 is amended to read as follows:

- (1) It shall be the duty of the ~~secretary~~~~[commissioner]~~, in order to prevent or minimize interruptions growing out of labor disputes, to assist parties to labor disputes to settle such disputes through conciliation and mediation.
- (2) The ~~secretary~~~~[commissioner]~~ may proffer his *or her* services in any labor dispute either upon his *or her* own motion or upon the request of one or more of the parties to the dispute. Whenever the ~~secretary~~~~[commissioner]~~ proffers his *or her* services in any dispute and the services of the ~~secretary~~~~[commissioner]~~ have been accepted, it shall be the duty of the ~~secretary~~~~[commissioner]~~ to put himself *or herself* in communication with the parties and to use his *or her* best efforts, by mediation and conciliation, to bring them to agreement.
- (3) If the ~~secretary~~~~[commissioner]~~ is not able to bring the parties to agreement by mediation within a reasonable time, he *or she* shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion. The failure or refusal of either party to agree to any procedure suggested by the ~~secretary~~~~[commissioner]~~ shall not be deemed a violation of any duty or obligation imposed by KRS 336.151 and 336.152.

➔Section 1714. KRS 336.152 is amended to read as follows:

In order to prevent or minimize interruptions growing out of labor disputes, employees and employers and their representatives~~[,]~~ shall:

- (1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;
- (2) Whenever a dispute arises over the terms or application of a collective-bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously;
- (3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the ~~secretary~~~~[commissioner]~~ under KRS 336.151 and 336.152 for the purpose of aiding in a settlement of the dispute.

➔Section 1715. KRS 336.156 is amended to read as follows:

- (1) Any individual, partnership, association or corporation who represents, advises or acts as consultant or spokesman for any party to labor/management negotiations or arbitration conducted in Kentucky shall be, for the purposes of this section, known as third parties.
- (2) Prior to representing or agreeing to represent any party to any labor/management negotiations or arbitration, all third parties shall notify the ~~secretary~~~~[commissioner]~~ of such intent.
- (3) The ~~secretary~~~~[commissioner]~~ shall require third parties to labor/management negotiations or arbitration to report such information as may assist the ~~cabinet~~~~[department]~~ in determining whether such third party is to be certified to engage in or render advice on negotiations or any matter under arbitration.
- (4) The ~~secretary~~~~[commissioner]~~ shall offer mediation and arbitration services elsewhere provided by law to all parties to negotiations or arbitration where third party intervention is contemplated.
- (5) The ~~secretary~~~~[commissioner]~~ shall promulgate regulations to implement the requirements of this section; regulations are to include but not be limited to: definitions, filing requirements, notification procedures and reasonable penalties for failure to comply.
- (6) The provisions of this section shall not apply to full-time employees of any party to negotiations or arbitration nor to any third party licensed to do business in Kentucky under any other section of Kentucky Revised Statutes.
- (7) No third party shall participate in or offer advice on negotiations or arbitration in the Commonwealth of Kentucky until the provisions of this section have been met.

➔Section 1716. KRS 336.160 is amended to read as follows:

The ~~secretary~~~~[commissioner]~~ shall present biennial reports to the General Assembly giving statistical data relating to employment and unemployment in the state such as the hours and wages of employees, cost of living, the amount of labor required, the estimated number and classification of persons unemployed, the estimated number of persons depending on daily labor for support, the probable chances of increased employment, the number of unemployed depending on public relief, facts relating to industrial accidents, the workers' compensation for industrial injuries, labor disputes, and facts relating to acts of the ~~cabinet~~~~[department]~~ in the enforcement of the law and its work generally.

➔Section 1717. KRS 336.162 is amended to read as follows:

- (1) There is hereby created the Commonwealth of Kentucky Labor-Management Advisory Council which shall consist of eighteen (18) members. One (1) member of the council shall be the ~~secretary~~~~[commissioner]~~ of the ~~[Department of]~~ Labor **Cabinet**, and one (1) member shall be the secretary of economic development, who shall be ex officio nonvoting members of the council. The other members of the council shall be appointed by the Governor for terms of four (4) years and until their successors have been appointed and have qualified.
- (2) Vacancies shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made within sixty (60) days of the occurrence of the vacancy.

- (3) In making appointments to the council, the Governor shall appoint eight (8) members representing management and eight (8) members representing labor. The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** shall serve as chairman of the council.
- (4) Upon the expiration of the terms of members appointed in 1978 the next appointments shall be made as follows: Two (2) labor and two (2) management members shall be appointed for a term of one (1) year; two (2) labor and two (2) management members shall be appointed for a term of two (2) years; two (2) labor and two (2) management members shall be appointed for a term of three (3) years; and two (2) labor and two (2) management members shall be appointed for a term of four (4) years. Thereafter all appointments shall be for a term of four (4) years. Such appointments shall be made by the Governor within thirty (30) days after the expiration of the term of any member.
- (5) The council shall meet at least two (2) times each year and at other times on call of the chairman or a majority of the members. Nine (9) members of the council shall constitute a quorum for the transaction of business.
- (6) The council shall be attached to the ~~Department of~~ Labor **Cabinet** for administrative purposes.

➔Section 1718. KRS 336.164 is amended to read as follows:

- (1) The council shall function as an advisory agent of state government and provide leadership and assistance for labor and management in this state, and shall serve to effect improved labor-management relations within the state, and to thereby attract and encourage new and existing industry in this state.
- (2) The council shall not infringe upon or assume the responsibilities, duties or functions of the ~~Department of~~ Labor **Cabinet** or Cabinet for Economic Development. The council may make recommendations to the Governor and the Legislature on matters relating to labor-management problems in this state and any other matter it deems necessary.
- (3) Meetings of the council may be held at any location in this state; however the principal office of the council will be located in Frankfort, Kentucky.
- (4) The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** shall supply necessary staff and supplies to the council as well as funds for reimbursing each member for reasonable and necessary expenses incurred as a result of attending council meetings, and he or she shall act as the executive secretary of the council. The ~~executive~~ director of the ~~Division~~~~Office~~ of **Employment Standards, Apprenticeship**~~Labor Management Relations~~ and Mediation shall be responsible for the coordination of such staff and supplies.

➔Section 1719. KRS 336.165 is amended to read as follows:

The ~~Division~~~~Office~~ of **Employment Standards, Apprenticeship**~~Labor Management Relations~~ and Mediation shall, subject to appropriation from the General Assembly or funds made available to the ~~division~~~~office~~ from any other public or private source, provide grants-in-aid to labor-management relations organizations that include both labor and management representatives. An organization shall use a grant-in-aid for the purpose of improving labor-management relations or improving communications with respect to subjects of mutual interest or concern to labor and management. The ~~division~~~~office~~ shall not provide a grant-in-aid to any organization which interferes with collective bargaining in any plant or industry. The ~~Division~~~~Office~~ of **Employment Standards, Apprenticeship**~~Labor Management Relations~~ and Mediation shall promulgate administrative regulations necessary to carry out this section.

➔Section 1720. KRS 336.1661 is amended to read as follows:

As used in KRS 336.1662 to 336.1664 unless the context clearly requires otherwise:

- (1) "Arbitrator" means a neutral individual to whom the parties involved in a labor dispute submit their differences for a final and binding decision in accordance with the provisions of KRS 336.1662 to 336.1664; and
- (2) "Roster" means the list of labor arbitrators prepared and maintained by the ~~secretary~~~~commissioner~~ consisting of persons who meet the criteria set forth in administrative regulations promulgated by the ~~secretary~~~~commissioner~~ in accordance with the provisions of KRS Chapter 13A.

➔Section 1721. KRS 336.1662 is amended to read as follows:

- (1) The ~~secretary~~~~commissioner~~ shall:
 - (a) Maintain a roster of qualified arbitrators from which arbitrators provided pursuant to this section shall be selected;

- (b) Refer or provide without charge, upon request of the party or parties to an agreement to arbitrate, a qualified arbitrator or a panel of qualified arbitrators;
 - (c) Assure that the needs of the parties requesting his *or her* services are served. To accomplish this purpose he *or she* may establish through administrative regulations procedures for the preparation of panels or the appointment of arbitrators, including consideration of such factors as background, experience, qualifications, availability, geographical location and the expressed preference of the parties; and
 - (d) Prescribe through administrative regulations a fee schedule and reporting requirements to which arbitrators listed on the roster shall subscribe.
- (2) The ~~secretary~~~~commissioner~~ shall not have the power or authority to:
- (a) Compel parties to arbitrate or agree to arbitration;
 - (b) Enforce an agreement to arbitrate;
 - (c) Compel parties to agree to a particular arbitrator;
 - (d) Influence, alter or set aside decisions of arbitrators provided pursuant to this section, KRS 336.1663 and 336.1664; or
 - (e) Compel, deny or modify payment of compensation to an arbitrator.

➔Section 1722. KRS 336.1663 is amended to read as follows:

- (1) Persons listed on the roster:
- (a) Shall comply with the rules and regulations promulgated by the ~~secretary~~~~commissioner~~ pertaining to arbitration and ethical standards and procedures; and
 - (b) Who are selected or appointed to hear arbitration matters do not become employees of the ~~Department of Labor~~ **Cabinet** by virtue of their listing, selection or appointment.
- (2) Following selection or appointment, the arbitrator's relationship is solely with the parties, except that arbitrators are subject to the fee schedule and reporting requirements set forth in subsection (1)(d) of KRS 336.1662. Provided that, the ~~secretary~~~~commissioner~~ may appoint in accordance with the provisions of KRS Chapter 18A such persons as he *or she* deems necessary to provide the services described in KRS 336.1662 to 336.1664.

➔Section 1723. KRS 336.1664 is amended to read as follows:

The ~~secretary~~~~commissioner~~ shall in accordance with KRS Chapter 13A promulgate such rules and regulations as he *or she* deems necessary to effectuate the purposes of KRS 336.1662 and 336.1663.

➔Section 1724. KRS 336.210 is amended to read as follows:

- (1) If a plan or custom exists in any industry under which the employees contribute to the payment of any physician or surgeon for furnishing treatment, by deductions from their wages through the office of the employer, a meeting of such employees may be called by any ten (10) of them, as they consider best to bring to the notice of all employees affected that the meeting is to be held. Those at the meeting, by a majority determination, shall authorize two (2) of their number to represent all employees in that plant so affected, and when the management of the plant is notified by the employees of their action, it shall forthwith select two (2) persons to represent it.
- (2) The persons selected shall meet and select a physician or surgeon for the plant. If no selection is made within three (3) days, all questions before them shall be referred to the ~~secretary~~~~commissioner~~ who shall act as umpire. His *or her* decision shall be final. No physician or surgeon shall be employed and paid by deductions from the wages of employees except as provided in this section.
- (3) Any physician or surgeon selected under this section shall be employed for a definite term, not to exceed four (4) years, and may be removed at any time for gross inefficiency or misconduct in the same manner in which he *or she* was selected.

➔Section 1725. KRS 336.985 is amended to read as follows:

- (1) The ~~secretary~~~~[commissioner]~~, or any person authorized to act in his *or her* behalf, shall initiate enforcement of civil penalties imposed in KRS Chapters 336, 337, and 339.
- (2) Any civil penalty imposed pursuant to KRS Chapter 336, 337, or 339 may be compromised by the ~~secretary~~~~[commissioner]~~ or *the secretary's*~~[his]~~ designated representative. In determining the amount of the penalty or the amount agreed upon in compromise, the ~~secretary~~~~[commissioner]~~, or *the secretary's*~~[his]~~ designated representative, shall consider the appropriateness of the penalty to the size of the business of the person charged, the gravity of the violation, the number of times the person charged has been cited, and the good faith of the person charged in attempting to achieve compliance, after notification of the violation.
- (3) If a civil penalty is imposed pursuant to this section, a citation shall be issued which describes the violation which has occurred and states the penalty for the violation. If, within fifteen (15) working days from the receipt of the citation, the affected party fails to pay the penalty imposed, the ~~secretary~~~~[commissioner]~~, or any person authorized to act in his *or her* behalf, shall initiate a civil action to collect the penalty. The civil action shall be taken in the court which has jurisdiction over the location in which the violation occurred.

➔Section 1726. KRS 336.990 is amended to read as follows:

- (1) Upon proof that any person employed by the ~~[Department of] Labor~~ *Cabinet* as a labor inspector has taken any part in any strike, lockout or similar labor dispute, *the person*~~[he]~~ shall forfeit his *or her* office.
- (2) The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:
 - (a) Any person who violates KRS 336.110 shall for each offense be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
 - (b) Any corporation, association, organization, or person that violates KRS 336.190 and 336.200 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each act of violation, and each day during which such an agreement remains in effect, shall constitute a separate offense.
 - (c) Any employer who violates the provisions of KRS 336.220 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

➔Section 1727. KRS 337.010 is amended to read as follows:

- (1) As used in this chapter, unless the context requires otherwise:
 - (a) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Workplace Standards under the direction and supervision of the ~~secretary~~~~[commissioner]~~ of the ~~Department of] Labor~~ *Cabinet*;
 - (b) "~~Department~~~~[Office]~~" means the *Department*~~[Office]~~ of Workplace Standards in the ~~Department of] Labor~~ *Cabinet*;
 - (c)
 1. "Wages" includes any compensation due to an employee by reason of his *or her* employment, including salaries, commissions, vested vacation pay, overtime pay, severance or dismissal pay, earned bonuses, and any other similar advantages agreed upon by the employer and the employee or provided to employees as an established policy. The wages shall be payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to the allowances made in this chapter;
 2. For the purposes of calculating hourly wage rates for scheduled overtime for professional firefighters, as defined in KRS 95A.210(5), "wages" shall not include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund. For the purposes of calculating hourly wage rates for unscheduled overtime for professional firefighters, as defined in KRS 95A.210(6), "wages" shall include the distribution to qualified professional firefighters by local governments of supplements received from the Firefighters Foundation Program Fund;
 - (d) "Employer" is any person, either individual, corporation, partnership, agency, or firm who employs an employee and includes any person, either individual, corporation, partnership, agency, or firm acting directly or indirectly in the interest of an employer in relation to an employee; and
 - (e) "Employee" is any person employed by or suffered or permitted to work for an employer.

- (2) As used in KRS 337.275 to 337.325, 337.345, and KRS 337.385 to 337.405, unless the context requires otherwise:
- (a) "Employee" is any person employed by or suffered or permitted to work for an employer, but shall not include:
1. Any individual employed in agriculture;
 2. Any individual employed in a bona fide executive, administrative, supervisory, or professional capacity, or in the capacity of outside salesman, or as an outside collector as the terms are defined by administrative regulations of the *commissioner*~~executive director~~;
 3. Any individual employed by the United States;
 4. Any individual employed in domestic service in or about a private home. The provisions of this section shall include individuals employed in domestic service in or about the home of an employer where there is more than one (1) domestic servant regularly employed;
 5. Any individual classified and given a certificate by the *commissioner*~~executive director~~ showing a status of learner, apprentice, worker with a disability, sheltered workshop employee, and student under administrative procedures and administrative regulations prescribed and promulgated by the *commissioner*~~executive director~~. This certificate shall authorize employment at the wages, less than the established fixed minimum fair wage rates, and for the period of time fixed by the *commissioner*~~executive director~~ and stated in the certificate issued to the person;
 6. Employees of retail stores, service industries, hotels, motels, and restaurant operations whose average annual gross volume of sales made for business done is less than ninety-five thousand dollars (\$95,000) for the five (5) preceding years exclusive of excise taxes at the retail level or if the employee is the parent, spouse, child, or other member of his *or her* employer's immediate family;
 7. Any individual employed as a baby-sitter in an employer's home, or an individual employed as a companion by a sick, convalescing, or elderly person or by the person's immediate family, to care for that sick, convalescing, or elderly person and whose principal duties do not include housekeeping;
 8. Any individual engaged in the delivery of newspapers to the consumer;
 9. Any individual subject to the provisions of KRS Chapters 7, 16, 27A, 30A, and 18A provided that the secretary of the Personnel Cabinet shall have the authority to prescribe by administrative regulation those emergency employees, or others, who shall receive overtime pay rates necessary for the efficient operation of government and the protection of affected employees;
 10. Any employee employed by an establishment which is an organized nonprofit camp, religious, or nonprofit educational conference center, if it does not operate for more than seven (7) months in any calendar year;
 11. Any employee whose function is to provide twenty-four (24) hour residential care on the employer's premises in a parental role to children who are primarily dependent, neglected, and abused and who are in the care of private, nonprofit childcaring facilities licensed by the Cabinet for Health and Family Services under KRS 199.640 to 199.670; or
 12. Any individual whose function is to provide twenty-four (24) hour residential care in his or her own home as a family caregiver and who is approved to provide family caregiver services to an adult with a disability through a contractual relationship with a community mental health-mental retardation board established under KRS 210.370 to 210.460, or is certified or licensed by the Cabinet for Health and Family Services to provide adult foster care.
- (b) "Agriculture" means farming in all its branches, including cultivation and tillage of the soil; dairying; production, cultivation, growing, and harvesting of any agricultural or horticultural commodity; raising of livestock, bees, furbearing animals, or poultry; and any practice, including any forestry or lumbering

operations, performed on a farm in conjunction with farming operations, including preparation and delivery of produce to storage, to market, or to carriers for transportation to market;

- (c) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron, or customer for services rendered;
 - (d) "Tipped employee" means any employee engaged in an occupation in which he *or she* customarily and regularly receives more than thirty dollars (\$30) per month in tips; and
 - (e) "U.S.C." means the United States Code.
- (3) As used in KRS 337.505 to 337.550, unless the context requires otherwise:
- (a) "Construction" includes construction, reconstruction, improvement, enlargement, alteration, or repair of any public works project by contract fairly estimated to cost more than two hundred fifty thousand dollars (\$250,000). No public works project, if procured under a single contract and subject to the requirements of this section, may be divided into multiple contracts of lesser value to avoid compliance with the provisions of this section;
 - (b) "Contractor" and "subcontractor" include any superintendent, foreman, or other authorized agent of any contractor or subcontractor who is in charge of the construction of the public works or who is in charge of the employment or payment of the employees of the contractor or subcontractor who are employed in performing the work to be done or being done by the contractor or subcontractor under the particular contract with any public authority;
 - (c) 1. "Locality" shall be determined by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ may designate more than one (1) county as a single locality, but if more than one (1) county is designated, the multicounty locality shall not extend beyond the boundaries of a state Senatorial district. The ~~commissioner~~~~executive director~~ shall not designate less than an entire county as a locality. If there is not available in the locality a sufficient number of competent, skilled laborers, workmen, and mechanics to efficiently and properly construct the public works, "locality" shall include any other locality nearest the one in which the work of construction is to be performed and from which such available skilled laborers, workmen, and mechanics may be obtained in sufficient number to perform the work; and
 - 2. "Locality" with respect to contracts advertised or awarded by the Transportation Cabinet of this state shall be determined by the secretary of the Transportation Cabinet. The secretary may designate any number of counties as constituting a single locality. The secretary may also designate all counties of the Commonwealth as a single locality, but he *or she* shall not designate less than an entire county as a locality;
 - (d) "Public authority" means any officer, board, or commission of this state, or any political subdivision or department thereof in the state, or any institution supported in whole or in part by public funds, including publicly owned or controlled corporations, authorized by law to enter into any contract for the construction of public works and any nonprofit corporation funded to act as an agency and instrumentality of the government agency in connection with the construction of public works, and any "private provider", as defined in KRS 197.500, which enters into any contract for the construction of an "adult correctional facility", as defined in KRS 197.500; and
 - (e) "Public works" includes all buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, and all other structures or work, including "adult correctional facilities", as defined in KRS 197.500, constructed under contract with any public authority.
- (4) If the federal government or any of its agencies furnishes by loans or grants any part of the funds used in constructing public works, and if the federal government or its agencies prescribe predetermined prevailing minimum wages to be paid to mechanics, workmen, and laborers employed in the construction of the public works, and if KRS 337.505 to 337.550 is also applicable, those wages in each classification which are higher shall prevail.

➔Section 1728. KRS 337.075 is amended to read as follows:

- (1) A lien may be placed on all property, both real and personal, of an employer who has been assessed civil penalties by the ~~commissioner~~~~executive director~~ for violations of the wages and hours provisions of this

chapter, but not before all administrative and judicial appeals have been exhausted. The lien shall be in favor of the ~~{Department of Labor}~~ **Cabinet** and shall be an amount totaling the unpaid wages and penalties due, together with interest at a rate of twelve percent (12%) per annum from the date the notice of the violation is final, but not before all administrative and judicial appeals have been exhausted. The lien shall be attached to all property and rights to property owned or subsequently acquired by the employer. The ~~commissioner~~~~{executive director}~~ or ~~the commissioner's~~~~{his}~~ designee shall record the lien as provided in subsection (2) of this section. The lien shall show the date on which the notice of violation was issued, the date of the violation, the name and last known address of the employer against whom the assessment was made, and the amount of unpaid wages, penalties, and interest. The lien shall be superior to the lien of any mortgage or encumbrance thereafter created and shall continue for ten (10) years from the time of the recording, unless sooner released or otherwise discharged.

- (2) The lien shall be filed in any of the following offices in which the employer owns property or rights to property and any filing fees associated with filing the lien shall be pursuant to KRS 64.012:
 - (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk of any county in which the defendant employer has property or an interest in property.

➔Section 1729. KRS 337.200 is amended to read as follows:

Except for employers who have been doing business in the state for five (5) consecutive years, every employer engaged in construction work, or the severance, preparation, or transportation of minerals, shall furnish on a form prescribed by the ~~commissioner~~~~{executive director}~~ a performance bond to assure the payment of all wages due from the employer. Surety for the bond shall be an amount of money equal to the employer's gross payroll operating at full capacity for four (4) weeks. Any employee whose wages are secured by a bond may obtain payment of those wages, liquidated damages, and attorney's fees as provided by law on presentation to the ~~commissioner~~~~{executive director}~~ of a final judgment entered by a court of competent jurisdiction. The bond may be terminated, with the approval of the ~~commissioner~~~~{executive director}~~, on submission of the employer's statement, lawfully administered under oath, that the employer has ceased doing business in the state and that all due wages have been paid.

➔Section 1730. KRS 337.295 is amended to read as follows:

Regulations issued by the ~~commissioner~~~~{executive director}~~ under KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405 may include, but are not limited to, regulations defining and governing bona fide executive, administrative, or professional employees; regulations governing learners, apprentices, workers with disabilities, sheltered workshop employees, and students, regulations governing outside salesmen; bonuses; part-time rates; special pay for special or extra work; allowances as part of the wage rates applicable under KRS 337.275 for board, lodging, and gratuities; other facilities or services furnished by employers and used by employees; and other special items usual in a particular employer-employee relationship.

➔Section 1731. KRS 337.310 is amended to read as follows:

All orders or decisions of the ~~commissioner~~~~{executive director}~~ issued or made under KRS 337.020 to 337.405 may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.

➔Section 1732. KRS 337.320 is amended to read as follows:

- (1) Every employer shall keep a record of:
 - (a) The amount paid each pay period to each employee;
 - (b) The hours worked each day and each week by each employee; and
 - (c) Such other information as the ~~commissioner~~~~{executive director}~~ requires.
- (2) Such records shall be kept on file for at least one (1) year after entry. They shall be open to the inspection and transcript of the ~~commissioner~~~~{executive director}~~ or ~~the commissioner's~~~~{his}~~ authorized representative at any reasonable time, and every employer shall furnish to the ~~commissioner~~~~{executive director}~~ or ~~the commissioner's~~~~{his}~~ authorized representative on demand a sworn statement of them. The

commissioner~~[executive director]~~ may require the statement to be upon forms prescribed or approved by him *or her*.

➔Section 1733. KRS 337.340 is amended to read as follows:

Every employer shall permit the ***commissioner***~~[executive director]~~ or ***the commissioner's***~~[his]~~ authorized agent to question any of his *or her* employees in the place of employment and during work hours in respect to the wages paid to and the hours worked by such employee or other employees.

➔Section 1734. KRS 337.345 is amended to read as follows:

Except as otherwise provided in this section, the ***department***~~[office]~~ shall not disclose the identity of any individual filing a complaint or request for inspection under any section of this chapter, except as necessary to enforce, and then only with the specific written permission of the complainant.

Except as otherwise provided in this section, information secured from inspection of the records, or from the transcriptions thereof, or from inspection of the employer's premises by the ***commissioner***~~[executive director]~~ or ***the commissioner's***~~[his]~~ authorized representatives, shall be held confidential and shall not be disclosed or be open to any person except such information may be made available to:

- (1) Officials concerned with, and for the purposes of administration of the laws relating to matters under the jurisdiction of the ***commissioner***~~[executive director]~~;
- (2) Any agency of this or any other state, or any federal agency for the purpose of enforcing KRS 337.275 to 337.325, 337.345, and 337.385 to 337.405;
- (3) To the Wage and Hour and Public Contracts Division of the United States, Department of Labor.

➔Section 1735. KRS 337.385 is amended to read as follows:

- (1) Any employer who pays any employee less than wages and overtime compensation to which such employee is entitled under or by virtue of KRS 337.020 to 337.285 shall be liable to such employee affected for the full amount of such wages and overtime compensation, less any amount actually paid to such employee by the employer, for an additional equal amount as liquidated damages, and for costs and such reasonable attorney's fees as may be allowed by the court. Provided, that if, in any action commenced to recover such unpaid wages or liquidated damages, the employer shows to the satisfaction of the court that the act or omission giving rise to such action was in good faith and that he *or she* had reasonable grounds for believing that his *or her* act or omission was not a violation of KRS 337.020 to 337.285, the court may, in its sound discretion, award no liquidated damages, or award any amount thereof not to exceed the amount specified in this section. Any agreement between such employee and the employer to work for less than the applicable wage rate shall be no defense to such action. Such action may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, *herself*, or themselves.
- (2) At the written request of any employee paid less than the amount to which he *or she* is entitled under the provisions of KRS 337.020 to 337.285, the ***commissioner***~~[executive director]~~ may take an assignment of such wage claim in trust for the assigning employee and may bring any legal action necessary to collect such claim, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The ***commissioner***~~[executive director]~~ in case of suit shall have power to join various claimants against the same employer in one (1) action.

➔Section 1736. KRS 337.420 is amended to read as follows:

- (1) "Employee" means any individual employed by any employer, including but not limited to individuals employed by the state or any of its political subdivisions, instrumentalities, or instrumentalities of political subdivisions.
- (2) "Employer" means a person who has two (2) or more employees within the state in each of twenty (20) or more calendar weeks in the current or preceding calendar year and an agent of such a person.
- (3) "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the ***commissioner***~~[executive director]~~ in regulations issued under KRS 337.420 to 337.433 and 337.990(14).
- (4) "Employ" includes to suffer or permit to work.

- (5) "Occupation" includes any industry, trade, business, or branch thereof, or any employment or class of employment.
- (6) "~~Commissioner~~~~[Executive director]~~" means the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Workplace Standards under the direction and supervision of the *secretary*~~[commissioner]~~ of the ~~[Department of]~~Labor *Cabinet*.
- (7) "Person" includes one (1) or more individuals, partnerships, corporations, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.

➔Section 1737. KRS 337.423 is amended to read as follows:

- (1) No employer shall discriminate between employees in the same establishment on the basis of sex, by paying wages to any employee in any occupation in this state at a rate less than the rate at which he *or she* pays any employee of the opposite sex for comparable work on jobs which have comparable requirements relating to skill, effort and responsibility. Differentials which are paid pursuant to established seniority systems or merit increase systems, which do not discriminate on the basis of sex, shall not be included within this prohibition. Nothing in KRS 337.420 to 337.433 and 337.990(14) shall apply to any employer who is subject to the federal Fair Labor Standards Act of 1938, as amended, when that act imposes comparable or greater requirements than contained in KRS 337.420 to 337.433 and 337.990(14) and when the employer files with the *commissioner*~~[executive director]~~ of the *Department*~~[Office]~~ of Workplace Standards a statement that the employer is covered by the federal Fair Labor Standards Act of 1938, as amended.
- (2) An employer who is paying a wage differential in violation of KRS 337.420 to 337.433 and 337.990(14) shall not, in order to comply with it, reduce the wage rates of any employee.
- (3) No person shall cause or attempt to cause an employer to discriminate against any employee in violation of KRS 337.420 to 337.433 and 337.990(14).
- (4) No employer may discharge or discriminate against any employee by reason of any action taken by such employee to invoke or assist in any manner the enforcement of KRS 337.420 to 337.433 and 337.990(14).

➔Section 1738. KRS 337.425 is amended to read as follows:

- (1) For this purpose, the *commissioner*~~[executive director]~~, or *the commissioner's*~~[his]~~ authorized representative, may enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by him *or her* are engaged, to question such persons, and to obtain other information necessary to the administration and enforcement of KRS 337.420 to 337.433 and 337.990(14).
- (2) The *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ authorized representative may examine witnesses under oath, and require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to KRS 337.420 to 337.433 and 337.990(14). If a person fails to attend, testify or produce documents under or in response to a subpoena, the Circuit Court in the judicial circuit where the hearing is being held, on application of the *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ representative, may issue an order requiring the person to appear before the *commissioner*~~[executive director]~~ or *the commissioner's*~~[his]~~ authorized representative, or to produce documentary evidence, and any failure to obey the order of the court may be punished by the court as contempt.
- (3) The *commissioner*~~[executive director]~~ may endeavor to eliminate pay practices unlawful under KRS 337.420 to 337.433 and 337.990(14) by informal methods of conference, conciliation and persuasion, and supervise the payment of wages owing to any employee under KRS 337.420 to 337.433 and 337.990(14).
- (4) The *commissioner*~~[executive director]~~ may issue regulations not inconsistent with the purpose of KRS 337.420 to 337.433 and 337.990(14), necessary or appropriate to carry out its provisions.

➔Section 1739. KRS 337.427 is amended to read as follows:

- (1) Any employer who violates the provisions of KRS 337.423 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits under subsection (2) of this section, up to an additional equal amount as liquidated damages.

- (2) Action to recover the liability may be maintained in any court of competent jurisdiction by any one (1) or more employees for and in behalf of himself, *herself*, or themselves and other employees similarly situated. The court in the action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action.
- (3) An agreement by any employee to work for less than the wage to which the employee is entitled under KRS 337.420 to 337.433 and 337.990(14) shall not be a bar to any such action, or to a voluntary wage restitution of the full amount due under KRS 337.420 to 337.433 and 337.990(14).
- (4) At the written request of any employee claiming to have been paid less than the wage to which he may be entitled under KRS 337.420 to 337.433 and 337.990(14), the *commissioner*~~[executive director]~~ may bring any legal action necessary in behalf of the employee to collect the claim for unpaid wages. The *commissioner*~~[executive director]~~ shall not be required to pay the filing fee, or other costs, in connection with the action. The *commissioner*~~[executive director]~~ shall have power to join various claims against the employer in one (1) cause of action.
- (5) In proceedings under this section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of KRS 337.420 to 337.433 and 337.990(14).
- (6) The *commissioner*~~[executive director]~~ may on his *or her* own motion petition any court of competent jurisdiction to restrain violations of KRS 337.423, and petition for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of KRS 337.420 to 337.433 and 337.990(14).

➔Section 1740. KRS 337.505 is amended to read as follows:

For the purpose of KRS 337.505 to 337.550, the term "prevailing wage" for each classification of laborers, workmen, and mechanics engaged in the construction of public works within the Commonwealth of Kentucky, means the sum of:

- (1) The basic hourly rate paid or being paid subsequent to the *commissioner's*~~[executive director's]~~ most recent wage determination to the majority of laborers, workmen, and mechanics employed in each classification of construction upon reasonably comparable construction in the locality where the work is to be performed; such rate shall be determined by the *commissioner*~~[executive director]~~ in accordance with paragraphs (a), (b), and (c) of subsection (3) of KRS 337.520; in the event that there is not a majority paid at the same rate, then the basic hourly rate of pay shall be the average basic hourly rate which shall be determined by adding the basic hourly rates paid to all workers in the classification and dividing by the total number of such workers;~~[;]~~ and
- (2) An additional amount per hour equal to the hourly rate of contribution irrevocably made or to be made by an employer on behalf of employees within each classification of construction to a trustee or to a third person pursuant to an enforceable commitment to carry out a financially responsible plan or program, which was communicated in writing to the employees affected, for the following fringe benefits: medical or hospital care, pensions on retirement, death compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, unemployment benefits, life insurance, disability and sickness insurance, accident insurance, vacation and holiday pay, defraying costs of apprenticeship or other similar programs, or other bona fide fringe benefits, but only where the employer is not required by other federal, state or local law to provide any of such benefits: provided, said additional amount may, at the discretion of the employer, be paid either in cash to the employee or by contributions for fringe benefits, or partly in cash and partly by such contributions, it being the intention of this subsection to recognize fringe benefits as a part of the prevailing wage rate where made in accordance with this subsection.

➔Section 1741. KRS 337.510 is amended to read as follows:

- (1) Before advertising for bids or entering into any contract for construction of public works, every public authority shall notify the *department*~~[office]~~ in writing of the specific public work to be constructed, and shall ascertain from the *department*~~[office]~~ the prevailing rates of wages for each classification of laborers, workmen, and mechanics for the class of work called for in the construction of such public works in the locality where the work is to be performed. This schedule of the prevailing rate of wages shall include a statement that it has been determined in accordance with the provisions of KRS 337.505 to 337.550 and shall be attached to and made part of the specifications for the work and shall be printed on the bidding blanks and made a part of every contract for the construction of public works.

- (2) The public authority advertising and awarding the contract shall cause to be inserted in the proposal and contract a stipulation to the effect that not less than the prevailing hourly rate of wages as determined by the ***commissioner***~~[executive director]~~ shall be paid to all laborers, workmen, and mechanics performing work under the contract. It shall also require in all the contractor's bonds that the contractor include such provisions as will guarantee the faithful performance of the prevailing hourly wage clause as provided by contract. It shall be the duty of the public authority awarding the contract, and its agents and officers, to take cognizance of all complaints of all violations of the provisions of KRS 337.505 to 337.550 committed in the course of the execution of the contract, and when making payments to the contractor becoming due under the contract, to withhold, and retain therefrom all sums and amounts due and owing as a result of any violation thereof. It shall be lawful for any contractor to withhold from any subcontractor under him sufficient sums to cover any penalties withheld from him by the awarding authority, on account of the subcontractor's failure to comply with the terms thereof and if payment has already been made to him *or her*, the contractor may recover from him *or her* the amount of the penalty in a suit at law.

➔Section 1742. KRS 337.512 is amended to read as follows:

- (1) No public official, authorized to contract for or construct public works shall fail, before advertising for bids or undertaking such construction, to ascertain from the ***commissioner***~~[executive director]~~ the prevailing rates of wages as provided in KRS 337.505 to 337.550.
- (2) No member of a public authority authorized to contract for or construct public works shall vote for the award of any contract for the construction of such public works, or vote for the disbursement of any funds on account of the construction of such public works, unless such public authority has first ascertained from the ***commissioner***~~[executive director]~~ the prevailing rates of wages of laborers, workmen, and mechanics for the classes of work called for by such public works in the locality where the work is to be performed and the determination of prevailing wages has been made a part of the proposal specifications and contract for such public works.

➔Section 1743. KRS 337.520 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall make initial determinations and current revisions of schedules of rates of prevailing wages, of the amount of fringe benefits included as defined in KRS 337.505, and the number of hours applicable. The ***commissioner***~~[executive director]~~ may promulgate administrative regulations to carry out the provisions and purposes of KRS 337.505 to 337.550 and to prevent their circumvention or evasion. The administrative regulations shall not include a provision that each contractor and subcontractor furnish a sworn affidavit with respect to the wages paid each employee. No administrative regulation shall be issued by the ***commissioner***~~[executive director]~~ except upon reasonable notice to, and opportunity to be heard by, any interested person.
- (2) The ***commissioner***~~[executive director]~~ shall require the filing of all wage contracts of all laborers, workmen, and mechanics in this state which have been agreed to between bona fide organizations of labor and an employer or associations of employers. The contracts shall be filed within ten (10) days after they are signed.
- (3) The ***commissioner***~~[executive director]~~ shall have the authority to determine schedules and current revisions of the rates of prevailing wages as defined in KRS 337.505, but in no case shall the ***commissioner***~~[executive director]~~ determine wages to be paid for a legal day's work to laborers, workmen, and mechanics engaged in the construction of public works at less than the prevailing wages paid in the localities. The ***commissioner***~~[executive director]~~, in determining what rates of wages prevail, shall consider the following criteria:
- (a) Wage rates paid on previous public works constructed in the localities. In considering the rates, the ***commissioner***~~[executive director]~~ shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each project, and the respective wage rates paid each worker who was engaged in the construction of these projects.
- (b) Wage rates previously paid on reasonably comparable private construction projects constructed in the localities. In considering the rates the ***commissioner***~~[executive director]~~ shall ascertain, insofar as practicable, the names and addresses of the contractors, including subcontractors, the locations, approximate costs, dates of construction and types of projects, the number of workers employed on each

project, and the respective wage rates paid each worker who was engaged in the construction of these projects.

- (c) Collective bargaining agreements or understandings between bona fide organizations of labor and their employers located in the Commonwealth of Kentucky which agreements apply or pertain to the localities in which the public works are to be constructed.
- (4) The wage rates to be used by the public authority in a contract for the construction of public works shall be the prevailing wage as of the date the public works project is advertised and offered for bid. If contracts are not awarded within ninety (90) days after the date of offering for bid, the public authority shall ascertain the prevailing rate of wages from the ~~department~~~~office~~ before the contract is awarded. The schedule or scale of prevailing wages shall be incorporated in and made a part of each contract.
- (5) The ~~commissioner~~~~executive director~~ may promulgate administrative regulations authorizing the employment of apprentices and trainees in skilled trades at wages lower than the applicable prevailing wage.

➔Section 1744. KRS 337.522 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ or ~~the commissioner's~~~~this~~ authorized representative shall conduct a public hearing for the purpose of making initial determinations or current revisions of a prevailing wage schedule for the construction of public works pertaining to a locality. The ~~commissioner~~~~executive director~~ shall, within sixty (60) days of the hearing, publish his ~~or her~~ wage determination. The hearing shall be conducted in the locality after notice has been given as provided in subsection (3) of this section. The ~~commissioner~~~~executive director~~ shall not be required to utilize this section in any locality where the United States Department of Labor has issued a prevailing wage under the Davis-Bacon or related acts, in which case, the ~~commissioner~~~~executive director~~ may adopt the wage schedule and any modifications issued by the United States Department of Labor and published in the Federal Register.
- (2) A public authority or any interested person may request and shall be granted an additional hearing solely for the purpose of having considered a review of the ~~commissioner's~~~~executive director's~~ determination of the prevailing wage schedule for the construction of public works in the locality; after notice has been given as provided in subsection (3) of this section, the hearing shall be conducted in the locality by a prevailing wage review board consisting of one (1) member representing employers in the construction industry, one (1) member representing labor in the construction industry, and one (1) member appointed by the public authority requesting the hearing. The member appointed by the public authority shall reside in the locality in which the public works are to be constructed. The members of the board representing employers in the construction industry and labor in the construction industry shall be appointed for periods of not more than four (4) years by the Governor from a list of prospective members recommended by bona fide associations representing the construction industry and bona fide labor organizations representing workers employed in the construction industry, and the members shall serve on the board for all hearings during their tenure. Prevailing wage review boards shall have the authority to revise prevailing wage schedules for the construction of public works; however, the revisions shall be governed by the same criteria and regulations governing wage determinations of the ~~commissioner~~~~executive director~~. A revision of a prevailing wage schedule for the construction of public works shall require a vote of a majority of the members. The members of a prevailing wage review board shall receive their actual necessary expenses incurred in carrying out their duties and the expenses shall be paid out of the general fund of the Commonwealth of Kentucky.
- (3) Notice of hearings as required in subsections (1) and (2) of this section shall be given by advertising one (1) time in the newspaper having the largest circulation in the locality, and the advertisement shall be run not less than ten (10) nor more than twenty (20) days prior to the date of the hearing. The advertisement shall set forth all pertinent information of the hearing regarding the time, place, and purpose of the hearing.
- (4) The prevailing wage review boards shall be attached to the ~~Department of~~ Labor **Cabinet** for administrative purposes.

➔Section 1745. KRS 337.524 is amended to read as follows:

If a review of the ~~commissioner's~~~~executive director's~~ determination is requested pursuant to subsection (2) of KRS 337.522, the wage rates to be used by the public authority in a contract for the construction of public works advertised during the pendency of the proceedings provided in subsection (2) of KRS 337.522, or on appeal pursuant to KRS 337.525, shall be the latest rate determined by the ~~commissioner~~~~executive director~~ and which is being reviewed. The public authority shall place in its advertisement, bid documents and contracts, a statement to the effect that the prevailing wage rates contained therein are presently being reviewed and subject to change by appropriate reviewing

authorities, and if said rates are modified or altered, the contractors shall be responsible for the payment of the wage rates finally determined. Should any rates be increased from that determined by the ~~commissioner~~~~executive director~~, the contractor may recover from the public authority any additional sums of money which he *or she* may be required to pay as a result of said wage modification or alteration. Should any rates be decreased from that determined by the ~~commissioner~~~~executive director~~, the public authority shall be barred from any recovery of the difference previously earned by or paid to employees.

➔Section 1746. KRS 337.525 is amended to read as follows:

- (1) Any person or party claiming to be aggrieved by any final determination of prevailing wages by the prevailing wage review board may appeal to the Franklin Circuit Court. The appeal shall state fully the grounds upon which an appeal is sought and assign all errors relied upon. A copy of the appeal and summons shall be served upon the ~~Department~~~~Office~~ of Workplace Standards and the members of the prevailing wage review board and within thirty (30) days after such service, or within such further time as the court may allow, the ~~department~~~~office~~ on behalf of the prevailing wage review board shall submit to the court a certified copy of all matters considered by the prevailing wage review board from which it made its final wage determination.
- (2) No new or additional evidence may be introduced in the Franklin Circuit Court except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling or award. The court shall otherwise hear the appeal upon the record as certified by the ~~Department~~~~Office~~ of Workplace Standards and shall dispose of same in summary manner. The court shall not substitute its judgment for that of the prevailing wage review board, the court's review being limited to determining whether or not:
 - (a) The prevailing wage review board acted without or in excess of its powers;
 - (b) The prevailing wage review board's final wage determination was procured by fraud;
 - (c) The determination is not in conformity with the provisions of this chapter;
 - (d) The determination is clearly erroneous on the basis of the information contained in the record; or
 - (e) The final wage determination is arbitrary or capricious.
- (3) The Franklin Circuit Court thereafter shall enter an order affirming or setting aside the prevailing wage review board's wage determination. The court may also remand the case to the prevailing wage review board for further proceedings.
- (4) An appeal may be taken to the Court of Appeals from any decision of the Franklin Circuit Court under this section.

➔Section 1747. KRS 337.530 is amended to read as follows:

- (1) Where a prevailing rate of wages has been determined and prescribed, the contract executed between a public authority and the successful bidder or contractor shall contain a provision requiring the successful bidder and all of his *or her* subcontractors to pay not less than the rate of wages so established. The successful bidder or contractor and all subcontractors shall strictly comply with these provisions of the contract.
- (2) All contractors and subcontractors required by KRS 337.505 to 337.550 and by contracts with any public authority to pay not less than the prevailing rate of wages, shall pay such wages in legal tender without any deductions. These provisions shall not apply where the employer and employee enter into an agreement in writing at the beginning of or during any term of employment covering deductions for food, sleeping accommodations or any similar item if this agreement is submitted by the employer to the ~~department~~~~office~~ and is approved by the ~~department~~~~office~~ as fair and reasonable. All contractors and subcontractors affected by the terms of KRS 337.505 to 337.550 shall keep full and accurate payroll records covering all disbursements of wages to their employees to whom they are required to pay not less than the prevailing rate of wages. Such records shall indicate the hours worked each day by each employee in each classification of work and the amount paid each employee for his *or her* work in each classification. They shall be open to the inspection and transcript of the ~~commissioner~~~~executive director~~ or *the commissioner's*~~his~~ authorized representative at any reasonable time, and shall be in compliance with all regulations issued by the ~~commissioner~~~~executive director~~. These payroll records shall not be destroyed or removed from this state for one (1) year following the completion of the improvement in connection with which they are made.

- (3) Each contractor and subcontractor subject to the provisions of KRS 337.505 to 337.550 shall post and keep posted in a conspicuous place or places at the site of the construction work a copy or copies of prevailing rates of wages and working hours as prescribed in the contract with the public authority, showing the rates of wages prescribed and the working hours for each class of laborers, workmen, and mechanics employed by him *or her* in the work of constructing the public works provided for in the contract with the public authority.
- (4) Every employer shall permit the ~~commissioner~~~~[executive director]~~ or *the commissioner's*~~[his]~~ authorized agents to question any of his *or her* employees at the site of the public work and during work hours in respect to the wages paid, hours worked and duties of such employee or other employees.

➔Section 1748. KRS 337.548 is amended to read as follows:

If it is found that a public authority has not complied with KRS 337.505 to 337.550, the ~~commissioner~~~~[executive director]~~ shall give notice thereof in writing to such public authority. Sufficient time may be allowed for compliance therewith as the ~~commissioner~~~~[executive director]~~ deems necessary. After the expiration of the time prescribed in the notice, the ~~department~~~~[office]~~ shall at the earliest possible time bring suit in the Circuit Court of the county in which such public body is located to enjoin the award of such contract for a public works or any further work or payments thereunder if the contract has been awarded until the requirements of such notice are complied with. The court may issue a temporary restraining order without notice to the defendant in such action. Upon final hearing thereof, if the court is satisfied that the requirements of the notice by the ~~department~~~~[office]~~ to the defendant were not unreasonable or arbitrary, it shall issue an order enjoining the defendant from awarding such contract for a public works or any further work or payments thereunder if the contract has been awarded until the notice is complied with. Such injunction shall continue operative until the court is satisfied that the requirements of the notice have been complied with and the court shall have and exercise with respect to the enforcement of such injunctions all the power invested in it in other similar cases. Both the plaintiff and the defendant in such action have the same rights of appeal as are provided by law in other injunction actions.

➔Section 1749. KRS 337.550 is amended to read as follows:

- (1) Any laborer, workman, or mechanic employed on public works may file a complaint of any violation of any provision of KRS 337.505 to 337.550 with the ~~department~~~~[office]~~. The ~~department~~~~[office]~~ shall assist him *or her* in the collection of claims of wages due him *or her* and shall also assist to the fullest extent in the administration and enforcement of KRS 337.505 to 337.550. The ~~commissioner~~~~[executive director]~~ shall investigate and enforce the provisions of KRS 337.505 to 337.550 to the fullest and shall bring all actions to collect wages due any laborer, workman, or mechanic and shall take action against any contractor or subcontractor to restrain violations of KRS 337.505 to 337.550. If any contractor or subcontractor is found to be in violation of any provisions of KRS 337.505 to 337.550, then the ~~commissioner~~~~[executive director]~~ shall inform the secretary for finance and administration of the Commonwealth of Kentucky, and the secretary for finance and administration shall hold such contractor or subcontractor ineligible to bid on public works until such time as that contractor or subcontractor is in substantial compliance as determined by the ~~commissioner~~~~[executive director]~~.
- (2) A laborer, workman, or mechanic may by civil action recover any sum due him *or her* as the result of the failure of his *or her* employer to comply with the terms of KRS 337.505 to 337.550. The ~~commissioner~~~~[executive director]~~ may also bring any legal action necessary to collect claims on behalf of any or all laborers, workmen, or mechanics. No employer shall take any punitive measure or action against an employee because such employee has made a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under KRS 337.505 to 337.550. The ~~commissioner~~~~[executive director]~~ shall not be required to pay the filing fee, or other costs, in connection with such action.

➔Section 1750. KRS 337.990 is amended to read as follows:

The following civil penalties shall be imposed, in accordance with the provisions in KRS 336.985, for violations of the provisions of this chapter:

- (1) Any firm, individual, partnership, or corporation that violates KRS 337.020 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each failure to pay an employee the wages when due him under KRS 337.020 shall constitute a separate offense.
- (2) Any employer who violates KRS 337.050 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).

- (3) Any employer who violates KRS 337.055 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation. Each failure to pay an employee the wages as required by KRS 337.055 shall constitute a separate offense.
- (4) Any employer who violates KRS 337.060 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and shall also be liable to the affected employee for the amount withheld, plus interest at the rate of ten percent (10%) per annum.
- (5) Any employer who violates the provisions of KRS 337.065 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and shall make full payment to the employee by reason of the violation.
- (6) Any person who fails to comply with KRS 337.070 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense and each day that the failure continues shall be deemed a separate offense.
- (7) Any employer who violates any provision of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405, or willfully hinders or delays the ~~commissioner~~~~[executive director]~~ or ~~the commissioner's~~~~[his]~~ authorized representative in the performance of his *or her* duties under KRS 337.295, or fails to keep and preserve any records as required under KRS 337.320 and 337.325, or falsifies any record, or refuses to make any record or transcription thereof accessible to the ~~commissioner~~~~[executive director]~~ or ~~the commissioner's~~~~[his]~~ authorized representative shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). A civil penalty of not less than one thousand dollars (\$1,000) shall be assessed for any subsequent violation of KRS 337.285(4) to (9) and each day the employer violates KRS 337.285(4) to (9) shall constitute a separate offense and penalty.
- (8) Any employer who pays or agrees to pay wages at a rate less than the rate applicable under KRS 337.275 and 337.285, or any wage order issued pursuant thereto shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (9) Any employer who discharges or in any other manner discriminates against any employee because the employee has made any complaint to his *or her* employer, to the ~~commissioner~~~~[executive director]~~, or to ~~the commissioner's~~~~[his]~~ authorized representative that he *or she* has not been paid wages in accordance with KRS 337.275 and 337.285 or regulations issued thereunder, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding under or related to KRS 337.385, or because the employee has testified or is about to testify in any such proceeding, shall be deemed in violation of KRS 337.275 to 337.325, KRS 337.345, and KRS 337.385 to 337.405 and shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (10) Any employer who violates KRS 337.365 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates KRS 337.530 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (12) Any contractor or subcontractor who violates any wage or work hours provision in any contract under KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and the contractor or subcontractor shall make full restitution to all employees to whom he *or she* is legally indebted by reason of said violation. The prime contractor shall be jointly and severally liable with a subcontractor for wages due an employee of the subcontractor. For a flagrant or repeated violation the offending contractor or subcontractor shall be barred from bidding on, or working on, any and all public works contracts, either in his *or her* name or in the name of any other company, firm, or other entity in which he *or she* might be interested for a period of two (2) years from the date of the last offense. Each day of violation shall constitute a separate offense, and the violation as affects each individual worker shall constitute a separate offense.
- (13) Any public authority, public official, or member of a public authority who willfully fails to comply or to require compliance with KRS 337.505 to 337.550 shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. Each day of violation shall constitute a separate offense. If a public authority, public official or member of a public authority willfully or

negligently fails to comply with KRS 337.505 to 337.550 and the failure results in damages, injury or loss to any person, the public authority, public official, or member of a public authority may be held liable in a civil action.

- (14) A person shall be assessed a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) when that person discharges or in any other manner discriminates against an employee because the employee has:
- (a) Made any complaint to his *or her* employer, the **commissioner**~~{executive director}~~, or any other person; or
 - (b) Instituted, or caused to be instituted, any proceeding under or related to KRS 337.420 to 337.433; or
 - (c) Testified, or is about to testify, in any such proceedings.

➔Section 1751. KRS 338.015 is amended to read as follows:

As used in this chapter:

- (1) "Employer" shall mean any entity for whom a person is employed except those employers excluded in KRS 338.021.
- (2) "Employee" shall mean any person employed except those employees excluded in KRS 338.021.
- (3) The term "occupational safety and health standard" means a standard which requires conditions, or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment. "Standard" has the same meaning as and includes the words "regulation" and "rule."
- (4) "Occupational safety and health hazard" means any practice or condition in a place of employment which may be deemed detrimental to the safety and health of employees.
- (5) "Occupational injury or illness" means any abnormal condition or disorder of an employee caused by exposure to factors associated with his *or her* employment.
- (6) "Board" means the Kentucky Occupational Safety and Health Standards Board established under this chapter.
- (7) "**Commissioner**~~{Executive director}~~" means the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ under the direction and supervision of the **secretary**~~{commissioner}~~ of the ~~{Department of}~~Labor **Cabinet**.
- (8) "Review commission" means the Kentucky Occupational Safety and Health Review Commission established under this chapter.
- (9) The term "national consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.
- (10) The term "established federal standard" means any operative occupational safety and health standard established by any agency of the United States government.
- (11) "**Department**~~{Office}~~" means the **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~.
- (12) "**Secretary**~~{Commissioner}~~" means the **secretary**~~{commissioner}~~ of the ~~{Department of}~~Labor **Cabinet**.

➔Section 1752. KRS 338.041 is amended to read as follows:

- (1) ~~{There is hereby created in} The Department of **Workplace Standards in the Labor Cabinet**~~{an Office of Occupational Safety and Health. This office shall consist of a Division of Compliance and a Division of Education and Training. This office}~~ shall administer all matters pertaining to occupational safety and occupational health~~{ and shall be under the supervision of an executive director appointed by the secretary of the Environmental and Public Protection Cabinet with the approval of the Governor}~~.~~
- (2) The **department**~~{office}~~ may require the assistance of other state agencies and may enter into agreements with other state agencies and political subdivisions of the Commonwealth for the administration of this chapter.
- (3) The **department**~~{office}~~ may enter into an agreement with the Cabinet for Health and Family Services and other appropriate departments or agencies to conduct research, experiments, and demonstrations relating to occupational safety and health, including studies of psychological factors involved, and relating to innovative

methods, techniques, and approaches for dealing with occupational safety and health problems in the administration of this chapter.

➔Section 1753. KRS 338.042 is amended to read as follows:

Effective July 1, 1994, the ~~Department~~~~[Kentucky Office]~~ of **Workplace Standards**~~[Occupational Safety and Health]~~ shall be expanded by sixteen (16) employees. These additional staff shall assist employers in their efforts to improve safety and health practices in their workplaces; to assure compliance with industrial health and safety regulations; and to expedite the processing of contested citations and appeals. These additional expenditures shall be financed by funds collected for the special fund pursuant to KRS 342.122.

➔Section 1754. KRS 338.051 is amended to read as follows:

- (1) There is hereby established the Kentucky Occupational Safety and Health Standards Board consisting of the ~~secretary~~~~[commissioner]~~ and twelve (12) members equally representing industry, labor, agriculture, and the safety and health profession. The members shall be appointed by the Governor for terms of three (3) years and until their successors are appointed and qualified, from lists of nominees submitted by bona fide associations representative of industry, labor, agriculture, and the safety and health profession. Members shall receive twenty-five dollars (\$25) per day for attending each meeting and shall be reimbursed for actual expenses incurred in carrying out their duties. The ~~secretary~~~~[commissioner]~~ shall act as chairman of the board. No member of the board may have a concurrent term on the review commission.
- (2) The board shall hold annual meetings and additional meetings as needed. A majority of the board constitutes a quorum for the transaction of business.
- (3) The board shall adopt and promulgate occupational safety and health rules, regulations, and standards, except that the chairman of the board may adopt established federal standards without board approval if necessary to meet federal time requirements. The board shall secure all expertise, testimony, and evidence necessary to accomplish the purposes of this chapter.
- (4) The board shall be attached to the ~~[Department of]~~ Labor **Cabinet** for administrative purposes.

➔Section 1755. KRS 338.071 is amended to read as follows:

- (1) There is hereby established the Kentucky Occupational Safety and Health Review Commission consisting of three (3) members appointed by the Governor on the basis of their experience and competence in the fields of occupational safety and health. The members selected shall be qualified to represent the interest of employers, employees, and the occupational safety and health profession with a minimum of five (5) years experience in their respective fields.
- (2) Members of the review commission shall serve terms of four (4) years and until their successors are appointed.
- (3) The review commission shall hold monthly meetings and additional meetings as deemed necessary. A majority of the review commission constitutes a quorum for the transaction of business. Special meetings of the review commission may be called upon reasonable notice by the commissioner or by any two (2) members of the commission.
- (4) The review commission shall hear and rule on appeals from citations, notifications, and variances issued under the provisions of this chapter and adopt and promulgate rules and regulations with respect to the procedural aspect of its hearings.
- (5) The review commission shall have the authority to employ a secretary, hearing officers, and other employees as may become necessary.
- (6) The chairman of the commission and each of the other two (2) members shall be paid a salary fixed under KRS 64.640.
- (7) The secretary of the commission shall be paid a salary to be fixed by the commission, with the approval of the Governor. The commission shall fix the compensation of all its other employees.
- (8) The commissioners and the secretary and employees of the commission are entitled to all necessary expenses incurred in traveling on business of the commission.
- (9) The commission shall be attached to the **Labor**~~[Environmental and Public Protection]~~ Cabinet~~[, Office of the Secretary,]~~ for administrative purposes only.

➔Section 1756. KRS 338.101 is amended to read as follows:

- (1) In order to carry out the purposes of this chapter, the ***commissioner***~~[executive director]~~ or ***the commissioner's***~~[his]~~ authorized representative shall have the authority:
 - (a) To enter without delay and advance notice any place of employment during regular working hours and at other reasonable times in order to inspect such places, question privately any such employer, owner, operator, agent, employee, or employee's representative, and investigate such facts, conditions, practices, or matters deemed appropriate to determine the cause of, or to prevent the occurrence of, any occupational injury or illness.
 - (b) To administer oaths, take depositions, conduct hearings, take photographs, review any and all accident and illness records, and secure any other evidence deemed necessary to evaluate any occupational safety and health hazard in order to ascertain whether any person has violated any provision of this chapter or regulations issued pursuant thereto.
- (2) If an employer refuses such entry, then the ***commissioner***~~[executive director]~~ may apply to the Franklin Circuit Court for an order to enforce the right of entry.

➔Section 1757. KRS 338.111 is amended to read as follows:

A representative of the employer and a representative authorized by the employees shall be given an opportunity to accompany the representative of the ***commissioner***~~[executive director]~~ during the physical inspection of any place of employment as authorized by KRS 338.101. If there is no authorized employee representative available at the time of inspection, the ***commissioner's***~~[executive director's]~~ representative shall consult with a reasonable number of employees concerning matters of occupational safety and health in the place of employment. The representative of the ***commissioner***~~[executive director]~~ shall be in full charge of the inspection, including the right to limit the number of representatives on the inspection team.

➔Section 1758. KRS 338.121 is amended to read as follows:

- (1) Any employee, or representative of employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the ***commissioner***~~[executive director]~~ of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employees or representative of employees, and a copy shall be provided the employer or ***the employer's***~~[his]~~ agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his ***or her*** name and the names of individual employees referred to therein shall not appear in such copy.
- (2) If upon receipt of notification, reasonable grounds are believed to exist for such violation or danger, then a special inspection shall be made in accordance with the provisions of KRS 338.101 and 338.111. If no reasonable grounds are believed to exist for such violation of danger, then the ***commissioner***~~[executive director]~~ shall notify the employee or the representative of the employees in writing of such determination.
- (3)
 - (a) No person shall discharge or in any manner discriminate against any employee because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this chapter or has testified or is about to testify in any such proceeding or because of the exercise by such employee on behalf of himself ***or herself*** or others of any right afforded by this chapter; and
 - (b) Any employee who believes that he ***or she*** has been discharged or otherwise discriminated against by any person in violation of this subsection may, within a reasonable time after such violation occurs, file a complaint with the ***commissioner***~~[executive director]~~ alleging such discrimination. Upon receipt of such complaint, the ***commissioner***~~[executive director]~~ shall cause such investigation to be made as deemed appropriate. If upon such investigation, the ***commissioner***~~[executive director]~~ determines that the provisions of this subsection have been violated, he ***or she*** shall issue a citation to the employer which may be challenged or contested in accordance with the provisions of this chapter and the review commission may order all appropriate relief including rehiring and reinstatement of the employee to his ***or her*** former position with back pay. Upon an initial determination by the ***commissioner***~~[executive director]~~ that an employee has been discharged by an employer in violation of subsection (3)(a) of this section, the ***secretary***~~[commissioner]~~ of the ~~[Department of]~~Labor ***Cabinet*** may order reinstatement of the employee pending a final determination and order of the review commission.

➔Section 1759. KRS 338.131 is amended to read as follows:

- (1) Whenever an authorized representative of the **commissioner**~~{executive director}~~ determines that conditions in any place of employment are of an imminent danger which reasonably could be expected to cause death or serious physical harm, then he *or she* shall order the danger to be immediately abated. Any order issued under this section may require such steps to be taken as may be necessary to avoid, correct, or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct, or remove such imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations, or where a cessation of operations is necessary, to permit such to be accomplished in a safe and orderly manner.
- (2) In the event the danger is not abated immediately, the **commissioner**~~{executive director}~~ shall apply to the Franklin Circuit Court for an order to restrain such condition or practice.

➔Section 1760. KRS 338.133 is amended to read as follows:

- (1) If in the discretion of the **commissioner**~~{executive director}~~ it is believed that a place of employment, equipment, or practice is substantially dangerous to employees, or other persons, then the **commissioner**~~{executive director}~~ may apply to the Circuit Court in the county wherein the condition is located for a temporary injunction restraining the operation or segment of operation.
- (2) The Circuit Court shall hear the application for the temporary injunction as soon as possible, irrespective of the regular court calendar.
- (3) The **commissioner**~~{executive director}~~ shall not be required to post any bond or pay any court costs or fees with the filing of the application.

➔Section 1761. KRS 338.141 is amended to read as follows:

- (1) If upon inspection an authorized representative of the **commissioner**~~{executive director}~~ finds that an employer has violated any requirement of this chapter, a citation shall be issued to the employer. Each citation shall describe the alleged violation, establish the time period permitted for correction by fixing a reasonable date by which the alleged violation shall be eliminated, and propose the civil penalty to be paid. If within fifteen (15) working days from the receipt of the citation an employer, employee, or representative of the employees fails to notify the **commissioner**~~{executive director}~~ that he *or she* intends to contest the citation, then the citation shall be deemed a final order of the review commission and not be subject to review by any court or agency.
- (2) The **commissioner**~~{executive director}~~, upon determination that an employer is acting in good faith to correct the cited violation, may grant additional time for compliance upon application by the employer.
- (3) If an employer, employee, or representative of the employees notifies the **commissioner**~~{executive director}~~ that he *or she* intends to challenge a citation issued under this section or under KRS 338.131, the **commissioner**~~{executive director}~~ shall notify the review commission of such notification and the review commission shall afford an opportunity for a hearing.
- (4) In the case of any review proceedings initiated by an employer, employee, or representative of the employees under this chapter, the time period permitted for correction of cited violations may be extended by the review commission.

➔Section 1762. KRS 338.153 is amended to read as follows:

- (1) Any affected employer may apply to the **commissioner**~~{executive director}~~ for a rule or order for a variance from a standard promulgated under this chapter. Affected employees shall be given notice of each such application and an opportunity to participate in a hearing. The **commissioner**~~{executive director}~~ shall issue such rule or order if he *or she* determines on the record, after opportunity for an inspection where appropriate and a hearing, that the proponent of the variance has demonstrated by a preponderance of the evidence that the conditions, practices, means, methods, operations, or processes used or proposed to be used by an employer will provide employment and places of employment to his *or her* employees which are as safe and healthful as those which would prevail if he *or she* complied with the standard. The rule or order so issued shall prescribe the conditions the employer must maintain, and the practices, means, methods, operations, and processes which he *or she* must adopt and utilize to the extent they differ from the standard in question. Such a rule or order may be modified or revoked upon application by an employer, employees, or by the **commissioner**~~{executive director}~~.

~~director~~ of his **or her** own motion, in the manner prescribed for its issuance under this subsection at any time after six (6) months from its issuance.

- (2) (a) Any employer may apply to the **commissioner**~~[executive director]~~ for a temporary order granting a variance from a standard or any provision thereof promulgated under this section. Such temporary order shall be granted only if the employer files an application which meets the requirements of paragraph (b) of this subsection and establishes that:

1. He **or she** is unable to comply with the standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;
2. He **or she** is taking all available steps to safeguard his **or her** employees against the hazards covered by the standard; and
3. He **or she** has an effective program for coming into compliance with the standard as quickly as practicable.

Any temporary order issued under this subsection shall prescribe the practices, means, methods, operations, and processes which the employer must adopt and use while the order is in effect and state in detail his **or her** program for coming into compliance with the standard. Such a temporary order may be granted only after notice to employees and an opportunity for a hearing; provided, that the **commissioner**~~[executive director]~~ may issue one (1) interim order to be effective until a decision is made on the basis of the hearing. No temporary order may be in effect for longer than the period needed by the employer to achieve compliance with the standard or one (1) year, whichever is shorter, except that such an order may be renewed not more than twice:

1. So long as the requirements of this subsection are met; and
2. If an application for renewal is filed at least ninety (90) days prior to the expiration date of the order. No interim renewal of an order may remain in effect for longer than one hundred eighty (180) days.

- (b) An application for a temporary order under this subsection shall contain:

1. A specification of the standard or portion thereof from which the employer seeks a variance;~~;~~
2. A representation by the employer, supported by representations from qualified persons having firsthand knowledge of the facts represented, that he **or she** is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefor;~~;~~
3. A statement of the steps he **or she** has taken and will take (with specific dates) to protect employees against the hazard covered by the standard;~~;~~
4. A statement of when he **or she** expects to be able to comply with the standard and what steps **or she** he has taken and what steps he **or she** will take (with dates specified) to come into compliance with the standard;~~;~~ and
5. A certification that he **or she** has informed his **or her** employees of the application by giving a copy thereof to their authorized representative, posting a statement giving a summary of the application and specifying where a copy may be examined at the place or places where notices to employees are normally posted, and by other appropriate means. A description of how employees have been informed shall be contained in the certification. The information to employees shall also inform them of their right to petition the **commissioner**~~[executive director]~~ for a hearing.

- (c) The **commissioner**~~[executive director]~~ is authorized to grant a variance from any standard or portion thereof whenever he **or she** determines that such variance is necessary to permit an employer to participate in an experiment approved by him **or her** designed to demonstrate or validate new and improved techniques to safeguard the health or safety of workers.

➔Section 1763. KRS 338.161 is amended to read as follows:

- (1) The **Department**~~[Office]~~ of **Workplace Standards**~~[Occupational Safety and Health]~~ shall develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. Each employer

shall make, keep and preserve, and make available to the **commissioner**~~{executive director}~~ and the Secretary of the United States Department of Labor or the Secretary of the United States Department of Health and Human Resources, such records regarding his *or her* activities relating to this chapter as may be prescribed by regulation.

- (2) The **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ shall also issue regulations requiring that employers, through posting of notices or other appropriate means, keep their employees informed of their protection and obligations under this chapter.

➔Section 1764. KRS 338.171 is amended to read as follows:

All information obtained by the **commissioner**~~{executive director}~~ in connection with any inspection or proceeding under this chapter which might reveal a trade secret shall be considered confidential except that such information may be disclosed to those persons concerned with carrying out this chapter or when relevant in any proceedings under this chapter. In any such proceedings, the **commissioner**~~{executive director}~~, review commission or courts shall issue such orders as may be appropriate to protect the confidentiality of trade secrets.

➔Section 1765. KRS 338.181 is amended to read as follows:

The **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ is empowered to administer the provisions of this chapter to employers, employees, and places of employment under the jurisdiction of the United States government pursuant to any agreement between the Commonwealth and the United States government. Pursuant to such agreement, the **Department**~~{Office}~~ of **Workplace Standards**~~{Occupational Safety and Health}~~ is empowered to make employer reports and data available to the United States government.

➔Section 1766. KRS 338.191 is amended to read as follows:

It shall be the duty of the Attorney General, upon request of the **commissioner**~~{executive director}~~, to bring all necessary civil or criminal actions for violations of the provisions of this chapter and to obtain injunctions against any person violating or threatening to violate any provisions of this chapter. The Attorney General may appoint special counsel to prosecute these claims. In the event special counsel is secured, all costs will be borne by the ~~{Department of}~~ Labor **Cabinet**.

➔Section 1767. KRS 338.201 is amended to read as follows:

- (1) A lien may be placed on all property, both real and personal, of an employer who has violated any requirement of this chapter, if the citation issued by the **commissioner**~~{executive director}~~ has been upheld by a final order of the review commission, but not before all administrative and judicial appeals have been exhausted. The lien shall be in favor of the ~~{Department of}~~ Labor **Cabinet** and shall be an amount totaling the penalties due, together with interest at a rate of twelve percent (12%) per annum from the date the order of the review commission is final, but not before all administrative and judicial appeals have been exhausted. The lien shall be attached to all property and rights to property owned or subsequently acquired by the employer. The **commissioner**~~{executive director}~~ or the **commissioner's**~~{his}~~ designee shall record the lien as provided in subsection (2) of this section. The lien shall show the date on which the citation was issued, the date of the violation, the name and last known address of the employer against whom the assessment was made, and the amount of penalties and interest. The lien shall be superior to the lien of any mortgage or encumbrance thereafter created and shall continue for ten (10) years from the time of the recording, unless sooner released or otherwise discharged.
- (2) The lien shall be filed in any of the following offices in which the employer owns property or rights to property and any filing fees associated with filing the lien shall be pursuant to KRS 64.012:
 - (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk of any county in which the defendant employer has property or an interest in property.

➔Section 1768. KRS 338.991 is amended to read as follows:

- (1) Any employer who willfully or repeatedly violates the requirement of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, may be assessed a civil penalty of up to

seventy thousand dollars (\$70,000) for each violation, but not less than five thousand dollars (\$5,000) for each willful violation.

- (2) Any employer who has received a citation for a serious violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, shall be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (3) Any employer who has received a citation for a violation of the requirements of any section of this chapter, including any standard, regulation, or order promulgated pursuant to this chapter, and such violation is specifically determined not to be of a serious nature, may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each violation.
- (4) Any employer who fails to correct a violation for which a citation has been issued within the period permitted for its correction may be assessed a civil penalty of up to seven thousand dollars (\$7,000) for each day during which such failure or violation continues.
- (5) Any employer found to be in violation of subsection (3) of KRS 338.121 shall be assessed a civil penalty of up to ten thousand dollars (\$10,000) for each violation.
- (6) The review commission shall have the authority to modify all civil penalties and fines provided for in this chapter. The review commission may, at its discretion, suspend the time period allotted for correction of a violation during the review of an appeal from the violation in question.
- (7) All civil penalties and fines collected under the provision of this chapter shall be paid into the general fund.
- (8) Any employer or individual who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than six (6) months, or by both.
- (9) Any person who gives advance notice of any investigation or inspection to be conducted under this chapter, without authority from the **commissioner**~~executive director~~, shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than six (6) months, or by both.
- (10) Any employer or individual who willfully causes bodily harm to any authorized representative of the **commissioner**~~executive director~~ while attempting to conduct an investigation or inspection under the provisions of this chapter, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment for not more than one (1) year, or by both.
- (11) As used in this section, a serious violation shall be deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one (1) or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

➔Section 1769. KRS 339.205 is amended to read as follows:

As used in this chapter, "**commissioner**~~executive director~~" shall mean the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Workplace Standards, under the direction and supervision of the **secretary**~~commissioner~~ of the ~~Department of~~ Labor **Cabinet**.

➔Section 1770. KRS 339.210 is amended to read as follows:

As used in KRS 339.220 to 339.450 "gainful occupation" does not include employment in farm work or in domestic service in a private home, nor occasional employment by a householder in connection with the household and not in connection with the householder's business or occupation, such as grass cutting or carrying ashes or similar casual domestic tasks, nor the delivery of newspapers on regularly scheduled routes, nor to employment as an actor or performer in motion pictures or theatrical productions, or in radio or television productions, nor to employment of minors by their own parents or persons standing in the place of a parent in occupations other than manufacturing, mining, or those found by the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Workplace Standards to be particularly hazardous.

➔Section 1771. KRS 339.220 is amended to read as follows:

No minor under fourteen (14) years of age shall be employed, permitted or suffered to work in, about or in connection with any gainful occupation at any time, except for employment in connection with an employment program

supervised and sponsored by the school or school district such child attends, which program has been approved by the Department of Education and subject to the regulations of the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workplace Standards.

➔Section 1772. KRS 339.225 is amended to read as follows:

- (1) The provisions of KRS 339.220 to the contrary notwithstanding, minors age eleven (11) years and over may be employed as caddies at golf courses subject to the following provisions:
 - (a) A "caddy" is an individual who offers his *or her* services to golfers at golf clubs both private and public. His *or her* duties during course of play include the carrying of golf clubs, direction to the golfer, assistance to the player in the general maintenance and upkeep of golf courses, including replacement of divots, repair of ball marks, raking of sand traps, location of golf balls and control of the pin. Duties normally referred to as "fore-caddying" or "shagging" of golf balls are not within the scope of this definition.
 - (b) No minor under eleven (11) years of age shall be employed, or suffered to work as a caddy for hire.
 - (c) Caddies under fourteen (14) years of age are restricted to caddying one (1) round of eighteen (18) holes in any one (1) day.
 - (d) Minors eleven (11) and twelve (12) years of age may not carry golf bags and are restricted to caddying with a "pull cart" only.
 - (e) Minors thirteen (13), fourteen (14), and fifteen (15) years of age may be employed to carry golf bags provided the bags do not exceed thirty-five (35) pounds in weight.
 - (f) No minor under sixteen (16) years of age shall be employed, permitted, or suffered to operate power-driven golf carts in the course of their employment, or any power-driven maintenance equipment.
 - (g) All persons employing minors as caddies are subject to all provisions of this chapter and the regulations issued hereunder.
- (2) The ~~Department~~~~Office~~ of Workplace Standards shall promulgate administrative regulations necessary to carry out the provisions of this section.

➔Section 1773. KRS 339.230 is amended to read as follows:

A minor who has passed his *or her* fourteenth birthday but is under eighteen (18) years of age may be employed, permitted, or suffered to work in, about, or in connection with any gainful occupation, except:

- (1) If he *or she* is under sixteen (16) years of age, he *or she* may not be employed during regular school hours, unless:
 - (a) The school authorities have made arrangements for him *or her* to attend school at other than the regular hours, in which event he *or she* may be employed subject to regulations of the ~~commissioner~~~~executive director~~ of workplace standards during such of the regular school hours as he *or she* is not required to be in attendance under the arrangement; or
 - (b) He *or she* has graduated from high school.
- (2) A minor who has passed his *or her* fourteenth birthday but is under eighteen (18) years of age, may not be employed, permitted, or suffered to work:
 - (a) In any place of employment or at any occupation, that the ~~commissioner~~~~executive director~~ of workplace standards shall determine to be hazardous or injurious to the life, health, safety, or welfare of such minor;
 - (b) More than the number of days per week, nor more than the number of hours per day that the ~~commissioner~~~~executive director~~ of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The ~~commissioner~~~~executive director~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments, but in no event may he *or she* make them less restrictive;

- (c) During the hours of the day that the **commissioner**~~[executive director]~~ of workplace standards shall determine to be injurious to the life, health, safety, or welfare of such minor. The **commissioner**~~[executive director]~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he *or she* make them less restrictive; and
 - (d) In, about, or in connection with any establishment where alcoholic liquors are distilled, rectified, compounded, brewed, manufactured, bottled, sold for consumption, or dispensed unless permitted by the rules and regulations of the Alcoholic Beverage Control Board (except *that* he *or she* may be employed in places where the sale of alcoholic beverages by the package is merely incidental to the main business actually conducted); or in a pool or billiard room.
- (3) The **commissioner**~~[executive director]~~ of workplace standards shall promulgate regulations to properly protect the life, health, safety, or welfare of minors. He *or she* may consider sex, age, premises of employment, substances to be worked with, machinery to be operated, number of hours, hours of the day, nature of the employment, and other pertinent factors. The **commissioner**~~[executive director]~~ of workplace standards in promulgating these regulations may make them more restrictive than those promulgated by the United States Secretary of Labor under provisions of the Fair Labor Standards Act and its amendments but in no event may he *or she* make them less restrictive, provided, however, these regulations shall have no effect on the definition of "gainful occupation" under KRS 339.210. To advise the **commissioner**~~[executive director]~~ with respect to the regulations, the Governor shall appoint a committee of four (4) persons which shall consist of a representative from the Cabinet for Health and Family Services, the Department of Education, the Kentucky Commission on Human Rights and the Personnel Cabinet. The regulations promulgated in accordance with this section shall be reviewed by such committee whenever deemed necessary by the **commissioner**~~[executive director]~~ of workplace standards.

➔Section 1774. KRS 339.400 is amended to read as follows:

Every person employing minors under eighteen (18) years of age shall keep a separate register containing the names, ages, and addresses of such employees, and the time of commencing and stopping of work for each day, and the time of the beginning and ending of the daily meal period, and shall post and keep conspicuously posted in the establishment wherein any such minor is employed, permitted, or suffered to work, a printed abstract of KRS 339.210 to 339.450, and a list of the occupations prohibited to such minors, together with a notice stating the working hours per day for each day in the week required of them. These records and files shall be open at all times to the inspection of the school directors of pupil personnel and probation officers, and representatives of the ~~[Department of]~~Labor **Cabinet** and Department of Education.

➔Section 1775. KRS 339.450 is amended to read as follows:

- (1) It shall be the duty of the **Department**~~[Office]~~ of Workplace Standards and of the inspectors and agents of said **department**~~[office]~~, with the assistance of the school directors of pupil personnel, police officers and juvenile session of District Court probation officers, to enforce the provisions of KRS 339.210 to 339.450, to make complaints against persons violating the provisions of those sections, and to prosecute violations thereof. The **Department**~~[Office]~~ of Workplace Standards, its inspectors and agents shall have authority to enter and inspect at any time any place or establishment covered by KRS 339.210 to 339.450, and to have access to age certificates kept on file by the employer and such other records as may aid in the enforcement of KRS 339.210 to 339.450. School directors of pupil personnel are likewise empowered to visit and inspect places where minors may be employed, and shall report any cases of employment that they find in violation of KRS 339.210 to 339.450 to the **Department**~~[Office]~~ of Workplace Standards.
- (2) Any person authorized to enforce KRS 339.210 to 339.450 may require an employer of a minor for whom an age certificate is not on file either to furnish him *or her* within ten (10) days the evidence showing that the minor is at least eighteen (18) years of age or to cease to employ or permit or suffer such minor to work. Proof of the making of such demand and of failure to deliver such proof of age shall be prima facie evidence, in any prosecution brought for violation of KRS 339.210 to 339.450, that such minor is under eighteen (18) years of age and is unlawfully employed.

➔Section 1776. KRS 339.990 is amended to read as follows:

Anyone who employs or permits or suffers any minor to be employed or to work in violation of KRS 339.210 to 339.450, or of any order or ruling issued under the provisions thereof, or obstructs the **Department**~~[Office]~~ of

Workplace Standards, its officers, or agents, or any other person authorized to inspect places of employment under KRS 339.210 to 339.450, or anyone who, having under his *or her* control or custody any minor, permits or suffers him *or her* to be employed or to work in violation of KRS 339.210 to 339.450, or who sells to a minor any article with the knowledge that the minor intends to sell the article in violation of KRS 339.210 to 339.450, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000). Every employer who continues to employ a minor in violation of KRS 339.210 to 339.450 after he has been notified by the ~~Department~~**Office** of Workplace Standards, its officers or agents, shall be assessed a civil penalty, in accordance with the provisions of KRS 336.985, of one hundred dollars (\$100) for each day the violation continues and the employment of any minor in violation of KRS 339.210 to 339.450 shall with respect to each minor so employed constitute a separate and distinct offense.

➔Section 1777. KRS 342.0011 is amended to read as follows:

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;
- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) "~~Department~~**Office**" means the ~~Department~~**Office** of Workers' Claims in the ~~Department of~~ Labor Cabinet;
- (9) "~~Commissioner~~**Executive director**" means the ~~commissioner~~**executive director** of the ~~Department~~**Office** of Workers' Claims;
- (10) "Board" means the Workers' Compensation Board;
- (11) (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and

- (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing;
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) "Person" means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns;
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption;
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business

entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;

- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the ~~Department~~**Office** of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in

Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the ~~commissioner~~~~executive director~~ using generally-accepted actuarial methods as follows:
 - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The ~~commissioner~~~~executive director~~ shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the ~~commissioner~~~~executive director~~. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;
 - (b) The ~~commissioner~~~~executive director~~ shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the ~~department~~~~office~~ and from the records of the Office of Employment and Training, Education and Workforce Development Cabinet. The ~~commissioner~~~~executive director~~ shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
 - (c) The ~~commissioner~~~~executive director~~ shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the ~~department~~~~office~~ and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
 - (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying ~~its~~~~his~~ own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying ~~its~~~~his~~ own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews ~~its~~~~his~~ application for certification to carry ~~its~~~~his~~ own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the

certification or recertification of the premium calculated by the ~~commissioner~~~~executive director~~, which shall form the employer's basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;

- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry ~~its~~~~his~~ own risk and is so certified, ~~its~~~~his~~ premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then ~~its~~~~his~~ premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the ~~commissioner~~~~executive director~~ pursuant to KRS 342.340(1);
 - (f) If an employer is certified to carry ~~its~~~~his~~ own risk after having previously insured the risk, ~~its~~~~his~~ premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry ~~its~~~~his~~ own risk and has paid all amounts due for assessments upon premiums paid while insured, ~~the employer~~~~he~~ shall be assessed only upon the premium calculated under this subsection;
 - (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and
 - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
 - (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
 - (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
 - (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
 - (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;
 - (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
 - (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest available edition; and
 - (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b).

➔Section 1778. KRS 342.0012 is amended to read as follows:

- (1) There is hereby created the Kentucky Workers' Compensation Advisory Council which shall consist of sixteen (16) members appointed by the Governor. Each member shall serve for a term of four (4) years and until his ~~or~~ **her** successor has been appointed and has qualified.
- (2) Vacancies shall be filled by appointment of the Governor for the unexpired term of the member whose office is vacant and shall be made within sixty (60) days of the occurrence of the vacancy.

- (3) Annually, the members of the council shall elect co-chairmen. One co-chairman shall be elected by the members of the council representing labor and the other co-chairman shall be elected by the members representing management. A majority of the members of the council shall constitute a quorum for the transaction of business.
- (4) The council shall meet at least quarterly and on other occasions as may be necessary, on the call of the co-chairmen or a majority of the members.
- (5) The council shall be attached to the Department of **Workers' Claims in the Labor Cabinet** for administrative purposes, and the commissioner of **the Department of Workers' Claims**~~Labor~~ shall supply necessary staff and supplies to the council.
- (6) The principal office of the council shall be located in Frankfort, Kentucky, but meetings of the council may be held at any location in the Commonwealth of Kentucky.
- (7) In making appointments to the council, the Governor shall appoint eight (8) members representing labor and eight (8) members representing management.
- (8) The council shall not infringe upon or assume the duties of the ~~Department of Labor~~ **Cabinet**, Cabinet for Economic Development or the **Department**~~Office~~ of Insurance. The council shall serve in an advisory capacity and shall make recommendations to the Governor and the legislature on all matters relating to workers' compensation including, but not limited to: efficient administration; coverage of employers and employees; adequacy and delivery of the benefit structure; insurance and self-insurance; medical cost containment and medical services; rehabilitation; liability and financing of the special fund; attorney fees; and lump-sum compensation and settlement procedures. In addition, the council may recommend legislation and administrative regulations as it deems necessary.

➔Section 1779. KRS 342.012 is amended to read as follows:

- (1) For the purposes of this chapter, an owner or owners of a business, including qualified partners of a partnership owning a business, or qualified members of a limited liability company, whether or not employing any other person to perform a service for hire, shall be included within the meaning of the term employee if the owner, owners, qualified partners, or qualified members of a limited liability company elect to come under the provisions of this chapter and provide the insurance required thereunder. Nothing in this section shall be construed to limit the responsibilities of the owners, partners, or members of a limited liability company to provide coverage for their employees, nonqualified partners, or nonqualified members, if any, required under this chapter.
- (2) When an owner, owners, qualified partners, or qualified members of a limited liability company have elected to be included as employees, this inclusion shall be accomplished by the issuance of an appropriate endorsement to a workers' compensation insurance policy.
- (3) For the purpose of this section, "qualified partner" or "qualified member or members" means, respectively, a partner who has entered into a meaningful partnership agreement or a member who has entered into meaningful articles of organization or a meaningful operating agreement of a limited liability company, which document shows on its face that the partner will substantially participate in the profit or loss of the business engaged in by the partnership or limited liability company and that the partner or member has made some contribution to the partnership or limited liability company which entitles him **or her** to participate in the profits of the business as well as to participate in the decision-making process of the partnership or limited liability company.
- (4) For the purposes of this section, "nonqualified partner" or "nonqualified member" means, respectively, a person who has entered into a partnership agreement, or articles of organization or operating agreement of a limited liability company, which document shows on its face that this person will receive regular payments in exchange for work for the business engaged in by the partnership or limited liability company; that the person will not participate in the decision-making of the partnership or limited liability company and will not participate in the profits and losses of the business engaged in by the partnership or limited liability company.
- (5) Every partnership filing a partnership agreement and every limited liability company filing articles of organization or an operating agreement for the purpose of exemption pursuant to the provisions of KRS 342.340 shall, on or before April 15 of each year, file with the **commissioner**~~executive director~~ the employer identification number assigned to the partnership or limited liability company by the Internal Revenue Service. On or before April 15 of each year, each partnership and each limited liability company having a partnership agreement, operating agreement, or articles of organization on file with the **commissioner**~~executive director~~

shall file a copy of the tax return of the partnership or limited liability company with the **commissioner**~~[executive director]~~. Failure to comply with the provisions of this subsection shall be prima facie evidence that the partnership agreement or limited liability company articles of organization filed with the **commissioner**~~[executive director]~~ is composed, respectively, of "nonqualified partners" or "nonqualified members", respectively, as defined in this section, and the **commissioner**~~[executive director]~~ shall promptly notify interested government agencies of the failure of the filed partnership agreement or limited liability company articles of organization or operating agreement to indicate compliance with KRS 342.340. With particular reference to employers engaged in coal mining, the **commissioner**~~[executive director]~~ shall promptly report the failure to comply with the provisions of this subsection to the **Energy**~~[Environmental]~~ and **Environment**~~[Public Protection]~~ Cabinet, Department ~~for~~~~of~~ Natural Resources, Office of Mine Safety and Licensing, so that appropriate action may be undertaken pursuant to KRS 351.175.

- (6) For purposes of this section, a "limited liability company" means an entity defined in KRS 275.015 and organized under the provisions of KRS Chapter 275.

➔Section 1780. KRS 342.020 is amended to read as follows:

- (1) In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The **commissioner**~~[executive director]~~ shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered. Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The **commissioner**~~[executive director]~~ may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.
- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, medical services and treatment provided under this chapter shall not be subject to copayments or deductibles.
- (3) Employers may provide medical services through a managed health care system. The managed health care system shall file with the **Department**~~[Office]~~ of Workers' Claims a plan for the rendition of health care services for work-related injuries and occupational diseases to be approved by the **commissioner**~~[executive director]~~ pursuant to administrative regulations promulgated by the **commissioner**~~[executive director]~~.
- (4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:
 - (a) Copayments or deductibles shall not be required for medical services rendered in connection with a work-related injury or occupational disease;
 - (b) The employee shall be allowed choice of provider within the plan;
 - (c) The managed health care system shall provide an informal procedure for the expeditious resolution of disputes concerning rendition of medical services;
 - (d) The employee shall be allowed to obtain a second opinion, at the employer's expense, from an outside physician if a managed health care system physician recommends surgery;
 - (e) The employee may obtain medical services from providers outside the managed health care system, at the employer's expense, when treatment is unavailable through the managed health care system;

- (f) The managed health care system shall establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee; and
 - (g) Statements for services shall be audited regularly to assure that charges are not duplicated and do not exceed those authorized in the applicable fee schedules.
 - (h) A schedule of fees for all medical services to be provided under this chapter which shall not be subject to the limitations on medical fees contained in this chapter.
 - (i) Restrictions on provider selection imposed by a managed health care system authorized by this chapter shall not apply to emergency medical care.
- (5) Except for emergency medical care, medical services rendered pursuant to this chapter shall be under the supervision of a single treating physician or physicians' group having the authority to make referrals, as reasonably necessary, to appropriate facilities and specialists. The employee may change his designated physician one (1) time and thereafter shall show reasonable cause in order to change physicians.
 - (6) When a compensable injury or occupational disease results in the amputation of an arm, leg, or foot, or the loss of hearing, or the enucleation of an eye or loss of teeth, the employer shall pay for, in addition to the other medical, surgical, and hospital treatment enumerated in subsection (1) and this subsection, a modern artificial member and, where required, proper braces as may reasonably be required at the time of the injury and thereafter during disability.
 - (7) Upon motion of the employer, with sufficient notice to the employee for a response to be filed, if it is shown to the satisfaction of the administrative law judge by affidavits or testimony that, because of the physician selected by the employee to treat the injury or disease, or because of the hospital selected by the employee in which treatment is being rendered, that the employee is not receiving proper medical treatment and the recovery is being substantially affected or delayed; or that the funds for medical expenses are being spent without reasonable benefit to the employee; or that because of the physician selected by the employee or because of the type of medical treatment being received by the employee that the employer will substantially be prejudiced in any compensation proceedings resulting from the employee's injury or disease; then the administrative law judge may allow the employer to select a physician to treat the employee and the hospital or hospitals in which the employee is treated for the injury or disease. No action shall be brought against any employer subject to this chapter by any person to recover damages for malpractice or improper treatment received by any employee from any physician, hospital, or attendant thereof.
 - (8) An employee who reports an injury alleged to be work-related or files an application for adjustment of a claim shall execute a waiver and consent of any physician-patient, psychiatrist-patient, or chiropractor-patient privilege with respect to any condition or complaint reasonably related to the condition for which the employee claims compensation. Notwithstanding any other provision in the Kentucky Revised Statutes, any physician, psychiatrist, chiropractor, podiatrist, hospital, or health care provider shall, within a reasonable time after written request by the employee, employer, workers' compensation insurer, special fund, uninsured employers' fund, or the administrative law judge, provide the requesting party with any information or written material reasonably related to any injury or disease for which the employee claims compensation.
 - (9) When a provider of medical services or treatment, required by this chapter, makes referrals for medical services or treatment by this chapter, to a provider or entity in which the provider making the referral has an investment interest, the referring provider shall disclose that investment interest to the employee, the **commissioner**~~executive director~~, and the employer's insurer or the party responsible for paying for the medical services or treatment, within thirty (30) days from the date the referral was made.

➔Section 1781. KRS 342.033 is amended to read as follows:

In a claim for benefits, no party may introduce direct testimony from more than two (2) physicians without prior consent from the administrative law judge. The motion requesting additional testimony shall clearly demonstrate the need for such additional testimony. A party may introduce direct testimony from a physician through a written medical report. The report shall become a part of the evidentiary record, subject to the right of an adverse party to object to the admissibility of the report and to cross-examine the reporting physician. The **commissioner**~~executive director~~ shall promulgate administrative regulations prescribing the format and content of written medical reports.

➔Section 1782. KRS 342.035 is amended to read as follows:

- (1) Periodically, the ***commissioner***~~[executive director]~~ shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the ***commissioner***~~[executive director]~~ may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the ***commissioner***~~[executive director]~~ shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the ***commissioner***~~[executive director]~~ not later than sixty (60) days following execution of the contract. The ***commissioner***~~[executive director]~~ shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.
- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his *or her* death is caused, or if and insofar as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.
- (4) The ***commissioner***~~[executive director]~~ shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the ***commissioner***~~[executive director]~~, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.
- (5)
 - (a) To ensure compliance with subsections (1) and (4) of this section, the ***commissioner***~~[executive director]~~ shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the ***commissioner***~~[executive director]~~ the program or plan it has adopted to ensure compliance.
 - (b) In addition, the ***commissioner***~~[executive director]~~ shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the ***commissioner***~~[executive director]~~, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the ***commissioner***~~[executive director]~~ to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the

~~commissioner~~~~[executive director]~~, and shall use the information for no other purpose than the audit required by this paragraph.

- (c) The **~~commissioner~~**~~[executive director]~~ shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter.
 - (d) Periodically, or upon request, the **~~commissioner~~**~~[executive director]~~ shall report to the Interim Joint Committee on Labor and Industry of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.
 - (e) The cost of implementing and carrying out the requirements of this subsection shall be paid from funds collected pursuant to KRS 342.122.
- (6) The **~~commissioner~~**~~[executive director]~~ may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
 - (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$.50) per page. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
 - (8)
 - (a) The **~~commissioner~~**~~[executive director]~~ shall develop or adopt practice parameters or guidelines for clinical practice for use by medical providers under this chapter. The **~~commissioner~~**~~[executive director]~~ may adopt any parameters for clinical practice as developed and updated by the federal Agency for Health Care Policy Research, or the **~~commissioner~~**~~[executive director]~~ may adopt other parameters for clinical practice which are developed by qualified bodies, as determined by the **~~commissioner~~**~~[executive director]~~, with periodic updating based on data collected during the application of the parameters.
 - (b) Any provider of medical services under this chapter who has followed the practice parameters or guidelines developed or adopted pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
 - (9)
 - (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.
 - (b) The provisions of this subsection apply only if reimbursement for an assisting physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the services.

➔Section 1783. KRS 342.038 is amended to read as follows:

- (1) Every employer subject to this chapter shall keep a record of all injuries, fatal or otherwise, received by his employees in the course of their employment. Within one (1) week after the occurrence and knowledge, as provided in KRS 342.185 to 342.200, of an injury to an employee causing his absence from work for more than one (1) day, a report thereof shall be made to the **~~department~~**~~[office]~~ in the manner directed by the **~~commissioner~~**~~[executive director]~~ through administrative regulations. An employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be responsible for making the report to the **~~Department~~**~~[Office]~~ of Workers' Claims within one week of receiving the notification referred to in subsection (3) of this section.
- (2) The report shall contain the name, nature, and location of the business of the employer and name, age, sex, wages, and occupation of the injured employee, and shall state the date and hour of the accident causing the injury, the nature and cause of the injury, and any other information required by the **~~commissioner~~**~~[executive director]~~.

- (3) Every employer subject to this chapter shall report to ~~its~~^{his} workers' compensation insurance carrier or the party responsible for the payment of workers' compensation benefits any work-related injury or disease or alleged work-related injury or disease within three (3) working days of receiving notification of the incident or alleged incident.
- (4) Every employer or insurer subject to this chapter shall file additional reports covering specifically voluntary payments and settlements, and any other reports required by the ~~commissioner~~^{executive director} by administrative regulation for the determination of the promptness of voluntary payment and validity and fairness of agreements. In addition, the ~~commissioner~~^{executive director} may require additional information as may be necessary to comply with a federal statute or regulation or any state statute.
- (5) Upon the termination of the disability of the injured employee, or if the disability extends beyond a period of sixty (60) days, then also at the expiration of that period, the employer shall make a supplementary report to the ~~commissioner~~^{executive director} on blanks procured from the ~~department~~^{office} for the purpose.

➔Section 1784. KRS 342.039 is amended to read as follows:

Beginning on January 1, 1995, and pursuant to administrative regulations promulgated under KRS Chapter 13A by the ~~commissioner~~^{executive director}, each insurance company writing workers' compensation insurance policies in the Commonwealth, every self-insured group, and each employer carrying its own risk shall file in the manner directed by the ~~commissioner~~^{executive director}, detailed claim information contained in the model regulation developed by the National Association of Insurance Commissioners (NAIC) in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC).

➔Section 1785. KRS 342.040 is amended to read as follows:

- (1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid, except that if the administrative law judge determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, the rate of interest shall be eighteen percent (18%) per annum. In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the ~~commissioner~~^{executive director} of the termination or failure to make payments and the ~~commissioner~~^{executive director} shall, in writing, advise the employee or known dependent of right to prosecute a claim under this chapter.
- (2) If overdue temporary total disability income benefits are recovered in a proceeding brought under this chapter by an attorney for an employee, or paid by the employer after receipt of notice of the attorney's representation, a reasonable attorney's fee for these services may be awarded. The award of attorney's fees shall be paid by the employer if the administrative law judge determines that the denial or delay was without reasonable foundation. No part of the fee for representing the employee in connection with the recovery of overdue temporary total disability benefits withheld without reasonable foundation shall be charged against or deducted from benefits otherwise due the employee.
- (3) All retraining incentive benefits awarded pursuant to KRS 342.732 shall be payable on the regular payday of the employer, commencing with the second regular payday after the award of the retraining incentive benefit by the administrative law judge becomes final. Retraining incentive benefits shall be due and payable not less often than semimonthly.
- (4) Upon written request of the employee, all payments of compensation shall be mailed to the employee at his *or her* last known address.

➔Section 1786. KRS 342.120 is amended to read as follows:

- (1) There is created the Division of Workers' Compensation Funds in the ~~Department~~^{Office} of Workplace Standards which shall be responsible for the administration ~~and legal representation~~ of the special fund and the coal workers' pneumoconiosis fund and the maintenance of records regarding the payment of claims by

these funds. The Division of Workers' Compensation Funds shall be headed by a director appointed by the secretary of the ~~Labor~~~~Environmental and Public Protection~~ Cabinet, with the prior written approval of the Governor pursuant to KRS 12.050. The director shall be responsible for overseeing the administration ~~and legal representation~~ of the funds and the maintenance of records regarding the payment of claims by the funds.

- (2) The special fund shall have no liability upon any claim in which the injury occurred, or for cumulative trauma, the disability became manifest, or, for occupational disease, if the date of injury or last exposure occurred, after December 12, 1996.
- (3) Where the employer has settled its liability for income benefits and thereafter a determination has been made of the special fund's liability, the special fund portion of the benefit rate shall be paid over the maximum period provided for by statute for that disability, with the period of payment beginning on the date settlement was approved by an administrative law judge. This provision is remedial and shall apply to all pending and future claims.

➔Section 1787. KRS 342.122 is amended to read as follows:

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the ~~Department of Labor~~ **Cabinet**, except the Division of Employment Standards, Apprenticeship and ~~Training and the Office of Labor Management Relations and~~ Mediation **in the Department of Workplace Standards**, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.
- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining until December 31, 2018. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying ~~its~~~~his~~ own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying ~~its~~~~this or her~~ own risk, of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.
- (c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Department of Revenue shall credit nineteen million dollars (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars (\$4,750,000).
- (d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
- (e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.

- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
- (3) The assessments imposed by this section may be collected by the insurance carrier from ~~its~~~~his~~ insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.
- (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.
- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education and Workforce Development Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
- (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating

under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying ~~its~~~~his~~ own risk.

➔Section 1788. KRS 342.1223 is amended to read as follows:

- (1) The Kentucky Workers' Compensation Funding Commission is created as an agency of the Commonwealth for the public purpose of controlling, investing, and managing the funds collected pursuant to KRS 342.122.
- (2) The commission shall:
 - (a) Hold, administer, invest, and reinvest the funds collected pursuant to KRS 342.122 and its other funds separate and apart from all "state funds" or "public funds," as defined in KRS Chapter 446;
 - (b) Act as a fiduciary, as defined in KRS Chapter 386, in exercising its power over the funds collected pursuant to KRS 342.122, and may invest association funds through one (1) or more banks, trust companies, or other financial institutions with offices in Kentucky in good standing with the ~~Department~~~~Office~~ of Financial Institutions, in investments described in KRS Chapter 386, except that the funding commission may, at its discretion, invest in nondividend-paying equity securities;
 - (c) Report to the General Assembly at each even-numbered-year regular session the actuarial soundness and adequacy of the funding mechanism for the special fund and other programs supported by the mechanism, including detailed information on the investment of funds and yields thereon;
 - (d) Recommend to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, changes deemed necessary in the level of the assessments imposed in this chapter;
 - (e) In conjunction with the ~~Department of~~ Labor **Cabinet**, submit to the General Assembly, not later than October 31 of the year prior to each even-numbered-year regular legislative session, a proposed budget for the biennium beginning July 1 following the even-numbered-year regular session of the General Assembly;
 - (f) In conjunction with the ~~Department of~~ Labor **Cabinet**, provide to the Interim Joint Committee on Appropriations and Revenue an annual budget and detailed quarterly financial reports;
 - (g) Conduct periodic audits, independently or in cooperation with the ~~Department of~~ Labor **Cabinet** or the Department of Revenue, of all entities subject to the assessments imposed in this chapter; and
 - (h) Report monthly to the Committees on Appropriations and Revenue and on Labor and Industry its monthly expenditures of restricted agency funds and the nature of the expenditures.
- (3) The commission shall have all of the powers necessary or convenient to carry out and effectuate the purposes for which it was established, including, but not limited to, the power:
 - (a) To sue and be sued, complain, or defend, in its name;
 - (b) To elect, appoint, or hire officers, agents, and employees, and define their duties and fix their compensation within the limits of its budget approved by the General Assembly;
 - (c) To contract for investment counseling, legal, actuarial, auditing, and other professional services in accordance with the provisions relating to personal service contracts contained in KRS Chapter 45A;
 - (d) To appoint, hire, and contract with banks, trust companies, and other entities to serve as depositories and custodians of its investment receipts and other funds;
 - (e) To take any and all other actions consistent with the purposes of the commission and the provisions of this chapter; and
 - (f) To make and promulgate administrative regulations.
- (4) Notwithstanding the provisions of this chapter to the contrary, the Kentucky Workers' Compensation Funding Commission shall utilize the investment expertise and advice of the Office of Financial Management in the Office of the Controller within the Finance and Administration Cabinet rather than entering into a consulting contract for investment counseling. The fees charged by financial institutions for managing the investments of the funds of the funding commission shall be paid from the investment earnings of the funds.
- (5) The commission shall be attached to the ~~Department of~~ Labor **Cabinet** for administrative purposes only.

➔Section 1789. KRS 342.1224 is amended to read as follows:

- (1) The commission shall be governed by a board of directors consisting of seven (7) members. The seven (7) members shall include the secretary of the **Labor**~~[Environmental and Public Protection]~~ Cabinet or a designee, the secretary of the Cabinet for Economic Development or a designee, the secretary of the Finance and Administration Cabinet or a designee, and four (4) members who shall be appointed by the Governor.
- (2) The four (4) appointed members shall include:
 - (a) One (1) member, selected from a list of three (3) submitted by the secretary of the **Labor**~~[Environmental and Public Protection]~~ Cabinet, who shall represent labor;
 - (b) One (1) member, selected from a list of three (3) submitted by the secretary for economic development, who shall represent employers; provided, however, that these three (3) members shall represent employers who purchase workers' compensation coverage for their employees from insurance companies writing workers' compensation insurance in the Commonwealth;
 - (c) One (1) member, selected from a list of three (3) submitted by the insurance advisory organization having jurisdiction over Kentucky, who shall represent insurance companies writing workers' compensation insurance in the Commonwealth; and
 - (d) One (1) member, selected from a list of three (3) submitted by the associations representing self-insured employers in the Commonwealth.
- (3) The members of the board of directors shall serve a term of four (4) years, except that the initial terms of the members shall be staggered as follows:
 - (a) The initial member appointed by the Governor to represent labor shall serve a term of one (1) year. Thereafter, such member shall serve a term of four (4) years;
 - (b) The initial member appointed by the Governor to represent employers shall serve a term of two (2) years. Thereafter, such member shall serve a term of four (4) years;
 - (c) The initial member appointed by the Governor to represent insurance companies shall serve a term of four (4) years. Thereafter, such member shall serve a term of four (4) years; and
 - (d) The initial member appointed by the Governor to represent self-insured employers shall serve a term of three (3) years. Thereafter, such member shall serve a term of four (4) years.
- (4) The board of directors shall annually elect from among its members a chairman, a vice chairman, and a secretary-treasurer. The board of directors may also elect or appoint, and prescribe the duties of, other officers as the board of directors deems necessary or advisable.
- (5) The board of directors shall appoint an executive director to administer, manage, and direct the affairs and business of the commission, and other staff persons to carry out the affairs and business of the commission, subject in each instance to the policies, control, and directions of the board of directors. The board of directors shall fix the compensation of all such persons and shall pay such compensation out of the funds of the commission.
- (6) Notwithstanding any other law, the Governor, pursuant to an executive order, may cause the employees of the commission to be eligible to participate in the Kentucky Retirement System and the Kentucky Public Employees Deferred Compensation System.
- (7) A majority of the board of directors of the commission shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. The majority shall be determined by excluding any existing vacancies from the total number of directors.
- (8) The board of directors of the Kentucky Workers' Compensation Funding Commission are hereby determined to be officers and agents of the Commonwealth of Kentucky and, as such, shall enjoy the same immunities from suit for the performance of their official acts as do other officers of the Commonwealth of Kentucky.

➔Section 1790. KRS 342.1228 is amended to read as follows:

The Kentucky Workers' Compensation Funding Commission shall not be subject to the Governor's power of reorganization under KRS Chapter 12, including attachment or transfer to another organizational unit or

administrative body other than the ~~{Department of}~~ Labor **Cabinet**. The Governor may, however, recommend changes in the organization of the commission to the General Assembly at any regular or special session of the General Assembly.

➔Section 1791. KRS 342.1242 is amended to read as follows:

- (1) There is created the Kentucky coal workers' pneumoconiosis fund which shall have one-half (1/2) of the liability for income benefits, including retraining benefits, payable for claims brought under KRS 342.732 for last exposure incurred on or after December 12, 1996. Income benefit payments by the Kentucky coal workers' pneumoconiosis fund shall be made contemporaneous with the payments made by the employer, except that the employer shall make all payments due under a final award or approved settlement until the liability of the Kentucky coal workers' pneumoconiosis fund is established under subsection (2) of this section and the coal workers' pneumoconiosis fund shall reimburse the employer for such payments to the extent of its liability.
- (2) The employer shall defend any claim brought under KRS 342.732 and upon conclusion shall seek participation in payment of the final award or settlement by the Kentucky coal workers' pneumoconiosis fund by making written request upon the director in the manner prescribed by administrative regulation to be promulgated by the ~~commissioner{executive director}~~ of the ~~Department{Office}~~ of Workers' Claims.
- (3)
 - (a) For the purpose of funding and prefunding the liabilities of the Kentucky coal workers' pneumoconiosis fund and financing the administration and operation of the Kentucky coal workers' pneumoconiosis fund, as reflected in the budget of the Commonwealth enacted by the General Assembly, a Kentucky coal workers' pneumoconiosis fund assessment at the rate of three percent (3%) is hereby imposed upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth and by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, from employers engaged in the severance or processing of coal. Likewise, on and after January 1, 1997, through December 31, 1997, an assessment at the rate of three percent (3%) of premium shall be paid by every employer engaged in the severance or processing of coal who is carrying his or her own risk.
 - (b) In addition to the assessment imposed in paragraph (a) of this subsection, an additional Kentucky coal workers' pneumoconiosis fund assessment at the rate of two and one-half cents (\$0.025) per ton is hereby imposed upon the total annual amount of tons of coal severed on or after January 1, 1997, through December 31, 1997, by every entity engaged in the severance of coal as required pursuant to KRS Chapter 143.
 - (c) As of June 30, 2006, and each year thereafter, the funding commission shall determine the assets of the fund and the claim and administrative expense liability incurred by the fund for all previous years and shall establish the rates under the provisions of paragraphs (a) and (b) of this subsection necessary as of January 1 of the next year to fully fund and prefund all claim liabilities and administrative expenses through December 31 of the next year of operations. The assessment rate authorized by this section for premiums received and tons of coal severed shall be set so as to receive fifty percent (50%) of the needed revenue from each assessment. Notice of any rate changes shall be provided no later than October 1 of the year preceding the rate change.
- (4) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to a separate account within the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission. In addition, the powers and responsibilities of the Kentucky Workers' Compensation Funding Commission including its fiduciary duties and responsibilities relating to assessments collected for the special fund pursuant to KRS 342.122, 342.1222, 342.1223, 342.1226, 342.1229, and 342.1231 shall apply to assessments collected for the Kentucky coal workers' pneumoconiosis fund created pursuant to this section. Each entity subject to assessments for the Kentucky coal workers' pneumoconiosis fund shall provide any and all information requested by the Kentucky Workers' Compensation Funding Commission necessary to carry out its powers and responsibilities relating thereto.
- (5) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received or the coal is processed or severed. Receipt shall be considered timely through actual physical receipt or by postmark by the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments. Penalty and interest penalties imposed pursuant to KRS 342.1221 and the authority of the Kentucky Workers' Compensation Funding Commission to waive part or all of the penalty shall apply to

assessments for the Kentucky coal workers' pneumoconiosis fund in the same manner and amount as they are imposed on assessments for the special fund under KRS 342.122.

- (6) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (7) Claims for benefits by reason of the development of coal workers' pneumoconiosis shall be maintained pursuant to KRS 342.732, and the Kentucky coal workers' pneumoconiosis fund shall be liable for payment of a part of the liability only for employees of employers engaged in the severance or processing of coal as defined in KRS 342.0011(23)(a) and (b).

➔Section 1792. KRS 342.140 is amended to read as follows:

The average weekly wage of the injured employee at the time of the injury or last injurious exposure shall be determined as follows:

- (1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:
 - (a) The wages were fixed by the week, the amount so fixed shall be the average weekly wage;
 - (b) The wages were fixed by the month, the average weekly wage shall be the monthly wage so fixed multiplied by twelve (12) and divided by fifty-two (52);
 - (c) The wages were fixed by the year, the average weekly wage shall be the yearly wage so fixed divided by fifty-two (52);
 - (d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury.
 - (e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his *or her* average weekly wage shall be computed under paragraph (d), taking the wages (not including overtime or premium pay) for that purpose to be the amount he *or she* would have earned had he *or she* been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.
 - (f) The hourly wage has not been fixed or cannot be ascertained, the wage for the purpose of calculating compensation shall be taken to be the usual wage for similar services where the services are rendered by paid employees.
- (2) In occupations which are exclusively seasonal and therefore cannot be carried on throughout the year, the average weekly wage shall be taken to be one-fiftieth (1/50) of the total wages which the employee has earned from all occupations during the twelve (12) calendar months immediately preceding the injury.
- (3) In the case of volunteer firemen, police, and emergency management agency members or trainees, the income benefits shall be based on the average weekly wage in their regular employment.
- (4) If the employee was a minor, apprentice, or trainee when injured, and it is established that under normal conditions his *or her* wages should be expected to increase during the period of disability, that fact may be considered in computing his *or her* average weekly wage.
- (5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his *or her* wages from all the employers shall be considered as if earned from the employer liable for compensation.
- (6) The term "wages" as used in this section and KRS 342.143 means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, and fuel or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer to the extent the gratuities are reported for income tax purposes.

- (7) The **commissioner**~~[executive director]~~ shall, from time to time, based upon the best available information, determine by administrative regulation industries which ordinarily do not have a full working day for five (5) days in every week. In those industries, compensation shall be computed at the average weekly wage earned by the employee at the time of injury reckoning wages as earned while working full time. "At full time" as used in this subsection means a full working day for five (5) working days in every week regardless of whether the injured employee actually worked all or part of the time.

➔Section 1793. KRS 342.143 is amended to read as follows:

For the purposes of this chapter, the average weekly wage of the state shall be determined by the **commissioner**~~[executive director]~~ as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by fifty-two (52) and the average weekly wage thus determined rounded to the nearest cent. The average weekly wage shall be certified to the **commissioner**~~[executive director]~~ by the Education and Workforce Development Cabinet in a manner prescribed by the **commissioner**~~[executive director]~~ by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disability in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination. Whenever a change in the average weekly wage of the state is of such amount that the minimum weekly income benefits for total disability or for death are increased or decreased by one dollar (\$1) or more, or the maximum weekly income benefits for total disability or for death are increased or decreased by two dollars (\$2) or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect this increase or decrease, but no change in such limitations shall otherwise be made. Notwithstanding the provisions of this section, KRS 342.140 and 342.740, or any other provisions of this chapter to the contrary, the average weekly wage for calendar years 1995 and 1996 shall be determined to be no higher than the average weekly wage determined by the **commissioner**~~[executive director]~~ to be in effect in the calendar year of 1994. If the average weekly wage calculated by the **commissioner**~~[executive director]~~ is determined to be lower than the 1994 calendar year wage, the average weekly wage may be lowered as provided by this section. Beginning in calendar year 1997 and annually thereafter, the average weekly wage shall be calculated based upon the state average weekly wage in effect two (2) years prior to that calculation.

➔Section 1794. KRS 342.165 is amended to read as follows:

- (1) If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment. If an accident is caused in any degree by the intentional failure of the employee to use any safety appliance furnished by the employer or to obey any lawful and reasonable order or administrative regulation of the **commissioner**~~[executive director]~~ or the employer for the safety of employees or the public, the compensation for which the employer would otherwise have been liable under this chapter~~[-]~~ shall be decreased fifteen percent (15%) in the amount of each payment.
- (2) No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his **or her** physical condition or medical history, if all of the following factors are present:
 - (a) The employee has knowingly and willfully made a false representation as to his **or her** physical condition or medical history;
 - (b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and
 - (c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

➔Section 1795. KRS 342.185 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for

compensation with respect to the injury shall have been made with the ~~department~~~~office~~ within two (2) years after the date of the accident, or in case of death, within two (2) years after the death, whether or not a claim has been made by the employee himself *or herself* for compensation. The notice and the claim may be given or made by any person claiming to be entitled to compensation or by someone in his *or her* behalf. If payments of income benefits have been made, the filing of an application for adjustment of claim with the ~~department~~~~office~~ within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

- (2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the ~~commissioner~~~~executive director~~ within five (5) years after the injurious exposure to the virus.

➔Section 1796. KRS 342.205 is amended to read as follows:

- (1) After an injury and so long as compensation is claimed, the employee, if requested by a party or by the administrative law judge, shall submit himself *or herself* to examination, at a reasonable time and place, to a duly-qualified physician or surgeon designated and paid by the requesting party. The employee shall have the right to have a duly-qualified physician or surgeon designated and paid by himself *or herself* present at the examination, but this right shall not deny the requesting party's physician or surgeon the right to examine the injured employee at all reasonable times and under all reasonable conditions.
- (2) The party requesting an examination pursuant to subsection (1) of this section shall make arrangements to provide all the cost of the examination. The requesting party shall also prepay the cost of transportation of the employee to and from the examination if public transportation is utilized. If the employee uses his *or her* own vehicle to travel to and from the examination, the requesting party shall prepay the employee at the state mileage rate. The requesting party shall also reimburse the employee for the cost of meals, lodging, parking, and toll charges upon proof of same by written voucher. The amounts prepaid or reimbursed by the requesting party, as required by this subsection, shall be the same as, and in accordance with, state travel administrative regulations and standards promulgated and established pursuant to KRS Chapter 45.
- (3) If an employee refuses to submit himself *or herself* to or in any way obstructs the examination, his *or her* right to take or prosecute any proceedings under this chapter shall be suspended until the refusal or obstruction ceases. No compensation shall be payable for the period during which the refusal or obstruction continues.
- (4) Any employee receiving benefits under this chapter may be required, upon request of any party, to furnish a sworn affirmed statement of earnings and other supporting information the administrative law judge may require.
- (5) The ~~cabinet~~~~department~~ shall supply forms for the report.

➔Section 1797. KRS 342.213 is amended to read as follows:

- (1) The Governor shall make all appointments to the board, and appoint the administrative law judges and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims, subject to the consent of the Senate in accordance with KRS 11.160, and in accordance with this section, KRS 342.215, 342.228, and 342.230 by choosing from names presented to him *or her* by the Workers' Compensation Nominating Commission.
- (2) The Workers' Compensation Nominating Commission shall consist of seven (7) members appointed by the Governor as follows:
 - (a) Two (2) members shall be attorneys experienced in the practice of workers' compensation, one (1) of whom customarily represents claimants, and one (1) of whom customarily represents employers. Both shall serve terms of two (2) years, but their successors shall be appointed to terms of four (4) years.
 - (b) 1. One (1) member of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of three (3) years; and

2. Two (2) members of the political party having the largest number of registered voters and one (1) member of the political party having the second largest number of registered voters shall serve a term of four (4) years.
 3. Thereafter, as each term expires, the vacancy so created shall be filled by an appointee from the same political party for a term of four (4) years.
- (c) Appointments to fill the unexpired term of a member shall be for the remainder of the term.
- (d) The members shall annually select a chairman of the nominating commission.
- (3) Notwithstanding the provisions of subsection (2) of this section, at least three (3) members of the Workers' Compensation Nominating Commission shall be individuals who directly derive no earned income from the workers' compensation program. In order to satisfy the requirement of this subsection, the Governor may remove any existing member of the Workers' Compensation Nominating Commission and replace that member with an individual who does not derive earned income from the workers' compensation program. On or before March 1, 1997, the Governor shall submit to the Senate a list of the members of the commission identifying the positions they fill and the terms they shall serve in accordance with the provisions of this section.
- (4) The **commissioner**~~executive director~~ shall monitor the workload of the administrative law judges and, whenever a vacancy occurs, determine whether filling the position is necessary to expeditious resolution of claims brought under this chapter. One hundred twenty (120) days prior to the expiration of the terms of the administrative law judges, and when a vacancy occurs under other circumstances, the **commissioner**~~executive director~~ shall certify to the Workers' Compensation Nominating Commission that filling the position is necessary and the Workers' Compensation Nominating Commission shall act to fill only such positions as have been certified as necessary by the **commissioner**~~executive director~~.
- (5) (a) The Workers' Compensation Nominating Commission shall consult with the **commissioner**~~executive director~~, chief administrative law judge, and a member of the Workers' Compensation Board as to the performance in office of the administrative law judges. The Workers' Compensation Nominating Commission may recommend retention of any sitting administrative law judge, or present to the Governor the names of three (3) qualified individuals nominated for the position. The Workers' Compensation Nominating Commission shall report its recommendation for retention to the Governor no later than thirty (30) days after receipt from the **commissioner**~~executive director~~ of certification of the necessity to fill the position and shall render to the Governor its list of nominees to fill vacancies within sixty (60) days of receipt of the **commissioner's**~~executive director's~~ certification. The name of an individual who has been rejected by the Governor when recommended for retention shall not be presented thereafter as a nominee for the same position. No sitting administrative law judge shall be nominated to fill more than one (1) vacancy except for separate vacancies as an administrative law judge.
- (b) Within thirty (30) days of receipt of the recommendation, the Governor may reject recommendations of retention, in which event the Workers' Compensation Nominating Commission shall, within thirty (30) days, reconvene and present a list of the names of three (3) nominees for each position for which a recommendation for retention has been rejected by the Governor.
- (6) The Governor shall appoint the **commissioner**~~executive director~~ of the **Department**~~Office~~ of Workers' Claims from a list of three (3) names submitted by the nominating commission. The list submitted to the Governor shall contain names of individuals who meet the qualifications and requirements contained in KRS 342.228. The **commissioner**~~executive director~~ shall be subject to Senate confirmation in accordance with KRS 11.160.
- (7) (a) The Governor shall appoint the members of the Workers' Compensation Board. The nominating commission shall present to the Governor a list of three (3) candidates for appointment to the board no later than thirty (30) days prior to the expiration of a board member's term. For the purpose of filling vacancies on the board which occur for reasons other than an expiration of term, the nominating commission shall present a list of three (3) names to the Governor no later than sixty (60) days after a vacancy occurs.
- (b) If the Governor fails to appoint a member of the board within thirty (30) days following receipt of a list of names from the nominating commission, the previous appointee may remain in the position until the ninetieth day following the date the nominating commission provided the Governor with its list of names, at which time he **or she** shall vacate the position.

- (8) The nominating commission shall meet as often as necessary to perform its responsibilities, and the members shall be reimbursed from funds collected pursuant to KRS 342.122 for necessary expenses in the manner and amounts prescribed for state employees by KRS 45.101 and the administrative regulations promulgated under the authority of that statute. In addition, each member of the nominating commission shall be paid at a rate of one hundred dollars (\$100) per day for each meeting attended, and these expenses shall be financed from funds collected pursuant to KRS 342.122.

➔Section 1798. KRS 342.215 is amended to read as follows:

- (1) The Workers' Compensation Board is hereby created and established. The board shall rule on appeals of decisions rendered by administrative law judges under this chapter. The board shall rule on an appeal of a decision of an administrative law judge no later than sixty (60) days following the date on which the last appeal brief was filed.
- (2) The Workers' Compensation Board shall consist of three (3) members appointed by the Governor. Each member shall hold no other public office and shall devote his *or her* full time to the duties of his *or her* office.
- (3) Of the members of the board appointed under this section, one (1) shall serve a term that shall expire on January 4, 2002; one (1) shall serve a term that shall expire on January 4, 2003; and one (1) shall serve a term that shall expire on January 4, 2004, as designated by the Governor at the time of appointment. Thereafter, each term of a board member shall run for four (4) years from the date of expiration of the term for which the member's predecessor was appointed, except that a person appointed to fill a vacancy prior to the expiration of a term shall be appointed for the remainder of the term. The Governor shall not appoint a member of the board to fill the unexpired term of another board member, nor shall the Governor reappoint a member of the board who has been removed from his *or her* position prior to the expiration of his *or her* term. The members of the board shall have the qualifications required of appeals court judges, except for residence in a district, and shall receive the same salary and shall be subject to the same standards of conduct. The Governor shall designate a member of the board to serve as chairman. Any vacancy in the chairmanship shall be filled by the Governor. The Governor may at any time remove any member for cause after furnishing *the member*~~him~~ with a written copy of the charges against him *or her* and giving *the member*~~him~~ a public hearing if he *or she* requests it.
- (4) A decision concurred in by any two (2) of the three (3) members shall constitute a decision of the board.
- (5) Members of the Workers' Compensation Board and the administrative law judges shall be members of the Kentucky Employees Retirement System.
- (6) The Workers' Compensation Board shall be attached to the *Department*~~Office~~ of *Workers' Claims*~~the Secretary~~ in the *Labor*~~Environmental and Public Protection~~ Cabinet.

➔Section 1799. KRS 342.228 is amended to read as follows:

- (1) The *Department*~~Office~~ of Workers' Claims shall be responsible for administering claims and ensuring compliance with the insurance, self-insurance, and rehabilitation provisions in this chapter. The *department*~~office~~ shall be administered by *a commissioner*~~an executive director~~ appointed by the Governor. The Governor shall select the *commissioner*~~executive director~~ from a list of three (3) names submitted by the Workers' Compensation Nominating Commission created pursuant to KRS 342.213. The *commissioner*~~executive director~~ appointed by the Governor shall be subject to the consent of the Senate in accordance with KRS 11.160.
- (2) The *commissioner*~~executive director~~ shall have demonstrated knowledge and experience in the area of workers' compensation, public administration, and administrative law.

➔Section 1800. KRS 342.229 is amended to read as follows:

- (1) The records of the *Department*~~Office~~ of Workers' Claims, to the extent that they provide information personally identifying an individual alleging a work-related injury or occupational disease, shall not be open to the public but only to parties satisfying the *commissioner*~~executive director~~ of their interest in the records and their right to inspect them.
- (2) This section shall not prohibit or limit the exchange of public records or the sharing of information between the *Department*~~Office~~ of Workers' Claims and another public agency when the exchange is serving a legitimate governmental need or is necessary in the performance of a legitimate government function, including the investigation of workers' compensation fraud.

➔Section 1801. KRS 342.230 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~, within the limits of appropriations therefor and except as otherwise specifically provided in this chapter, shall establish and fill any positions, including medical services and advice, necessary to carry on the ***department's***~~[office's]~~ work. The employees of the ***Department***~~[Office]~~ of Workers' Claims, except the ***commissioner***~~[executive director]~~, administrative law judges, and board members, shall be members of the classified service.
- (2) The ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims shall have immediate supervision of the employees of the ***department***~~[office]~~, perform duties assigned him *or her*, and have complete authority to carry out all the administrative functions relating to the ***Department***~~[Office]~~ of Workers' Claims. The ***commissioner***~~[executive director]~~ with the assistance of the board shall train and instruct the administrative law judges on an ongoing basis; assign cases; and monitor the caseloads of the administrative law judges and the Workers' Compensation Board to ensure timely disposition of cases; keep and be the custodian of the records of the board and the administrative law judges; annually report the activities of the board and the administrative law judges to the Governor; and devote his *or her* full time to the duties of his *or her* office. The ***commissioner***~~[executive director]~~ shall be paid a salary not less than the salary of a member of the board.
- (3) The Governor shall appoint, with the consent of the Senate in accordance with KRS 11.160 for a term of four (4) years, not more than nineteen (19) administrative law judges, each of whom shall be an attorney and shall have five (5) years' experience in the Commonwealth in the practice of workers' compensation law or a related field, and extensive knowledge of workers' compensation law, and shall be paid the same salary as a Circuit Judge. Each administrative law judge may be employed for additional terms with the consent of the Senate in accordance with KRS 11.160. The Governor, at least thirty (30) days prior to the expiration of a term of an administrative law judge, shall provide the name of the individual whom he intends to appoint to the position to the chairman of the Senate Labor and Industry Committee. These administrative law judges shall conduct hearings, and otherwise supervise the presentation of evidence and perform any other duties assigned to them by statute and shall render final decisions, orders, or awards. Administrative law judges may, in receiving evidence, make rulings affecting the competency, relevancy, and materiality of the evidence about to be presented and upon motions presented during the taking of evidence as will expedite the preparation of the case.
- (4) To ensure that the administrative law judges perform their responsibilities competently and issue decisions consistent with this chapter, the ***commissioner***~~[executive director]~~ shall, at least twice annually, conduct training and education seminars in workers' compensation law; administrative law; and methods and procedures for writing well-reasoned, clear, correct, and concise opinions, orders, or awards.
- (5) The Governor may at any time remove the ***commissioner***~~[executive director]~~ or any member of the board. The ***commissioner***~~[executive director]~~ may remove any administrative law judge. A member of the board or an administrative law judge may be removed for good cause, including~~[-]~~ violation of the code of judicial ethics or the code of ethics applicable to the executive branch of the Commonwealth. In addition, an administrative law judge or a member of the board may be removed for the persistent or repeated failure to perform satisfactorily the specific duties assigned in this chapter, including the requirement of timely disposition of cases, review of attorney's fees, and failure to attend training and continuing education programs required by this section.
- (6) Any vacancy in the term of an administrative law judge, which occurs prior to the expiration of the term, shall be filled if necessary by appointment of the Governor in accordance with subsection (3) of this section within sixty (60) days from the date the vacancy occurs, with the consent of the Senate in accordance with KRS 11.160, for the remainder of the term.
- (7)
 - (a) Effective at 12 midnight, December 31, 1997, the terms of administrative law judges who were appointed to fill the five (5) administrative law judge positions which were created in 1990 shall end, and the term of the chief administrative law judge who was appointed under subsection (8) of this section shall end. On January 1, 1998, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.
 - (b) Effective at 12 midnight, December 31, 1999, the terms of administrative law judges who were appointed to fill the ten (10) administrative law judge positions which were created in 1987 shall end.

On January 1, 2000, the Governor shall make four (4) year appointments to fill as many of these positions as are necessary to fulfill the duties assigned to administrative law judges under this chapter.

- (8) One (1) of the administrative law judges appointed pursuant to this section shall be appointed as a chief administrative law judge, to have the same qualifications, powers, duties, and requirements as those of other administrative law judges. The chief administrative law judge shall not be assigned regular dockets but shall instead assist the **commissioner**~~executive director~~ by doing all scheduling of the administrative law judges, handling dockets assigned to the administrative law judges in case of an emergency, providing supervision of the administrative law judges, and providing educational opportunities for the administrative law judges. The chief administrative law judge shall be paid at the same rate as the administrative law judges plus an additional three thousand dollars (\$3,000) per year. At any time the **commissioner**~~executive director~~ may replace the chief administrative law judge with one (1) of the other administrative law judges at which time the former chief administrative law judge shall resume the duties assigned to the other administrative law judges pursuant to this chapter. The term of the chief administrative law judge employed in 1994 shall expire on December 31, 1997. On January 1, 1998, the **commissioner**~~executive director~~ shall employ a person in this position for a four (4) year term.

➔Section 1802. KRS 342.231 is amended to read as follows:

The ~~Department of~~ Labor **Cabinet** shall report monthly to the Committee on Appropriations and Revenue its monthly expenditures of restricted agency funds and the nature of such expenditures. Separate reporting shall be done by each office within the ~~Department of~~ Labor **Cabinet** and for general administration and support.

➔Section 1803. KRS 342.232 is amended to read as follows:

- (1) The boards of directors of the following funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the listed funds during each quarter to the Legislative Research Commission. The funds which shall be reported are:
- (a) Kentucky individual self-insurance guaranty fund;
 - (b) Kentucky group self-insurance fund; and
 - (c) Kentucky coal employers self-insurance fund.
- (2) The director of the Division of Workers' Compensation Funds shall make quarterly reports according to generally accepted accounting principles of all money received and disbursed by the coal workers' pneumoconiosis fund to the Legislative Research Commission.
- (3) The **Department**~~Office~~ of Workers' Claims shall make quarterly reports to the Legislative Research Commission on the status of the provisions of this chapter.

➔Section 1804. KRS 342.235 is amended to read as follows:

The **commissioner**~~executive director~~ and employees or authorized representatives of the department shall, for traveling necessitated by the discharge of official duties, be reimbursed for transportation actually paid for, not exceeding the regular fare over the most direct route, and meals and lodging actually paid for.

➔Section 1805. KRS 342.240 is amended to read as follows:

The ~~department~~~~office~~ shall maintain its main office in Frankfort, Kentucky, using suitable rooms and offices belonging to this state, and shall be provided necessary office furniture to be paid for by the state. The **commissioner**~~executive director~~ shall provide necessary supplies, books, periodicals, and maps and shall provide a seal for the authentication of orders, awards, or proceedings of the administrative law judges, on which shall be inserted the words "**Department**~~Office~~ of Workers' Claims, State of Kentucky, official seal." The board and the administrative law judges may hold sessions at any place within the state where necessary and shall have power to sue or institute legal proceedings in any court of this state, under existing laws as to jurisdiction of actions. Unless consented to by the **commissioner**~~executive director~~, all actions or proceedings against the board or a member in his **or her** official capacity, or against an administrative law judge or the **commissioner**~~executive director~~ in his **or her** official capacity, shall be brought in the courts of Franklin County.

➔Section 1806. KRS 342.245 is amended to read as follows:

All proceedings of the board and the administrative law judges shall be recorded in books kept for that purpose by the **commissioner**~~[executive director]~~, which shall constitute a public record and shall contain an entry of each case, claim, or proceeding considered, heard or passed upon by each administrative law judge and the board, with the award, finding or decisions made thereon.

➔Section 1807. KRS 342.260 is amended to read as follows:

- (1) The **commissioner**~~[executive director]~~ shall prepare administrative regulations as he *or she* considers necessary to carry on the work of the **department**~~[office]~~ and the work of the administrative law judges and may promulgate administrative regulations not inconsistent with this chapter and KRS Chapter 13A for carrying out the provisions of this chapter.
- (2) The **commissioner**~~[executive director]~~ shall develop or adopt life expectancy tables for use in making computations for the apportionment of benefits under KRS 342.120, computation of attorneys' fees under KRS 342.320, and for use in all other situations arising under this chapter in which the calculation of a life expectancy is necessary or desirable, including the computation of assessments or reserves for self-insurers. The **commissioner**~~[executive director]~~ may adopt life tables published by the United States Department of Health and Human Services or other life tables developed by a qualified entity, as determined by the **commissioner**~~[executive director]~~. The life tables designated by the **commissioner**~~[executive director]~~ through administrative regulation in effect as of the date of an opinion, award, or settlement approved by an administrative law judge shall apply to computations concerning that opinion, award, or settlement.
- (3) Processes and procedure under this chapter shall be as summary and simple as reasonably possible. The board or any member thereof or any administrative law judge for the purpose of this chapter, may subpoena witnesses, administer or cause to have administered oaths, and examine or cause to have examined those parts of the books and records of the parties to a proceeding as relate to questions in dispute.
- (4) The sheriff shall serve all subpoenas of the board and administrative law judges and shall receive the same fee as provided by law for like service in civil actions. Each witness who appears in obedience to the subpoena of the board or any administrative law judge shall receive for attendance the fees and mileage for witnesses in civil cases in the Circuit Courts.
- (5) The Circuit Court shall, on application of the board, any member thereof, or any administrative law judge, enforce by proper proceedings the attendance and testimony of witnesses and the production and examination of books, papers, and records.

➔Section 1808. KRS 342.265 is amended to read as follows:

- (1) If the employee and employer and special fund or any of them reach an agreement conforming to the provisions of this chapter in regard to compensation, a memorandum of the agreement signed by the parties or their representatives shall be filed with the **commissioner**~~[executive director]~~, and, if approved by an administrative law judge, shall be enforceable pursuant to KRS 342.305. Where all parties have not joined in the settlement agreement, it shall not be approved unless it is certified that the party not participating in the settlement has been served with a copy of the agreement not less than ten (10) days prior to submission of the agreement for approval. This provision shall not be construed to prevent the voluntary payment of compensation for the periods and in the amounts prescribed by this chapter, but nothing shall operate as a final settlement except a memorandum of agreement filed with the **commissioner**~~[executive director]~~ and approved by the administrative law judge. Upon claims settled after December 12, 1996, the special fund shall have the option of settling its liability for income benefits on the same terms as those reached between the employee and employer. Notice of the special fund exercise of the option granted in this subsection shall be made by letter of the director of the Division of Workers' Compensation Funds mailed to the parties within ten (10) days of receipt by the director of a copy of the agreement.
- (2) Settlement agreements concluded after July 14, 2000, providing for commuted lump-sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars (\$100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims.
- (3) Upon lump-sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the **commissioner**~~[executive director]~~. For settlements approved after December 12, 1996, until December 31, 1997, the true discount rate shall be six percent (6%) compounded annually on each payment. Before January 1 of each year commencing in 2001, the **commissioner**~~[executive director]~~ shall fix the discount rate to be utilized in the succeeding year based at one-

half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of the preceding year.

- (4) If the parties have previously filed an agreement which has been approved by the administrative law judge, and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may invoke the provisions of KRS 342.125, which remedy shall be exclusive.
- (5) An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay.

➔Section 1809. KRS 342.267 is amended to read as follows:

If an insurance carrier, self-insured group, or self-insured employer providing workers' compensation coverage engages in claims settlement practices in violation of this chapter, or the provisions of KRS 304.12-230, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims shall fine the insurance company, self-insured group, or self-insured employer the sum of one thousand dollars (\$1,000) to five thousand dollars (\$5,000) for each violation and if they have a pattern of violations, the ~~commissioner~~~~executive director~~ may revoke the certificate of self-insurance or request the ~~commissioner~~~~executive director~~ of insurance to revoke the certificate of authority of the insurance carrier or the self-insured group.

➔Section 1810. KRS 342.270 is amended to read as follows:

- (1) If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he *or she* shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him *or her*. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.
- (2) Except with respect to claims for benefits by reason of coal workers' pneumoconiosis, the ~~commissioner~~~~executive director~~ shall issue notice of the filing to all parties and shall promptly assign the claim to an administrative law judge. The administrative law judge shall facilitate the exchange of information pertinent to the claim pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~. Within forty-five (45) days of the date of issuance of the notice required by this section, the employer or carrier shall file notice of claim denial or acceptance, setting forth specifically those material matters which are admitted, those which are denied, and the basis of any denial of the claim.
- (3) Within one hundred twenty (120) days of July 14, 2000, the ~~commissioner~~~~executive director~~ shall promulgate administrative regulations establishing procedures for the resolution of claims. The administrative regulations promulgated pursuant to the provisions of this subsection shall be effective on an emergency basis and be applied to all pending claims.

➔Section 1811. KRS 342.275 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ shall promptly issue notice of the assignment of the claim to an administrative law judge, time for presentation of proof and of the time and place of a benefit review conference. The administrative law judge may confer informally with the parties for the purpose of defining and narrowing the issues, discussing settlement, and considering other relevant matters that may aid in the disposition of the case.
- (2) The administrative law judge may grant continuances or grant or deny any benefits afforded under this chapter, including interlocutory relief, according to criteria established in administrative regulations promulgated by the ~~commissioner~~~~executive director~~. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

➔Section 1812. KRS 342.276 is amended to read as follows:

- (1) The **commissioner**~~executive director~~ shall establish a program to provide an opportunity for mediation of disputes as to the entitlement to benefits under this chapter.
- (2) The **commissioner**~~executive director~~ shall promulgate administrative regulations necessary to establish and implement the mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation.
- (3) Recommendations by mediators are without administrative or judicial authority and are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations. Administrative law judges may participate in the mediation process but shall not issue findings or orders as a result of the process unless agreed to by the parties.

➔Section 1813. KRS 342.277 is amended to read as follows:

- (1) In accordance with administrative regulations promulgated by the **commissioner**~~executive director~~, a collective bargaining agreement between an employer and a recognized or certified exclusive bargaining representative that contains the following provisions may be recognized as valid and binding:
 - (a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter that relate to the resolution of disputes, and which may include but is not limited to mediation and arbitration, the results of which may be binding upon the parties;
 - (b) The use of an agreed list of providers of medical treatment, which may be the exclusive source of all medical and related treatment provided under this chapter;
 - (c) The use of a limited list of physicians to conduct independent medical examinations;
 - (d) A light duty, modified job, or return-to-work program;
 - (e) A vocational rehabilitation or retraining program; and
 - (f) A twenty-four (24) hour health care coverage plan for medical benefits.
- (2) A system of arbitration may provide that the decision of the arbiter is subject to review by an administrative law judge.
- (3) Notwithstanding the provisions in subsection (1) of this section, no agreement shall be recognized as valid and binding that diminishes the rights of any of the parties under this chapter. Also, no agreement shall be valid and binding unless it is agreed to by the employer's insurance carrier.

➔Section 1814. KRS 342.285 is amended to read as follows:

- (1) An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the **commissioner**~~executive director~~ appeal to the Workers' Compensation Board for the review of the order or award.
- (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
 - (a) The administrative law judge acted without or in excess of his powers;
 - (b) The order, decision, or award was procured by fraud;
 - (c) The order, decision, or award is not in conformity to the provisions of this chapter;
 - (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record; or
 - (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

- (3) Within sixty (60) days following the date on which the last appellate brief was filed, the board shall enter its decision affirming, modifying, or setting aside the order, decision, or award, or in its discretion remanding the claim to the administrative law judge for further proceedings in conformity with the direction of the board. The board may, before decision and upon a sufficient showing of fact, remand the claim to the administrative law judge.

➔Section 1815. KRS 342.315 is amended to read as follows:

- (1) The ~~commissioner~~~~executive director~~ shall contract with the University of Kentucky and the University of Louisville medical schools to evaluate workers who have had injuries or become affected by occupational diseases covered by this chapter. Referral for evaluation may be made to one (1) of the medical schools whenever a medical question is at issue.
- (2) The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the ~~commissioner~~~~executive director~~. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.
- (3) The ~~commissioner~~~~executive director~~ or an administrative law judge may, upon the application of any party or upon his own motion, direct appointment by the ~~commissioner~~~~executive director~~, pursuant to subsection (1) of this section, of a medical evaluator to make any necessary medical examination of the employee. Such medical evaluator shall file with the ~~commissioner~~~~executive director~~ within fifteen (15) days after such examination a written report. The medical evaluator appointed may charge a reasonable fee not exceeding fees established by the ~~commissioner~~~~executive director~~ for those services.
- (4) Within thirty (30) days of the receipt of a statement for the evaluation, the employer or carrier shall pay the cost of the examination. Upon notice from the ~~commissioner~~~~executive director~~ that an evaluation has been scheduled, the insurance carrier shall forward within seven (7) days to the employee the expenses of travel necessary to attend the evaluation at a rate equal to that paid to state employees for travel by private automobile while conducting state business.
- (5) Upon claims in which it is finally determined that the injured worker was not the employee at the time of injury of an employer covered by this chapter, the special fund shall reimburse the carrier for any evaluation performed pursuant to this section for which the carrier has been erroneously compelled to make payment.
- (6) Not less often than annually the designee of the secretary of the Cabinet for Health and Family Services shall assess the performance of the medical schools and render findings as to whether evaluations conducted under this section are being rendered in a timely manner, whether examinations are conducted in accordance with medically recognized techniques, whether impairment ratings are in conformity with standards prescribed by the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association, and whether coal workers' pneumoconiosis examinations are conducted in accordance with the standards prescribed in this chapter.
- (7) The General Assembly finds that good public policy mandates the realization of the potential advantages, both economic and effectual, of the use of telemedicine and telehealth. The ~~commissioner~~~~executive director~~ may, to the extent that he *or she* finds it feasible and appropriate, require the use of telemedicine and telehealth practices, as authorized under KRS 194A.125, in the independent medical evaluation process required by this chapter.

➔Section 1816. KRS 342.316 is amended to read as follows:

- (1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability

under this section. Also, it does not affect whatever rights the later operator might have against the prior operator.

- (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.
- (2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise *the employee* ~~him~~ that he *or she* has contracted the disease, or a diagnosis of the disease is first communicated to him *or her*, whichever shall first occur.
- (3) The procedure for filing occupational disease claims shall be as follows:
 - (a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his *or her* claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The ~~commissioner~~ ~~executive director~~ shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.
 - 1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray interpretation by a National Institute of Occupational Safety and Health (NIOSH) certified "B" reader. The chest X-ray upon which the report is made shall be filed with the application as well as spirometric tests when pulmonary dysfunction is alleged.
 - 2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.
 - (b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:
 - 1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report. Only interpretations by National Institute of Occupational Safety and Health (NIOSH) certified "B" readers shall be admissible.
 - 2. Spirometric testing shall be conducted in accordance with the standards recommended in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.
 - 3. The ~~commissioner~~ ~~executive director~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The

~~commissioner~~ shall periodically review the applicability of the spirometric test values contained in the latest edition available of the "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.

4. The procedure for determination of occupational disease claims shall be as follows:
 - a. Immediately upon receipt of an application for resolution of claim, the **~~commissioner~~** shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.
 - b. The **~~commissioner~~** shall assign the claim to an administrative law judge and, except for coal workers' pneumoconiosis claims, shall promptly refer the employee to such physician or medical facility as the **~~commissioner~~** may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the **~~commissioner~~** for examination within two (2) years following any prior referral for examination for the same disease.
 - c. Except for coal workers' pneumoconiosis claims, within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the **~~commissioner~~** and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial. In coal workers' pneumoconiosis claims, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the issuance by the **~~commissioner~~** of the notice of the consensus reading unless the consensus is that the miner has not developed coal workers' pneumoconiosis category 1/0 or greater. In the event the consensus procedure is exhausted without consensus being established, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the **~~commissioner~~** notification to the administrative law judge that consensus has not been reached.
 - d. Within forty-five (45) days of assignment of a coal workers' pneumoconiosis claim to an administrative law judge, the employer shall cause the employee to be examined by a physician of the employer's choice and shall provide to all other parties and file with the **~~commissioner~~** the X-ray interpretation by a "B" reader. The examination of the employee shall include spirometric testing if pulmonary dysfunction is alleged by the employee in the application for resolution of a claim. The **~~commissioner~~** shall determine whether the X-ray interpretations filed by the parties are in consensus.
 - e. If the readings are not in consensus, the **~~commissioner~~** shall forward both films, masking information identifying the facility where the X-ray was obtained and the referring physician, consecutively to three (3) "B" readers selected randomly from a list maintained by the **~~commissioner~~** for interpretation. Each "B" reader shall select the highest quality film and report only the interpretation of that film. The **~~commissioner~~** shall determine if two (2) of the X-ray interpretations filed by the three (3) "B" readers selected randomly are in consensus. If consensus is reached, the **~~commissioner~~** shall forward copies of the report to all parties as well as notice of the consensus reading which shall be considered as evidence. If consensus is not reached, the administrative law judge shall decide the claim on the evidence submitted.
 - f. "Consensus" is reached between two (2) chest X-ray interpreters when their classifications meet one (1) of the following criteria: each finds either category A, B, or C progressive massive fibrosis; or findings with regard to simple pneumoconiosis are both in the same major category and within one (1) minor category (ILO category twelve (12) point scale) of each other.

- g. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
 - h. Unless a voluntary settlement is reached by the parties, or the parties agree otherwise, the administrative law judge shall issue a written determination within sixty (60) days following a hearing. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
- 5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.285.
- (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the **commissioner**~~executive director~~ within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise **the employee**~~him~~ that he **or she** has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the **commissioner**~~executive director~~ within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or ~~its~~~~his~~ insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the **commissioner**~~executive director~~ within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.
- (b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his **or her** last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.
- (5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:
 - (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
 - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
 - (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his **or her** death occurring at any time within twenty (20) years from the date of disability, his **or her** dependents, if any, shall be awarded compensation for his **or her** death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
- (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or ~~its~~~~his~~ representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.
- (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself **or herself**, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his **or her** knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his **or her** knowledge, the previous state of his **or her** health.

- (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.
- (9) Whenever any claimant misconceives his *or her* remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his *or her* application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.
- (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he *or she* was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.
- (11) (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.
- (b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.
- (12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.
- (13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall apply to all claims which have not been assigned to an administrative law judge prior to July 15, 2002. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.

➔Section 1817. KRS 342.320 is amended to read as follows:

- (1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge pursuant to the statutes and administrative regulations.
- (2) In an original claim, attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
 - (a) Twenty percent (20%) of the first twenty-five thousand dollars (\$25,000) of the award, fifteen percent (15%) of the next ten thousand dollars (\$10,000), and five percent (5%) of the remainder of the award, not to exceed a maximum fee of twelve thousand dollars (\$12,000). This fee shall be paid by the employee from the proceeds of the award or settlement.
 - (b) Attorney-client employment contracts entered into and signed after July 14, 2000, shall be subject to the conditions of paragraph (a) of this subsection.
- (3) In approving an allowance of attorney's fees, the administrative law judge shall consider the extent, complexity, and quality of services rendered, and in the case of death, the Remarriage Tables of the Dutch Royal Insurance Institute. An attorney's fee may be denied or reduced upon proof of solicitation by the attorney. However, this

provision shall not be construed to preclude advertising in conformity with standards prescribed by the Kentucky Supreme Court.

- (4) No attorney's fee in any case involving benefits under this chapter shall be paid until the fee is approved by the administrative law judge, and any contract for the payment of attorney's fees otherwise than as provided in this section shall be void. The motion for approval of an attorney's fee shall be submitted within thirty (30) days following finality of the claim. Except when the attorney's fee is to be paid by the employer or carrier, the attorney's fee shall be paid in one (1) of the following ways:
 - (a) The employee may pay the attorney's fee out of his *or her* personal funds or from the proceeds of a lump-sum settlement; or
 - (b) The administrative law judge, upon request of the employee, may order the payment of the attorney's fee in a lump sum directly to the attorney of record and deduct the attorney's fee from the weekly benefits payable to the employee in equal installments over the duration of the award or until the attorney's fee has been paid, commuting sufficient sums to pay the fee.
- (5) At the commencement of the attorney-client relationship, the attorney shall explain to the employee the methods by which this section provides for the payment of the attorney's fee, and the employee shall select the method in which ~~the~~~~his~~ attorney's fee is to be paid. His *or her* selection and statement that he *or she* fully understands the method to be used shall be submitted by his *or her* attorney, on a notarized form signed by the employee, at the time the motion for approval of the attorney's fee is submitted. The ~~commissioner~~~~executive director~~ shall develop the format and content of the form to be used pursuant to this section. The form to be used shall list on its face all options permitted in this section for the payment of an attorney's fees and contain an explanation in nontechnical language of each method.
- (6) The General Assembly declares that by the enactment of KRS 342.316(3), it is the legislative intent to encourage settlement and prompt administrative handling of those claims and thereby reduce expenses to claimants for compensation under the provisions of KRS 342.316, and the administrative law judge shall give due regard to this legislative intent in the handling of uncontested claims and the allowance of attorney's fees therein.
- (7) In a claim that has been reopened pursuant to the provisions of this chapter, an attorney's fee may be awarded by the administrative law judge subject to the limits set forth in subsection (2) of this section. In awarding the attorney's fee, the administrative law judge shall consider the factors set forth in subsection (3) of this section. If no additional amount is recovered upon reopening, no attorney's fee shall be awarded. No attorney's fee shall be allowed or approved exceeding the amounts provided in subsection (2)(a) of this section applicable to any additional amount recovered.
- (8) Attorney's fees for representing employers in proceedings under this chapter pursuant to contract with the employer shall be subject to approval of the administrative law judge in the same manner as prescribed for attorney representation of employees. Employer attorney's fees are subject to the limitation of twelve thousand dollars (\$12,000) maximum fees except that fees for representing employers shall not be dependent upon the result achieved. Employer attorney's fees may be paid on a periodic basis while a claim is adjudicated and the payments need not be approved until the claims resolution process is completed. Fees for legal services in presenting a claim for reimbursement from the Kentucky coal workers' pneumoconiosis fund shall not exceed one thousand dollars (\$1,000). All such approved fees shall be paid by the employer and in no event shall exceed the amount the employer agreed by contract to pay.

➔Section 1818. KRS 342.329 is amended to read as follows:

- (1) The Division of Ombudsman and *Workers' Compensation* Specialist Services shall be headed by a director appointed by the ~~commissioner with the approval of the Governor, in accordance with KRS 12.050 and 342.230~~~~executive director~~. The functions of the division shall include:
 - (a) Serving as an information source for employees, employers, medical, vocational, and rehabilitation personnel, carriers, and self-insurers;
 - (b) Responding to inquiries and complaints relative to the workers' compensation program;
 - (c) Advising all parties of their rights and obligations under this chapter;
 - (d) Assisting workers in obtaining medical reports, job descriptions, and other materials pertinent to a claim for benefits and preparing all documents necessary for a claim application; and

- (e) Performing other duties as required by the *commissioner*~~{executive director}~~ through administrative regulations promulgated by the *commissioner*~~{executive director}~~.
- (2) The employee, employer, carrier, self-insured administrator, and medical provider shall promptly comply with reasonable information requests from an ombudsman.
- (3) The ombudsman program shall be staffed with personnel trained in techniques performed by ombudsmen and who are familiar with medical and vocational rehabilitation principles and knowledgeable about the provisions of this chapter and applicable administrative regulations.
- (4) A toll-free telephone number shall be provided throughout the Commonwealth to insure easy access by all parties to the division.

➔Section 1819. KRS 342.335 is amended to read as follows:

- (1) No person shall knowingly file, or permit to be filed, any false or fraudulent claim on his *or her* behalf to compensation or other benefits under this chapter, or by fraud, deceit, or misrepresentation procure or cause to be made or receive any payments of compensation or other benefits under this chapter to which the recipient is not lawfully entitled, or conspire with, aid, or abet another so to do. No person shall by deceit or misrepresentation or with intent to defraud cause or procure or conspire with, aid or abet another in so causing or procuring any person entitled to compensation or other benefits under this chapter to delay or omit to claim title thereto or to accept the payment of a less sum than that to which he *or she* may be lawfully entitled ~~to~~ thereunder.
- (2) Any person, as that term is defined in KRS 342.0011, who knowingly, as defined in KRS 501.020, makes any false representation, including misrepresentations of hazards, classifications, payrolls, or other facts by an employer or its agent that are designed to cause a reduction in the employer's premium, for the purpose of or in the course of receiving or providing any service or benefit available under this chapter, shall be subject to the civil fines imposed pursuant to KRS 342.990 for a violation of this subsection. In addition, if a person who violates the provisions of this subsection is also dependent upon a professional license to provide any service or benefit under this chapter, the *commissioner*~~{executive director}~~ shall refer the matter to the appropriate licensing body and recommend revocation of that person's license to work at his *or her* profession in the Commonwealth of Kentucky.

➔Section 1820. KRS 342.340 is amended to read as follows:

- (1) Every employer under this chapter shall either insure and keep insured ~~its~~*his* liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the *commissioner*~~{executive director}~~ satisfactory proof of ~~its~~*his* financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the *commissioner*~~{executive director}~~ shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the *commissioner*~~{executive director}~~ directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation.
- (2) Every employer subject to this chapter shall file, or have filed on its behalf, with the *department*~~{office}~~, as often as may be necessary, evidence of its compliance with the provisions of this section and all others relating hereto. Any insurance carrier or self-insured group providing workers' compensation insurance coverage for a Kentucky location shall file on behalf of the employer, with the *commissioner*~~{executive director}~~, evidence of the employer's compliance with this chapter. Evidence of compliance filed with the *department*~~{office}~~ may include a named additional insured who has been provided proof of workers' compensation insurance coverage by the employer. The filing shall be made within ten (10) days after the issuance of a policy, endorsement to a policy, or similar documentation of coverage. Every employer who has complied with the foregoing provision and has subsequently canceled its insurance or its membership in an approved self-insured group, as the case may be, shall immediately notify, or have notice given on its behalf to the *department*~~{office}~~ of the cancellation, the date thereof, and the reasons therefor; and every insurance carrier or self-insured group shall in like manner notify the *commissioner*~~{executive director}~~ upon the cancellation, lapse, termination, expiration by reason of termination of policy period, or nonrenewal of any policy issued by it or termination of

any membership agreement, whichever is applicable under the provisions of this chapter, except that the carrier or self-insured group need not set forth its reasons therefor unless requested by the ~~commissioner~~~~[executive director]~~. The above filings are to be made on the forms prescribed by the ~~commissioner~~~~[executive director]~~. Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the ~~commissioner~~~~[executive director]~~ unless the employer has obtained other insurance and the ~~commissioner~~~~[executive director]~~ is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the ~~commissioner~~~~[executive director]~~ shall promptly notify interested government agencies of this failure and, with particular reference to employers engaged in coal mining, the ~~commissioner~~~~[executive director]~~ shall promptly report any failures to the Department for Natural Resources so that appropriate action may be undertaken pursuant to KRS 351.175.

- (3) The ~~Department~~~~[Office]~~ of Workers' Claims shall notify a named additional insured at the address listed on the evidence of coverage under a workers' compensation insurance policy upon the cancellation, lapse, termination, expiration, or nonrenewal of a workers' compensation insurance policy issued by the insurance carrier. The notice required in this subsection shall be provided by the ~~department~~~~[office]~~ no later than ten (10) days after the insurance notice is provided to the ~~commissioner~~~~[executive director]~~ as required in subsection (2) of this section.

➔Section 1821. KRS 342.342 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS 342.340, KRS 342.350, or any administrative regulations promulgated pursuant to those provisions, the ~~commissioner~~~~[executive director]~~ shall annually review the adequacy of the financial or other security requirements contained in administrative regulations, promulgated pursuant to the individual self-insurance provisions in this chapter. The ~~commissioner~~~~[executive director]~~ shall report the results of the review to the Labor and Industry Committee of the General Assembly and any recommendations for proposed changes to insure the financial soundness of the individual self-insurers authorized pursuant to this chapter. In addition, the ~~commissioner~~~~[executive director]~~ shall report not less often than annually a summary report on the financial soundness of the individual self-insurers.
- (2) The Labor and Industry Committee of the General Assembly shall annually review the administrative regulations promulgated pursuant to the individual provisions under this chapter.
- (3) On July 1, 1994, the Division of Security and Compliance of the ~~Department~~~~[Office]~~ of Workers' Claims in the ~~{Department of}~~ Labor **Cabinet** shall be expanded by five (5) employees. These additional employees shall be employed for the purpose of conducting financial audits, examinations, and reviews and other activities necessary to ensure and monitor the financial soundness of the individual self-insured employers authorized pursuant to KRS 342.340.

➔Section 1822. KRS 342.345 is amended to read as follows:

- (1) Whenever an employer has complied with the provisions of KRS 342.340 relating to individual self-insurance, the ~~commissioner~~~~[executive director]~~ shall issue to the employer a certificate which shall remain in force for a period fixed by the ~~commissioner~~~~[executive director]~~. But the ~~commissioner~~~~[executive director]~~ may, upon at least ten (10) days' notice and a hearing to the employer, revoke or suspend the certificate upon satisfactory evidence that revocation or suspension is appropriate. If the ~~commissioner~~~~[executive director]~~ revokes a certificate, the ~~commissioner~~~~[executive director]~~ may thereafter, upon petition of the employer and a hearing, grant a new certificate, but the employer shall not, as a matter of right, be entitled to a hearing for this purpose sooner than six (6) months following an order of the ~~commissioner~~~~[executive director]~~ revoking the employer's certificate.
- (2) A self-insurer whose certificate to self-insure has been revoked is not relieved of its obligations for compensation to its employees for work-related injuries or occupational diseases that occur during the period of self-insurance. The required security shall be maintained with the ~~commissioner~~~~[executive director]~~ or under the ~~commissioner's~~~~[executive director's]~~ control until each claim for workers' compensation benefits has been paid, been settled, or lapsed under this chapter.

➔Section 1823. KRS 342.347 is amended to read as follows:

- (1) The ~~commissioner~~~~[executive director]~~ or the ~~commissioner's~~~~[his]~~ designee shall have power to examine the financial condition and affairs related to workers' compensation of any individual self-insureds and shall have free access to books and documents relating to the self-insurance activities of the entity. The

commissioner~~{executive director}~~ shall so examine each individual self-insured not less frequently than once every four (4) years. Information obtained through the examination shall be exempt from disclosure, under KRS 61.878(1)(j).

- (2) All individual self-insured employers shall file with the **commissioner**~~{executive director}~~ a statement of financial condition audited by an independent certified public accountant on or before one hundred twenty (120) days from the end of the self-insured's fiscal year for the immediately preceding fiscal year.
- (3) The expense of examination shall be borne by the entity examined and shall include reasonable lodging and travel expenses of the **commissioner's**~~{executive director's}~~ designees, and expert assistance as necessarily incurred in the examination.
- (4) The **Department**~~{Office}~~ of Insurance shall approve the form and contents of excess insurance policies and upon request of the **commissioner**~~{executive director}~~ shall review the application for approval of any individual self-insured and render an opinion as to the sufficiency of the excess insurance policies or other security posted by the applicant.
- (5) Not less often than biennially, the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance shall review the activities, procedures, administrative regulations, and policies of the **Department**~~{Office}~~ of Workers' Claims and make such recommendations to the Governor and legislative committees as may be appropriate to strengthen the oversight of individual self-insureds so that payment of liabilities to workers under this chapter is assured.

➔Section 1824. KRS 342.350 is amended to read as follows:

- (1) In order to comply with KRS 342.340, groups of employers may form, either among themselves or with employers in other states, mutual insurance associations, or reciprocal or interinsurance exchanges subject to the insurance laws of this state and any reasonable conditions and restrictions not inconsistent therewith fixed by the **commissioner**~~{executive director}~~. Membership in these mutual insurance associations or reciprocal or interinsurance exchanges so approved, together with evidence of the payment of premiums due, shall be evidence of compliance with KRS 342.340.
- (2) The **commissioner**~~{executive director}~~ may, except as provided in subsection (3), require any mutual insurance association or reciprocal or interinsurance exchange to purchase an annuity or to effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state that shall in either case be approved by the **commissioner**~~{executive director}~~ for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.
- (3) Any mutual insurance association or reciprocal or interinsurance exchange possessing a surplus of at least one hundred thousand dollars (\$100,000) and not less in amount than the capital required of a domestic stock insurance company transacting the same kind of insurance shall not be required to purchase an annuity or effect reinsurance with a company authorized to transact insurance in this state or to make a deposit with a bank or trust company of this state for the purpose of fully securing the payment of all deferred installments upon any claim for compensation.
- (4) In addition, under the provisions of KRS 304.50-010 and administrative regulations promulgated by the **commissioner**~~{executive director}~~ of the **Department**~~{Office}~~ of Insurance, twenty (20) or more employers with common interests or membership in a bona fide trade association or two (2) or more city, county, charter county, urban-county, or consolidated local government employers or their agencies may enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insured groups.

➔Section 1825. KRS 342.352 is amended to read as follows:

- (1) The **commissioner**~~{executive director}~~ may establish one (1) or more programs for interested employers of integrated management of an employer's workers' compensation and group health insurance claims by an insurer authorized to do business in the Commonwealth and may promulgate any administrative regulations necessary to implement the provisions of this subsection. The integrated management of such claims shall in no event affect any benefits, rights, or coverage established pursuant to a workers' compensation insurance policy. Treatment for work-related conditions shall not be subject to either copayments or deductibles. The **commissioner**~~{executive director}~~ shall make a report comparing the results of each program to the expected results under traditional workers' compensation insurance and traditional workers' compensation with a managed care program. The program shall serve as a tentative model for future experiments.

- (2) No policy for twenty-four (24) hour coverage shall become effective until it is reviewed and approved by the ***commissioner***~~[executive director]~~, in consultation with the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance.
- (3) The purchase of a twenty-four (24) hour health policy shall not constitute an exemption from statutory provisions which require other nonmedical insurance coverage. However, an insurance carrier shall reduce its premium for insurance coverage written without the medical or health care component. Notwithstanding the provisions of Subtitle 13 of KRS Chapter 304, the premium reduction required in this subsection shall be subject to the approval of the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance.
- (4) If an employer obtains a twenty-four (24) hour health insurance policy, pursuant to this section, to secure payment of compensation for medical care and treatment under this chapter, the employer shall also procure an insurance policy which shall provide indemnity benefits to ensure that the total coverage afforded by both the twenty-four (24) hour insurance policy and the policy providing indemnity benefits shall provide the total compensation required by this chapter.
- (5) The participants in a project for twenty-four (24) hour health coverage shall comply with periodic reporting requirements of the commission.
- (6) Each agency of state government shall cooperate with the ***commissioner***~~[executive director]~~ if requested to provide information for the purposes of this section.

➔Section 1826. KRS 342.375 is amended to read as follows:

Every policy or contract of workers' compensation insurance under this chapter, issued or delivered in this state, shall cover the entire liability of the employer for compensation to each employee subject to this chapter, except as otherwise provided in KRS 216.2960, 342.020, 342.345, or 342.352. However, if specifically authorized by the ***commissioner***~~[executive director]~~, a separate insurance policy may be issued for a specified plant or work location if the liability of the employer under this chapter to each employee subject to this chapter is otherwise secured and provided that no employee transferred from one plant or work location to another within the employment of the same employer shall thereby lose any benefit rights accumulated under the average weekly wage concept.

➔Section 1827. KRS 342.380 is amended to read as follows:

No policy of insurance or rider to be used therewith shall be issued or delivered until a copy of its form has been filed with the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance at least thirty (30) days before such issue or delivery, unless before the expiration of thirty (30) days the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance has approved the form thereof in writing; nor if the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance notifies the company in writing that in his opinion the form of the policy or rider does not comply with the laws of this state, specifying fully the reasons for his opinion. Upon petition of the company, the decision of the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Insurance shall be subject to review by the Franklin Circuit Court and to appeal therefrom to the Court of Appeals.

➔Section 1828. KRS 342.382 is amended to read as follows:

- (1) Any insurer authorized to write a policy of workers' compensation insurance shall transmit the following information on its workers' compensation experience only to the ***Department***~~[Office]~~ of Workers' Claims and the Workers' Compensation Advisory Council each year, and that information shall be certified and reported on a net basis with respect to reinsurance for nationwide experience and direct basis with respect to Kentucky experience:
 - (a) Direct premiums written;
 - (b) Direct premiums earned;
 - (c) Dividends paid or credited to policyholders;
 - (d) Losses paid;
 - (e) Allocated loss adjustment expenses;
 - (f) The ratio of allocated loss adjustment expenses to losses paid;
 - (g) Unallocated loss adjustment expenses;
 - (h) The ratio of unallocated loss adjustment expenses to losses paid;

- (i) The total of losses paid and unallocated and allocated loss adjustment expenses;
 - (j) The ratio of losses paid and unallocated and allocated loss adjustment expenses to premiums earned;
 - (k) The number of claims outstanding as of December 31 of each year;
 - (l) The total amount of losses unpaid as of December 31 of each year;
 - (m) The total amount of allocated and unallocated loss adjustment expenses unpaid as of December 31 of each year;
 - (n) The total of losses paid and allocated loss adjustment expenses and unallocated loss adjustment expenses, plus the total of losses unpaid as of December 31 of each year and loss adjustment expenses unpaid as of December 31 of each year; and
 - (o) Net investment gain or loss.
- (2) The first report of the information required in subsection (1) of this section shall include the information for the year ending December 31, 1987. Such report shall be filed no later than August 1, 1988. Beginning with the report for the period ending December 31, 1989, all future reports shall have all information required by subsection (1) of this section broken down by year for the current and two (2) preceding years.

➔Section 1829. KRS 342.395 is amended to read as follows:

- (1) Where an employer is subject to this chapter, then every employee of that employer, as a part of his *or her* contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by the employer, shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he *or she* shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease. However, before an employee's written notice of rejection shall be considered effective, the employer shall file the employee's notice of rejection with the ~~Department~~~~Office~~ of Workers' Claims. The ~~commissioner~~~~executive director~~ of that ~~department~~~~office~~ shall not give effect to any rejection of this chapter not voluntarily made by the employee. If an employee withdraws his *or her* rejection, the employer shall notify the ~~commissioner~~~~executive director~~.
- (2) An employer shall not require an employee to execute a rejection of this chapter as either a condition to obtain employment or a condition to maintain employment. An employer shall not terminate an employee for refusal to execute a rejection of this chapter.
- (3) Until notice to the contrary as specified in subsection (1) of this section is given to the employer, the measure of liability of the employer shall be determined according to the compensation provisions of this chapter. Any employee, may, without prejudice to any existing right or claim, withdraw his election to reject this chapter by filing with the employer a written notice of withdrawal, stating the date when the withdrawal is to become effective. Following the filing of that notice, the status of the party withdrawing shall become the same as if the former election to reject this chapter had not been made, except that withdrawal shall not be effective as to any injury sustained or disease incurred less than one (1) week after the notice is filed.

➔Section 1830. KRS 342.402 is amended to read as follows:

The ~~commissioner~~~~executive director~~, upon showing a certification of noncompliance, may temporarily restrain or temporarily or permanently enjoin the further operation of any employer covered by this chapter. The action shall be brought in Franklin Circuit Court.

➔Section 1831. KRS 342.425 is amended to read as follows:

Upon the request of the ~~commissioner~~~~executive director~~, the Attorney General, or, under his *or her* direction, the Commonwealth's attorney or county attorney of any county, shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of this chapter arising within his *or her* jurisdiction, and shall defend in like manner all actions or proceedings brought against the ~~department~~~~office~~, the employees thereof, board members, or administrative law judges in their official capacity.

➔Section 1832. KRS 342.430 is amended to read as follows:

The ~~commissioner~~~~executive director~~ shall prepare and furnish, free of charge, blank forms of all notices, claims, reports, proofs, and other blank forms and literature which he *or she* considers proper and requisite to the efficient

administration of this chapter. He *or she* may authorize the publication and distribution of these blanks by employers and their insurers in manner and form provided by him *or her*, and shall promulgate administrative regulations for their distribution so that they may be readily available.

➔Section 1833. KRS 342.435 is amended to read as follows:

Annually on or before the fifteenth day of December, the **commissioner**~~[executive director]~~ shall make a report to the Governor for the preceding fiscal year, which shall include a statement of the number of awards made and of claims rejected by the board and each administrative law judge, a general statement of the causes of accident leading to the injuries for which awards were made or rejected claims based, together with any other information which the **commissioner**~~[executive director]~~ deems proper to call to the attention of the Governor, including any recommendations he may have to make, and it shall be the duty of the **commissioner**~~[executive director]~~ to publish and distribute among employers and employees any general information as to the business transacted by the **department**~~[office]~~ as may be useful and necessary. The annual report shall not exceed ten thousand (10,000) copies. All printing of the **department**~~[office]~~ shall be done by the contractor or contractors for public printing, subject to the provisions of the general laws governing public printing applicable thereto.

➔Section 1834. KRS 342.447 is amended to read as follows:

- (1) All funds collected by insurance companies from their insureds, prior to October 26, 1987, for assessments of the Kentucky Reinsurance Association or special fund taxes and assessments of the Kentucky Department of Revenue not previously paid, shall be paid in full by January 1, 1988, to the Kentucky Workers' Compensation Funding Commission.
- (2) To ensure compliance with the provisions of subsection (1) of this section, the Department of Revenue shall conduct audits of insurance companies. The costs of such audits shall be borne by the Kentucky Workers' Compensation Funding Commission. The Department of Revenue may enter an agreement with the **Department**~~[Office]~~ of Insurance for assistance in conducting such audits or it may hire additional auditors on a temporary basis. The audits shall commence within sixty (60) days from October 26, 1987, and shall be completed within six (6) months. The aggregate findings of such audits shall be presented to the commissioner of revenue, the **commissioner**~~[executive director]~~ of insurance, the Kentucky Workers' Compensation Funding Commission, and the Governor.
- (3) If the audits reveal noncompliance with subsection (1) of this section, the Department of Revenue shall notify the affected party of such fact. The affected party shall remit the amount in question not later than thirty (30) days following notification and the Department of Revenue shall institute a civil action in Franklin Circuit Court if remittance is not made within such thirty (30) day period.
- (4) The failure of an insurance company to comply with the provisions of this section shall constitute grounds for the revocation by the **commissioner**~~[executive director]~~ of insurance of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (5) The Department of Revenue shall report to the **commissioner**~~[executive director]~~ of insurance the failure of any insurance company to comply with the provisions of this section and the **commissioner**~~[executive director]~~ of insurance shall institute revocation procedures of such entity's authority to write workers' compensation coverage in the Commonwealth.
- (6) "Funds collected" as used in subsection (1) of this section shall mean all funds collected without reduction for credits, refund, or returns of any type made to insureds or group members after September 1, 1987.

➔Section 1835. KRS 342.610 is amended to read as follows:

- (1) Every employer subject to this chapter shall be liable for compensation for injury, occupational disease, or death without regard to fault as a cause of the injury, occupational disease, or death.
- (2) A contractor who subcontracts all or any part of a contract and his *or her* carrier shall be liable for the payment of compensation to the employees of the subcontractor unless the subcontractor primarily liable for the payment of such compensation has secured the payment of compensation as provided for in this chapter. Any contractor or his *or her* carrier who shall become liable for such compensation may recover the amount of such compensation paid and necessary expenses from the subcontractor primarily liable therefor. A person who contracts with another:
 - (a) To have work performed consisting of the removal, excavation, or drilling of soil, rock, or mineral, or the cutting or removal of timber from land; or

- (b) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person

shall for the purposes of this section be deemed a contractor, and such other person a subcontractor. This subsection shall not apply to the owner or lessee of land principally used for agriculture.

- (3) Liability for compensation shall not apply where injury, occupational disease, or death to the employee was proximately caused primarily by voluntary intoxication as defined in KRS 501.010, or by his *or her* willful intention to injure or kill himself, *herself*, or another.
- (4) If injury or death results to an employee through the deliberate intention of his *or her* employer to produce such injury or death, the employee or *the employee's*~~his~~ dependent as herein defined shall receive the amount provided in this chapter in a lump sum to be used, if desired, to prosecute the employer. The dependents may bring suit against the employer for any amount they desire. If injury or death results to an employee through the deliberate intention of his *or her* employer to produce such injury or death, the employee or *the employee's*~~his~~ dependents may take under this chapter, or in lieu thereof, have a cause of action at law against the employer as if this chapter had not been passed, for such damage so sustained by the employee, his dependents or personal representatives as is recoverable at law. If a suit is brought under this subsection, all right to compensation under this chapter shall thereby be waived as to all persons. If a claim is made for the payment of compensation or any other benefit provided by this chapter, all rights to sue the employer for damages on account of such injury or death shall be waived as to all persons.
- (5) Prior to issuing any building permit pursuant to KRS 198B.060(10), every local building official shall require proof of workers' compensation coverage from the builder before a permit is issued. A person who is exempt under the exception contained in KRS 342.650(2), and any contractor otherwise exempt from this chapter, shall so certify to the local building official, in writing and on a form prescribed by the *commissioner*~~executive director~~, in lieu of providing proof of workers' compensation coverage.
- (6) Every employer subject to this chapter, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall post a notice stating the name of its workers' compensation insurance carrier and policy number, setting forth the means to access medical care for injuries, the employee's obligation to give notice of accidents, and such other matters concerning the employee's rights under this chapter as may be required by the *commissioner*~~executive director~~ so as to afford every employee the opportunity to become informed about the employer's workers' compensation program. The format and contents of the notice shall be established by the *commissioner*~~executive director~~ through administrative regulation, and copies shall be provided to the employer by its insurance carrier.

➔Section 1836. KRS 342.615 is amended to read as follows:

- (1) As used in this section:
- (a) "Employee leasing company" or "lessor" means an entity that grants a written lease to a lessee pursuant to an employee leasing arrangement.
- (b) "Lessee" means an employer that obtains all or part of its workforce from another entity through an employee leasing arrangement.
- (c) "Leased employee" means a person performing services for a lessee under an employee leasing arrangement.
- (d) "Employee leasing arrangement" means an arrangement under contract or otherwise whereby the lessee leases all or some of its workers from an employee leasing company. Employee leasing arrangements include, but are not limited to, full-service employee leasing arrangements, long-term temporary arrangements, and any other arrangement which involves the allocation of employment responsibilities among two (2) or more entities. For purposes of this section, "employee leasing arrangement" does not include arrangements to provide temporary workers.
- (e) "Temporary worker" means a worker who is furnished to an entity to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions for a finite period of time.
- (f) "Temporary help service" means a service whereby an organization hires its own employees and assigns those employees to clients for finite periods of time to support or supplement the client's workforce in

special work situations, including employee absences, temporary skill shortages, and seasonal workloads.

- (2) A corporation, partnership, sole proprietorship, or other business entity which acts as an employee leasing company shall register with the **commissioner**~~[executive director]~~ in the manner as prescribed by administrative regulations.
- (3) Any lessor of employees whose workers' compensation insurance has been terminated within the past five (5) years in any jurisdiction due to a determination that an employee leasing arrangement was being utilized to avoid premiums, taxes, or assessments otherwise payable by lessees shall be ineligible to register with the **commissioner**~~[executive director]~~ or to remain registered, if previously registered.
- (4) A lessee shall fulfill its statutory responsibility to secure benefits for leased employees under this chapter by purchasing and maintaining a standard workers' compensation policy approved by the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Insurance. A lessee may fulfill that responsibility by contracting with an employee leasing company to purchase and maintain the required insurance policy. In either event, it shall be the responsibility of the lessee to maintain in its files at all times the certificate of insurance, or a copy thereof, evidencing the existence of the required insurance. The exposure and experience of the lessee shall be used in determining the premium for the policy and shall include coverage for all leased employees.
- (5) A temporary help service shall be deemed the employer of a temporary worker and shall be subject to the provisions of this chapter.

➔Section 1837. KRS 342.650 is amended to read as follows:

The following employees are exempt from the coverage of this chapter:

- (1) Any person employed as a domestic servant in a private home by an employer who has less than two (2) employees each regularly employed forty (40) or more hours a week in domestic servant employment.
- (2) Any person employed, for not exceeding twenty (20) consecutive work days, to do maintenance, repair, remodeling, or similar work in or about the private home of the employer, or if the employer has no other employees subject to this chapter, in or about the premises where that employer carries on his **or her** trade, business, or profession.
- (3) Any person performing services in return for aid or sustenance only, received from any religious or charitable organization.
- (4) Any person for whom a rule of liability for injury or death is provided by the laws of the United States, except those persons covered under Title IV, Public Law 91-173, 91st Congress, commonly referred to as the Black Lung Benefits of the Federal Coal Mine Health and Safety Act of 1969, or as amended.
- (5) Any person employed in agriculture.
- (6) Any person who would otherwise be covered but who elects not to be covered in accordance with the administrative regulations promulgated by the **commissioner**~~[executive director]~~.
- (7) Any person participating as a driver or passenger in a voluntary vanpool or carpool program while that person is on the way to or from his **or her** place of employment. For the purposes of this subsection, carpool or vanpool means any method by which two (2) or more employees are transported from their residences to their places of employment.
- (8) Members of a religious sect or division that is an adherent of established tenets or teachings by reason of which members are conscientiously opposed to acceptance of the benefits of any public or private insurance which makes payments in the event of death, disability, old age, or retirement, or makes payments toward the cost of, or provides services for, medical bills, including the benefits of any insurance system established by the Federal Social Security Act, 42 U.S.C. secs. 301 et seq., and it is the practice, and has been for ten (10) or more years, for members of the sect or division to make reasonable provision for their dependent members.

➔Section 1838. KRS 342.660 is amended to read as follows:

- (1) An employer ~~that~~~~who~~ has in ~~its~~~~this~~ employment any employee exempted under KRS 342.650 may elect to be subject to this chapter. This election on the part of the employer shall be made by the employer securing the payment of compensation to these exempted employees in accordance with KRS 342.340. Any employee, otherwise exempted under KRS 342.650, of the employer shall be deemed to have elected to come under this chapter, if at the time of the injury for which liability is claimed, his **or her** employer has in force an election to

be subject to this chapter with respect to the employment in which the employee was injured and the employee has not, either upon entering into employment or within five (5) days after the filing of an election by the employer, given to his *or her* employer and to the ~~commissioner~~~~executive director~~ notice in writing that he *or she* elects not to be subject to this chapter.

- (2) An employer within the scope of subsection (1) of this section, within five (5) days after securing the payment of compensation in accordance with KRS 342.340, shall give the ~~commissioner~~~~executive director~~ written notice of ~~its~~~~his~~ election to be subject to this chapter. The employer shall post and keep posted on the premises where any employee or employees, otherwise exempted under KRS 342.650, works, printed notices furnished by the ~~commissioner~~~~executive director~~ stating ~~its~~~~his~~ acceptance of this chapter. Failure to give the notices required by this paragraph shall not void or impair the employer's election to be subject to or relieve ~~it~~~~him~~ of any liability under this chapter.
- (3) Any employer who has complied with subsection (2) of this section may withdraw ~~its~~~~his~~ acceptance of this chapter, by filing written notice with the ~~commissioner~~~~executive director~~ of the withdrawal of ~~its~~~~his~~ acceptance. A withdrawal shall become effective 60 days after the filing of notice or on the date of the termination of the security for payment of compensation, whichever last occurs. The withdrawal shall not be effective until the employer shall theretofore post notice of the withdrawal where the affected employee or employees work or shall otherwise notify the employees of withdrawal.

➔Section 1839. KRS 342.670 is amended to read as follows:

- (1) If an employee, while working outside the territorial limits of this state, suffers an injury on account of which ~~the employee~~~~he~~, or in the event of ~~the employee's~~~~his~~ death, his *or her* dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of ~~the employee's~~~~his~~ death resulting from that injury, his *or her* dependents, shall be entitled to the benefits provided by this chapter, if at the time of the injury:
 - (a) His *or her* employment is principally localized in this state;~~;~~~~or~~ or
 - (b) He *or she* is working under a contract of hire made in this state in employment not principally localized in any state;~~;~~~~or~~ or
 - (c) He *or she* is working under a contract of hire made in this state in employment principally localized in another state whose workers' compensation law is not applicable to his *or her* employer;~~;~~~~or~~ or
 - (d) He *or she* is working under a contract of hire made in this state for employment outside the United States and Canada.
- (2) The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his *or her* dependents otherwise entitled on account of such injury or death to the benefits of this chapter shall not be a bar to a claim for benefits under this chapter, if a claim under this chapter is filed within two (2) years after that injury or death. If compensation is paid or awarded under this chapter:
 - (a) The medical and related benefits furnished or paid for by the employer under another jurisdiction's workers' compensation law on account of such injury or death shall be credited against the medical and related benefits to which the employee would have been entitled under this chapter had claim been made solely under this chapter;
 - (b) The total amount of all income benefits paid or awarded the employee under another jurisdiction's workers' compensation law shall be credited against the total amount of income benefits which would have been due the employee under this chapter, had claim been made solely under this chapter; and
 - (c) The total amount of death benefits paid or awarded under another jurisdiction's workers' compensation law shall be credited against the total amount of death benefits due under this chapter.
- (3) If any employee is entitled to the benefits of this chapter by reason of an injury sustained in this state in employment by an employer who is domiciled in another state and who has not secured the payment of compensation as required by this chapter, the employer or his carrier may file with the ~~commissioner~~~~executive director~~ a certificate, issued by the commission or agency of the other state having jurisdiction over workers' compensation claims, certifying that the employer has secured the payment of compensation under the workers' compensation law of the other state and that with respect to the injury the employee is entitled to the benefits

provided under that law, and that the benefits to which the employee or his *or her* dependents is entitled are at least as great as those to which he *or she* would be entitled if the injury occurred and was processed under Kentucky law, under Kentucky coverage. In this event:

- (a) The filing of the certificate shall constitute an appointment by the employer or his carrier of the ~~commissioner~~~~executive director~~ as his *or her* agent for acceptance of the service of process in any proceeding brought by the employee or his *or her* dependents to enforce his, *her*, or their rights under this chapter on account of the injury;
 - (b) The ~~commissioner~~~~executive director~~ shall send to the employer or carrier, by certified mail to the address shown on the certificate, a true copy of any notice of claim or other process served on the ~~commissioner~~~~executive director~~ by the employee or his *or her* dependents in any proceeding brought to enforce his, *her*, or their rights under this chapter;
 - (c)
 1. If the employer is a qualified self-insurer under the workers' compensation law of the other state, the employer shall, upon submission of evidence satisfactory to the ~~commissioner~~~~executive director~~, of ~~its~~~~this~~ ability to meet ~~its~~~~this~~ liability to the employee under this chapter, be deemed to be a qualified self-insurer under this chapter;
 2. If the employer's liability under the workers' compensation law of the other state is insured, the employer's carrier, as to the employee or his *or her* dependents only, shall be deemed to be an insurer authorized to write insurance under and be subject to this chapter; however, unless its contract with the employer requires it to pay an amount equivalent to the compensation benefits provided by this chapter, its liability for income benefits or medical and related benefits shall not exceed the amounts of the benefits for which the insurer would have been liable under the workers' compensation law of the other state;
 - (d) If the total amount for which the employer's insurance is liable under (c) above is less than the total of the compensation benefits to which the employee is entitled under this chapter, the ~~commissioner~~~~executive director~~ may, if he *or she* deems it necessary, require the employer to file security, satisfactory to the ~~commissioner~~~~executive director~~, to secure the payment of benefits due the employee or his *or her* dependents under this chapter; and
 - (e) Upon compliance with the preceding requirements of this subsection (3), the employer, as to the employee only, shall be deemed to have secured the payment of compensation under this chapter.
- (4) Any professional athlete, coach, or trainer who has been hired outside this Commonwealth by an employer domiciled in a foreign state, including professional baseball, basketball, football, and ice-hockey clubs, is exempted from the provisions of this chapter while that employee is temporarily within this Commonwealth doing work for the employer, if the foreign employer has secured workers' compensation insurance coverage under the workers' compensation law of the foreign state, so as to cover the employee's employment while in this Commonwealth. The benefits under the workers' compensation law of the foreign state shall be the exclusive remedy against that employer and any affiliated club for any injury, whether resulting in death or not, received by any employee while working for that employer in this Commonwealth.
- (5) As used in this section:
- (a) "United States" includes only the states of the United States and the District of Columbia;
 - (b) "State" includes any state of the United States, the District of Columbia, or any province of Canada;
 - (c) "Carrier" includes any insurance company licensed to write workers' compensation insurance in any state of the United States or any state or provincial fund which insures employers against their liabilities under a workers' compensation law;
 - (d) A person's employment is principally localized in this or another state when:
 1. His *or her* employer has a place of business in this or the other state and he *or she* regularly works at or from that place of business, or
 2. If subparagraph 1. foregoing is not applicable, he *or she* is domiciled and spends a substantial part of his *or her* working time in the service of his *or her* employer in this or the other state;
 - (e) An employee whose duties require him *or her* to travel regularly in the service of his *or her* employer in this and one (1) or more other states may, by written agreement with his *or her* employer, provide that

his *or her* employment is principally localized in this or another state, and, unless the other state refuses jurisdiction, the agreement shall be given effect under this chapter;

- (f) "Workers' compensation law" includes "occupational disease law."

➔ Section 1840. KRS 342.710 is amended to read as follows:

- (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.
- (2) The ~~commissioner~~~~executive director~~ shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities, both private and public.
- (3) An employee who has suffered an injury covered by this chapter shall be entitled to prompt medical rehabilitation services for whatever period of time is necessary to accomplish physical rehabilitation goals which are feasible, practical, and justifiable. When as a result of the injury he *or she* is unable to perform work for which he *or she* has previous training or experience, he *or she* shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him *or her* to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his *or her* own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him *or her* fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be provided at the expense of the employer or ~~its~~~~his~~ insurance carrier. Vocational rehabilitation training, treatment, or service shall not extend for a period of more than fifty-two (52) weeks, except in unusual cases when by special order of the administrative law judge, after hearing and upon a finding, determined by sound medical evidence which indicates such further rehabilitation is feasible, practical, and justifiable, the period may be extended for additional periods.
- (4) Where rehabilitation requires residence at or near the facility or institution, away from the employee's customary residence, reasonable cost of his *or her* board, lodging, or travel shall be paid for by the employer or ~~its~~~~his~~ insurance carrier.
- (5) Refusal to accept rehabilitation pursuant to an order of an administrative law judge shall result in a fifty percent (50%) loss of compensation for each week of the period of refusal.
- (6) The ~~commissioner~~~~executive director~~ shall cooperate on a reciprocal basis with the Office of Vocational Rehabilitation and the Office of Employment and Training of the Education and Workforce Development Cabinet. In the event medical treatment, medical rehabilitation services, or vocational rehabilitation services are purchased for an injured employee by the Office of Vocational Rehabilitation or Office of Employment and Training following the refusal by the employer or ~~its~~~~his~~ insurance carrier to provide such services, the administrative law judge, after affording the parties an opportunity to be heard, may order reimbursement of the cost of such treatment or services by the employer or ~~its~~~~his~~ insurance carrier as apportioned in the award. This section shall not be interpreted to require mandatory evaluation of employees based on length of disability. Any administrative regulations promulgated pursuant to this section that require mandatory referral to a qualified rehabilitation counselor shall expire on April 4, 1994.
- (7) An employee who is enrolled and participating in a program of rehabilitation training pursuant to this section may elect to receive an acceleration of benefits as awarded under KRS 342.730. Such acceleration shall be available to the employee during the period of retraining, but in no event shall be paid in a weekly amount greater than sixty-six and two-thirds percent (66-2/3%) of the average weekly wage upon which the award is based, not to exceed one hundred percent (100%) of the state average weekly wage. Upon successful completion of the rehabilitation program, the total of all accelerated benefits paid shall be deducted on a dollar-for-dollar basis, without discount, from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, if any, shall then be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. If a program of rehabilitation training is terminated by the employee prior to completion, all sums paid on an accelerated basis

shall be discounted at the rate set forth in KRS 342.265 and then deducted on a dollar-for-dollar basis from weekly benefits otherwise due the employee subject to the maximum amount of the award. Such remaining benefits, after the discount, shall be divided by the number of weeks remaining payable under the award, and that amount shall be the weekly benefit due the employee. In no event shall this subsection be construed as requiring payment of benefits in excess of the total of those benefits which would otherwise be payable under the award.

➔Section 1841. KRS 342.730 is amended to read as follows:

(1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:

- (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.
- (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by "Guides to the Evaluation of Permanent Impairment," American Medical Association, latest edition available, times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
- 2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.
- 3. Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths

(0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).

4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.
 - (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.
 - (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his *or her* lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his *or her* death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:
 - (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
 - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
 - (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
 - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed

in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the ~~commissioner~~~~executive director~~ provides by administrative regulation.

- (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.
- (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.
- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

➔Section 1842. KRS 342.732 is amended to read as follows:

- (1) Notwithstanding any other provision of this chapter, income benefits and retraining incentive benefits for occupational pneumoconiosis resulting from exposure to coal dust in the severance or processing of coal shall be paid as follows:
 - (a) 1. If an employee has a radiographic classification of category 1/0, 1/1 or 1/2, coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, the employee shall be awarded a one (1) time only retraining incentive benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than seventy-five percent (75%) of the state average weekly wage, payable semimonthly for a period not to exceed one hundred four (104) weeks, except as provided in subparagraph 3. of this paragraph.
 - 2. Except as provided in subparagraph 3. of this paragraph, these benefits shall be paid only while the employee is enrolled and actively and successfully participating as a full-time student taking the equivalent of twelve (12) or more credit hours per week in a bona fide training or education program that if successfully completed will qualify the person completing the course for a trade, occupation, or profession and which program can be completed within the period benefits are payable under this subsection. The program must be approved under administrative regulations to be promulgated by the ~~commissioner~~~~executive director~~. These benefits shall also be paid to an employee who is a part-time student taking not less than the equivalent of six (6) nor more than eleven (11) credit hours per week, except that benefits shall be an amount equal to thirty-three and one-third percent (33-1/3%) of the employee's average weekly wage as determined by KRS 342.740, but not more than thirty-seven and one-half percent (37-1/2%) of the state average weekly wage, payable biweekly for a period not to exceed two hundred eight (208) weeks.
 - 3. These benefits shall also be paid biweekly while an employee is actively and successfully pursuing a General Equivalency Diploma (GED) in accordance with administrative regulations promulgated by the ~~commissioner~~~~executive director~~. These benefits shall be paid in the amount of sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage not to exceed seventy-five percent (75%) of the state average weekly wage for a maximum period not to exceed seventeen (17) weeks. These income benefits shall be in addition to the maximum amount of retraining incentive benefits payable under this paragraph.

4. The employer shall also pay, directly to the institution conducting the training or education program, instruction, tuition, and material costs not to exceed five thousand dollars (\$5,000).
 5. The period of weeks during which this benefit is payable shall begin no later than the thirtieth day after the administrative law judge's order awarding the benefit becomes final, except that an employee may elect to defer the beginning of such benefits up to the three hundred sixty-fifth day following the thirtieth day the order becomes final. Unless the employee has requested deferral of income benefits, those income benefits payable under subparagraphs 1. and 2. of this paragraph shall begin no later than thirty (30) days following conclusion of income benefits paid under subparagraph 3. if such benefits were paid.
 6. If an employee who is awarded retraining incentive benefits under this paragraph successfully completes a bona fide training or education program approved by the ~~commissioner~~~~executive director~~, upon completion of the training or education program, the employer shall pay to that employee the sum of five thousand dollars (\$5,000) for successful completion of a program that requires a course of study of not less than twelve (12) months nor more than eighteen (18) months, or the sum of ten thousand dollars (\$10,000) for successful completion of a program that requires a course of study of more than eighteen (18) months. This amount shall be in addition to retraining incentive benefits awarded under this paragraph, and tuition expenses paid by the employer.
 7. An employee who is age fifty-seven (57) years or older on the date of last exposure and who is awarded retraining incentive benefits under subparagraphs 1. to 4. of this paragraph, may elect to receive in lieu of retraining incentive benefits, an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%) for a period not to exceed four hundred twenty-five (425) weeks, or until the employee reaches sixty-five (65) years of age, whichever occurs first, KRS 342.730(4) notwithstanding.
 8. A claim for retraining incentive benefits provided under this section may be filed, but benefits shall not be payable, while an employee is employed in the severance or processing of coal as defined in KRS 342.0011(23).
 9. If an employer appeals an award of retraining incentive benefits, upon an employee's motion, an administrative law judge may grant retraining incentive benefits pending appeal as interlocutory relief.
 10. If an employee elects to defer payment of retraining incentive benefits for a period of retraining longer than three hundred sixty-five (365) days, benefits otherwise payable shall be reduced week-for-week for each week retraining benefits are further deferred.
- (b)
1. If an employee has a radiographic classification of category 1/0, 1/1, or 1/2 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more of the predicted normal values, there shall be an irrebuttable presumption that the employee has a disability rating of twenty-five percent (25%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage, but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of twenty-five percent (25%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.
 2. An employee who is awarded benefits under this paragraph may, at the time of the award or before benefit payments begin, elect to receive retraining incentive benefits provided under paragraph (a)1. to 6. of this subsection, in lieu of income benefits awarded under this paragraph, provided that such option is available one (1) time only and is not revokable, and provided that in no event shall income benefits payable under this paragraph be stacked or added to retraining incentive income benefits paid or payable under subparagraphs 1. to 6. of paragraph (a)1. to 6. of this subsection to extend the period of disability.

- (c) If it is determined that an employee has a radiographic classification of category 1/0, 1/1, or 1/2, and respiratory impairment resulting from exposure to coal dust as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, or category 3/2 or 3/3 coal workers' pneumoconiosis and spirometric test values of eighty percent (80%) or more, there shall be an irrebuttable presumption that the employee has a disability rating of fifty percent (50%) resulting from exposure to coal dust, and the employee shall be awarded an income benefit which shall be an amount equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of fifty percent (50%). The award shall be payable for a period not to exceed four hundred twenty-five (425) weeks.
 - (d) If it is determined that an employee has a radiographic classification of category 2/1, 2/2, or 2/3 coal workers' pneumoconiosis, based on the latest ILO International Classification of Radiographics, and respiratory impairment as evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values or category 3/2 or 3/3 pneumoconiosis and respiratory impairment evidenced by spirometric test values of fifty-five percent (55%) or more but less than eighty percent (80%) of the predicted normal values, there shall be an irrebuttable presumption that the employee has a seventy-five percent (75%) disability rating resulting from exposure to coal dust and the employee shall be awarded income benefits which shall be equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not to exceed seventy-five percent (75%) of the state average weekly wage as determined by KRS 342.740 multiplied by the disability rating of seventy-five percent (75%). The award shall be payable for a period not to exceed five hundred twenty (520) weeks. Income benefits awarded under this paragraph shall be payable to the employee during the disability.
 - (e) If it is determined that an employee has radiographic classification of 3/2 or 3/3 occupational pneumoconiosis and respiratory impairment evidenced by spirometric test values of less than fifty-five percent (55%) of the predicted normal values, or complicated pneumoconiosis (large opacities category A, B, or C progressive massive fibrosis), there shall be an irrebuttable presumption that the employee is totally disabled resulting from exposure to coal dust, and the employee shall be awarded income benefits equal to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the average weekly wage of the state as determined by KRS 342.740. Income benefits awarded under this paragraph shall be payable to the employee during such disability.
- (2) The presence of respiratory impairment resulting from exposure to coal dust shall be established by using the largest forced vital capacity (FVC) value or the largest forced expiratory volume in one second (FEV1) value determined from the totality of all such spirometric testing performed in compliance with accepted medical standards.
 - (3) When valid spirometric tests are not provided and a physician certifies to the administrative law judge that spirometric testing is not medically indicated because of the permanent physical condition of the employee, the administrative law judge shall make his *or her* decision on the basis of evidence admitted which establishes the existence of a diagnosis of occupational pneumoconiosis and respiratory impairment due to the occupational pneumoconiosis. The evidence submitted by the employee shall include one (1) or more arterial blood gas studies performed in accordance with accepted medical standards. Income benefits shall not be awarded in the absence of valid spirometric tests if the claimant's PO2 arterial blood gas value is equal to or higher than one (1) standard deviation from the normal value obtained by the formula $(103.5 - 0.42X)$, where X equals the claimant's age at the time of the arterial blood gas study.
 - (4) Upon request, the ~~commissioner~~~~executive director~~ shall refer an employee who has been awarded retraining incentive benefits under subsection (1)(a) of this section to the Office of Vocational Rehabilitation for evaluation and assessment of the training, education, or other services necessary to prepare the employee for a trade, occupation, or profession that will return the employee to remunerative employment, or services necessary and appropriate to prepare and enable the employee to successfully complete a bona fide training or education program approved by the ~~commissioner~~~~executive director~~. The ~~commissioner~~~~executive director~~ shall contract with the Office of Vocational Rehabilitation to provide vocational rehabilitation or education services commensurate with the skill levels and abilities of the employee. Services provided under this subsection shall be funded by the coal workers' pneumoconiosis fund, KRS 342. 1242 notwithstanding.

- (5) The ***commissioner***~~{executive director}~~ shall promulgate administrative regulations sufficient to effectuate the provisions relating to retraining incentive benefits provided under subsection (1)(a) of this section. The administrative regulations shall:
- (a) Define a "bona fide training or education program" to mean a postsecondary education or training program, including but not limited to the postsecondary programs registered with the Higher Education Assistance Authority, and successful completion of which will qualify the person completing the course for a trade, occupation, or profession, and which program can be completed within the period benefits are payable under subsection (1)(a) of this section;
 - (b) Establish requirements for approval and certification of a bona fide training or education program;
 - (c) Provide that funds paid to the training or education program by the employer as required under subsection (1)(a)4. of this section shall be applied only to instruction, tuition, material costs, and any fees necessary for the completion of the program;
 - (d) Establish requirements for successful participation in and completion of an approved and certified bona fide training or education program, and eligibility standards that must be satisfied to receive sums to be paid by the employer pursuant to subsection (1)(a)6. of this section; and
 - (e) Establish attendance, performance and progress standards, and reporting requirements in consultation with the Kentucky Adult Education Program within the Council on Postsecondary Education as conditions that must be satisfied to receive retraining incentive income benefits pursuant to subsection (1)(a)3. of this section.
- (6) In no event shall income benefits awarded under this section be stacked or added to income benefits awarded under KRS 342.730 to extend the period of disability and in no event shall income or retraining incentive benefits be paid to the employee while the employee is working in the mining industry in the severance or processing of coal as defined in KRS 342.0011(23)(a).

➔Section 1843. KRS 342.734 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A:
- (a) Establishing the form and content of a statement for services;
 - (b) Specifying the manner in which the employee may designate and change the designation of physicians;
 - (c) Requiring selection of gatekeeper physicians;
 - (d) Requiring reports from providers on the condition of the employee; and
 - (e) Establishing procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of medical services shall be resolved.
- (2) Pending the effective date of administrative regulations promulgated by the ***commissioner***~~{executive director}~~, all administrative regulations heretofore promulgated by the Workers' Compensation Board pertaining to these matters shall remain in effect, it being determined that those administrative regulations are within the statutory grant of authority, meet legislative intent, and are not in conflict with the provisions of this chapter.

➔Section 1844. KRS 342.735 is amended to read as follows:

- (1) The ***commissioner***~~{executive director}~~ shall promulgate administrative regulations to expedite the payment of temporary total disability and medical expense benefits.
- (2) The ***commissioner***~~{executive director}~~ may promulgate administrative regulations incorporating managed care intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (3) The ***commissioner***~~{executive director}~~ shall promulgate administrative regulations pursuant to KRS Chapter 13A establishing an expedited method for resolving medical issues prior to the filing of a claim with the ***Department***~~{Office}~~ of Workers' Claims. The administrative regulations shall permit an employee or other interested party, prior to the filing of a claim, to request a determination by an administrative law judge on medical issues relating to the reasonableness or appropriateness of the proposed medical care or relating to the

obligation of the employer or the employer's insurance carrier to make payment of contested medical bills. However, the employee has the burden of proof to show the medical expenses are related to the injury, reasonable and necessary prior to an application of benefits being filed and before an award or order of benefits. Thereafter, the burden is upon the employer. The respondent to the moving party shall be given ten (10) days to answer a request for an expedited determination of medical issues, and the administrative law judge shall issue a ruling within seven (7) days thereafter. The interested parties shall be provided a form to provide to the medical care provider and the completed form filed with the ~~department office~~ and served upon the respondent shall initiate the time for response and determination.

➔Section 1845. KRS 342.740 is amended to read as follows:

- (1) For the purposes of this chapter, the average weekly wage of the state shall be determined by the ~~commissioner~~~~executive director~~ as follows: On or before September 1 of each year, the total wages reported by subject employers under the Kentucky Unemployment Insurance Law for the preceding calendar year shall be divided by the average monthly number of insured workers (determined by dividing the total number of insured workers reported for the preceding year by twelve (12)). The average annual wage thus obtained shall be divided by 52 and the average weekly wage thus determined rounded to the nearest cent. This average weekly wage shall be certified to the ~~commissioner~~~~executive director~~ by the Education and Workforce Development Cabinet in a manner prescribed by the ~~commissioner~~~~executive director~~ by administrative regulation. The average weekly wage as so determined shall be applicable for the full period during which income or death benefits are payable, when the date of occurrence of injury or of disablement in the case of disease, or of death, falls within the calendar year commencing January 1 following the September 1 determination.
- (2) Whenever a change in the average weekly wage of the state is of an amount that increases or decreases the minimum weekly income benefits for total disability or death by \$1 or more, or the maximum weekly income benefits for total disability or for death by \$2 or more, computed in each case and rounded to the nearest dollar, an adjustment in those minimums or maximums which are affected in the requisite amount by the change in the average weekly wage of the state shall be made which will reflect the increase or decrease, but no change in these limitations shall otherwise be made.

➔Section 1846. KRS 342.750 is amended to read as follows:

If the injury causes death, income benefits shall be payable in the amount and to or for the benefit of the persons following, subject to the maximum limits specified in subsections (3) and (4) of this section:

- (1) (a) If there is a widow or widower and no children of the deceased, to such widow or widower 50 percent of the average weekly wage of the deceased, during widowhood or widowerhood.
- (b) To the widow or widower, if there is a child or children living with the widow or widower, 45 percent of the average weekly wage of the deceased, or 40 percent, if such child is not or such children are not living with a widow or widower, and in addition thereto, 15 percent for each child. Where there are more than two (2) such children, the indemnity benefits payable on account of such children shall be divided among such children, share and share alike.
- (c) Two (2) years' indemnity benefits in one (1) lump sum shall be payable to a widow or widower upon remarriage.
- (d) To the children, if there is no widow or widower, 50 percent of such wage for one (1) child, and 15 percent for each additional child, divided among such children, share and share alike.
- (e) The income benefits payable on account of any child under this section shall cease when he dies, marries, or reaches the age of eighteen (18), or when a child over such age ceases to be physically or mentally incapable of self-support, or if actually dependent ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational institution, ceases to be so enrolled or reaches the age of 22. A child who originally qualified as a dependent by virtue of being less than 18 years of age may, upon reaching age 18, continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actual dependency, or enrollment in an educational institution.
- (f) To each parent, if actually dependent, 25 percent.
- (g) To the brothers, sisters, grandparents, and grandchildren, if actually dependent, 25 percent to each such dependent. If there should be more than one (1) of such dependents, the total income benefits payable on account of such dependents shall be divided share and share alike.

- (h) The income benefits of each beneficiary under paragraphs (f) and (g) above shall be paid until he, if a parent or grandparent, dies, marries, or ceases to be actually dependent, or, if a brother, sister, or grandchild, dies, marries, or reaches the age of eighteen (18) or if over that age ceases to be physically or mentally incapable of self-support, or ceases to be actually dependent.
- (i) A person ceases to be actually dependent when his *or her* income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time as of which the original determination of actual dependency was made, it would not have supported a finding of dependency. In any event, if the present annual income of an actual dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after each time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this subsection, but full payments shall not be suspended during the pendency of any proceeding to determine dependency.
- (2) Upon the cessation of income benefits under this section to or on account of any person, the income benefits of the remaining persons entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.
- (3) For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state as determined in KRS 342.740. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefit that was or would have been payable for total disability to the deceased, including benefits to his dependents.
- (4) The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed 75 percent of the average weekly wage of the deceased as calculated under KRS 342.140, subject to the maximum limits in subsection (3) above. The maximum aggregate limitation shall not operate in case of payment of two (2) years' income benefits to the widow or widower upon remarriage as provided under paragraph (c) of subsection (1) of this section, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subsection (2) of this section, but the weekly income benefits as to such remaining beneficiaries shall not exceed the weekly income benefit that was or would have been payable for total disability to the deceased. The classes of beneficiaries specified in paragraphs (a), (b), and (d) of subsection (1) of this section shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this subsection should prevent payment to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in paragraph (f) of subsection (1) in another class.
- (5) All relations of dependency referred to in this section shall mean dependency existing at the time of the accident to the employee or at the time his *or her* disability from an occupational disease began.
- (6) In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, a lump-sum payment of fifty thousand dollars (\$50,000) shall be made to the deceased's estate, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the ~~commissioner~~*executive director* shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump-sum payment due under this subsection for injuries occurring in the succeeding year.
- (7) All benefits awarded pursuant to this section, other than those provided in subsection (6) of this section, shall be subject to the limitations contained in KRS 342.730(4).

➔Section 1847. KRS 342.760 is amended to read as follows:

- (1) There is hereby authorized in the ~~Department of~~ Labor *Cabinet* an uninsured employers' fund for the purpose of making payments in accordance with the provisions of subsection (4) of this section. The ~~secretary~~*commissioner* of the ~~Department of~~ Labor *Cabinet* shall be the custodian of the fund, and all

moneys and securities in the fund shall be held in trust by the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** and shall not be considered a part of the general funds of the state.

- (2) The ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** is authorized to disburse moneys from the fund only upon written order of the administrative law judge or the board.
- (3) All amounts collected as fines and penalties under this chapter shall be paid into the uninsured employers' fund.
- (4) The uninsured employers' fund shall be responsible for the payment of compensation when there has been default in the payment of compensation due to the failure of an employer to secure payment of compensation as provided by this chapter. Such employer shall be liable for payment into the fund of all the amounts authorized to be paid therefrom under the authority of this subsection including reimbursement of the special fund of all liability apportioned to it and for the purposes of enforcing this liability the ~~Department of~~ Labor **Cabinet**, for the benefit of the fund, shall be subrogated to all the rights of the person receiving such compensation from the fund. This provision shall apply to all pending claims upon which a final order has not been entered.
- (5) In furtherance of this purpose, the Attorney General shall appoint a member or members of his *or her* staff or special counsel to represent the fund in all proceedings brought to enforce claims against or on behalf of the fund. Necessary expenses for this purpose including salaries of said staff or special counsel shall be borne by the fund. The ~~Department of~~ Labor **Cabinet** shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund.
- (6) On December 29, 1987, the liabilities of the uninsured employers' fund and its assets remaining in the State Treasury shall be transferred to the uninsured employers' fund created within the ~~Department of~~ Labor **Cabinet** pursuant to this section.

➔Section 1848. KRS 342.765 is amended to read as follows:

- (1) Notwithstanding the provisions of KRS Chapter 342 to the contrary, the office of the Attorney General shall be responsible for the administration of the uninsured employers' fund and shall be charged with the conservation of the assets of the fund. Funds to reimburse the Attorney General's office for expenses incurred in litigation and administration in defense of the uninsured employers' fund shall be transferred upon request of the Attorney General's office and approval by the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet**.
- (2) The office of the Attorney General shall report monthly to the Interim Joint Committee on Appropriations and Revenue, the Interim Joint Committee on Labor and Industry, and the ~~commissioner~~~~executive director~~ the amount of the agency fund expenditures in each month for the uninsured employers' fund and the nature of these expenditures. In addition, the Office of the Attorney General shall report quarterly to the ~~commissioner~~~~executive director~~ on the amount of funds recouped from uninsured employers.

➔Section 1849. KRS 342.770 is amended to read as follows:

- (1) Upon the filing of a claim the ~~commissioner~~~~executive director~~ shall ascertain whether the employer, or any other person against whom a claim is filed and who is not exempt by KRS 342.630 or 342.650, has secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer pursuant to KRS 342.340. Upon determination that any employer under this chapter has failed to comply with the provisions of KRS 342.340, the ~~commissioner~~~~executive director~~ shall record, as provided by subsection (2) of this section, a certificate prepared and furnished him *or her* by the general counsel showing the date on which such claim was filed, the date of the injury alleged, the name and last known address of the employer against whom it was filed, and the fact that the employer has not secured the payment of compensation as required. Upon recordation, such certificate constitutes a valid lien against the assets of the employer in favor of the uninsured employers' fund for the whole amount which may be due as compensation. Such lien shall be superior to the lien of any mortgage or other encumbrance thereafter created and shall continue for ten (10) years from the time of such recording, unless sooner released or otherwise discharged. A copy of such certificate shall be served upon the employer by the ~~commissioner~~~~executive director~~.
- (2) The certificate constituting a lien in favor of the uninsured employers' fund shall be filed in the following offices:
 - (a) The office of the county clerk of the county in which the defendant employer resides.
 - (b) The office of the county clerk of the county in which the defendant employer has its principal place of business.
 - (c) The office of the county clerk in the counties where such employer's property is located.

➔Section 1850. KRS 342.790 is amended to read as follows:

When an award is made against an employer who:

- (1) Has not secured payment of compensation by either securing insurance coverage or qualifying as a self-insurer; and
- (2) Has not made a deposit of security, indemnity, or bond acceptable to the **commissioner**~~[executive director]~~ to secure the payment of compensation liability; and
- (3) Has failed to make payment of compensation according to the terms of that award, the award shall constitute a liquidated claim for damages against that employer in an amount commuted to a lump sum which will equal the present value of the total sum of the probable future payments discounted at four percent (4%) true discount compounded annually on each payment, which amount is to be ascertained and fixed by the **commissioner**~~[executive director]~~, and the **commissioner**~~[executive director]~~ shall certify the same to the Attorney General who shall forthwith institute a civil action against that employer in the name of the uninsured employers' fund for the collection of that award. In that action, it shall be sufficient for plaintiff to set forth a copy of the award of the administrative law judge relative to the claim as certified by the **commissioner**~~[executive director]~~ and to state that there is due to plaintiff on account of the opinion, order, or award of the administrative law judge a specified sum which plaintiff claims with interest. A certified copy of the award in the claim shall be attached to the complaint and shall constitute prima facie evidence of the truth of the facts therein contained.

➔Section 1851. KRS 342.792 is amended to read as follows:

- (1) The claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis between December 12, 1996, and July 15, 2002, shall nonetheless be governed by the provisions of KRS 342.732 and notwithstanding the provisions of KRS 342.125 all claims for benefits which were filed for last injurious occupational exposure to coal dust occurring between December 12, 1996, and July 15, 2002, shall be considered pursuant to the provisions of KRS 342.732 and administrative regulations promulgated by the **commissioner**~~[executive director]~~, and closed claims, except claims dismissed for reasons other than failure to meet medical eligibility standards, may be reopened by the claimant. Income or retraining incentive benefits shall be awarded thereon as if the entitlement standards established by the amendments to KRS 342.732 were effective at the time of last exposure. Any benefits previously granted by an award or settlement shall be credited against any subsequent award or settlement and no interest shall be payable on additional benefits. A previous grant of retraining incentive benefits shall be credited only to the extent that the benefits were actually paid. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (2) The original claim of any miner last exposed to the occupational hazards of coal workers' pneumoconiosis prior to December 12, 1996, which was subject to a university evaluation pursuant to KRS 342.315 and was dismissed upon a finding that the miner did not prove the presence of coal workers' pneumoconiosis radiographically may be reopened by the claimant notwithstanding the provisions of KRS 342.125, pursuant to administrative regulations adopted by the **commissioner**~~[executive director]~~. Income benefits may be awarded thereon pursuant to entitlement standards effective as of the date of last exposure, except the income or retraining benefits shall be paid without interest from the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (3) Notwithstanding the provisions of KRS 342.316(4)(a), the coal workers' pneumoconiosis claim of any miner last exposed between December 12, 1996, and July 15, 2002, may be filed with the **commissioner**~~[executive director]~~ on or before December 12, 2003, or within the time frame prescribed by KRS 342.316(4)(a), whichever is longer. All income or retraining incentive benefits greater than those which would have been awarded were not these new provisions applicable shall be paid by the Kentucky coal workers' pneumoconiosis fund without interest, the provisions of KRS 342.1242 notwithstanding.
- (4) Administrative regulations promulgated by the **commissioner**~~[executive director]~~ pursuant to subsections (1) and (2) of this section shall provide that chest X-rays previously taken at university medical schools pursuant to KRS 342.315 shall be obtained by the **commissioner**~~[executive director]~~ and forwarded to three (3) randomly selected "B" readers for determination of consensus pursuant to KRS 342.316(3)(b)4.e.~~[f]~~ The claim shall be

assigned to an administrative law judge for determination of whether the claim should be reopened and the award of additional benefits, if any.

➔Section 1852. KRS 342.794 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall maintain a list of duly qualified "B" reader physicians who are licensed in the Commonwealth. The list shall include "B" reader physicians at the university medical schools and other "B" reader physicians certified by the National Institute of Occupational Safety and Health (NIOSH) who have agreed to interpret chest X-rays pursuant to KRS 342.316 for a fee to be fixed by the ***commissioner***~~[executive director]~~ and paid by the Kentucky coal workers' pneumoconiosis fund, the provisions of KRS 342.1242 notwithstanding.
- (2) Physicians from the "B" reader list shall be utilized as necessary to obtain consensus classifications of chest films in coal workers' pneumoconiosis claims. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.
- (3) "B" reader" means a physician who has demonstrated proficiency in evaluating chest roentgenograms for roentgenographic quality and in the use of the ILO classification for interpreting chest roentgenograms for pneumoconiosis and other diseases by taking and passing a specially designed proficiency examination given on behalf of the National Institute of Occupational Safety and Health (NIOSH) or by the Appalachian Laboratory for Occupational Safety and Health (ALOSH), or successors.
- (4) The university medical schools in consultation with the ***commissioner***~~[executive director]~~ shall jointly develop a procedure to annually report the performance of physicians on the "B" reader list who have participated in the consensus procedure established in KRS 342.316. The physicians shall be evaluated with respect to the timeliness and completeness of their reports, as well as the frequency at which the physician's classification of X-rays differs from the consensus reading. The ***commissioner***~~[executive director]~~ shall remove a physician from the "B" reader list if the physician consistently renders incomplete or untimely reports, or if the physician's interpretations of X-rays are not in conformity with the consensus reading fifty percent (50%) of the time. The report required under this subsection shall be provided to the Interim Joint Committee on Labor and Industry beginning in July 1, 2003 and by July 1 of each year thereafter.

➔Section 1853. KRS 342.796 is amended to read as follows:

- (1) Notwithstanding any provisions of the KRS to the contrary, every employer engaged in the severance or processing of coal, as defined in KRS 342.0011, at its principal office and such other locations where employees customarily report for payroll and personnel matters, shall conspicuously post a notice advising employees of the education and training opportunities available under this chapter. The notice shall include:
 - (a) Toll-free telephone numbers for the:
 1. ***Department***~~[Office]~~ of Workers' Claims;
 2. Kentucky Community and Technical College System; and
 3. Kentucky Higher Education Assistance Authority;
 - (b) Telephone numbers for the local board of education and centers for adult education and literacy; and
 - (c) A list of approved education and training programs available to employees engaged in the severance or processing of coal.
- (2) The notice shall be made available to all employers at no cost and upon request of the employer. The notice shall also be posted on the Web sites maintained by the ***Department***~~[Office]~~ of Workers' Claims and the Kentucky Community and Technical College System.

➔Section 1854. KRS 342.807 is amended to read as follows:

- (1) The authority shall be governed by a board of directors. The board shall exercise complete jurisdiction over the authority.
- (2) The board shall consist of the:
 - (a) Secretary of the Finance and Administration Cabinet;

- (b) Secretary of the Personnel Cabinet;
 - (c) Secretary of the **Labor**~~[Environmental and Public Protection]~~ Cabinet; and
 - (d) Seven (7) at-large members appointed by the Governor, subject to confirmation by the Senate.
- (3) Any vacancy which occurs prior to the expiration of a term shall be filled by the Governor in the same manner as the initial appointment was made, and the new appointee shall serve only the remainder of the unexpired term.
- (4) No person shall serve on the board who:
- (a) Fails to meet or comply with the conflict of interest policies established by the board and KRS 304.24-270;
 - (b) Is not bondable;
 - (c) Is an employee, attorney, or contractor of a competing insurer providing workers' compensation insurance in the Commonwealth; or
 - (d) Is not a resident of this Commonwealth.
- (5) In making the appointments to the board, subject to Senate confirmation, the Governor shall ensure adequate representation from the major sectors of the economy and workforce in the Commonwealth.

➔Section 1855. KRS 342.817 is amended to read as follows:

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority.
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the **commissioner**~~[executive director]~~ of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the Labor and Industry Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

➔Section 1856. KRS 342.823 is amended to read as follows:

- (1) In determining the solvency of the authority in regard to maintaining adequate reserves, the **commissioner**~~[executive director]~~ of insurance, the independent accountant engaged for the annual audit, and the board, in exercising its prudent stewardship, shall not utilize the practice of "discounting" the funds to

reduce future liabilities, except in conformity with standards or rules promulgated by the National Association of Insurance Commissioners.

- (2) The authority shall file reports required by KRS 304.3-240.
- (3) The authority shall file a report not later than March 31 of each year indicating the business done by the authority during the previous year, including a balance sheet showing assets and liabilities at the beginning and conclusion of that year. The report shall be a public record and shall be delivered to the Governor, **commissioner**~~executive director~~ of insurance, Auditor of Public Accounts, Attorney General, and the co-chairs of the Legislative Research Commission. Additionally, a statement of solvency shall be prepared which shall include, at a minimum:
 - (a) A summary of the prior quarterly reports required in KRS 342.821;
 - (b) A management projection of the future solvency status for the authority; and
 - (c) Any recommendations pertaining to the same.
- (4) The authority shall not enter into any contract with a certified public accountant for an audit unless the Auditor of Public Accounts has declined in writing to perform the audit or has failed to respond within thirty (30) days of receipt of a written request for an audit. Any contract with a certified public accountant entered into as a result of the Auditor of Public Accounts declining to perform the audit shall specify the following:
 - (a) That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts, Attorney General, and Legislative Research Commission; and
 - (b) That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers.
- (5) If at any time the assets of the authority are less than its liabilities, the board may levy an assessment on its policyholders in the manner provided in Subtitle 24 of KRS Chapter 304.

➔Section 1857. KRS 342.902 is amended to read as follows:

As used in KRS 342.900 to 342.912, unless the context requires otherwise:

- (1) "Insolvent self-insurer" means either an individual self-insured employer or a self-insured group who has failed to pay compensation as a result of a declaration of bankruptcy or insolvency by a court of competent jurisdiction, and whose security deposit has been called by the **commissioner**~~executive director~~, or who has failed to provide compensation and who has been issued a certificate of default by the **commissioner**~~executive director~~ and whose security deposit has been called by the **commissioner**~~executive director~~.
- (2) "Member" means a self-insured employer or self-insured group that participates in a guaranty fund created pursuant to KRS 342.900 to 342.912.
- (3) "Guaranty fund" means one (1) of the three (3) guaranty funds established pursuant to KRS 342.900 to 342.912.
- (4) "Directors" means the board of directors of a guaranty fund.
- (5) "Certificate of default" means a notice issued by the **commissioner**~~executive director~~ based upon a finding that a self-insured employer or self-insured group has failed to pay compensation required by this chapter.

➔Section 1858. KRS 342.906 is amended to read as follows:

- (1) There is created a nonprofit, unincorporated legal entity to be known as the Kentucky individual self-insurance guaranty fund to function as the guaranty fund for individually insured employers, excluding individually self-insured coal employers, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the **commissioner**~~executive director~~. Each noncoal, individually self-insured employer who has qualified and been certified by the **commissioner**~~executive director~~ as a self-insured employer on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to this subsection as a condition of maintaining its certificate required to be self-insured under this chapter. The **commissioner**~~executive director~~ shall revoke any self-insurer's certificate and authority to be self-insured if the self-insured employer fails to maintain membership in the guaranty fund or fails to pay assessments levied by the guaranty fund created pursuant to this subsection.

- (2) There is created a nonprofit, unincorporated legal entity known as the Kentucky group self-insurance fund to function as a guaranty fund for self-insured groups or associations established under KRS 342.350(4) and 304.50-010, to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance. Each self-insured group or association that is authorized to self-insure and certified by the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection, as a condition of maintaining its authorization and certificate to self-insure. The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance shall revoke any authorization and certificate to self-insure of any self-insured group or association for failure to maintain membership in the guaranty fund or failure to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.
- (3) There is created a nonprofit, unincorporated legal entity known as the Kentucky coal employers self-insurance fund to function as a guaranty fund for individually self-insured coal employers to secure workers' compensation liabilities under this chapter and pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~. Each coal employer that is individually self-insured and that has been authorized and certified to self-insure on or after March 1, 1997, shall participate as a member of the guaranty fund created pursuant to the provisions of this subsection as a condition of maintaining authorization and certification to self-insure. The ~~commissioner~~~~executive director~~ shall revoke a coal employer's authority and certification to self-insure for failure to maintain membership in the guaranty fund or to pay assessments levied by the guaranty fund created pursuant to the provisions of this subsection.
- (4) The guaranty funds created pursuant to this section are created for the purposes of meeting the obligations of insolvent individually self-insured employers or members of a self-insured group or association incurred while members of a guaranty fund and after exhaustion of all security, including bonds, escrow deposits, insurance, or reinsurance, required by this chapter or KRS 304.50-045 and 304.50-050. The method of operation of each guaranty fund created pursuant to the provisions of this section shall be established by a plan of operation pursuant to administrative regulations promulgated by the ~~commissioner~~~~executive director~~.
- (5) The Kentucky individual self-insurance guaranty fund and the Kentucky coal employers self-insurance guaranty fund shall each be governed by a nine (9) member board of directors who shall serve staggered terms not to exceed four (4) years, be representative of individual self-insurers, and be elected by the members of the guaranty fund. Each member of the board shall have one (1) vote. In addition to the nine (9) directors elected by the members, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A member of the board of directors may designate another member to act in the member's place as though the member were acting, and the designee's actions shall be deemed those of the member.
- (6) The Kentucky group self-insurance guaranty fund shall be governed by a board of directors composed of one (1) representative of each self-insured group or association. In addition, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims and the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Insurance, or their designees, shall be ex officio nonvoting members of the board of directors. A director may designate another member to act in the member's place, and the designee's actions shall be deemed those of the director.
- (7) Each guaranty fund created pursuant to this section shall establish bylaws and a plan of operation subject to prior approval of the ~~commissioner~~~~executive director~~, necessary to the purposes of this chapter and to carry out the responsibilities of each guaranty fund. Each guaranty fund may carry out its responsibilities directly or by contract and may purchase services and insurance and borrow funds as it deems necessary for the protection of the members and their employees.
- (8) Security called by the ~~commissioner~~~~executive director~~ and disbursed to the guaranty funds, and assessments made upon members, shall vest in the guaranty funds, shall not thereafter be deemed state property, and shall not be subject to appropriation by the General Assembly or any other state agency.
- (9) All moneys in the individual guaranty funds, exclusive of costs reasonably necessary to conduct business, shall be used solely to compensate persons entitled to receive workers' compensation benefits from a Kentucky member who has defaulted in performance of its workers' compensation benefit payment obligations under this chapter.

- (10) No liability shall lie, whether at law or in equity, against any director, agent, or employee of a guaranty fund created pursuant to this section, on account of any action or inaction taken by any of them in the administration of a guaranty fund.

➔Section 1859. KRS 342.908 is amended to read as follows:

- (1) The ~~commissioner~~~~[executive director]~~ shall notify a guaranty fund if the ~~commissioner~~~~[executive director]~~ has knowledge that any member of the guaranty fund has failed to timely pay workers' compensation benefits required by this chapter or if a court of competent jurisdiction has declared the member to be bankrupt or insolvent.
- (2) In the event of issuance of a certificate of default, the ~~commissioner~~~~[executive director]~~ shall call all security and transfer it to the appropriate guaranty fund created pursuant to this section. The ~~commissioner~~~~[executive director]~~ shall also immediately notify, by certified mail, the guaranty fund and order the guaranty fund to assume the workers' compensation obligations of the member required in this chapter. The guaranty fund shall commence payment of these obligations within fourteen (14) days of receipt of notification and order of the ~~commissioner~~~~[executive director]~~. Payment shall be made to claimants whose entitlement to benefits can be ascertained by the guaranty fund with or without proceedings before the ~~Department~~~~[Office]~~ of Workers' Claims or a court of competent jurisdiction. Upon assumption of the obligations of a member by a guaranty fund, the guaranty fund shall have the right to immediate possession of any security, and the custodian, surety, or issuer of any irrevocable letter of credit shall turn over the security, proceeds of the surety bond, or letter of credit to the guaranty fund, together with the interest that has accrued since the date of the member's insolvency. The guaranty fund may administer payment of benefits or it may retain a third party to do so.
- (3) Notwithstanding any other provision of law, any cash, securities, irrevocable letters of credit, specific excess or aggregate excess insurance proceeds, or any other security deposited or posted in accordance with this section shall be used first, when due, to pay workers' compensation claims. After the security has been exhausted, the payment of workers' compensation claims from member assessments may be made. Where the guaranty fund member-assessment account is used to pay workers' compensation claims on an emergency or an interim basis, pending receipt by the guaranty fund of security which is due but not yet received, the member-assessment account shall be reimbursed for payment from the security when it is received, and the priorities stated above shall thereafter apply.
- (4) To the extent necessary to secure funds for the initial establishment of each guaranty fund member-assessment account, the board of directors of each guaranty fund created pursuant to this section shall levy assessments based on the premium of each individual self-insured employer, as defined and calculated pursuant to KRS 342.0011(28), for members of the Kentucky individual self-insurers guaranty fund and for the Kentucky coal employers self-insurance guaranty fund, and KRS 342.0011(24) for the Kentucky group self-insurance guaranty fund, but no such assessments shall ever exceed, in the aggregate, from all members of a single guaranty fund, an amount in excess of one million dollars (\$1,000,000) at any given time. The assessments shall be made at a maximum annual assessment of: one-half of one percent (0.5%) of the premium for each member of the Kentucky individual self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(28); two percent (2%) of the premium for each member of the Kentucky coal employers guaranty fund as defined and calculated pursuant to KRS 342.0011(28); and three-fourths of one percent (0.75%) of the premium for each member of the Kentucky group self-insurance guaranty fund as defined and calculated pursuant to KRS 342.0011(24).
- (5) The initial assessment for each guaranty fund created pursuant to this section shall be for an amount equal to five hundred thousand dollars (\$500,000), to be levied and collected within a one (1) year period. There shall be no reassessments against any member unless the current balance of such guaranty fund created pursuant this section is insufficient after deducting the amount paid for or reserved for outstanding claims and for administrative and other costs in managing the guaranty fund at which point the board of directors shall raise assessments sufficient to bring the minimum amount of the guaranty fund to five hundred thousand dollars (\$500,000) or such other amount not to exceed, in any event, one million dollars (\$1,000,000) based upon a maximum annual assessment for each guaranty fund.
- (6) A guaranty fund created pursuant to this section shall pay no dividends, rebates, interest, or otherwise distribute income from the guaranty fund to any of its members, unless the guaranty fund has the assets prescribed in subsection (5) of this section and the distributions are approved by the ~~commissioner~~~~[executive director]~~.

- (7) The ***commissioner***~~[executive director]~~ shall be provided with any relevant information by the employer, any excess insurer, any third party administrator, or any issuer of any irrevocable letter of credit, issuer of any surety bond, or custodian of any security necessary for the ***commissioner***~~[executive director]~~ to carry out the ***commissioner's***~~[executive director's]~~ obligations under this chapter, and the ***commissioner***~~[executive director]~~ shall provide this information to the guaranty fund as necessary to carry out its obligations.
- (8) The payment of benefits by a guaranty fund does not release any person or entity from any liability to the individual guaranty fund for full reimbursement.

➔Section 1860. KRS 342.912 is amended to read as follows:

- (1) The directors of each guaranty fund shall annually contract for an independent certified audit of the financial activities of the guaranty fund. An annual report on the financial status of the guaranty fund as of June 30 of each year shall be submitted to the ***commissioner***~~[executive director]~~ and to each member.
- (2) Each guaranty fund shall be established on March 1, 1997.
- (3) The individual guaranty fund shall be liable for payment of benefits only for members where there has been a declaration of bankruptcy or insolvency by a court of competent jurisdiction after the date on which the guaranty fund is established, or where the ***commissioner***~~[executive director]~~ has issued a certificate of default which has occurred after the date on which the guaranty fund is established.

➔Section 1861. KRS 342.920 is amended to read as follows:

- (1) The General Assembly finds and declares that there is a need to protect employees of workers' compensation self-insured employers who had claims for injuries that occurred prior to the creation of the workers' compensation self-insurance guaranty funds under this chapter. The General Assembly further finds that there may be instances in which the security of a former self-insured employer is insufficient to pay the entire workers' compensation claim of an injured employee who was injured prior to March 1, 1997.
- (2) There is hereby established the self-insurance fund for the purpose of making payments to workers' compensation claimants injured prior to March 1, 1997, when the security of a former self-insured employer has been depleted.
- (3) (a) The ***commissioner***~~[executive director]~~ shall be:
1. Authorized to disburse moneys from the fund in accordance with written orders of an administrative law judge or the board; and
 2. Responsible for administration of the fund and conservation of the assets of the fund.
- (b) The ***commissioner***~~[executive director]~~ may hire an administrator to oversee the payment of claims as provided in this section.
- (4) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, all amounts collected after July 12, 2006, as fines and penalties under KRS 342.267 and 342.990 shall be paid into the self-insurance fund.
- (5) The self-insurance fund shall be responsible for the payment of compensation when there has been a default in the payment of compensation by a self-insured employer and the security held by the ***Department***~~[Office]~~ of Workers' Claims has been completely depleted.
- (6) The ***Department***~~[Office]~~ of Workers' Claims shall appoint an attorney on its staff or special counsel to represent the self-insurance fund in all proceedings brought to enforce claims against or on behalf of the self-insurance fund. Necessary expenses for this purpose including salaries or special counsel shall be borne by the self-insurance fund.
- (7) Any party seeking reopening under KRS 342.125 or action on a claim involving the self-insurance fund shall name the self-insurance fund in its action.
- (8) (a) The Workers' Compensation Funding Commission shall hold, invest, and reinvest the funds collected for the self-insurance fund;
- (b) The funding commission shall have the same authority and duties with regard to the self-insurance fund as described in KRS 342.1223; and

(c) The funding commission shall disburse moneys of the fund as requested by the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims pursuant to subsection (3) of this section.

- (9) Amounts in the self-insurance fund not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year. Any interest earnings of the self-insurance fund shall become part of the fund and shall not lapse.

➔ Section 1862. KRS 342.990 is amended to read as follows:

- (1) The ***commissioner***~~[executive director]~~ shall initiate enforcement of civil and criminal penalties imposed in this section.
- (2) When the ***commissioner***~~[executive director]~~ receives information that he *or she* deems sufficient to determine that a violation of this chapter has occurred, he *or she* shall seek civil penalties pursuant to subsections (3) to (7) of this section, criminal penalties pursuant to subsections (8) and (9) of this section, or both.
- (3) The ***commissioner***~~[executive director]~~ shall initiate enforcement of a civil penalty by simultaneously citing the appropriate party for the offense and stating the civil penalty to be paid.
- (4) If, within fifteen (15) working days from the receipt of the citation, a cited party fails to notify the ***commissioner***~~[executive director]~~ that he *or she* intends to contest the citation, then the citation shall be deemed final.
- (5) If a cited party notifies the ***commissioner***~~[executive director]~~ that he *or she* intends to challenge a citation issued under this section, the ***commissioner***~~[executive director]~~ shall cause the matter to be heard as soon as practicable by an administrative law judge and in accordance with the provisions of KRS Chapter 13B. The burden of proof shall be upon the attorney representing the ***commissioner***~~[executive director]~~ to prove the offense stated in the citation by a preponderance of the evidence. The parties shall stipulate to uncontested facts and issues prior to the hearing before the administrative law judge. The administrative law judge shall issue a ruling within sixty (60) days following the hearing.
- (6) A party may appeal the ruling of the administrative law judge to the Franklin Circuit Court in conformity with KRS 13B.140.
- (7) The following civil penalties shall be applicable for violations of particular provisions of this chapter:
 - (a) Any employer, insurer, or payment obligor subject to this chapter who fails to make a report required by KRS 342.038 within fifteen (15) days from the date it was due, shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
 - (b) Any employer, insurer, or payment obligor acting on behalf of an employer who fails to make timely payment of a statement for services under KRS 342.020(1) without having reasonable grounds to delay payment may be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense.
 - (c) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.340, 342.400, 342.420, or 342.630 shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense. With respect to employers who fail to maintain workers' compensation insurance coverage on their employees, each employee of the employer and each day of violation shall constitute a separate offense. With respect to KRS 342.040, any employer's insurance carrier or other party responsible for the payment of workers' compensation benefits shall be fined for failure to notify the ***commissioner***~~[executive director]~~ of a failure to make payments when due if a report indicating the reason payment of income benefits did not commence within twenty-one (21) days of the date the employer was notified of an alleged work-related injury or disease is not filed with the ***commissioner***~~[executive director]~~ within twenty-one (21) days of the date the employer received notice, and if the employee has not returned to work within that period of time. The date of notice indicated in the report filed with the ***department***~~[office]~~ pursuant to KRS 342.038(1), shall raise a rebuttable presumption of the date on which the employer received notice.
 - (d) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.395, 342.460, 342.465, or 342.470 shall be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000) for each offense. With respect to KRS 342.395, each required notice of rejection form executed by an employee or potential employee of an employer shall constitute a separate offense.

- (e) Any person who fails to comply with the data reporting provisions of administrative regulations promulgated by the ~~commissioner~~~~executive director~~ pursuant to KRS 342.039, or with utilization review and medical bill audit administrative regulations promulgated pursuant to KRS 342.035(5), shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.
 - (f) Except as provided in paragraph (g) of this subsection, a person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) is less than or equal to three hundred dollars (\$300) shall be fined per occurrence not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.
 - (g) Any person who violates any of the provisions of KRS 342.335(1) or (2) where the claim, compensation, benefit, or money referred to in KRS 342.335(1) or (2) exceeds three hundred dollars (\$300) shall be fined per occurrence not more than five thousand dollars (\$5,000) per individual nor ten thousand dollars (\$10,000) per corporation, or twice the amount of gain received as a result of the violation, whichever is greater.
 - (h) Any person who violates the employee leasing provision of this chapter shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) for each violation.
 - (i) Any violation of the provisions of this chapter relating to self-insureds shall constitute grounds for decertification of such self-insured, a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000) per occurrence, or both.
 - (j) Actions to collect the civil penalties imposed under this subsection shall be instituted in the Franklin District Court and the Franklin Circuit Court.
- (8) The ~~commissioner~~~~executive director~~ shall initiate enforcement of a criminal penalty by causing a complaint to be filed with the appropriate local prosecutor. If the prosecutor fails to act on the violation within twenty (20) days following the filing of the complaint, the ~~commissioner~~~~executive director~~ shall certify the inaction by the local prosecutor to the Attorney General who shall initiate proceedings to prosecute the violation. The provisions of KRS 15.715 shall not apply to this section.
- (9) The following criminal penalties shall be applicable for violations of particular provisions of this chapter:
- (a) Any person who violates KRS 342.020(9), 342.035(2), 342.040, 342.400, 342.420, or 342.630, shall, for each offense, be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000), or imprisoned for not less than thirty (30) days nor more than one hundred eighty (180) days, or both.
 - (b) Any person who violates any of the provisions of KRS 342.165(2), 342.335, 342.460, 342.465, or 342.470 shall, for each offense, be fined not less than two hundred dollars (\$200) nor more than two thousand dollars (\$2,000), or imprisoned for not less than thirty (30) days nor more than one hundred and eighty (180) days, or both.
 - (c) Any corporation, partnership, sole proprietorship, or other form of business entity and any officer, general partner, agent, or representative of the foregoing who knowingly utilizes or participates in any employee leasing arrangement or mechanism as defined in KRS 342.615 for the purpose of depriving one (1) or more insurers of premium otherwise properly payable or for the purpose of depriving the Commonwealth of any tax or assessment due and owing and based upon said premium shall upon conviction thereof be subject to a fine of not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000), or imprisonment for not more than one hundred eighty (180) days, or both, for each offense.
 - (d) Notwithstanding any other provisions of this chapter to the contrary, when any employer, insurance carrier, or individual self-insured fails to comply with this chapter for which a penalty is provided in subparagraphs (7), (8), and (9) above, such person, if the person is an owner in the case of a sole proprietorship, a partner in the case of a partnership, a principal in the case of a limited liability company, or a corporate officer in the case of a corporation, who knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be personally and individually liable, both jointly and severally, for the penalties imposed in the above cited subparagraphs. Neither the dissolution nor

withdrawal of the corporation, partnership, or other entity from the state, nor the cessation of holding status as a proprietor, partner, principal, or officer shall discharge the foregoing liability of any person.

- (10) Fines paid pursuant to KRS 342.267 and subsections (7) and (9) of this section shall be paid into the self-insurance fund established in KRS 342.920.
- (11) In addition to the penalties provided in this section, the ~~commissioner~~~~executive director~~ and any administrative law judge or court of jurisdiction may order restitution of a benefit secured through conduct proscribed by this chapter.

➔Section 1863. KRS 343.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

- (1) "Apprentice" means a person at least sixteen (16) years of age who has entered into an apprenticeship agreement with an employer or an association of employers or an organization of employees;
- (2) "Apprenticeship agreement" means a voluntary written agreement entered into by the apprentice or through his *or her* parent or guardian with an employer, or an apprenticeship and training committee acting as agent for an employer, which agreement contains the terms and conditions of the employment and training of the apprentice to enable the apprentice to learn the trade, craft or business of the employer;
- (3) "~~Commissioner~~~~Executive director~~" means ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workplace Standards, under the direction and supervision of the ~~secretary~~~~commissioner~~ of the ~~Department of Labor~~ *Cabinet*, or any person authorized to act in his *or her* behalf, having jurisdiction over laws or regulations governing wages and hours of employees working in this state;
- (4) "Council" means apprenticeship and training council;
- (5) "Supervisor" means supervisor of apprenticeship and training;
- (6) "Trainee" means a person at least sixteen (16) years of age who has entered into an on-the-job training agreement with an employer or an association of employers or an organization of employees in a construction occupation under a program which has been approved by a federal agency as promoting equal employment opportunity in conjunction with federal-aid construction projects.
- (7) "Apprenticeship program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of apprentices, including such matters as the requirement for a written apprenticeship agreement;
- (8) "On-the-job training program" means a plan containing all terms and conditions for the qualification, recruitment, selection, employment, and training of a trainee, including such matters as the requirement for a written on-the-job training agreement other than an apprenticeship program; provided, however, that said program has been approved by a federal agency as promoting equal employment opportunity in conjunction with federal-aid construction projects;
- (9) "Sponsor" means any person, association, committee, or organization in whose name or title the program is or is to be registered, irrespective of whether such entity is an employer;
- (10) "Employer" means any person or organization employing an apprentice or trainee whether or not such person or organization is a party to an apprenticeship or on-the-job training agreement with the apprentice or trainee;
- (11) "Related instruction" means an organized and systematic form of instruction designed to provide the apprentice or trainee with knowledge of the theoretical and technical subjects related to his *or her* trade.

➔Section 1864. KRS 343.020 is amended to read as follows:

- (1) (a) The Governor shall appoint an Apprenticeship and Training Council composed of four (4) representatives from employer organizations, four (4) representatives from employee organizations, and one (1) at-large member who shall serve for a term of four (4) years and until their successors are appointed and qualified. The ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workplace Standards, the commissioner of the Department for Workforce Investment, and the chancellor for the Technical Institutions' Branch in the Kentucky Community and Technical College System shall be ex officio members of the council. The chairman shall be elected by vote of the Apprenticeship and Training Council.

- (b) The regular members of the council shall each have one (1) vote. In the event of a tie vote among the regular members, the **commissioner**~~[executive director]~~ of the **Department**~~[Office]~~ of Workplace Standards shall have the right to cast the tie-breaking vote. Each member of the council shall receive his **or her** actual and necessary expenses incurred in attending its meetings.
 - (c) The council shall meet at the call of the **commissioner**~~[executive director]~~ and shall aid him **or her** in formulating policies for the effective administration of this chapter. The **commissioner**~~[executive director]~~ with the aid of the council shall have the authority to make and revise such rules and regulations as he **or she** may deem appropriate to carry out the provisions and purposes of this chapter.
- (2) (a) On June 25, 2009, the terms of the council members appointed on September 12, 2006, shall end, and the Governor shall make the following appointments to the Apprenticeship and Training Council:
- 1. Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2009;
 - 2. Two (2) representatives from employer organizations, and two (2) representatives from employee organizations to serve for terms that shall expire on December 31, 2010; and
 - 3. One (1) at-large member to serve for a term that shall expire on December 31, 2011.
- (b) Subsequent members shall serve terms of four (4) years and shall serve until their successors are appointed and qualified.
- (3) The council shall be attached to the ~~[Department of]~~ Labor **Cabinet** for administrative purposes.

➔Section 1865. KRS 343.030 is amended to read as follows:

The **commissioner**~~[executive director]~~, with the approval of the Governor, may appoint a supervisor of apprenticeship and training. This appointment shall be subject to the confirmation of the council by a majority vote. He **or she** may also appoint such clerical, technical, and professional help as shall be necessary to effectuate the purposes of this chapter.

➔Section 1866. KRS 343.040 is amended to read as follows:

The supervisor, under the direction of the **commissioner**~~[executive director]~~ and with the advice and guidance of the council, may administer this chapter in cooperation with the apprenticeship and training council; set up conditions and training standards for apprenticeship or on-the-job training programs and agreements; act as secretary to the council; approve, if in his **or her** opinion approval is to the best interest of both parties, any apprenticeship or on-the-job training program and agreement submitted to him **or her** by the parties thereto, that meets the standards established under this chapter; keep a record of apprenticeship and on-the-job training programs and agreements and their disposition; issue certificates of completion of apprenticeship and on-the-job training; and perform such other duties as are necessary to carry out the intention of this chapter.

➔Section 1867. KRS 343.070 is amended to read as follows:

- (1) Upon the complaint of either party to the agreement, or upon his **or her** own initiative, the supervisor may investigate or determine if there has been a violation of the terms of the apprenticeship or on-the-job training agreement approved under this chapter. He may conduct inquiries and other proceedings necessary to any investigation and determination. The parties to the agreement shall, after reasonable notice, be given an informal hearing. All informal hearings, investigations, and determinations shall be made under authority of reasonable administrative regulations promulgated by the council subject to the approval of the **commissioner**~~[executive director]~~.
- (2) The determination of the supervisor shall be filed with the **commissioner**~~[executive director]~~. If no appeal therefrom is filed with the **commissioner**~~[executive director]~~ within fifteen (15) days, the determination shall become final. Any party aggrieved by any determination or action of the supervisor may appeal to the **commissioner**~~[executive director]~~, who shall hold an administrative hearing in accordance with KRS Chapter 13B.
- (3) Any party to an apprenticeship or on-the-job training agreement aggrieved by a final order of the **commissioner**~~[executive director]~~ may appeal to the Franklin Circuit Court.

➔Section 1868. KRS 345.010 is amended to read as follows:

When used in this chapter:

- (1) "Public employer" means a city of the first class or a consolidated local government, or any city that petitions the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** to be included by this chapter;
- (2) "Firefighter" means an employee of the public employer engaged in serving the public by providing fire protection, including those covered by KRS Chapter 95;
- (3) "Labor organization" means any chartered labor organization of any kind in which firefighters participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rate of pay, hours of employment, or conditions of employment;
- (4) "Exclusive representative" means the labor organization which has been designated by the State Labor Relations Board as the representative of the majority of firefighters in appropriate units or has been so recognized by the public employer;
- (5) "Board" means the State Labor Relations Board;
- (6) "Person" includes one (1) or more individuals, labor organizations, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers;
- (7) "~~Secretary~~~~Commissioner~~" means the ~~secretary~~~~commissioner~~ of the ~~Department of~~ Labor **Cabinet** of the Commonwealth of Kentucky.

➔Section 1869. KRS 345.080 is amended to read as follows:

- (1) If after a reasonable period, but in no event less than thirty (30) days, of negotiations over the terms of a new collective bargaining agreement or modifications in an existing agreement the parties to the negotiations are deadlocked, either party or the parties jointly may petition the board, by certified mail, return receipt requested, or by registered mail, to initiate fact finding.
- (2) Upon receipt of a petition to initiate fact finding, the ~~secretary~~~~commissioner~~ shall cause an investigation to determine whether or not the parties are deadlocked in their negotiations. During the course of this investigation, the ~~secretary~~~~commissioner~~ is empowered to utilize his **or her** office in an effort to effectuate a settlement between the parties through mediation and conciliation.
- (3) Upon completion of the ~~secretary's~~~~commissioner's~~ investigation, and if a settlement between the parties has still not been reached, the ~~secretary~~~~commissioner~~ shall within five (5) days appoint a qualified and disinterested person as the impartial chairman of a three (3) man panel to function as the fact finders. In addition to the impartial chairman, the other two (2) members of the panel shall be one (1) member named by the labor organization and one (1) by the employer, parties to the deadlocked negotiations.
- (4) Upon consultation with the other members of the panel, the impartial chairman shall establish dates and places for public hearings. Whenever feasible, public hearings shall be held within the jurisdiction in which the employer is located. The panel may subpoena witnesses, and a written transcript of the hearing shall be made. Upon completion of the hearings the panel shall, by majority decision, make written findings of fact and recommendations for solution of the dispute. The panel shall cause all of its written findings, recommendations, and opinions to be served on the employer and labor organization (parties) and same shall be released to the public. Expenses incurred by the three (3) man panel in this section shall be paid by the parties involved in the labor dispute.
- (5) The ~~secretary~~~~commissioner~~ may adopt, promulgate, amend, and rescind such rules and regulations as he **or she** deems necessary and administratively feasible not inconsistent with the provisions of this chapter to carry out his **or her** responsibilities over the fact-finding procedures set forth in this section. However, unless the parties agree to extend the time for the hearings, they must be completed with recommendations from the fact-finding panel, within one hundred twenty (120) days from the date the petition to initiate the fact-finding procedure was received by the ~~secretary~~~~commissioner~~.

➔Section 1870. KRS 345.120 is amended to read as follows:

- (1) There is hereby created and established a State Labor Relations Board to assist in resolving disputes between public employers and firefighters or their labor organization which shall be composed of three (3) members appointed by the Governor, one (1) for a term of two (2) years, one (1) for a term of three (3) years, and one (1) for a term of four (4) years. The Governor shall designate one (1) member to serve as chairman of the

board. Thereafter, upon the expiration of the term of any member, members shall be appointed for four (4) year terms by the Governor.

- (2) Each member of the board shall have been an elector in this state for at least one (1) year next preceding his *or her* appointment. Any member may be removed by the Governor for cause, shown in an administrative hearing conducted in accordance with KRS Chapter 13B. The Governor shall fill any vacancy by appointment for the unexpired term. No member shall receive a salary but each member shall be paid fifty dollars (\$50) and expenses for each day during which he *or she* is engaged in the duties of the board. The board is authorized to hold hearings at any place in this state. Any and all expenses incurred by the Labor Relations Board shall be shared by all parties concerned in the dispute.
- (3) The board shall appoint employees necessary to carry out the work of the board. All files, records, and documents accumulated by the board shall be kept in offices provided by the board. All decisions shall be made by a majority of the board.
- (4) To accomplish the objectives and to carry out the duties prescribed by this chapter, the board may subpoena witnesses; issue subpoenas to require the production of books, papers, records, and documents which may be needed as evidence in any matter under inquiry; and administer oaths and affirmations.
- (5) In case of neglect or refusal to obey a subpoena issued to any person, the Circuit Court of the county in which the investigations or the public hearings are taking place, upon application by the board may issue an order requiring the person to appear before the board, any member, or agent, to produce evidence or give testimony about the matter under investigation. A failure to obey a court order may be punished by the court as a contempt.
- (6) Any subpoena, notice of hearing, or other process or notice of the board issued under the provisions of this chapter, with the exception of notice requirements for administrative hearings as provided in KRS Chapter 13B, may be served personally, by certified mail, return receipt requested, or by leaving a copy at the principal office or place of residence of the respondent required to be served. A return, made and verified by the individual making service and setting forth the manner of service, is proof of service and a returned post-office receipt, when certified mail is used, is proof of service. All process of any court to which application may be made under the provisions of this chapter may be served in the county in which the persons required to be served reside or may be found.
- (7) The board shall, promulgate, amend, or repeal any administrative regulations necessary and administratively feasible to carry out the provisions of this chapter. Public hearings shall be held by the board, pursuant to KRS Chapter 13A, on any proposed administrative regulation of general applicability designed to implement, interpret, or prescribe policy, procedure, or practice requirements under the provisions of this chapter and on any proposed change in an existing administrative regulation.
- (8) The board shall be attached to the ~~Department of Labor~~ **Cabinet** for administrative purposes.

➔Section 1871. KRS 349.010 is amended to read as follows:

As used in this chapter:

- (1) "Abandoned" when used in connection with a well or hole means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of coalbed methane or the injection or disposal of fluid therein;
- (2) "Coal interest holder" means every record coal owner, record coal lessee, mine licensee as defined in KRS 352.010(1)(s) and mine permittee as defined in KRS 350.010(21) whose coalbed is penetrated, or proposed to be penetrated, by a coalbed methane well;
- (3) "Coalbed" or "coal seam" means a seam of coal, whether workable or unworkable;
- (4) "Coalbed methane" means gas produced from a reservoir found in a coalbed, a mined-out area, or gob;
- (5) "Coalbed methane well" means any well drilled, deepened, converted, or reopened for the purpose of capturing coalbed methane for sale or use. Any well initially used for a coal mining-related purpose, such as a vent well, but which is subsequently used for the purpose of recovering coalbed methane for sale or use, shall then be deemed to be a coalbed methane well and shall comply with the provisions of this chapter at the time that the well is converted or used for the purpose of recovering coalbed methane for sale or use;

- (6) "Commissioner" means the commissioner of the Department for Natural Resources;
- (7) "Correlative rights" means the reasonable opportunity of each person entitled to recover, without waste, the coalbed methane in and under his or her tract or tracts, or the equivalent thereof;
- (8) "Department" means the Department for Natural Resources;
- (9) "Director" means the director of the Division of Oil and Gas ~~[Conservation]~~ as established in KRS 353.530;
- (10) "Drilling unit" means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable coalbed methane in the area. Where the department has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, the area shall be a drilling unit;
- (11) "Division" means the Division of Mine Permits in the Department for Natural Resources;
- (12) "Field rules" means rules established by orders of the review board relating to the drilling, completion, production of, and specifications for coalbed methane wells in a particular geographic area as defined by an order;
- (13) "Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coalbed;
- (14) "Gob well" means a well drilled or a vent hole converted to a well pursuant to this chapter which produces or is capable of producing coalbed methane for sale or use, from a de-stressed zone associated with any full seam extraction of coal that extends above or below a mined-out coalbed;
- (15) "Horizontally drill" or "horizontal drilling" means the intentional act of drilling a borehole, shaft, or hole, which deviates from vertical for the purpose of penetrating a coal seam to produce coalbed methane;
- (16) "Mine licensee" means the mine licensee as defined in KRS 352.010(1)(s);
- (17) "Mine permittee" means the permittee as defined in KRS 350.010(21);
- (18) "Nonparticipating working interest owner" means a coalbed methane owner or lessee of a tract included in a drilling unit who elects to share in the operation of the coalbed methane well on a carried basis by agreeing to have his or her proportionate share of the costs allocable to his or her interest charged against his or her share of production from the coalbed methane well;
- (19) "Nonparticipating operator" means a nonparticipating working interest owner who is also the operator of the coalbed methane well;
- (20) "Operator" means any owner of the right to drill, develop, operate, and produce coalbed methane from a pool and to appropriate the coalbed methane produced therefrom, either for himself or herself, or for himself, herself, and others; in the event there is no coalbed methane lease in existence with respect to the tract in question, the owner of the coalbed methane rights therein shall be considered as an "operator" to the extent of seven-eighths (7/8) of the coalbed methane in that portion of the pool underlying the tract owned by that owner, and as a "royalty owner" as to one-eighth (1/8) interest in that coalbed methane;
- (21) "Other interested coalbed methane parties" means all working interest owners other than the operator, all royalty and overriding royalty interest owners or holders, and any other party who owns or holds a right or interest in a drilling unit, coalbed methane well site for which a drilling permit has been issued or is pending, and all associated equipment, facilities, infrastructure, and improvements;
- (22) "Participating working interest owner" means a coalbed methane owner or lessee who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging, and abandoning a coalbed methane well equal to the proportion which the acreage in the drilling unit he or she owns or holds under lease bears to the total acreage of the drilling unit;
- (23) "Participating operator" means a participating working interest owner who is also the operator of the coalbed methane well;
- (24) "Person" means any person, corporation, association, partnership, limited liability company, receiver, governmental agency subject to this chapter, trustee, so-called common law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;

- (25) "Plat" means a map, drawing, or print showing the location of a well;
- (26) "Review board" means the Coalbed Methane Well Review Board;
- (27) "Royalty owner" means any owner of coalbed methane in place, or coalbed methane rights, to the extent that the owner is not an operator as defined in subsection (20) of this section;
- (28) "Stimulate" means any action taken to increase the flow of coalbed methane, or the inherent productivity of a coalbed methane well, including but not limited to fracturing, shooting, acidizing, or waterflooding, but excluding cleaning out, bailing, or workover operations;
- (29) "Surface owner" means the person in whose name the surface of the land is assessed for purposes of taxes imposed according to the property valuation administrator;
- (30) "Unit" means any tract or tracts which the department has determined are underlaid by a pool or pools of coalbed methane and are not drilling units as defined in subsection (10) of this section;
- (31) "Unitization" means the act of combining separately owned tracts or separate interests therein into a unit constituting all or some portion of a coalbed that produces or is capable of producing coalbed methane and the joint operation of that unit;
- (32) "Unit operator" means the party designated in a pooling order to develop a unit by the drilling of one (1) or more coalbed methane wells;
- (33) "Vent hole" means a borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened, which is used for the purpose of releasing or venting coalbed methane to the atmosphere and not for the purpose of capturing or producing coalbed methane for sale or use;
- (34) "Venting" means the act of releasing coalbed methane to the atmosphere;
- (35) "Well" means any borehole, shaft driven, or hole dug, drilled, deepened, converted or reopened for the purpose of capturing or producing coalbed methane for sale or use; and
- (36) "Workable coalbed" means:
 - (a) Any coalbed twenty-four (24) inches or more in thickness;
 - (b) Any coalbed actually being operated commercially;
 - (c) Any coalbed that the department decides can be operated commercially, and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (d) Any coalbed that, from outcrop indication or other definite evidence, proves to the satisfaction of the department to be workable and, when operated, will require protection if wells are drilled through or into it.

➔Section 1872. KRS 349.055 is amended to read as follows:

- (1) The Coalbed Methane Well Review Board is hereby established. The review board shall be composed of five (5) members and shall have the powers and duties specified under this chapter.
- (2) The review board shall consist of the commissioner of the Department for Natural Resources or his or her designee within the department, the director of the Division of Mine Reclamation and Enforcement and the director of the Division of Oil and Gas ~~Conservation~~ within the Department for Natural Resources, a representative of the oil and gas industry, and a representative of the coal industry. The representatives from the oil and gas industry and the coal industry shall be appointed by the Governor for terms of four (4) years subject to confirmation by the Senate.
- (3) The review board shall be, for administrative purposes only, attached to the ***Energy and Environment*** ~~Environmental and Public Protection~~ Cabinet, Department for Natural Resources.

➔Section 1873. KRS 350.010 is amended to read as follows:

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

- (1) "Surface coal mining operations" means activities conducted on the surface of lands in connection with a surface coal mine and surface impacts incident to an underground coal mine. The activities shall include

excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, extended depth secondary recovery systems, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching, or other chemical or physical processing, and cleaning, concentrating, or other processing or preparation, and the loading of coal at or near the mine site. Excavation for the purpose of obtaining coal includes extraction of coal from refuse piles. The activities shall not include the extraction of coal by a landowner of fifty (50) tons or less within twelve (12) successive calendar months for his own noncommercial use from land owned or leased by him; the extraction of twenty-five (25) to two hundred fifty (250) tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; or coal exploration subject to KRS 350.057. Surface coal mining operations shall also include the areas upon which the activities occur or where the activities disturb the natural land surface. The areas shall also include any adjacent land, the use of which is incidental to the activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or materials on the surface resulting from or incident to the activities. This definition shall include the terms "strip mining" of coal and the "surface effects of underground mining" of coal as used in this chapter;

- (2) "Strip mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter; any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location; and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include the extraction of coal by a landowner for his own noncommercial use of fifty (50) tons or less within twelve (12) successive calendar months from land owned or leased by him; the extraction of coal as an incidental part of federal, state, or local government financed highway or other construction under administrative regulations established by the cabinet; the extraction of, or intent to extract, twenty-five (25) tons or less of coal by any person by surface coal mining operations within twelve (12) successive calendar months; the extraction of coal incidental to the extraction of other minerals where coal does not exceed sixteen and two-thirds percent (16-2/3%) of the tonnage of minerals removed for purposes of commercial use or sale; coal exploration subject to KRS 350.057; nor shall it include the surface effects or surface impacts of underground coal mining;
- (3) "Surface coal mining and reclamation operations" means surface coal mining operations and all activities necessary and incident to the reclamation of the operations as required by this chapter;
- (4) "Overburden" means material of any nature, consolidated or unconsolidated, excluding topsoil, which lies above a natural deposit of coal and also means the material after removal from its natural state in the process of surface coal mining;
- (5) "Area of land affected" means any area of land or water upon which surface coal mining and reclamation operations are conducted or located or are to be conducted or located;
- (6) "Operations" means surface coal mining operations, all of the premises, facilities, roads, and equipment used in the process of producing coal from a designated area or removing overburden for the purpose of determining the location, quality, or quantity of a natural coal deposit or the activity to facilitate or accomplish the extraction or the removal of coal;
- (7) "Method of operation" means the method or manner by which the cut or open pit is made, the overburden is placed or handled, water is controlled, and other acts are performed by the operator in the process of uncovering and removing the coal;
- (8) "Operator" means any person, partnership, or corporation engaged in surface coal mining operations who removes or intends to remove more than twenty-five (25) tons of coal from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location;

- (9) "Person" means any individual, partnership, corporation, association, society, joint stock company, firm, company, or other business organization and shall also include any agency, unit, or instrumentality of federal, state, or local government including any publicly-owned utility or publicly-owned corporation of federal, state, or local government;
- (10) "Cabinet" means the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (11) "Secretary" means the secretary of the *Energy and Environment*~~[Environmental and Public Protection]~~ Cabinet;
- (12) "Reclamation" means the reconditioning of the area affected by surface coal mining operations under a plan approved by the cabinet;
- (13) "Degree" when used in this chapter shall mean from the horizontal, and in each case shall be subject to a tolerance of five percent (5%) of error;
- (14) "Bench" means the ledge, shelf, or terrace formed in the contour method of strip mining;
- (15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the cabinet determines that they are in compliance with KRS 350.455;
- (16) "Certification" by a qualified registered professional engineer, as required by this chapter and administrative regulations promulgated hereunder, means a good faith representation to the best of his or her knowledge and belief, based on adequate knowledge of the requirements of this chapter and administrative regulations promulgated hereunder, related experience, best professional judgment, accepted engineering practices and recognized professional standards, and standard practice as it relates to direct participation by the registered professional engineer or supervision of the registered professional engineer's employees or subordinates. Certification shall not be construed to constitute a warranty or guarantee;
- (17) "Reclamation development fund" means only that reconditioning of land affected by surface mining, which will directly promote and benefit the fund administered by the Kentucky Economic Development Finance Authority to foster economic development on surface mining land;
- (18) "Reclamation development project" means only that reconditioning of land affected by surface mining, which will directly promote and benefit an economic undertaking which constitutes a project under KRS 154.01-010(20);
- (19) "Reclamation development plan" means a plan submitted to the cabinet to show compliance with reclamation standards, and submitted to the Kentucky Economic Development Finance Authority to seek moneys from the reclamation development fund for a reclamation development project;
- (20) "Permit applicant" or "applicant" means a person applying for a permit;
- (21) "Permittee" means a person holding a permit to conduct surface coal mining and reclamation operations;
- (22) "Unanticipated event or condition" as used in KRS 350.085(7) means an event or condition encountered in a remining operation that was not contemplated by the applicable surface coal mining and reclamation permit;
- (23) "Lands eligible for remining" means those lands that would otherwise be eligible for expenditures under KRS 350.560(1) or (2);
- (24) "Coal combustion by-products" means fly ash, bottom ash, scrubber sludge, and waste from fluidized bed combustion, produced by the combustion of coal. Coal combustion by-products do not include boiler slag, or residues of refuse derived fuels, such as municipal solid waste, tires, and solvents;
- (25) "NAD 83" means the North American Datum, 1983 version, in feet units; and
- (26) "Single Zone Projection" means the Kentucky Single Zone State Plane Coordinate System of 1983, based on the Lambert Conformal map projection with double standard parallels on the North American Datum, as established in 10 KAR 5:010.

➔Section 1874. KRS 350.020 is amended to read as follows:

The General Assembly finds that the Commonwealth is the leading producer of coal and that the production of coal in Kentucky contributes significantly to the nation's energy needs. The General Assembly further finds that unregulated surface coal mining operations cause soil erosion, damage from rolling stones and overburden, landslides, stream pollution, the accumulation of stagnant water and the seepage of contaminated water, increase the likelihood of floods, destroy the value of land for agricultural purposes, destroy aesthetic values, counteract efforts for the conservation of soil, water and other natural resources, destroy or impair the property rights of citizens, create fire hazards, and in general create hazards dangerous to life and property, so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth. The General Assembly further finds that lands that have been subjected to surface coal mining operations and have not been reclaimed and rehabilitated in accordance with modern standards constitute the aforementioned perils to the welfare of the Commonwealth. The General Assembly further finds that there are wide variations in the circumstances and conditions surrounding and arising out of surface coal mining operations due primarily to difference in topographical and geological conditions, and by reason thereof it is necessary, in order to provide the most effective, beneficial and equitable solution to the problem, that a broad discretion be vested in the authority designated to administer and enforce the regulatory provisions enacted by the General Assembly. The General Assembly further finds that governmental responsibility for regulating surface coal mining operations rests with state government and hereby directs the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet to take all actions necessary to preserve and exercise the Commonwealth's authority, to the exclusion of all other governmental entities except the Commonwealth and agencies thereof and except as provided in KRS Chapter 100, and any county surface mining regulation contained within a zoning ordinance adopted prior to April 1, 1988, in regulating surface coal mining operations. Therefore, it is the purpose of this chapter to provide such regulation and control of surface coal mining operations as to minimize or prevent injurious effects on the people and resources of the Commonwealth. To that end, the cabinet is directed to rigidly enforce this chapter and to adopt whatever administrative regulations are found necessary to accomplish the purpose of this chapter.

➔Section 1875. KRS 350.028 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall have and exercise the following authority and powers:

- (1) To adopt administrative regulations after a hearing pertaining to surface coal mining operations including strip mining and the surface effects of underground mining to accomplish the purposes of this chapter;
- (2) To conduct investigations and hearings under provisions of this chapter or regulations adopted pursuant thereto;
- (3) To issue, after an opportunity for a hearing, suspension orders or show cause orders requiring an operator, permittee, or person to adopt remedial measures that are necessary to comply with this chapter and administrative regulations adopted pursuant thereto. Failure to attend a hearing shall be excused for good cause shown;
- (4) To issue, after an opportunity for a hearing, a final order imposing civil penalties for violations of this chapter or directing the Department for Natural Resources to revoke a permit, when the requirements set forth by the notice of noncompliance, order of cessation, or an order of the cabinet requiring remedial measures have not been complied with according to the terms therein. When the secretary or his authorized representatives determines that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the secretary or his authorized representatives also find that the violations are caused by the unwarranted failure of the permittee to comply with any requirements of this chapter or any permit conditions or that the violations are willfully caused by the permittee, the secretary or his authorized representative shall forthwith issue an order to the permittee to show cause as to why the permit should not be suspended or revoked and shall provide an opportunity for a hearing. Failure to attend a hearing shall be excused for good cause shown; and
- (5) To adopt administrative regulations to allow the state to administer and enforce the initial and permanent regulatory programs of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977." Administrative regulations shall be no more stringent than required by that law. Nothing in this chapter shall be construed as superseding, amending, modifying, or repealing any of the acts listed in Section 702(a) of Public Law 95-87, or any administrative regulation promulgated thereunder.

➔Section 1876. KRS 350.050 is amended to read as follows:

The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet under the supervision of the secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall have and exercise the following authority and powers:

- (1) To exercise general supervision and administration and enforcement of this chapter and all rules and regulations and orders promulgated thereunder;
- (2) To encourage and conduct investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to strip mining and reclamation of lands and waters affected by strip mining;
- (3) To adopt, without hearing, internal procedures with respect to the filing of reports, the issuance of permits, and other matters of procedure and administration;
- (4) To examine and pass upon all plans and specifications submitted by the permit applicant for the method of operation, backfilling, grading, and for the reclamation of the area of land affected by his operation;
- (5) To make investigations or inspections which may be deemed necessary to insure compliance with any provision of this chapter;
- (6) To order, through personnel of the cabinet, the suspension of any permit for failure to comply with any of the provisions of this chapter or any regulations adopted pursuant thereto;
- (7) To order, through personnel of the cabinet, the stopping of any operation that is started without first having secured a permit as required by this chapter.

➔Section 1877. KRS 350.054 is amended to read as follows:

- (1) There is established a special fund to be known as the "Illegal Mining and Conveyance Reclamation Fund" which shall be under the control of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet.
- (2) The fund shall consist of all moneys from the sale or forfeiture of all instrumentalities used in violation of KRS 350.057(3) or 350.060(1) as provided for in KRS 350.053.
- (3) Moneys in the fund may be used for the following purposes:
 - (a) To reclaim lands mined without a permit or authorization, as required by KRS 350.057 or 350.060(1), and not eligible for the abandoned mine lands reclamation fund; and
 - (b) To defray all expenses associated with the seizure, storing, and sale of forfeited property pursuant to KRS 350.053.
- (4) Moneys contained in the illegal mining and conveyance reclamation fund shall be deemed a trust and agency account and shall not lapse.
- (5) The cabinet shall have access to and control of the moneys held in the illegal mining and conveyance reclamation fund, but shall expend the moneys only for the purposes set forth in subsection (3) of this section.

➔Section 1878. KRS 350.057 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall promulgate regulations for the permitting and performance of coal exploration operations which substantially disturb the natural land surface. The regulations shall include at a minimum provisions for giving notice of intention to explore including a description of the area to be explored and the period of supposed exploration and provisions for reclamation, as required by this chapter, of all land disturbed in the exploration.
- (2) Any requirements of public access to records set forth in the Kentucky Revised Statutes to the contrary notwithstanding, the secretary shall order that confidential trade secrets or privileged commercial or financial information in the possession of the cabinet or pursuant to a coal exploration permit remain confidential.
- (3)
 - (a) No person or operator shall remove more than twenty-five (25) tons of coal by coal exploration operations without first obtaining a coal exploration permit from the cabinet.
 - (b) No person or operator conducting coal exploration operations in which more than twenty-five (25) tons of coal are removed shall knowingly and willfully receive, transport, sell, convey, exchange, transfer, trade, donate, deliver, or otherwise convert to a commercial use any coal extracted during the course of

the operations, except with the prior written approval of the cabinet for the purpose of testing or determining the properties of the coal.

- (4) All persons or operators conducting operations pursuant to this section shall be subject to the applicable provisions of KRS 350.990.

➔Section 1879. KRS 350.139 is amended to read as follows:

- (1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund except as provided in KRS 350.990(1). All funds from the forfeiture of bonds shall be placed in the State Treasury in an interest-bearing account and credited to a special agency account. The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds shall be expended upon the lands for which the bond was given. The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.
- (2) The State Treasurer shall on or before August 1 of each year transfer thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any permit for surface coal mining operations to the fiscal courts of the county in which the permitted operation is located for the general purposes of that fiscal court.

➔Section 1880. KRS 350.151 is amended to read as follows:

- (1) The **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall promulgate permanent program administrative regulations for the mining and reclamation of land disturbed or removed by operations resulting from or incident to underground coal mining. The regulations shall recognize the distinct differences between underground mining and strip mining of coal, shall be promulgated pursuant to this chapter, and shall be enforced as provided in KRS 350.130 and 350.990. Those activities may include, but not be limited to, the construction of new roads or the improvement or use of existing roads to gain access to the site of the activities and all lands affected by haulage, excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas and other areas upon which are sited structures, facilities, or other property or materials on the surface, but the regulations shall not be more stringent than those applied to strip mining of coal.
- (2) The permit applicant shall file with the cabinet a reclamation bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000) conditioned upon the faithful performance of the requirements set forth in this section and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. The cabinet shall accept, in lieu of the surety provided in this subsection, the deposit by the operator of United States government securities, cash or its equivalent in a sum equal to the principal amount of the required bond, or a self-bond pursuant to administrative regulations promulgated by the cabinet.
- (3) In order to protect the stability of the land, the cabinet shall suspend underground mining activities under urbanized areas, and adjacent to industrial or commercial buildings, major impoundments, or permanent streams, if the cabinet finds imminent danger to inhabitants of the urbanized areas.

➔Section 1881. KRS 350.152 is amended to read as follows:

- (1) The Commonwealth, acting by and through its **Energy and Environment**~~Environmental and Public Protection~~ Cabinet, shall have the power to acquire, either by negotiation or by exercise of the power of eminent domain, land which has been affected or disturbed by strip or auger mining, or by other surface coal mining operations which consists of orphan banks or unreclaimed spoil piles.
- (2) Prior to acquiring any land pursuant to KRS 350.152 to 350.163 and KRS 350.240, the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet shall extend to the owners thereof an opportunity to backfill, grade, plant, and do other acts of restoration thereon to the same extent and within the same time limits as prescribed by this chapter and regulations adopted pursuant thereto. If the owner or owners agree in

writing to perform such restoration and, weather permitting, start such restoration within a period of thirty (30) days, the land shall not be acquired by the Commonwealth.

- (3) The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall attempt to purchase any land which it has determined should be acquired for the purpose of restoration and which the owners have not agreed to restore as provided in subsection (2) above. In any case where the cabinet and the owners of the land are unable to agree upon the amount to be paid for the land, the cabinet may exercise the power of eminent domain against such land by filing a condemnation suit under the procedure of the Eminent Domain Act of Kentucky.
- (4) The purchase price, in the case of a negotiated acquisition, or the damages as finally determined, in the case of acquisition by condemnation, and the necessary expenses incidental thereto, shall be paid from appropriations made by the General Assembly for such purposes and appropriations to which federal funds made available for such purposes have been credited.

➔Section 1882. KRS 350.240 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet may adopt in the manner provided in subsection (17) of KRS 224.10-100 and subsections (5) and (6) of KRS 224.01-110 reasonable regulations for the reclamation of land disturbed or removed in the mining of clay. Such regulations shall encourage water impoundments and shall follow the standards established in Article III of the Interstate Mining Compact. The cabinet shall have the authority to adopt such regulations prior to the effective date of the Interstate Mining Compact and irrespective of whether the state becomes a member or withdraws from membership in the Interstate Mining Compact.

➔Section 1883. KRS 350.255 is amended to read as follows:

Any person may petition the secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet to initiate a proceeding for the issuance, amendment, or repeal of any regulation under this chapter.

- (1) Notice and an opportunity shall be provided for the petitioner and any person wishing to participate to be heard at a public hearing within thirty (30) days following the filing of the petition on the facts, technical justification, and law alleged in the petition.
- (2) The secretary shall render a final order in writing within thirty (30) days after the hearing granting or denying the petition on grounds that there is a reasonable basis for the petitioned rule change, or is not, or that it is required or prohibited by law and setting forth the reasons for the decision.
- (3) The secretary shall initiate a rulemaking proceeding pursuant to KRS Chapter 13A within thirty (30) days after a petition is granted proposing the issuance, amendment, or repeal of the petitioned regulations in conformity with the final order.
- (4) Any participant in the petition proceedings may seek review in the Circuit Court of Franklin County of a final order of the secretary denying all or any portion of the action requested in a petition.

➔Section 1884. KRS 350.260 is amended to read as follows:

There is hereby created a Small Coal Operators Advisory Council which shall report directly to the secretary of the Governor's Executive Cabinet. The council shall advise on matters affecting coal production and utilization including coal market development, transportation, and storage problems. The council shall have the function of coordinating and improving the working relationships between those state agencies administering programs which regulate, serve, or aid small coal mine operators. The council shall consist of fifteen (15) members. Ten (10) of those members shall be appointed by the Governor. Seven (7) of the ten (10) members shall be full-time operators producing three hundred thousand (300,000) or fewer tons of coal per year. Three (3) of the ten (10) appointees shall be with backgrounds in one (1) or more of the following areas: transportation, marketing, mining education, and mining engineering. The secretary of the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet, the commissioners of the Department of Agriculture and the Department for Natural Resources, and the special assistant to the Governor for coal and energy policy shall be ex officio members. Each individual appointment shall be for a four (4) year term which shall begin on July 15, 1984. Members may serve successive terms if reappointed. Vacancies shall be filled in a manner consistent with the provisions for initial appointments. At the first meeting held on or after July 1 of each year, a chairman shall be elected by and from the membership. The council shall meet at least quarterly during each year and may meet more often at the call of the chairman. The council shall be attached to the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet for administrative purposes. Council members shall be eligible for reimbursement by the cabinet for actual expenses directly related to serving on the council.

➔Section 1885. KRS 350.275 is amended to read as follows:

- (1) The General Assembly finds that:
 - (a) The backstowing of coal processing and coal underground development waste is a disposal method which, under appropriate conditions, is authorized under state and federal coal mining laws;
 - (b) The state Division of Water and Department for Natural Resources, United States Environmental Protection Agency, and United States Mine Safety and Health Administration each have responsibilities under different state and federal laws relative to any proposal to backstow or reinject coal processing and coal underground development waste; and
 - (c) The maximization of coordination of agency review of such a proposal is in the best interest of each agency, the proponent, and the public-at-large.
- (2) It is the intent of the General Assembly that the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet negotiate improved coordination among state and federal agencies in the review of proposals for backstowing or reinjection of coal processing and coal underground development waste, consistent with all requirements of KRS Chapters 224 and 350 and other state and federal laws relating to such proposals.

➔Section 1886. KRS 350.310 is amended to read as follows:

- (1) The "Mining Council," hereinafter called "the council," is hereby established in the office of the Governor. The council shall be the advisory body referred to in Article V(a) of the Interstate Mining Compact. No member of the council shall receive any compensation on account of his service thereon, but any such member shall be entitled to reimbursement for expenses actually incurred by him in connection with his possible service as the Governor's alternate on the Interstate Mining Commission.
- (2) The council shall be composed of eight (8) members: one (1) of whom shall be the Lieutenant Governor; three (3) of whom shall be representatives of mining industries; two (2) of whom shall be representatives of nongovernmental conservation interests; the commissioner for environmental protection and the secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.
- (3) The members of the council representing mining industries and nongovernmental conservation interests shall be appointed by the Governor. The term of office of such members shall be for four (4) years concurrent with that of the Governor or until their successor has been qualified.

➔Section 1887. KRS 350.320 is amended to read as follows:

In accordance with Article V(i) of the compact, the commission shall file copies of its bylaws and any amendments thereto with the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet.

➔Section 1888. KRS 350.425 is amended to read as follows:

The permittee, operator, or other person shall design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards and criteria developed pursuant to subsection (f) of Section 515 of Public Law 95-87, "Surface Mining Control and Reclamation Act of 1977," all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments. The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet through this chapter shall have exclusive jurisdiction over KRS Chapter 151 concerning the regulation of dams, levees, embankments, dikes, bridges, fills, or other obstructions across or along any stream or in the floodway of any stream, which structures or obstructions are permitted under this chapter.

➔Section 1889. KRS 350.465 is amended to read as follows:

- (1) The provisions of this section and regulations promulgated pursuant thereto, except with regard to the mining of clay, limestone, sand, gravel, fluorspar, stone, and rock asphalt, shall apply to the regulation of all surface coal mining and reclamation operations in the Commonwealth in the event that the Commonwealth receives from the United States Department of Interior and pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, approval of a permanent state regulatory program, and the Commonwealth has promulgated regulations pursuant to this section.
- (2) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet is hereby authorized and directed to prepare, develop and promulgate a comprehensive permanent regulatory program for the implementation of the Surface Mining Control and Reclamation Act of 1977, PL 95-87, for the purpose of

accepting and administering primary enforcement responsibilities pursuant to that act. The implementation of this section shall contain procedures similar to the Surface Mining Control and Reclamation Act of 1977, PL 95-87, and shall require surface coal mining operation performance standards no more stringent than provided for in that act. Nothing in this section shall be construed to empower the cabinet to adopt a regulatory program in conflict with the policy and purposes of the Surface Mining Control and Reclamation Act of 1977, PL 95-87. To that end, the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall include in its permanent regulatory program:

- (a) Environmental protection performance standards to prevent or minimize the adverse environmental effects of surface coal mining and reclamation operations on the land and water resources of the Commonwealth.
 - (b) A procedure for designating as being unsuitable for mining certain lands because of their topographical, geological, hydrological, climatological, biological, or chemical characteristics or historical, cultural, scientific, or aesthetic values.
 - (c) Procedures and regulations for the allowance of those persons having an interest which is or may be adversely affected to have the opportunity to be heard at every significant or critical part of the administrative and judicial process, including, but not limited to, the permit review and issuance process, the general enforcement process and hearings incident thereto, and the rulemaking procedures conducted by the cabinet; and procedures and regulations for persons having a valid legal interest which is or may be adversely affected by the setting, release, and inspection of bonds to have an opportunity to be heard at every significant or critical part of the administrative and judicial process relating to bonds. The regulations shall provide reasonable procedures for notice and an opportunity to be heard, access to minesites, access to records, and other reasonable procedures to accomplish the purposes of this chapter.
 - (d) Procedures for the administrative and judicial review of all actions of the cabinet to administer and enforce the provisions of this chapter, including the award of costs and expenses, including attorney's fees and expert witness fees, by the cabinet or the court.
 - (e) Plans and procedures for the reclamation and restoration of land and water resources affected by mining which have been abandoned or inadequately reclaimed to the standards imposed by this section and for which no bond is held or legal obligation to reclaim continues. The plan shall include provisions for the imposition of liens for necessary reclamation expenditures made on private property.
 - (f) Procedures for the assumption of the small operator assistance program pursuant to the Surface Mining Control and Reclamation Act of 1977, PL 95-87. The cabinet shall assume and implement that program and apply for and administer funds as may be provided pursuant to that act and such state funds as may be provided for the program.
- (3) In addition to any other authority, power, and duty vested in it by law, the cabinet shall have and exercise broad authority, power, and duty to:
- (a) Require those persons who wish to engage in surface coal mining and reclamation operations to submit application for a permit from the cabinet to conduct the operations, and to include in that application all information required by the cabinet pertaining to that operation.
 - (b) Issue, deny, or modify under such conditions as the cabinet may prescribe, permits to conduct surface coal mining and reclamation operations within the Commonwealth.
 - (c) Enter and inspect any permitted surface coal mining and reclamation operation or any known or suspected unpermitted mining operation for the purpose of ascertaining compliance with any provision of this chapter or of the permit.
 - (d) Order the cessation of mining activities, and if necessary impose affirmative abatement obligations, upon the permittee, operator, or person when, upon inspection, the cabinet determines that this section or any permit condition is being or has been violated so as to constitute an imminent and inordinate peril to the welfare of the Commonwealth.
 - (e) Order a person, permittee, or an operator to comply with the requirements of this section or his permit if inspection reveals a violation of the conditions of his permit or of any provision of this section.

- (f) Order a permittee to appear and show cause why his permit should not be suspended or revoked and his bond forfeited if the cabinet determines that the permittee or operator or the permitted operation has a pattern of violations of this section or permit conditions, and has willfully violated this section or permit conditions or a pattern of violations exists and that the violations are caused by the operator's or permittee's unwarranted failure to comply with this section or permit conditions.
 - (g) Require, increase, release, or decrease, under such conditions as the cabinet may prescribe, reclamation performance bonds and cause the forfeiture and collection of those bonds where the permittee has abandoned the operation or for which the permit under which the bond was given has been revoked or has expired without the required reclamation.
 - (h) To administratively impose, in lieu of those civil penalties provided for in KRS 350.990, civil penalties of up to five thousand dollars (\$5,000) per day for violations of permit conditions, this section, or any orders of the cabinet and enforce the administrative assessment of the penalties by initiating civil action in the Franklin Circuit Court or in any court having jurisdiction of the defendant.
 - (i) Conduct hearings and make investigations of any matter relating to the regulation of surface coal mining and reclamation operations, and provide for the assessment and payment of civil penalties including the placement of proposed civil penalty assessments into an escrow account prior to a contest on the amount of the assessment, consistent with the process of law.
 - (j) Provide for variances or exceptions consistent with KRS 350.450 from or in addition to mining performance standards, recognizing the specific characteristics inherent in:
 - 1. Steep slope mining;
 - 2. Mountaintop removal;
 - 3. Relatively low acreage disturbance or annual coal production;
 - 4. Prime farmland mining as defined by the United States Department of Agriculture, and to provide for other variances where land uses and watersheds will be improved; and
 - 5. Postmining uses different from and as beneficial as the premining uses.
 - (k) Receive and expend funds or aid from whatever source to accomplish the purposes of this chapter.
 - (l) Propose and promulgate regulations to accomplish the purposes of this section.
- (4) The cabinet shall not promulgate regulations which are inconsistent with the Surface Mining Control and Reclamation Act of 1977, PL 95-87.
- (5) Any person who violates a provision of this section or the regulations promulgated pursuant thereto shall be subject to those penalties and remedies set forth in KRS 350.990 except as provided for in subsection (3)(h) of this section.

➔Section 1890. KRS 350.475 is amended to read as follows:

- (1) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet is directed to promulgate regulations which specifically address what liability surface mining permittees shall have to reclaim permit areas on which parties or forces not controlled by the permittee have disturbed the reclamation previously performed by the permittee. Such parties or forces not controlled by the permittee shall include, without limitation, acts of God, oil and gas operations, loggers, recreational vehicles, and trespassers.
- (2) The ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet is also directed to promulgate regulations which specifically set forth the procedure for transferring liability for reclamation of a surface mining permit to a party who will make a post mining use of the permit area.

➔Section 1891. KRS 350.550 is amended to read as follows:

- (1) There is hereby created within the Commonwealth of Kentucky an Abandoned Mine Lands Program, to be administered within the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet. The secretary of the ***Energy and Environment***~~Environmental and Public Protection~~ Cabinet may promulgate regulations necessary to implement this program. The provisions of KRS 350.150, 350.152, 350.154, 350.156(1) and (2), 350.158, 350.161, and 350.163 shall not be applicable to this program.

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

➔Section 1892. KRS 350.565 is amended to read as follows:

The ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet shall have the authority to prepare and submit to the Secretary, United States Department of the Interior, reclamation plans, annual projects, applications for federal support, and any other reports or plans which are provided for or required pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

➔Section 1893. KRS 350.570 is amended to read as follows:

- (1) If the cabinet makes a finding of fact pursuant to the Abandoned Mine Lands Program that:
 - (a) Land or water resources have been adversely affected by past coal mining practices; and
 - (b) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control, or prevent should be taken; and
 - (c) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices are not known or readily available; or
 - (d) The owners will not give permission for the United States, the Commonwealth, political subdivisions, or their agents, employees, or contractors to enter upon such property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices;

then, upon giving notice by mail to the owners if known, or if not known, by posting notice upon the premises and advertising once in a newspaper of general circulation in the municipality or county in which the land lies,

the cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon the property adversely affected by past coal mining practices, and any other property to have access to such property to do all things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for such work and the benefits accruing to any such premises so entered upon shall be chargeable against such land and shall mitigate or offset any claim in or any action brought by any owner of any interest in such premises for any alleged damages by virtue of such entry: provided, however, that this provision is not intended to create new rights of action or eliminate existing immunities.

- (2) The cabinet and its authorized representatives, agents, and contractors shall have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal mining practices and to determine the feasibility of restoration, reclamation, abatement, control, or prevention of such adverse effects. Such entry shall be construed as an exercise of the police power for the protection of public health, safety, and general welfare, and shall not be construed as an act of condemnation of property nor trespass thereon.
- (3) The Commonwealth shall have the power to acquire, by purchase, donation, devise, or condemnation, any land which is adversely affected by past coal mining practices if acquisition of such land is necessary for successful reclamation and that:
 - (a) The acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will serve recreation and historic purposes, conservation and reclamation purposes, or provide open space benefits; or
 - (b) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices; or
 - (c) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this chapter or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices.
- (4) Title to all lands acquired pursuant to this section shall be in the name of the Commonwealth. The price paid for the land acquired under this section shall reflect the market value of the land as adversely affected by past coal mining practices. The Commonwealth may exercise the power of eminent domain against such land by filing a condemnation suit under the procedure of the Eminent Domain Act of Kentucky. Provided, that when the Commonwealth acquires land adversely affected by past coal mining practices pursuant to the Abandoned Mine Lands Program and when such abandoned mine reclamation fund moneys are less than the purchase price, the Commonwealth shall be authorized to use whatever funds are available pursuant to KRS 350.156(3).
- (5) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet may receive any federal, state, or other funds for the purpose of reclaiming lands affected by past coal mining practices, including federal funds made available to it pursuant to Title IV of the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87). The cabinet may avail itself of any services which may be provided by other state agencies or the federal government, and may compensate them for such services.
- (6) The cabinet shall have the power to backfill, grade, revegetate, and perform other acts of restoration and reclamation on lands acquired pursuant to this section. The cabinet may cause the reclamation work to be done by its own employees or by employees of other governmental agencies or soil conservation districts, or through contracts with qualified persons. Such contracts shall be awarded pursuant to regulations promulgated by the cabinet. The cabinet and any other agency and any contractor under a contract with the cabinet shall have the right of access to the land affected to carry out such reclamation.
- (7) Where land acquired pursuant to this section is deemed to be suitable for industrial, commercial, residential, or recreational development, the Commonwealth shall have the power to sell such land by public sale under a system of competitive bidding, at not less than fair market value and under such regulations as may be promulgated to insure that such lands are put to proper use consistent with local and state land use plans, if any. The proceeds of any such sale shall be credited to the abandoned mine reclamation fund. The cabinet, when requested after appropriate public notice, shall hold a public hearing, with the appropriate notice, in the county or counties in which lands acquired pursuant to this section are located. The hearings shall be held at a time which shall afford local citizens and governments the maximum opportunity to participate in the decision

concerning the use or disposition of the lands after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices.

- (8) In addition to the authority to acquire and reclaim land for the purposes set forth in subsection (3) of this section, the Commonwealth is given authority to use money in the fund to acquire land by purchase, donation, devise, or condemnation and to reclaim such land and to transfer it to any political subdivision of the Commonwealth or to any person, firm, association, or corporation, if such is an integral and necessary element of an economically feasible plan for a project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, persons dislocated as the result of adverse effects of coal mining practices which constitute an emergency as provided in KRS 350.585, or persons dislocated as the result of natural disasters or catastrophic failures from any cause, or any related commercial, industrial, agricultural, recreational, or governmental use of facilities. Such activities shall be accomplished under such terms and conditions as the Commonwealth shall require, which may include transfers of land with or without monetary consideration. Provided, that to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association, or corporation. No part of the funds provided under the abandoned mine reclamation fund may be used to pay the actual construction costs of housing.
- (9) All acquisitions and disposals of land or any interests therein pursuant to the authority granted by this section shall be governed by the applicable provisions of KRS Chapters 45A and 56.

➔Section 1894. KRS 350.600 is amended to read as follows:

- (1) The General Assembly finds that there has been a recent interest in the Commonwealth in the mining and processing of oil shale due to the critical need for fossil fuel which has developed in this country. The General Assembly further finds that the development of this fossil fuel could be of significant long-range benefit to the Commonwealth and to the United States of America, but that the unregulated extraction and processing of oil shale within the Commonwealth could cause soil erosion, water pollution, and the destruction of aesthetic and agricultural values. The General Assembly further finds that, in order to effectively regulate the extraction and processing of oil shale, the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall conduct extensive research concerning the process, waste production, and potentially adverse environmental impacts of such recovery operations.
- (2) It is the intent of the General Assembly to provide such regulation and control of the mining and processing of oil shale as to minimize and prevent its adverse effects on the citizens and the environment of the Commonwealth. The General Assembly further finds that the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet is the most competent agency to regulate the extraction and processing of oil shale due to its expertise in the handling of the surface mining of other minerals and in the regulation of other sources of air and water pollution.
- (3) The ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet shall file with the regulations compiler reasonable rules and regulations pertaining to oil shale mining operations, which shall include strip mining as defined by KRS 350.010, the surface effects of underground mining of oil shale, and the in situ mining of oil shale by June 30, 1981. No person shall engage in the commercial mining or processing of oil shale until such time as the cabinet promulgates rules and regulations to provide standards for such mining.
- (4) In promulgating regulations pursuant to subsection (3) of this section, the secretary shall make written finding that the regulations promulgated are based on sound scientific and engineering data and are reasonably necessary to protect the people and environment of the Commonwealth from the adverse effects of oil shale extraction. The secretary shall promulgate regulations consistent with existing standards for land, water, and air protection. The secretary may conduct a public hearing on the subject of the cabinet's regulation of the extraction and processing of oil shale for the purpose of collecting data and receiving public comments on this issue. The hearing will be held at a time and place to be determined by the secretary in accordance with the policy of the cabinet.
- (5) Prior to the adoption of the regulations required by this section, any person may conduct core drilling, experimentation, removal of samples, or a pilot and demonstration project which involves the mining of not more than five (5) acres for the production of oil shale in any one (1) county. Such core drilling, experimentation, removal of samples, or pilot and demonstration project involving the mining of not more than five (5) acres for the production of oil shale in any one (1) county shall not be initiated until written

notification of the intent to perform such operations shall be filed at least fifteen (15) days prior to commencement of such projects by registered mail by the mine operator with the secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet of the Commonwealth of Kentucky and with the person(s) holding title to the surface of the land to be utilized for such operations.

- (6) The secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet of the Commonwealth of Kentucky shall be granted the right to monitor such core drilling, experimentation, removal of samples, or pilot and demonstration project as it may deem necessary for the purpose of establishing sound and reasonable scientific and engineering data upon which rules and regulations pertaining to oil shale mining operations in the Commonwealth of Kentucky can be based.

➔Section 1895. KRS 350.610 is amended to read as follows:

- (1) The secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet is hereby authorized to establish a planning process enabling objective decisions based upon competent and scientifically sound data as to which, if any, lands of the Commonwealth are unsuitable for all or certain types of surface coal mining operations pursuant to the standards set forth in this chapter; provided, that any such designation shall not prevent coal or other mineral exploration of any area so designated.
- (2) Upon petition and hearing pursuant to subsection (6) of this section, the secretary shall designate an area as unsuitable for all or certain types of surface coal mining operations, if the secretary determines that reclamation pursuant to this chapter is not technologically and economically feasible.
- (3) Upon petition and hearing pursuant to subsection (6) of this section, a surface area may be designated unsuitable for certain types of surface coal mining operations if such operations will:
 - (a) Be incompatible with existing state and local land use plans; or
 - (b) Affect fragile or historic lands in which such operations could result in significant damage to important historic, cultural, scientific, and aesthetic values, and natural systems; or
 - (c) Affect renewable resource lands in which such operations could result in a substantial loss or reduction of long-range productivity of water supply or food or fiber products, and such lands to include aquifers and aquifer recharge areas; or
 - (d) Affect natural hazard lands in which such operations could substantially endanger life and property, such lands to include areas subject to frequent flooding and areas of unstable geology.
- (4) Determinations of the unsuitability of land for surface coal mining shall be integrated as closely as possible with present and future land use planning and regulation processes at any appropriate level of government, including but not limited to any valid exercise of authority of a municipality or county, acting independently or jointly, pursuant to KRS Chapter 100.
- (5) The requirements of this section shall not apply to lands on which coal mining operations were being conducted on August 3, 1977, or under a permit issued pursuant to this chapter or where substantial legal and financial commitments in such operation were in existence prior to January 4, 1977.
- (6) Other provisions of this chapter relating to hearings to the contrary notwithstanding, any person having an interest which is or may be adversely affected shall have the right to petition the cabinet to the extent such a petition would be consistent with subsections (2) and (3) of this section, to have a specific and well-defined area designated as unsuitable for surface coal mining operations, or to have such a designation terminated. Such a petition shall contain allegations of facts which shall be specific as to the petitioner's designated area, including a justification that the criteria alleged occur throughout and form a significant feature, and shall be based upon objective evidence which would tend to establish the allegations. The cabinet shall make a determination or finding whether the petition is complete, incomplete, or frivolous. Within ten (10) months after the receipt of the petition, the cabinet shall hold a public hearing in the locality of the affected area, after appropriate notice and publication of the date, time, and location of such hearing, pursuant to regulations promulgated by the cabinet to implement this section, provided that when a permit application is pending before the cabinet and such application involves an area in a designation petition, the cabinet shall hold the hearing on the petition within ninety (90) days of its receipt. After a person having an interest which is or may be adversely affected has filed a petition and before the hearing, any person may intervene by filing allegations of facts with supporting evidence which would tend to establish the allegations. Within sixty (60) days after such a hearing, the cabinet shall issue and furnish to the petitioner and any other party to the hearing, a written decision regarding the petition, and the reasons therefor. In the event that all petitioners stipulate agreement

prior to the requested hearing and withdraw their request, such hearing need not be held. Within thirty (30) days after receipt of an order, determination, finding, or decision by the cabinet or the secretary hereunder, any applicant, or any person with an interest which is or may be adversely affected and who is aggrieved by the order, determination, finding, or decision of the cabinet or secretary, may obtain judicial review thereof by appealing to the Circuit Court of Franklin County pursuant to the provisions of KRS 224.10-470.

- (7) Prior to designating any land areas as unsuitable for surface coal mining operations, the cabinet shall prepare a detailed statement on:
 - (a) The potential coal resources of the area;
 - (b) The demand for coal resources;
 - (c) The impact of such designation on the environment, the economy, and the supply of coal; and
 - (d) The characteristics of the petition area including a justification that the criteria alleged occur throughout the petition area and form a significant feature.
- (8) Subject to subsection (5) of this section, the cabinet shall not issue a permit to conduct surface coal mining and reclamation operations in contravention of any designation or any decision on any petition pursuant to subsection (6) of this section regarding any surface area designated unsuitable for mining; nor shall the cabinet issue a permit to conduct surface coal mining and reclamation operations in an area under study for such designation in an administrative proceeding already commenced under subsection (6) of this section.

➔Section 1896. KRS 350.990 is amended to read as follows:

- (1) Any permittee, person, or operator who violates any of the provisions of this chapter or administrative regulations promulgated pursuant thereto or who fails to perform the duties imposed by these provisions, except the refusal or failure to obtain a permit or other authorization as provided in this chapter, or who violates any determination or order issued pursuant to the provisions of this chapter, may be liable to a civil penalty of not more than five thousand dollars (\$5,000) for the violation, and an additional civil penalty of not more than five thousand dollars (\$5,000) for each day during which the violation continues, and in addition, may be enjoined from continuing the violations provided in this section. Any permittee, operator, or person who fails to abate a violation noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement shall be assessed a civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. Any person issued an order pursuant to KRS 350.130(4) shall be assessed a civil penalty of not more than five thousand dollars (\$5,000) for each violation cited in the underlying notice of noncompliance issued therewith. No separate civil penalty shall be assessed for the order issued pursuant to KRS 350.130(4). Each day of continuing violation may be deemed a separate violation for purposes of penalty assessment. The cabinet shall develop a method for calculating monetary penalties and shall promulgate it as an administrative regulation. The secretary or a designated representative, upon his or her own initiative or upon written request received within fifteen (15) days after the cabinet mails its proposed penalty assessment, may waive the use of the method for calculating monetary penalties if he or she determines that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. The basis for every waiver shall be fully explained and documented in the records of the case. If the secretary or his or her designated representative waives the use of the formula, he or she shall determine the appropriate penalty upon consideration of the permittee's history of previous violations at the particular surface coal mining operation, the seriousness of the violation, whether the permittee was negligent, and the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notification of the violation. The penalties shall be recoverable in an action brought in the name of the Commonwealth of Kentucky by the ~~cabinet's Office of Legal Services~~ *cabinet's Office of Legal Services*. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto. All sums recovered shall be placed in the State Treasury, except those moneys collected in excess of eight hundred thousand dollars (\$800,000) in any fiscal year shall be deposited in the bond pool fund for purposes set forth in KRS 350.595 and KRS 350.700 to 350.755 until the fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, after which excess money collected shall be deposited fifty percent (50%) to the bond pool fund and fifty percent (50%) to the supplemental fund established under KRS 350.139(1), and used for the purposes of that section. If the bond pool fund falls below sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study, all excess moneys shall be deposited in the

bond pool fund until that fund reaches sixteen million dollars (\$16,000,000) or a higher amount as may be established by the most recent actuarial study. All moneys previously deposited in the abandoned mine land enhancement fund shall be redeposited in the bond pool fund.

- (2) Any person or operator who engages in surface coal mining operations without first securing a permit, as provided in KRS 350.060, or any person who engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who engages in other mining operations, without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, shall be liable to a civil penalty for damages to the Commonwealth of not less than five thousand dollars (\$5,000) nor more than twenty-five thousand dollars (\$25,000) and in addition, may be enjoined from continuing the violations. Each day shall constitute a separate violation. In addition to the foregoing penalties, any permittee, person, or operator who fails to abate a violation of KRS 350.060 or KRS 350.029 or KRS 350.057, as noted in a notice of noncompliance or an order for immediate compliance and cessation within the time period prescribed for the abatement, shall be assessed an additional civil penalty of not less than seven hundred fifty dollars (\$750) for each day during which the violation continues. However, the penalties provided in subsection (1) of this section shall apply in lieu of the penalties provided in this subsection where an operator or permittee through inadvertence has exceeded the boundaries or expiration date of the permit in effect at that time.
- (3) The ~~cabinet~~~~[cabinet's Office of Legal Services]~~ shall bring an action for the recovery of penalties and bring an action for a restraining order, temporary or permanent injunction, against any permittee, operator, or person violating or threatening to violate any of the provisions of this chapter or violating or threatening to violate any order or determination issued pursuant to the provisions of this chapter. The Franklin Circuit Court shall hold concurrent jurisdiction and venue of all civil and injunctive actions instituted by the cabinet for the enforcement of the provisions of this chapter or the orders and administrative regulations of the cabinet promulgated pursuant thereto.
- (4) Any permittee, operator, or person who knowingly and willfully violates any of the provisions of this chapter, except as provided in subsection (5) of this section, or any determination or order issued pursuant to the sections of this chapter which have become final, shall be guilty of a Class A misdemeanor. Each day on which the violation occurs may constitute a separate offense.
- (5)
 - (a) Any person or operator who, in violation of KRS 350.060(1)(a) willfully and knowingly engages in surface coal mining operations without first obtaining a permit from the cabinet, or any person or operator who willfully and knowingly engages in coal exploration operations, exclusive of core drilling, without proper authorization, as required by the cabinet pursuant to KRS 350.057 or administrative regulations promulgated pursuant thereto, or any person or operator who willfully and knowingly engages in other mining operations without proper authorization as required by this chapter or administrative regulations promulgated pursuant thereto, with the intent to violate the laws, shall be guilty of a Class D felony.
 - (b) Any person or operator who in violation of KRS 350.060(1)(b) willfully and knowingly receives, transports, sells, conveys, transfers, trades, exchanges, donates, purchases, delivers, or in any way derives benefit from coal removed from any surface mining operations conducted in violation of KRS 350.060(1)(a) or 350.057 shall be guilty of a Class D felony.
- (6) Any person who violates any of the provisions of KRS 350.600 or administrative regulations promulgated pursuant thereto shall be subject to civil penalties of not more than twenty-five thousand dollars (\$25,000). Each day of continuing violation shall be deemed a separate violation.
- (7) Any permittee, operator, or person who knowingly makes any false statement, representation, or certification, or knowingly fails to make any statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by the cabinet, shall upon conviction be guilty of a Class A misdemeanor.
- (8) Except as permitted by law, any permittee, operator, or person who willfully and knowingly resists, prevents, impedes, or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall be guilty of a Class A misdemeanor.
- (9) When a corporate permittee violates any provision of this chapter or administrative regulation promulgated pursuant thereto or fails or refuses to comply with any final order issued by the secretary, any director, officer,

or agent of the corporation who willfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal shall be subject to the same civil penalties, fines, and imprisonment as may be imposed upon a person pursuant to this section.

- (10) Upon notice by the secretary that any surety has failed to comply with the provisions of KRS 350.032(3), the ~~commissioner~~~~[executive director]~~ of the Kentucky ~~Department~~~~[Office]~~ of Insurance shall revoke the surety's certificate of authority to conduct insurance business within the Commonwealth of Kentucky.
- (11) The cabinet, upon written request by any permittee, person, or operator subject to any penalty assessment under this section and pursuant to procedures, if any, set forth by administrative regulation and after consultation with the local county fiscal court, may allow as an alternative to the payment of any assessed penalty under this section the performance of in-kind reclamation, environmental rehabilitation, or similar action to correct environmental pollution. The in-kind work shall not substitute for those remedial measures mandated by the cabinet for the correction of any violations. The estimated cost of the in-kind work shall be greater than the penalty assessment. The cabinet's Division of Abandoned Mine Lands shall have the authority to approve proposed in-kind projects and to recommend projects to the cabinet, and shall determine whether the estimated cost of the in-kind work exceeds the penalty assessment. For the purposes of this subsection, the cost of the in-kind work shall include only those expenditures for actual on-site reclamation or rehabilitation work, including direct equipment, personnel, and material cost, but excluding administrative overhead or transportation costs. Failure to perform the in-kind work as agreed upon by the person or operator subject to the penalty assessment shall reinstate the liability of the person, permittee, or operator for the full amount of the assessed penalty. The cabinet may prepare and promulgate administrative regulations as are necessary to implement and administer the provisions of this subsection.

➔Section 1897. KRS 351.070 is amended to read as follows:

- (1) The commissioner shall have full authority over the department and shall superintend and direct the activities of the mine inspectors and other personnel of the department. There is created within the Department for Natural Resources an Office of Mine Safety and Licensing.
- (2) The secretary shall appoint an executive director to the Office of Mine Safety and Licensing in accordance with KRS 224.10-020(2) and prescribe his powers and duties.
- (3) The commissioner may, whenever necessary, divide the coal fields of the state into as many inspection districts as necessary, so as to equalize as nearly as practicable the work of each inspector, and may assign to the inspectors their respective districts.
- (4) The commissioner may, whenever he or she deems it necessary in the interest of efficient supervision of the mines, temporarily employ the services of additional mine inspectors or change inspectors from one (1) district to another.
- (5) The commissioner shall superintend and direct the inspection of mines and cause to be investigated the character and quality of air in mines whenever conditions indicate the necessity of doing so.
- (6) The commissioner shall collect statistics relating to coal mining in the state and make an annual report of the statistics.
- (7) The commissioner shall see that maps, plans, projections, and proposed developments of all underground coal mines are made and filed in his office.
- (8) The commissioner shall keep a properly indexed, permanent record of all inspections made by himself and the personnel of the department.
- (9) The commissioner shall exercise general supervision over the training of officials and workmen in safety and first aid and mine rescue methods, and may conduct demonstrations in safety whenever he deems it advisable.
- (10) The commissioner shall exercise general supervision over the dissemination of information among officials and employees concerning mine ventilation, mining methods, and mine accidents and their prevention, and shall assume full charge in the event of mine fire or explosion or other serious accident at any mine in the state.
- (11) The commissioner may assist in the resumption of operations of any mine or gather data for the development of any coal seams that would be of any benefit to the state or create new employment.

- (12) The commissioner may prescribe reasonable safety standards governing the use of explosives, and electrical and mechanical equipment in the operation of open-pit or surface mines.
- (13) The secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet shall have the power and authority to promulgate, amend, or rescind any administrative regulations he or she deems necessary and suitable for the proper administration of this chapter. Administrative regulations may be promulgated, amended, or rescinded by the secretary only after public hearing or an opportunity to be heard thereon of which proper notice by publication pursuant to KRS Chapter 424, has been given. Administrative regulations so promulgated shall carry the full force and effect of law.
- (14) The commissioner shall ascertain the cause or causes of any coal mining fatality and any accidents involving serious physical injury and, within sixty (60) days of completion of the investigation, shall report his or her findings and recommendations to the Governor, the Mine Safety Review Commission, the Mining Board, and the Legislative Research Commission. Accident interviews conducted by the Office of Mine Safety and Licensing shall be closed proceedings. The recommendations may include without being limited to the need to promulgate or amend administrative regulations to prevent the recurrence of the conditions causing the fatality. Effective January 1, 2009, the Office of Mine Safety and Licensing shall appoint an existing full-time employee to act as a family liaison. The family liaison shall have the responsibility during an accident investigation to keep the families of miners informed of the progress and findings of the accident investigation. The family liaison shall be trained in mining and in grief counseling.
- (15) The commissioner shall assess civil monetary penalties against licensed facilities for violations of laws in this chapter and KRS Chapter 352 pertaining to roof control plans, mine seal construction plans, unsafe working conditions, and mine ventilation plans that could lead to imminent danger or serious physical injury. The ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet shall promulgate administrative regulations within ninety (90) days of July 12, 2006, providing for the manner and method of the assessment of the penalties and appeals therefrom. In no event shall the civil penalty assessed pursuant to this subsection for the violation exceed five thousand dollars (\$5,000). Nothing contained in this subsection shall be construed to impair or contravene the authority granted under KRS 351.025(2) for imposing penalties against licensed facilities.

➔Section 1898. KRS 351.1041 is amended to read as follows:

- (1) The Mine Safety Review Commission is created as an independent governmental entity attached to the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, Office of the Secretary, for administrative purposes. The commission shall:
 - (a) Conduct hearings and issue orders regarding a licensee, coal operation, or other person involved in the mining of coal in accordance with KRS 351.194;
 - (b) Jointly with the department establish a process for the department's referral of allegations of mine safety violations, allegations of unsafe working conditions, violation of a miner's drug- and alcohol-free condition of certification, or supervisory personnel's failure to immediately report a fatal accident or an accident involving serious physical injury to the commission for adjudication;
 - (c) Make any recommendations to the department that it believes appropriate upon its review, consideration, and analysis of:
 - 1. All reports of coal mining fatalities and serious physical injuries provided by the commissioner under KRS 351.070(14);
 - 2. Any case in which a miner or a mine owner or operator, in the professional opinion of the department has a history of significant and substantial safety violations even though there has been no serious physical injury or death resulting from the violations;
 - 3. Any case in which a miner or a mine owner or operator has been convicted of a criminal charge for a violation of a federal mine safety standard or standards; and
 - 4. Any case in which the Federal Mine Safety and Health Administration has made a recommendation relating to certification of an individual certified under this chapter.
- (2) The Mine Safety Review Commission shall consist of three (3) members appointed by the Governor subject to the consent of the Senate and the House of Representatives in accordance with KRS 11.160. Of the members of the Mine Safety Review Commission first appointed under this section, one (1) shall be appointed for a term

of one (1) year; one (1) shall be appointed for a term of two (2) years; and one (1) shall be appointed for a term of three (3) years. After the initial appointments, members of the board shall be appointed for terms of four (4) years. A member may be reappointed at the expiration of his or her previous term. Members shall continue to serve until a successor is appointed and qualified.

- (3) The members of the Mine Safety Review Commission shall have the qualifications required of Judges of the Court of Appeals, except for residence in a district, and shall be subject to the same standards of conduct made applicable to a part-time judge by the Rules of the Kentucky Supreme Court. The members shall receive the per diem equivalent of the salary of a Judge of the Court of Appeals for each day spent in conducting the business of the commission.
- (4) The Governor shall designate a member of the Mine Safety Review Commission to serve as chair and shall fill any vacancy in the office of chair.
- (5) The Governor may remove any member for good cause, including violation of the Code of Judicial Conduct and repeated failure to perform satisfactorily the specific duties assigned in this chapter or KRS Chapter 352. The Governor may remove the member only after furnishing him or her with a written copy of the charges against that member and holding a public hearing if requested by the member.
- (6) The commission shall meet on the call of the chair or a majority of the members of the commission.
- (7) The **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall provide administrative services to the Mine Safety Review Commission. If the commission deems it necessary to employ hearing officers to assist it, the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall employ hearing officers to assist the commission in accordance with KRS Chapter 13B and this chapter, notwithstanding the provisions of KRS 13B.030(2)(b).
- (8) The commission may conduct hearings, compel the attendance of witnesses, administer oaths, and conduct oversight activities as may be required to ensure the full implementation of its duties.
- (9) The department shall provide the Mine Safety Review Commission with all information requested by the commission for the fulfillment of its responsibilities under this chapter and KRS Chapter 352.
- (10) The secretary of the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet shall effectuate the hiring of any staff deemed necessary and affordable for the efficient operations of the Mine Safety Review Commission. This may include an executive director, general counsel, or other administrative support positions, to be appointed in accordance with KRS 12.010 and 12.050.

➔Section 1899. KRS 351.1055 is amended to read as follows:

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the **Energy and Environment**~~(Environmental and Public Protection)~~ Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations annually to the executive director of the Office of Mine Safety and Licensing and the Interim Joint Committee on Agriculture and Natural Resources regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel. Based on the recommendations provided by the panel, the executive director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.
- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the executive director of mine safety and licensing. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:
 - (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
 - (b) One (1) member shall represent the federal Mine Safety and Health Administration;

- (c) One (1) member shall represent the coal industry;
 - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
 - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
 - (f) One (1) member shall be the executive director of the Office of Mine Safety and Licensing.
- (5) The Mine Equipment Review Panel shall provide initial recommendations to the executive director of the Office of Mine Safety and Licensing not more than one hundred twenty (120) days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the executive director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

➔Section 1900. KRS 351.175 is amended to read as follows:

- (1) The operation of a coal mine in Kentucky is a privilege granted by the Commonwealth of Kentucky to a licensee who satisfies the requirements of this section and demonstrates that the mine is or will be operated in a safe manner and in accordance with the laws of this Commonwealth.
- (2) Within forty-five (45) days after January 1, 1953, and of each year thereafter, the owner, operator, lessee, or licensee of each mine shall procure from the department a license to operate the mine, and the license shall not be transferable. Any owner, operator, lessee, or licensee who assumes control of a mine, opens a new mine, or reopens an abandoned mine during any calendar year shall procure a license before mining operations are begun.
- (3) The license shall be in printed form as the commissioner may prescribe and when issued shall be kept posted at a conspicuous place near the main entrance of the mine.
- (4) Requests for a license shall be made to the department and shall be accompanied by a United States postal money order or cashier's check drawn in favor of the State Treasurer in an amount established by administrative regulations of a minimum of one hundred dollars (\$100) and a maximum of fifteen hundred dollars (\$1,500). The license shall be issued when the following are properly submitted to the commissioner:
 - (a) The annual report of the licensee and the annual mine map required in KRS 351.170 and 352.450;
 - (b) A certification from the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims that the licensee has provided positive proof of compliance with the provisions of KRS Chapter 342;
 - (c) A certification from the commissioner of the Department of Revenue that the licensee is not a "delinquent taxpayer" as defined in KRS Chapter 131;
 - (d) Mine seal construction plan filed with the state and approved by MSHA;
 - (e) Roof control plan filed with the state and approved by MSHA;
 - (f) The ventilation plan required in KRS 352.020; and
 - (g) An approved emergency action plan required by KRS 352.640.
- (5) The department shall immediately revoke any license if the department receives:
 - (a) Withdrawal of the certification of compliance with KRS Chapter 342 issued by the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Workers' Claims; or
 - (b) Notice from the commissioner of the Department of Revenue that the licensee is a "delinquent taxpayer" as defined in KRS Chapter 131.
- (6) The commissioner, the executive director of the Office of Mine Safety and Licensing, or the mine inspector shall have the authority to stop production or close any mine whose operator fails to procure a license or fails to furnish a certification of workers' compensation coverage as required under this section.
- (7) The department shall be authorized to seek injunctive relief for any violation of this section. Revocation of a license by the department shall be an administrative function of the department. Appeals from revocation by the department shall be brought in Franklin Circuit Court.

- (8) A license which has been revoked under the "delinquent taxpayer" provision shall not be reissued until a written tax clearance has been received from the commissioner of revenue.
- (9) No mine underlying a cemetery shall be licensed by the commissioner unless two-thirds (2/3) of the governing body of that cemetery vote in approval of the operation. The application for a license shall contain an affidavit setting forth the approval of the cemetery's governing body. This subsection applies only to those cemeteries with governing bodies.

➔Section 1901. KRS 351.186 is amended to read as follows:

- (1) Any employer who is also a licensee that has implemented a drug-free workplace program certified by the Office of Mine Safety and Licensing shall be eligible to obtain a credit on the licensee's premium for workers' compensation insurance.
- (2) Each insurer authorized to write workers' compensation insurance policies shall provide the credit on the workers' compensation premium to any employer who is also a licensee for which the insurer has written a workers' compensation policy. The credit on the workers' compensation premium shall not:
 - (a) Be available to those employers that are also licensees who do not maintain their drug-free workplace program for the entire workers' compensation policy period; or
 - (b) Apply to minimum premium policies.
- (3) The ~~Department~~~~Office~~ of Insurance shall approve workers' compensation rating plans that give a credit on the premium for a certified drug-free workplace so long as the credit is actuarially sound. The credit shall be at least five percent (5%) unless the ~~Department~~~~Office~~ of Insurance determines that five percent (5%) is actuarially unsound.
- (4) The credit on the workers' compensation premium may be applied by the insurer at the final audit.

➔Section 1902. KRS 351.330 is amended to read as follows:

- (1) Blasting of explosives for use in the neighborhood of any public highway, stream of water, dwelling house, public building, school, church, commercial or institutional building, pipeline, or utility shall be done in accordance with the provisions of this section, and rules and regulations promulgated by the department.
- (2) Where necessary in a blasting operation, the department may require that the operator submit a blasting plan to the department for approval.
- (3) In all blasting operations, except as hereinafter otherwise provided, the maximum peak particle velocity of the ground motion in any direction shall not exceed two (2) inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, and the particle velocity at such location immediately after a period of one (1) second following the peak particle velocity produced by any charge shall not continuously exceed one-half (1/2) inch per second.
- (4) Blasting operations without instrumentation will be considered as being within the limits set forth in this subsection if such blasting operations are conducted in accordance with rules and regulations of the department establishing the maximum amount of explosives to be used in a single charge and in a single subcharge within specified distances from any location provided by subsection (1). No more than 40,000 pounds of explosives may be used in any charge except with the approval of the commissioner. Regulations promulgated by the department pursuant to this subsection shall be in such terms that compliance therewith will assure compliance with the provisions of subsection (3).
- (5) No two (2) consecutive subcharges containing the maximum permitted by the department pursuant to this subsection shall have a detonation time separated by less than eight (8) milliseconds, except that if the amount of explosive used in any subcharge is less than maximum permitted by the department pursuant to subsection (4), the time delay between detonation times may be decreased in the same ratio.
- (6) Any blasting operation may be conducted without reference to any maximum amount or period provided by or pursuant to subsection (4) if the operator of such blasting operation demonstrates by instrumentation that maximum particle velocity of the ground motion in any direction does not exceed the limits provided in subsection (3).
- (7) Instruments for determining particle velocity as set forth in this subsection shall be limited to such specific types of devices as shall have been expressly approved by the department and the commissioner or his duly

authorized agent may enter upon any premises for the purpose of conducting or supervising any necessary instrumentations provided by KRS 351.315 to 351.375.

- (8) When blasting operations are contemplated which would result in ground vibrations that would have a particle velocity in any direction in excess of 2 inches per second at the immediate location of any dwelling house, public building, school, church, commercial or institutional building, blasting operations may proceed after receiving written consent from the property owner or owners affected.
- (9) When blasting operations, other than those conducted at a fixed site as a part of any industry or business operated at such site, are to be conducted within the vicinity of a pipeline or public utility, the blaster or person in charge of the blasting operations shall take due precautionary measures for the protection of the pipeline or utility, and shall give adequate notice to the owner or his agent that such blasting operations are intended. The blaster shall be subject to regulations promulgated by the department concerning such a blasting operation.
- (10) Blasting operations near streams shall be prohibited in all cases where the effect of the blasting is liable to change the course or channel of any stream without first obtaining a permit from the department which has been approved by the Division of Water in the ***Energy and Environment***~~(Environmental and Public Protection)~~ Cabinet.
- (11) Blasting operations shall not be conducted within eight hundred (800) feet of any public highway, unless due precautionary measures are taken to safeguard the public.
- (12) Mudcapping in blasting operations shall be permitted only where it would endanger the safety of the workers to drill the rock or material to be blasted. If mudcapping is necessary, no more than ten (10) pounds of explosives shall be used for each charge.
- (13) When the use of detonating cord would cause severe air blast the department may cause all trunk lines to be covered by 5 to 6 inches of loose earth.
- (14) In blasting operations, flying rocks shall not be allowed to fall greater than one-half (1/2) the distance between the blast and a dwelling house, public building, school, church, commercial or institutional building. Protective material shall be used to insure this limit.
- (15) When a blast is about to be fired, ample warning shall be given to allow all persons to retreat to a safe place, and care shall be taken to ascertain that all persons are in the clear. Each operator shall follow a definite plan of warning signals that can be clearly seen or heard by anyone in the blasting area. The operator shall inform all employees at the operation as to the established procedure.
- (16) No person shall use explosives in such manner that safety to persons or property is threatened.
- (17) The two (2)-inch-per-second maximum peak particle velocity as specified in subsections (3) and (8) of this section shall be construed as the threshold below which blasting damage is unlikely to occur. However, the department shall have the authority to promulgate regulations requiring more restrictive levels of maximum peak particle velocity when necessary to maintain consistency with federal statutes or regulations.

➔Section 1903. KRS 353.510 is amended to read as follows:

As used in KRS 353.500 to 353.720, unless the context otherwise requires:

- (1) "Department" means the Department for Natural Resources~~[as defined in KRS 351.010];~~
- (2) "Commissioner" means the commissioner of the Department for Natural Resources~~[as defined in KRS 351.010];~~
- (3) "Director" means the director of the Division of Oil and Gas ~~{Conservation}~~ as provided in KRS 353.530;
- (4) "Commission" means the Kentucky Oil and Gas Conservation Commission as provided in KRS 353.565;
- (5) "Person" means any natural person, corporation, association, partnership, receiver, governmental agency subject to KRS 353.500 to 353.720, trustee, so-called common-law or statutory trust, guardian, executor, administrator, or fiduciary of any kind, federal agency, state agency, city, commission, political subdivision of the Commonwealth, or any interstate body;
- (6) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof;

- (7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;
- (8) "Gas" means all natural gas, including casinghead gas, and all other hydrocarbons not defined in subsection (7) of this section as oil;
- (9) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both. Each productive zone of a general structure which is completely separated from any other zone in the structure, or which for the purpose of KRS 353.500 to 353.720 may be so declared by the department, is covered by the word "pool" as used herein;
- (10) "Field" means the general area which is underlaid or appears to be underlaid by at least one (1) pool; and "field" includes the underground reservoir containing oil or gas or both. The words "field" and "pool" mean the same thing when only one (1) underground reservoir is involved; however, "field," unlike "pool," may relate to two (2) or more pools;
- (11) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying his tract or tracts;
- (12) "Abandoned," when used in connection with a well or hole, means a well or hole which has never been used, or which, in the opinion of the department, will no longer be used for the production of oil or gas or for the injection or disposal of fluid therein;
- (13) "Workable bed" means:
 - (a) A coal bed actually being operated commercially;
 - (b) A coal bed that the department decides can be operated commercially and the operation of which can reasonably be expected to commence within not more than ten (10) years; or
 - (c) A coal bed which, from outcrop indications or other definite evidence, proves to the satisfaction of the commissioner to be workable, and which, when operated, will require protection if wells are drilled through it;
- (14) "Well" means a borehole drilled, shaft driven, or hole dug or such proposed or otherwise used for the purpose of producing natural gas or petroleum, or one through which natural gas or petroleum is being produced, or for the purpose of injecting any water, gas, or other fluid therein or one into which any water, gas, or other fluid is being injected;
- (15) "Shallow well" means any well drilled and completed at a depth less than four thousand (4,000) feet except, in the case of any well drilled and completed east of longitude line 84 degrees 30'; shallow well means any well drilled and completed at a depth less than four thousand (4,000) feet or above the base of the lowest member of the Devonian Brown Shale, whichever is the deeper in depth;
- (16) "Deep well" means any well drilled and completed below the depth herein provided for a shallow well;
- (17) "Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for himself or for himself and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein shall be considered as "operator" to the extent of seven-eighths (7/8) of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner" as to one-eighth (1/8) interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the right to develop, operate, and produce the substance being produced or sought to be produced from the pool shall be considered as "operator" as to such pool;
- (18) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that such owner is not an operator as defined in subsection (17) of this section;
- (19) "Drilling unit" generally means the maximum area in a pool which may be drained efficiently by one (1) well so as to produce the reasonable maximum recoverable oil or gas in such area. Where the regulatory authority has provided rules for the establishment of a drilling unit and an operator, proceeding within the framework of the rules so prescribed, has taken the action necessary to have a specified area established for production from a well, such area shall be a drilling unit;

- (20) "Underground source of drinking water" means those subsurface waters identified as such in regulations promulgated by the department which shall be consistent with the definition of underground source of drinking water in regulations promulgated by the Environmental Protection Agency pursuant to the Safe Drinking Water Act, 42 U.S.C. secs. 300(f) et seq.;
- (21) "Underground injection" means the subsurface emplacement of fluids by well injection but does not include the underground injection of natural gas for purposes of storage;
- (22) "Endangerment of underground sources of drinking water" means underground injection which may result in the presence in underground water, which supplies or can reasonably be expected to supply any public water system, of any contaminant and if the presence of such contaminant may result in such system's not complying with any national primary drinking water regulation or may otherwise adversely affect the health of persons;
- (23) "Class II well" means wells which inject fluids:
 - (a) Which are brought to the surface in connection with conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection;
 - (b) For enhanced recovery of oil or natural gas; and
 - (c) For storage of hydrocarbons which are liquid at standard temperature and pressure;
- (24) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state.

➔Section 1904. KRS 353.530 is amended to read as follows:

- (1) The **secretary of the Energy and Environment Cabinet**~~Governor~~ shall appoint, as director of the Division of Oil and Gas~~Conservation~~ in the Department for Natural Resources, a person who has, at the time of his appointment, at least five (5) years' experience in the exploration for or the production of oil or gas.
- (2) It shall be his duty to administer the provisions of KRS 353.500 to 353.720 subject to the direction and supervision of the commissioner.
- (3) Before taking office, the director shall take oath, which shall be certified by the officer administering it. The oath, in writing, and the certificate shall be filed in the office of the Secretary of State.
- (4) No director shall, while holding office, acquire any financial interest, directly or indirectly, in any venture or activity for the exploration for or production of oil or gas in this Commonwealth.

➔Section 1905. KRS 353.560 is amended to read as follows:

- (1) Without limiting its general authority, the department shall regulate:
 - (a) The drilling and plugging of all wells;
 - (b) The spacing or locating of wells; and
 - (c) The use of vacuum.
- (2) The department shall make recommendations to the U.S. Environmental Protection Agency and the **Energy and Environment**~~Environmental and Public Protection~~ Cabinet as to disposal of salt water and oil field wastes.

➔Section 1906. KRS 353.565 is amended to read as follows:

- (1) There is hereby created in the Department for Natural Resources, the "Kentucky Oil and Gas Conservation Commission" which shall be composed of five (5) members. Four (4) of the members shall be appointed by the Governor and the fifth member, who shall serve as chairman of the commission, shall be the director of the Division of Oil and Gas~~Conservation~~ and who shall serve in an ex officio capacity as a nonvoting member except in the case of a tie. The four (4) members appointed by the Governor shall be residents of this state and not more than one (1) of them may be directly employed in the exploration for or the production of oil or gas, or deriving more than fifty percent (50%) of that person's income from the exploration for or production of oil or gas, or engaged in a business directly servicing or supplying these activities. No member of the commission shall participate in the deliberations of the commission or vote on any matter before the commission in which he, his employer, or any business unit in which he has a financial interest is an interested party, but a member of the commission is not prohibited from deliberating or voting on matters of general interest, such as the

fixing of statewide spacing patterns, affecting him, his employer, or a business unit in which he has financial interest as a member of a class of persons to be affected by an administrative regulation or order of the commission. The commission shall not contain more than one (1) representative from any one (1) operator, including subsidiaries or affiliates. Of the four (4) members appointed by the Governor, two (2) shall be residents of eastern Kentucky and two (2) shall be residents of western Kentucky. Longitude 84 deg. 30 min. shall be deemed as the division line between eastern Kentucky and western Kentucky.

- (2) The members of the commission, except the chairman, shall be appointed for terms of four (4) years each, except that:
 - (a) The original appointments shall be for terms of one (1), two (2), three (3), and four (4) years respectively; and
 - (b) Of the members appointed after July 15, 1998, one (1) member appointed to fill the term expiring June 21, 1999, shall serve until January 21, 2000; one (1) member appointed to fill the term expiring June 21, 2000, shall serve until January 21, 2001; one (1) member appointed to fill one (1) of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2002; and one (1) member appointed to fill the second of the two (2) terms expiring June 21, 2001, shall serve until January 21, 2003; and subsequent appointments shall be for four (4) year terms ending on January 21. Each member appointed by the Governor shall serve until his successor has been appointed and qualified. Members may be reappointed by the Governor to serve successive terms. The members of the commission, before performing any duty hereunder, shall take an oath which shall be certified by the officer administering it. The oath in writing and the certificate shall be filed in the office of the Secretary of State. Vacancies in the membership appointed by the Governor shall be filled by appointment by him and for the unexpired term of the member whose office shall be vacant, and the appointment shall be made by the Governor within sixty (60) days of the occurrence of a vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance of office.
- (3) The commission shall meet at times and places as shall be designated by the chairman. The chairman may call a meeting of the commission at any time, and he shall call a meeting of the commission upon the written request of two (2) members. Notification of each meeting shall be given in writing to each member by the chairman at least five (5) days in advance of the meeting. Any three (3) members, one (1) of which may be the chairman, shall constitute a quorum for the transaction of any business, including the holding of hearings. A majority of the commission present shall be required to determine any issue brought before it for decision.
- (4) Each member of the commission, except the chairman, shall receive one hundred fifty dollars (\$150) per diem not to exceed one hundred (100) days per calendar year while actually engaged in the performance of his duties as a member of the commission. Each member of the commission, including the chairman, shall also be reimbursed for all reasonable and necessary expenses actually incurred in the performance of his duties as a member of the commission.
- (5) The commission shall execute and carry out, administer, and enforce the provisions of KRS 353.651 and 353.652. The commission may make any investigation of records and facilities as it deems proper.
- (6) If an emergency is found to exist by the commission which, in its judgment, requires the making, changing, renewal, or extension of an administrative regulation or order without first having a hearing, an emergency regulation may be promulgated in accordance with KRS Chapter 13A and an emergency order may be issued in accordance with KRS 13B.125.
- (7) The commission shall have specific authority to:
 - (a) Promulgate and enforce reasonable administrative regulations and issue orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission, and otherwise administer the provisions of KRS 353.651 and 353.652; and
 - (b) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of its duties under the provisions of KRS 353.651 and 353.652.

- (8) Any interested person may have the commission call a hearing for the purpose of taking action in respect to any matter within the jurisdiction of the commission by making a request therefor in writing. Upon the receipt of any request, the commission promptly shall call a hearing thereon, and, after the hearing and with all convenient speed, and in any event within thirty (30) days after the conclusion of the hearing, shall take appropriate action with regard to the subject matter thereof as it may deem appropriate. If the hearing is adjudicatory in nature, it shall be conducted in accordance with KRS Chapter 13B.
- (9) Agreements made in the interest of conservation of oil or gas, or both, or for the prevention of waste, between and among owners or operators, or both, owning separate holdings in the same field or pool, or in any area that appears from geologic or other data to be underlaid by a common accumulation of oil or gas, or both, and agreements between and among these owners or operators, or both, and royalty owners therein, for the purpose of bringing about the development and operation of the field, pool, or area, or any part thereof, as a unit, and for establishing and carrying out a plan for the cooperative development and operation thereof, when the agreements are approved by the commission, are hereby authorized and shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.
- (10) Nothing in this section shall be construed as giving to the commission the right or authority to supersede the authority of the department in the administration of KRS 353.060.

➔Section 1907. KRS 353.590 is amended to read as follows:

- (1) Any person seeking a permit required by KRS 353.570 shall submit to the department a written application in a form prescribed by the department.
- (2) Each application shall be accompanied by a specified fee as follows:
- (a) The fee shall be three hundred dollars (\$300) for each well to be drilled, deepened, or reopened for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole.
 - (b) If the department receives delegation of authority for administration of the underground injection control program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended), the department may, by administrative regulation, establish a fee or schedule of fees in an amount not to exceed fifty dollars (\$50) per well, in addition to the fees imposed by paragraph (a) of this subsection, upon each application to drill, deepen, or reopen a well for any purpose relating to the production, repressuring, or storage of oil or gas, and for each water supply well, observation well, and geological or structure test hole. The fees or schedule of fees to be established by administrative regulation shall not exceed an amount sufficient to recover the costs incurred by the department in administering the Underground Injection Control Program less any other state or federal funds which are made available for this purpose.
 - (c) All money paid to the State Treasurer for fees required by paragraph (b) of this subsection shall be for the sole use of the department in the administration of the Underground Injection Control Program under Section 1425 of the Safe Drinking Water Act (Pub. L. 93-523 as amended).
- (3) All money paid to the State Treasurer for licenses and fees required by KRS 353.500 to 353.720 shall be for the sole use of the department and shall be in addition to any moneys appropriated by the General Assembly for the use of the department.
- (4) Each application shall be accompanied by a plat, which shows the location and elevation of each well, prepared according to the administrative regulations promulgated under KRS 353.500 to 353.720. The plat shall be certified as accurate and correct by a professional land surveyor licensed in accordance with the provisions of KRS Chapter 322.
- (5) When any person submits to the Department for Natural Resources an application for a permit to drill a well, or to reopen, deepen, or temporarily abandon any well which is not covered by surety bond, the department shall, except as provided in this section, require from the well operator the posting of a bond. Except for bonds for well depths greater than four thousand (4,000) feet, the bond shall be posted in accordance with the following schedule:

Well Depth Bond Amount

0 to 500 feet \$500.00

- | | |
|--------------------------------|------------|
| 501 feet to 1,000 feet | \$1,000.00 |
| 1,001 feet to 1,500 feet | \$1,500.00 |
| 1,501 feet to 2,000 feet | \$2,000.00 |
| 2,001 feet to 2,500 feet | \$2,500.00 |
| 2,501 feet to 3,000 feet | \$3,000.00 |
| 3,001 feet to 3,500 feet | \$3,500.00 |
| 3,501 feet to 4,000 feet | \$4,000.00 |
| 4,001 feet and deeper..... | \$5,000.00 |
- (6) The commission may establish a bond in a sum greater than five thousand dollars (\$5,000) for any well to be drilled to a depth of more than four thousand (4,000) feet if the members of the commission determine that the particular circumstances of the drilling of the well warrant an increase in the bond amount established in subsection (5) of this section.
 - (7) All bonds required to be posted under this section shall:
 - (a) Be made in favor of the Department for Natural Resources;
 - (b) Be conditioned that the wells, upon abandonment, shall be plugged in accordance with the administrative regulations of the department and that all records required by the department be filed as specified; and
 - (c) Remain in effect until the plugging of the well is approved by the department, or the bond is released by the department.
 - (8) An operator may petition the department to amend the drilling depth and bond amount applicable to a particular well and shall not proceed to drill to a depth greater than that authorized by the department until the operator is so authorized, except pursuant to administrative regulations promulgated by the department.
 - (9)
 - (a) Any qualified well operator, in lieu of the individual bond, may file with the department a blanket bond according to the following tiered structure:
 1. One (1) to twenty-five (25) wells require a ten thousand dollar (\$10,000) bond;
 2. Twenty-six (26) to one hundred (100) wells require a twenty-five thousand dollar (\$25,000) bond;
 3. One hundred one (101) to five hundred (500) wells require a fifty thousand dollar (\$50,000) bond;
 4. Five hundred one (501) or more wells require a one hundred thousand dollar (\$100,000) bond.
 - (b) Any nonqualified well operator, in lieu of an individual bond, may file with the department a blanket bond according to the following tiered structure:
 1. One (1) to one hundred (100) wells require a fifty thousand dollar (\$50,000) bond;
 2. One hundred one (101) or more wells require a one hundred thousand dollar (\$100,000) bond.
 - (10) To qualify for a blanket bond under the tiered structure set forth in subsection (9)(a) of this section, an operator shall:
 - (a) Have a blanket bond in place filed with the department prior to July 15, 2006, and have no outstanding, unabated violations of KRS Chapter 353 or regulations adopted pursuant thereto which have not been appealed;
 - (b) Demonstrate for a period of thirty-six (36) months prior to the request for blanket bonding a record of compliance with the statutes and administrative regulations of the division; or
 - (c) Provide proof of financial ability to plug and abandon wells covered by the blanket bond.

- (11) In addition to the requirements set forth in subsection (12) of this section, proof of financial ability set forth in subsection (10)(c) of this section shall be established by an audited financial statement that satisfies at least two (2) of the following ratios:
 - (a) A ratio of total liabilities to net worth less than two (2); or
 - (b) A ratio of the sum of net income plus depreciation, depletion, and amortization to total liability greater than one-tenth (0.1); or
 - (c) A ratio of current assets to current liabilities greater than one and five-tenths (1.5).
- (12) If the operator is a corporate subsidiary, the operator further shall provide a corporate guarantee in which the guarantor shall be the parent corporation of the operator of the wells covered under the bond. The corporate guarantee shall provide:
 - (a) That if the operator fails to perform with the proper plugging and abandonment of any well covered by the blanket bond, the guarantor shall do so or provide for alternate financial assurance; and
 - (b) The corporate guarantee shall remain in force unless the guarantor sends notice of the cancellation by certified mail to the operator and to the department. Cancellation shall not occur, however, during the one hundred twenty (120) day period beginning on the first day that both the operator and the department have received notice of cancellation, as evidenced by the certified mail return receipts.
- (13) An operator shall not be eligible for blanket bonding if:
 - (a) It has more than ten (10) violations of KRS Chapter 353 or the regulations adopted pursuant thereto within the thirty-six (36) month period;
 - (b) It has any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto which have not been appealed;
 - (c) It has a forfeiture of a bond, whether an individual bond or portion of a blanket bond, on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well or wells on the forfeited permit or permits; or
 - (d) It has a permit or permits, upon which a bond or portion of a bond has been forfeited and the proceeds from the forfeiture have been spent by the department to plug or reclaim the permitted well or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment.
- (14) A deposit in cash or a bank-issued irrevocable letter of credit may serve in lieu of either of the individual well or blanket bonds.
- (15) Individuals acquiring a single well for domestic use may post a combination bond which shall consist of a cash bond in the amount of one thousand dollars (\$1,000) plus a lien on the property to cover future plugging costs. Only one (1) combination bond may be posted by each individual.
- (16) A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may serve for an individual well bond. A certificate of deposit, the principal of which is pledged in lieu of a bond and whose interest is payable to the party making the pledge, may serve for a blanket bond, provided that the first five thousand dollars (\$5,000) of the blanket bond is posted with the department in cash.
- (17) The bond or bonds referred to in this section shall be executed by the well operator as principal and, if a surety bond, by a corporate surety authorized to do business in the Commonwealth.
- (18) A deposit in cash shall serve in lieu of either of the above bonds; all cash bonds accepted by the department shall be deposited into an interest-bearing account, with the interest thereon payable to the special agency account known as the oil and gas well plugging fund, created in subsection (24) of this section, to be used in accordance with the purposes described therein. All cash bonds being held by the department on July 13, 1990, shall likewise be deposited in the interest-bearing account, with the proceeds to be used for the purposes established for the oil and gas well plugging fund.
- (19) The bond amounts prescribed by subsection (5) of this section shall be applicable only to permits issued upon and after July 15, 2006. All bonds posted for permits issued prior to July 15, 2006, shall remain in full force and effect for the duration of the permits.

- (20) The blanket bond amounts prescribed by subsection (9) of this section shall be effective upon and after July 15, 2006. Any operator having filed a blanket bond with the department prior to July 15, 2006, may at its discretion increase the level of the blanket bond incrementally by increasing the blanket bond by the amount of the individual bond prescribed by subsection (9) of this section on any wells drilled subsequent to July 15, 2006, until the blanket bond has reached the level prescribed by subsection (9) of this section.
- (21) A successor to the well operator shall post bond, pay a twenty-five dollar (\$25) fee per well to the department, and notify the department in writing in advance of commencing use or operation of a well or wells. The successor shall assume the obligations of this chapter as to a particular well or wells and relieve the original permittee of responsibility under this chapter with respect to the well or wells. It shall be the responsibility of the selling operator to require the successor operator to post bond before use or operation is commenced by the successor and relief of responsibility under this chapter is granted to the original permittee.
- (22) If the requirements of this section with respect to proper plugging upon abandonment and submission of all required records on all well or wells have not been complied with within the time limits set by the department, by administrative regulation, or by this chapter, the department shall cause a notice of noncompliance to be served upon the operator by certified mail, addressed to the permanent address shown on the application for a permit.
- (a) The notice shall specify in what respects the operator has failed to comply with this chapter or the administrative regulations of the department.
- (b) If the operator has not reached an agreement with the department or has not complied with the requirements set forth by it within forty-five (45) days after mailing of the notice, the bond shall be forfeited to the department.
- (23) A bond forfeited pursuant to the provisions of this chapter may be collected by an attorney for the department or by the Attorney General, after notice from the director of the Division of Oil and Gas ~~Conservation~~.
- (24) All sums received under this section or through the forfeiture of bonds shall be placed in the State Treasury and credited to a special agency account to be designated as the oil and gas well plugging fund, which shall be an interest-bearing account with the interest thereon payable to the fund. This fund shall be available to the department and shall be expended for the plugging of any abandoned wells coming within the authority of the department pursuant to this chapter. The plugging of any well pursuant to this subsection shall not be construed to relieve the operator or any other person from civil or criminal liability which would exist except for the plugging. Any unencumbered and any unexpended balance of this fund remaining at the end of any fiscal year shall not lapse but shall be carried forward for the purpose of the fund until expended or until appropriated by subsequent legislative action.
- (25) Upon request by any person applying for a permit for a geological or structure test hole, the department shall keep the location and elevation of the hole confidential until the information is allowed to be released by the person obtaining the permit.
- (26) For the purpose of this chapter, "water supply well" shall not include:
- (a) Any well for a potable water supply for domestic use or for livestock; or
- (b) Any water well used primarily for cooling purposes in an industrial process.
- (27) Notwithstanding the provisions of KRS Chapter 353 or this section, no operator shall be eligible to receive additional permits if that operator or any entity in which it has an ownership interest has:
- (a) Any outstanding, unabated violations of KRS Chapter 353 or the regulations adopted pursuant thereto, which have not been appealed;
- (b) A forfeiture of a bond, whether an individual bond or portion of a blanket bond, on any permit where the operator has not entered into an agreed order with the department for the plugging and proper abandonment of the well or wells on the forfeited permit or permits; or
- (c) A permit or permits upon which a bond or portion of a bond has been forfeited, and the proceeds therefrom having been spent by the department to plug or reclaim the permitted well, or wells, unless the operator has made restitution to the department for all costs associated with the forfeiture, plugging, and proper abandonment.

➔Section 1908. KRS 353.5901 is amended to read as follows:

- (1) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, a well operator shall submit to the department an operations and reclamation proposal at the time of filing an application for permit to drill, deepen, or reopen a well. The proposal shall be filed on forms provided by the department and shall include:
 - (a) A proposal to prevent erosion of and sedimentation from the well site and all disturbed areas, including roads;
 - (b) A narrative description of the location of all areas to be disturbed, including the location of roads, gathering lines, the well site, tanks and other storage facilities, and any other information that may be required by the department. Accompanying this narrative description shall be a plat depicting the location on the land of all of these disturbances or facilities;
 - (c) A signed agreement by the surface owners of all disturbed areas to the operations and reclamation proposal; and
 - (d) Any additional information that the department may require.
- (2) In all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface and the surface owners of all disturbed areas have not signed agreements with the well operator agreeing to the operations and reclamation proposal, at the time of filing the application the well operator shall cause to be delivered to the surface owners of all disturbed areas who have not agreed to the operations and reclamation proposal, by certified mail, return receipt requested:
 - (a) A copy of the operations and reclamation proposal required by paragraph (a) of subsection (1) of this section, and the narrative description of land disturbances and plat required by paragraph (b) of subsection (1) of this section; and
 - (b) A notice to read as follows: "If you do not agree with the proposed use of your land by the well operator, the well operator may request mediation of your dispute by the General Counsel's Office of the Department for Natural Resources. If mediation is requested, and you decide to participate, each party to the mediation will be charged one hundred dollars (\$100) to help cover the cost of mediation. You will be notified of the time and place for mediation, if the well operator chooses mediation, and of your right to participate."

The certified mail receipt, when returned, shall be filed by the well operator with the department and made part of the permit application.
- (3) If the well operator has been unable to reach agreement with the surface owners of all areas to be disturbed in all cases where there has been a complete severance of the ownership of the oil and gas from the ownership of the surface to be disturbed, the permit required by this chapter shall not be issued until the dispute has been referred to mediation by the General Counsel's Office of the Department for Natural Resources, and mediation has been concluded either by agreement between the parties or by a report of the mediator, in accordance with subsection (4) of this section.
- (4) The well operator may request mediation any time after filing the permit application, and all parties participating in the mediation shall pay a nonrefundable fee of one hundred dollars (\$100) to the Kentucky State Treasurer, which shall be for the sole use of the department and shall be in addition to any money appropriated by the General Assembly for the use of the department. The department shall notify the well operator and all surface owners of areas to be disturbed by drilling who have not agreed to the operation and reclamation plan of the date and time mediation shall be conducted by certified mail, return receipt requested. The department shall conduct mediation at the site proposed to be disturbed within fifteen (15) days from the date requested, if practicable. At the mediation, the mediator will attempt to facilitate an agreement between the well operator and the surface owner. If an agreement is not forthcoming after mediation, the mediator shall, within five (5) days after mediation, issue a report to the director of the Division of Oil and Gas ~~Conservation~~ recommending that the director:
 - (a) Accept the proposal as submitted by the well operator; or
 - (b) Accept the proposal with modifications set forth by the mediator.

- (5) If an agreement between the well operator and the surface owners of all disturbed areas is not forthcoming after mediation, the mediator shall consider the following factors as to the reasonable use of the surface by the well operator in issuing a report to the director, which recommendations shall become permit conditions:
- (a) The location of roads, gathering lines, and tank batteries;
 - (b) The timing of the operation, considering seasonal uses of the land by the surface owner and the need of the well operator to drill expeditiously;
 - (c) The impact on the other uses of the land by the surface owner, including the location of timber, houses, barns, ponds, crops, and other improvements;
 - (d) Whether the proposal includes a plan for timely, effective reclamation of all disturbed areas; and
 - (e) Any other information deemed appropriate by the mediator.
- (6) The director shall act upon the recommendation of the mediator within five (5) days of the receipt of the mediation report.

➔Section 1909. KRS 353.640 is amended to read as follows:

- (1) The operator shall provide a list to the department of all persons reasonably known to own an oil or gas interest in any tract, or portion thereof, proposed to be pooled in an application to the department for a pooling order. A pooling order shall be made only after the department provides notice to all persons reasonably known to own an oil or gas interest in any tract, or a portion thereof, proposed to be pooled after a hearing has been held. In the event of the filing of an application for a pooling order under KRS 353.630(2) where unknown owners or nonlocatable owners exist, the operator shall cause to be published, at least twenty (20) days prior to the hearing on the application for the pooling order, one (1) notice in the newspaper of the largest circulation in each county in which any tract, or portion thereof, proposed to be pooled is located. The notice shall:
- (a) State that an application for a pooling order is being filed with the Division of Oil and Gas{~~Conservation~~} in the Department for Natural Resources;
 - (b) Describe any tract, or portion thereof, proposed to be pooled;
 - (c) In the case of an unknown owner, identify the name of the last known owner;
 - (d) In the case of a nonlocatable owner, identify the owner and the owner's last known address; and
 - (e) State that any party claiming an interest in any tract, or portion thereof, proposed to be pooled should contact the operator at the published address and provide a copy of the notification to the director of the Division of Oil and Gas{~~Conservation~~} in the Department for Natural Resources within twenty (20) days of the date of publication.
- (2) A pooling order shall authorize the drilling, deepening, or reopening, and the operation of a well for the production of oil or gas on the tracts or portions thereof pooled; shall designate the operator to drill and operate the well; shall prescribe the time and manner in which all owners of operating interests in the pooled tracts or portions thereof may elect to participate therein; shall provide that all reasonable costs and expenses of drilling, deepening, or reopening, and the completing, operating, plugging, and abandoning the well shall be borne, and all production from the well shall be shared by all owners of operating interests in proportion to the net mineral acres in the pooled tracts owned or under lease to each owner; and shall make provision for the payment of the reasonable actual cost thereof, including a reasonable charge for supervision, by all those who elect to participate therein.
- (3) A pooling order shall establish a procedure for the owner of an operating interest who does not decide to become a participating operator to elect to either:
- (a) Surrender, by means of sale or lease, the interest to a participating operator on a reasonable basis and for a reasonable consideration, which if not agreed upon shall be determined by the director of the Division of Oil and Gas{~~Conservation~~}; or
 - (b) Share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.

- (4) An oil or gas owner whose identity and location remain unknown at the conclusion of a hearing concerning the entry of a pooling order for which public notice was given and whose interest is pooled pursuant to KRS 353.630(3) shall be deemed to have elected to lease the interest to the oil or gas operator, exclusive of one-eighth (1/8) of the production attributable to the unleased interest, and shall not be entitled to make the election established in subsection (3) of this section.
- (5) Except as provided in this subsection, an oil or gas owner who does not make an election under the pooling order within thirty (30) days of the entry of the order shall be deemed to have leased the oil or gas interest to the oil or gas well operator in the manner established in subsection (4) of this section. If the holder of an operating interest has obtained the interest by lease or other agreement granting the right to conduct operations to anyone other than the holder of the oil and gas estate, and if the owner of the operating interest does not make an election under the pooling order, the holder of the operating interest shall be deemed to have elected to share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his or her share equal two hundred percent (200%) of the share of the costs allocable to his or her interest.
- (6) A person whose interest is subject to an oil or gas lease or other agreement which grants to another the right to operate or conduct operations shall not own an operating interest for the purposes of subsection (3) of this section.
- (7) A certified copy of any pooling order entered under KRS 353.500 to 353.720 shall be entitled to be recorded in the office of the county clerk of the county or counties in which all or any portion of the pooled tract is located, and the record of the order, from the time of lodging the order for record, shall be notice of the order to all persons.

➔Section 1910. KRS 353.650 is amended to read as follows:

- (1) If one (1) or more of the owners of any operating interest in any portion of the pooled tract shall drill, deepen or reopen and operate, or pay the costs of drilling, deepening or reopening and operating a well for the benefit of another owner of an opening interest, as provided in the pooling order, then such owner or owners shall be entitled to the proceeds from the share of production from the tracts or portions thereof pooled accruing to the interest of such other owner, exclusive of any royalty reserved in any lease or leases of such tracts or portions thereof or exclusive of one-eighth (1/8) of production attributable to all unleased tracts or portions thereof, until such proceeds equal the sums payable by or charged to the interest of the other owner plus a reasonable charge for interest on such sums.
- (2) If a dispute shall arise as to the costs of drilling, deepening or reopening, and operating a well, the director of the Division of Oil and Gas~~[-Conservation]~~ shall determine and apportion the costs.

➔Section 1911. KRS 353.670 is amended to read as follows:

- (1) All rules, regulations and amendments promulgated under KRS 353.500 to 353.720 shall be promulgated by the department after notice and a hearing. At all hearings held to consider any rules, regulations or amendments thereto, any interested person shall be entitled to be heard.
- (2) All hearings held under this section shall be held at such time and place as is specified by the department, and according to rules and regulations promulgated under KRS 353.500 to 353.720. A written record of each hearing shall be kept, unless the keeping of a record shall be waived by all parties who participate therein. All interested persons shall be entitled to be heard at all hearings conducted under KRS 353.500 to 353.720.
- (3) The director of the Division of Oil and Gas~~[-Conservation]~~, or his representatives, shall attend all hearings under this section conducted by the department.
- (4) All rules, regulations and orders promulgated or issued under KRS 353.500 to 353.720 shall be in writing, shall be entered in full and indexed in books to be kept by the department for that purpose, shall be public records open for inspection at all times during office hours, and shall be filed in accordance with the provisions of KRS Chapter 13A. A copy of any rule, regulation or order, certified by the commissioner of the Department for Natural Resources or the director of the Division of Oil and Gas~~[-Conservation]~~, shall be received in evidence in all courts of this Commonwealth without any further authentication thereof.

➔Section 1912. KRS 353.739 is amended to read as follows:

- (1) Within ten (10) days of the drilling of the well, the well operator shall have performed, at its expense, a directional survey for any well drilled in an active mining area or an inclination survey for any well drilled through a workable coal bed that is not in an active mining area.
- (2) If, as a result of the as-drilled well location plat prepared pursuant to KRS 353.735 or the directional or inclination survey performed under subsection (1) of this section, it is determined that a well or any portion of a well has been drilled at either a surface location or a subsurface location at the base of the lowest workable coal bed that is not in compliance with the allowable distances established in KRS 353.737(2), as well as the spacing requirements of KRS 353.610, then the well operator shall promptly notify the Division of Oil and Gas~~[-Conservation]~~ of the noncompliance. The division shall order the well operator to remediate the noncompliance to bring the well within the allowable distances that have been exceeded. If the division determines that the well's permit conditions cannot be satisfied by remediation or that the well operator is unable to satisfactorily meet the ordered remediation, then the division shall order the well to be plugged and abandoned.
- (3) No remediation shall be required under subsection (2) of this section if:
 - (a) A directional survey indicates that the well is not in compliance with the allowable distance established in KRS 353.737(2)(b), but the well is in compliance with the spacing requirements of KRS 353.610; and
 - (b) The well operator receives a waiver for the noncompliance from the coal operator or permittee.
- (4) No remediation shall be required under subsection (2) of this section if:
 - (a) An inclination survey indicates that the well is not in compliance with the allowable distances established in KRS 353.737(2), but the well is in compliance with the spacing requirements of KRS 353.610; and
 - (b) The well operator performs or causes to be performed a directional survey to identify the correct subsurface location of the wellbore.

➔Section 1913. KRS 353.743 is amended to read as follows:

A coal, oil, or gas operator that has a directional or inclination survey performed pursuant to KRS 353.737 and 353.739 shall provide a copy of the survey to the Division of Oil and Gas~~[-Conservation]~~. The division shall be responsible for reasonably maintaining and updating all information required by this chapter regarding oil and gas wells.

➔Section 1914. KRS 353.745 is amended to read as follows:

- (1) For gathering lines installed across terrain with a slope of greater than twenty degrees (20°), the well operator shall mark the location of the gathering lines with line markers at interval distances not to exceed two hundred fifty (250) feet.
- (2) The Division of Oil and Gas~~[-Conservation]~~ shall make available on its Web site maps or other relevant information showing the location of gathering lines, as filed by the well operator, within thirty (30) days of the information being filed.
- (3) Prior to the issuance of a permit to drill, the division shall determine whether the proposed well will intersect an active mining area by reviewing the pertinent mine maps filed with the Office of Mine Safety and Licensing. If the proposed well will intersect with an active mining area, the division shall:
 - (a) Determine whether the coal mine permittee has been properly notified pursuant to KRS 353.050; and
 - (b) Issue the permit to drill on the condition that a directional survey be performed pursuant to KRS 353.739(1).
- (4) In order to perform the duties under this section, the Division of Oil and Gas~~[-Conservation]~~ shall create and adequately staff the positions required to perform the duties. The division may charge an administrative fee not to exceed fifty dollars (\$50) per permit application to perform its duties under this section.

➔Section 1915. KRS 353.752 is amended to read as follows:

- (1) There is created and established within the Finance and Administration Cabinet a Kentucky Gas Pipeline Authority composed of the following nine (9) members:

- (a) The secretary of the Finance and Administration Cabinet or his or her designee;
 - (b) The secretary of the Tourism, Arts and Heritage Cabinet or his or her designee;
 - (c) The secretary of the ***Energy and Environment***~~[Environmental and Public Protection]~~ Cabinet or his or her designee;
 - (d) A member designated by the Kentucky Oil and Gas Association;
 - (e) A member designated by the Kentucky Society of Professional Engineers who shall have experience in oil and gas pipeline construction;
 - (f) A member designated by the Kentucky Gas Association representing a natural gas distribution company with a minimum annual throughput of ten billion (10,000,000,000) cubic feet;
 - (g) A citizen member appointed by the Governor; and
 - (h) Two (2) nonvoting legislator members, one (1) appointed by the President of the Senate and one (1) by the Speaker of the House of Representatives.
- (2) Members described in paragraphs (d), (e), (f), and (g) of subsection (1) of this section shall begin their terms on August 1, 2005. The initial terms of the members described in paragraphs (d) and (e) shall be two (2) years. The initial terms of the members described in paragraphs (f) and (g) shall be three (3) years and four (4) years, respectively. All subsequent terms for those members shall be four (4) years.
- (3) Vacancies occurring during the term of any member shall be filled in the same manner as the original appointment.
- (4) The nine (9) members of the authority and their successors shall be a body corporate and politic, with perpetual succession, constituting a public corporation and a governmental agency and instrumentality of the Commonwealth. The authority shall have the power, in its corporate name, to contract and be contracted with, acquire and convey property, sue and be sued, have and use a corporate seal, and exercise all of the usual powers of corporations not inconsistent with the authority's specifically enumerated powers.
- (5) The members of the authority shall receive no compensation for their services, but shall be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their duties under KRS 353.750 to 353.776.
- (6) The secretary of the Finance and Administration Cabinet shall serve as chair, and the members of the authority shall elect a vice chair from their membership and appoint a secretary.
- (7) The secretary of the Finance and Administration Cabinet shall designate an employee of his or her cabinet to serve as treasurer of the authority. The treasurer shall give bond to the authority for a faithful accounting for all funds coming into his or her custody, in the amount the authority may prescribe, drawn upon a surety company qualified to do business in the Commonwealth. The premium shall be paid by the Commonwealth.
- (8) The authority shall establish and maintain an office and keep accurate and complete records of the authority's actions and proceedings, which shall be available for public inspection in accordance with KRS 61.870 to 61.884. The Finance and Administration Cabinet shall provide the funds, staff, facilities, and materials required by the authority in the conduct of its duties and functions.

➔Section 1916. KRS 360.100 is amended to read as follows:

- (1) The following definitions apply for the purposes of this section:
- (a) "High-cost home loan" means a loan other than an open-end credit plan or a reverse mortgage transaction in which:
 - 1. The principal amount of the loan is greater than fifteen thousand dollars (\$15,000) and does not exceed two hundred thousand dollars (\$200,000);
 - 2. The borrower is a natural person;
 - 3. The debt is incurred by the borrower primarily for personal, family, or household purposes;
 - 4. The loan is secured by a mortgage on residential real property or secured by collateral which has a mortgage lien interest in residential real property, which is or will be occupied by the borrower as the borrower's principal dwelling; and

5. The terms of the loan exceed either or both of the following thresholds:
 - a. Without regard to whether the loan transaction is or may be a "residential mortgage transaction" as defined in 12 C.F.R. 226.2(a)(24), as amended from time to time, the loan at the time the loan is consummated is such that the loan is considered a "mortgage" under section 152 of the Home Ownership and Equity Protection Act of 1994, Pub. L. No. 103-325, 15 U.S.C. sec. 1602(aa), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including 12 C.F.R. 226.32, as the same may be amended from time to time; or
 - b. The total points and fees payable by the borrower at or before the loan closing exceed the greater of three thousand dollars (\$3,000) or six percent (6%) of the total loan amount as shown as the amount financed on the final Truth-in-Lending Statement.
- (b) "Lender" means any person who funds or negotiates the terms of a high-cost home loan or acts as a mortgage broker or lender, finance company, or retail installment seller with respect to a high-cost home loan. However, any person who purchases or is otherwise assigned a high-cost home loan shall be subject to an action for violation of this section only if the violation for which the action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note.
- (c) "Material change" means any of the following:
 1. A change in the type of loan being offered, such as a fixed or variable rate loan or a loan with a balloon payment;
 2. A change in the term of the loan, as reflected in the number of monthly payments due before a final payment is scheduled to be made;
 3. An increase in the interest rate of more than one-quarter of one percent (0.25%), or an equivalent increase in the amount of discount points charged;
 4. A change regarding the requirement of escrow for taxes and insurance; and
 5. A change regarding the requirement or payment, or both, of private mortgage insurance.
- (d) 1. "Total points and fees payable by the consumer at or before the loan closing" means all amounts payable by a borrower at or before the closing of a home loan, excluding any interest or time-price differential due at closing on the loan proceeds and includes:
 - a. All mortgage broker fees, including fees paid by the consumer directly to the broker, fees paid by the consumer to the creditor for delivery to the broker, and yield spread premiums paid by the creditor to the broker;
 - b. Any amount payable under an add-on or discount system of additional charges;
 - c. Service, transaction, activity, and carrying charges that exceed similar charges on a noncredit account;
 - d. Points, loan fees, assumption fees, finder's fees, and similar charges;
 - e. Appraisal, investigation, and credit report fees when service is provided by the lender or an affiliate and not by a third party;
 - f. Charges imposed on a creditor by another person for purchasing or accepting the borrower's obligation, if the borrower is required to pay the charges in cash, as an addition to the loan obligation, or as a deduction from loan proceeds;
 - g. Premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage, whether or not the debt-cancellation coverage is insurance under applicable law; or
 - h. Closing agent fees charged by a third party, but only if the lender requires the particular services for which the borrower is charged and the lender requires the imposition of the charge or the lender retains a portion of the charge.

2. "Total points and fees payable by the consumer at or before the loan closing" does not include real estate related fees paid to third parties if the charge is reasonable, the creditor receives no direct or indirect compensation in connection with the charge, and the charge is not paid to an affiliate of the creditor. Real estate related fees include:
 - a. Fees for title examination, abstract of title, title insurance, property survey, and similar purposes;
 - b. Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents;
 - c. Notary and credit report fees;
 - d. Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest infestation and flood hazard determinations; and
 - e. Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.
- (2) A high-cost home loan shall be subject to the following limitations:
- (a)
 1. No lender may make, provide, or arrange a high-cost home loan with a prepayment penalty unless the lender offers the borrower a loan without a prepayment penalty, the offer is in writing, and the borrower initials the offer to indicate that the borrower has declined the offer. The lender shall disclose the discount in rate received in consideration for a high-cost home loan with the prepayment penalty; and
 2. If a borrower declines an offer required in paragraph (a)1. of this subsection, the lender may include a prepayment penalty schedule. No prepayment penalty shall be assessed against the borrower following the third anniversary date of the mortgage or sixty (60) days prior to the date of the first interest rate reset, whichever is less. No prepayment penalty shall exceed three percent (3%) for the first year, two percent (2%) for the second year, and one percent (1%) for the third year of the outstanding balance of the loan; but in no event shall a prepayment penalty be assessed against a borrower refinancing with the mortgage loan company that funded the mortgage;
 - (b) A high-cost home loan may not contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule;
 - (c) A high-cost home loan may not contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower;
 - (d) A high-cost home loan may not contain a payment schedule with regular periodic payments that cause the principal balance to increase;
 - (e) A high-cost home loan may not contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness;
 - (f) A high-cost home loan may not include terms under which more than two (2) periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower;
 - (g) A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan, unless the fees are less than one-half (1/2) of any fees that would be charged for a refinance or unless the borrower is in default and it is in the borrower's best interest;

- (h) A lender may not make a high-cost home loan unless the borrower has been provided the following notice or a substantially similar notice, in writing, not later than the time that notice provided by 12 C.F.R. 226.31(c), as amended from time to time, is required:

NOTICE TO BORROWER

IF YOU OBTAIN THIS LOAN, THE LENDER WILL HAVE A MORTGAGE ON YOUR HOME. YOU COULD LOSE YOUR HOME AND ANY MONEY YOU PUT INTO IT IF YOU DO NOT MEET YOUR OBLIGATIONS UNDER THE LOAN.

MORTGAGE LOAN RATES AND CLOSING COSTS AND FEES VARY BASED ON MANY FACTORS, INCLUDING YOUR PARTICULAR CREDIT AND FINANCIAL CIRCUMSTANCES, YOUR EMPLOYMENT HISTORY, THE LOAN-TO-VALUE REQUESTED AND THE TYPE OF PROPERTY THAT WILL SECURE YOUR LOAN. THE LOAN RATE AND FEES COULD ALSO VARY BASED ON WHICH LENDER OR BROKER YOU SELECT. YOU SHOULD SHOP AROUND AND COMPARE LOAN RATES AND FEES.

YOU SHOULD ALSO CONSIDER CONSULTING A QUALIFIED INDEPENDENT CREDIT COUNSELOR OR OTHER EXPERIENCED FINANCIAL ADVISOR REGARDING THE RATE, FEES, AND PROVISIONS OF THIS MORTGAGE LOAN BEFORE YOU PROCEED. YOU SHOULD CONTACT THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT FOR A LIST OF CREDIT COUNSELORS AVAILABLE IN YOUR AREA.

YOU ARE NOT REQUIRED TO COMPLETE THIS LOAN AGREEMENT MERELY BECAUSE YOU HAVE RECEIVED THESE DISCLOSURES OR HAVE SIGNED A LOAN APPLICATION.

REMEMBER, PROPERTY TAXES AND HOMEOWNER'S INSURANCE ARE YOUR RESPONSIBILITY. NOT ALL LENDERS PROVIDE ESCROW SERVICES FOR THESE PAYMENTS. YOU SHOULD ASK YOUR LENDER ABOUT THESE SERVICES.

ALSO, YOUR PAYMENTS ON EXISTING DEBTS CONTRIBUTE TO YOUR CREDIT RATINGS. YOU SHOULD NOT ACCEPT ANY ADVICE TO IGNORE YOUR REGULAR PAYMENTS TO YOUR EXISTING CREDITORS;

- (i) A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one (1) or more of the borrowers, when considered individually or collectively, will be able to make the scheduled payments to repay the loan based upon a consideration of their current and expected income, current obligations, current employment status, and other financial resources, other than the borrower's equity in the dwelling which secures repayment of the loan. A borrower shall be presumed to be able to make the scheduled payments to repay the loan if, at the time the loan is consummated:
1. The borrower's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the borrower's monthly gross income as verified by the credit application, the borrower's financial statement, a credit report, financial information provided to the lender by or on behalf of the borrower, or any other reasonable means;
 2. The loan has been approved by an automated underwriting service offered by FNMA or Freddie MAC;
 3. The lender verifies and documents that the borrower has liquid assets equal to fifty percent (50%) of the principal loan amount; or
 4. The borrower has sufficient residual income as defined in the guidelines established in 38 C.F.R. 36.4337(e) and United States *Department of Veterans Affairs* ~~Administration~~ form 26-6393;
- (j) If the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder, the lender may not directly or indirectly finance:
1. Any prepayment fees or penalties payable by the borrower; or
 2. Points and fees, excluding those provided for in 12 C.F.R. 226.4(c)(7), which in the aggregate are in excess of four percent (4%) of the total amount financed;

- (k) A lender or mortgage loan broker may not, within one (1) year of the consummation of a high-cost home loan, charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan on which points were charged. A lender may not, at any time, charge a borrower points and fees in addition to those allowed by 12 C.F.R. 226.4(c)(7) if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan, on which points were charged, held by the same lender as noteholder. However, points and fees in accordance with this section may be charged on any proceeds of a high-cost home loan which are in excess of the amount refinanced on the existing high-cost home loan;
- (l) A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than by an instrument payable to the borrower or jointly to the borrower and the contractor, or at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement;
- (m) A lender shall not refinance, replace, or consolidate a zero interest rate or low interest rate loan made by a governmental or nonprofit lender with a high-cost home loan. For purposes of this paragraph, a low interest rate loan is defined as a loan that carries a current interest rate that is two (2) percentage points or more below the current yield on United States Treasury securities with a comparable maturity;
- (n) A lender shall not finance single premium credit life, credit accident, credit health, credit disability, or credit loss of income insurance in connection with a high-cost home loan;
- (o) A lender shall not make a high-cost home loan unless the lender has made available to the borrower a videotape, or other similar audio-video media format such as DVD or CD, approved by the ~~Department~~~~Office~~ of Financial Institutions, which explains the borrower's rights and responsibilities with regard to this section or high-cost home loans. A lender shall have available for viewing at least one (1) copy of the video in the principal office and each branch office of the lender;
- (p) A lender shall not make a high-cost home loan subject to a mandatory arbitration clause that is oppressive, unfair, unconscionable, or substantially in derogation of the rights of consumers. Arbitration clauses that comply with the standards set forth in the Statement of Principles of the National Consumer Dispute Advisory Committee of the American Arbitration Association in effect on June 24, 2003, shall be presumed not to violate this subsection;
- (q) A lender shall not charge a late payment fee on a high-cost home loan except in accordance with the following:
 - 1. The late payment fee may not be in excess of five percent (5%) of the amount of the payment past due or ten dollars (\$10), whichever is greater;
 - 2. The loan documents must specifically authorize the late payment fee;
 - 3. The late payment fee may only be assessed for a payment past due fifteen (15) days or more; and
 - 4. The late payment fee may only be charged once with respect to a single late payment;
- (r) A lender may not charge a borrower a fee for the first request of each calendar year for a written payoff calculation. Thereafter, for each subsequent request in a calendar year, the lender may charge a reasonable fee not to exceed in excess of ten dollars (\$10) or actual costs, whichever is greater, per request for a written payoff calculation on a high-cost home loan by a borrower in a calendar year;
- (s) A lender shall not initiate a foreclosure or other judicial process to terminate a borrower's interest in residential real property subject to a high-cost home loan without first providing the borrower, at least thirty (30) days prior to the initiation of any process, written notice of default and of the borrower's right to cure. The notice shall include a statement of the amount needed to be paid by the borrower in order to cure the default and the date by which the payment is due to cure the default. If the amount needed to be paid will change during the thirty (30) day notice period, the notice shall provide information sufficient to enable a calculation of the daily change;
- (t) A lender shall not recommend or encourage default on an existing loan or other debt in connection with the closing of a high-cost home loan that refinances all or a portion of the existing loan or debt;
- (u) A lender shall not make a high-cost home loan that does not require an escrow account for taxes and insurance;

- (v) A lender shall not process the application to make a high-cost home loan if the proceeds shall be used, in whole or in part, to repay the principal of an existing loan secured by the borrower's principal dwelling that is not a high-cost home loan, without first requiring the borrower to obtain housing counseling by a HUD-approved counselor;
- (w) A lender shall not make a high-cost home loan that allows the borrower, for any part or all of the term of the loan, to make payments that are applied only to interest and not to principal;
- (x) A lender shall provide timely notice to the borrower of any material change in the terms of a high-cost home loan if the change is made after an application has been taken but before the closing of the loan. Notice shall be deemed timely if given not later than three (3) days after the lender has learned of the change or twenty-four (24) hours before the high-cost home loan is closed, whichever is earlier. If the lender discloses a material change more than three (3) days after learning of the change but still twenty-four (24) hours before the high-cost home loan is closed, it will not be liable for penalties or forfeitures if the lender cures in time for the borrower to avoid any damage;
- (y) A lender shall not make a high-cost home loan without verifying the borrower's income and financial resources through tax returns, payroll receipts, bank records, or other similarly reliable documents, whether provided directly by the borrower or through a third party with the borrower's permission; and
- (z) A lender shall not make a high-cost home loan without verifying the borrower's reasonable ability to pay all scheduled payments of principal, interest, real estate taxes, homeowner's insurance, and mortgage insurance premiums, as applicable. For loans in which the interest rate may vary, the reasonable ability to repay shall be determined based upon the following:
 1. In the case of a high-cost home loan in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time during the loan agreement; or
 2. In the case of a high-cost home loan in which the rate may vary at any time during the term of the loan for any reason other than in accordance with an index, the interest charged on the loan at the maximum rate that may be charged during the term of the loan.
- (3) Except as provided in paragraph (e) of subsection (2) of this section, the making of a high-cost home loan which violates any provisions of subsection (2) of this section is usurious, subject to the penalties of this chapter, and unlawful as an unfair and deceptive act or practice in or affecting commerce in violation of the provisions of KRS 367.170. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by:
 - (a) The structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the loan would have been a high-cost home loan if the loan had been structured as a closed-end loan; or
 - (b) Dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section; or
 - (c) Any other such subterfuge.

The Attorney General, the ~~commissioner~~~~executive director~~ of the ~~Department~~~~Office~~ of Financial Institutions, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this chapter or KRS Chapter 367, but not both.

- (4) A lender of a high-cost home loan who, when acting in good faith, fails to comply with subsection (2) of this section, will not be deemed to have violated this section if the lender establishes that either:
 - (a) Within thirty (30) days of the loan closing the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made, at the choice of the borrower, to the loan to either:
 1. Make the high-cost home loan satisfy the requirements of subsection (2) of this section; or

2. Change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or
 - (b) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid such errors, and within sixty (60) days after the discovery of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, make the high-cost home loan satisfy the requirements of subsection (2) of this section or change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors.
 - (c) For purposes of this subsection, "appropriate restitution" means the reimbursement by the lender of any points, fees, interest, or other charges made by the lender and received from the borrower necessary to put the borrower in the same position as he or she would have been had the loan, as adjusted in accordance with paragraphs (a) and (b) of this subsection, been originally made in accordance therewith.
- (5) For purposes of this section, any extension of credit shall be deemed to have been made in the Commonwealth of Kentucky, and therefore subject to the provisions of this section, if the lender offers or agrees in Kentucky to lend money to a borrower, who is a resident of Kentucky, on real property located within the Commonwealth of Kentucky, or if such borrower accepts or makes the offer in Kentucky to borrow, regardless of the situs of the contract as specified therein. Any oral or written solicitation or communication to lend originating outside of Kentucky, but forwarded to and received in Kentucky by a borrower who is a resident of Kentucky, shall be deemed to be an offer or agreement to lend in Kentucky and, therefore, subject to this section. Any oral or written solicitation or communication to borrow originating within Kentucky, from a borrower who is a resident of Kentucky, but forwarded to and received by a lender outside of Kentucky, shall be deemed to be an acceptance or offer to borrow in Kentucky. Any oral or written offer, acceptance, solicitation, or communication to lend or borrow, made in Kentucky to, or received in Kentucky from, a borrower who is not a resident of Kentucky, shall be subject to the provisions of this section, applicable federal law, law of the situs of the contract, or law of the residence of the borrower, as the parties may elect. The provisions of this section shall be severable and if any phrase, clause, sentence, or provision is declared to be invalid, the validity of the remainder of this section shall not be affected thereby.

➔Section 1917. KRS 367.160 is amended to read as follows:

- (1) All departments, agencies, officers, and employees of the Commonwealth shall fully cooperate with the Attorney General in carrying out the functions of KRS 367.120 to 367.300.
- (2) The persons designated by the Attorney General as utility consumer intervenors shall have the same access to material evidence and information of the Public Service Commission relating to any case before it as other parties to the case.
- (3) The persons designated by the Attorney General as health insurance consumer intervenors shall have the same access to material evidence and information of the *commissioner*~~executive director~~ of the *Department*~~Office~~ of Insurance relating to any health insurance rate hearings before it as other parties to the hearing.

➔Section 1918. KRS 367.934 is amended to read as follows:

- (1) All payments of money made to any person, partnership, association, or corporation upon any agreement or contract, or any series or combination of agreements or contracts, but not including the furnishing of cemetery lots or mausoleums, which has for a purpose the furnishing or performance of funeral services, or the furnishing or delivery of personal property, merchandise, or services of any nature in connection with the final disposition of a dead human body, for future use at a time determinable by the death of the person whose body is to be disposed of, are held to be trust funds. The person, partnership, association, or corporation receiving the payments is declared to be the agent thereof, and shall deposit all payments in a trust account with a bank or trust company or invest said payments in a savings and loan association or federally chartered credit union. The trustee shall be the financial institution holding said funds. All of the interest, dividends, increases, or accretions of whatever nature earned by the funds deposited in a trust account shall remain with the principal of such account and become a part thereof, subject to all of the regulations concerning the principal of said fund herein contained. The agent shall have the authority at any time to transfer or redesignate the trustee of said

funds in his or her discretion upon notification to the Attorney General. In case of any transfer, the former trustee shall transfer funds directly to and payable to the newly designated trustee or its representative.

- (2) All payments made to the agent under the agreement, contract, or plan are and shall remain trust funds with the financial institution until the death of the person for whose service the funds were paid and until the delivery of all merchandise and full performance of all services called for by the agreement, contract, or plan, except where payment is made pursuant to a request for refund.
- (3) The funds shall not be paid by the financial institution until a certified statement is furnished to the financial institution by the agent setting forth that all of the terms and conditions of the agreement have been fully performed by the person, association, partnership, firm, or corporation. Any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract, or plan shall be paid to the estate of the beneficiary of the agreement, contract, or plan.
- (4) The funds shall not be paid by the financial institution until the agent has proven the death of the person for whose service the funds were paid by furnishing the financial institution with a verified or certified copy of a record verifying the death, issued by the state registrar of the Vital Statistics Branch or its successor agency as authorized by KRS Chapter 213, or a provisional certificate of death as described in KRS 213.076.
- (5) No provision of KRS 367.932 to 367.974 shall be construed to apply to contracts for funeral service or merchandise sold as preneed and burial insurance policies which are regulated by the ~~Department~~**Office** of Insurance of this state.

➔Section 1919. KRS 386.510 is amended to read as follows:

As used in KRS 386.510 to 386.590, the following terms shall be construed to have the meaning set forth by this section, unless a contrary meaning clearly appears from the context:

- (1) The term "trust institution" means any of the following corporations having trust powers and authorized to act in a fiduciary capacity under the laws of Kentucky: Any state bank or trust company incorporated under the laws of Kentucky and any national banking association incorporated under the laws of the United States and having its principal office in Kentucky.
- (2) The term "investment adviser" of a fiduciary investment company means (a) any trust institution which, pursuant to contract with a fiduciary investment company possessing the qualifications provided by KRS 386.510 to 386.590, regularly furnishes advice to such investment company with respect to the desirability of investing in, purchasing or selling securities or other property or is empowered to determine what securities or other property shall be purchased or sold by such investment company, and (b) any person other than a trust institution, who, pursuant to contract with such trust institution, regularly performs substantially all of the duties undertaken by such trust institution.
- (3) The term "fiduciary investment company" means a corporation which is an investment company as defined by the Act of Congress entitled "Investment Company Act of 1940" approved August 22, 1940, as amended, and is incorporated in accordance with the "Kentucky Business Corporation Act" as to constitute a medium for the investment of funds held by trust institutions and foreign trust institutions in a fiduciary capacity, either alone or with one (1) or more cofiduciaries.
- (4) The term "supervisory agency" means (a) the comptroller of the currency of the United States with respect to any fiduciary investment company having a national banking association as an investment adviser, and (b) the ~~commissioner~~**executive director** of financial institutions of the Commonwealth of Kentucky with respect to any fiduciary investment company having a state bank as an investment adviser. The term shall mean the ~~commissioner~~**executive director** of financial institutions of the Commonwealth of Kentucky with respect to any fiduciary investment company which does not have an investment adviser.
- (5) The term "foreign trust institution" means any state bank or trust company organized under the laws of any state other than Kentucky or any national banking association incorporated under the laws of the United States and having its principal office in some state other than Kentucky, which has trust powers and is authorized to act in a fiduciary capacity under the laws under which it was incorporated.

➔Section 1920. KRS 386.570 is amended to read as follows:

The ~~commissioner~~**executive director** of financial institutions shall have authority to adopt and issue reasonable and uniform rules and regulations to govern the conduct and management of all fiduciary investment companies having

investment advisers other than national banks. The ***commissioner***~~[executive director]~~ of financial institutions may, whenever he may deem it necessary or expedient, examine every fiduciary investment company contemplated by KRS 386.510 to 386.590 having an investment adviser which is not a national bank. In every such examination, the ***commissioner***~~[executive director]~~ of financial institutions shall make inquiry as to its financial condition, the policies of its management, whether it is complying with the laws of Kentucky, and such other matters as the ***commissioner***~~[executive director]~~ of financial institutions may reasonably prescribe. In the enforcement of KRS 386.510 to 386.590 and the restrictions and limitations imposed by their articles of incorporation and bylaws, the ***commissioner***~~[executive director]~~ of financial institutions shall have the same powers and authority with respect to fiduciary investment companies having investment advisers other than a national bank as are conferred upon him by the laws of this state with respect to state banks and trust companies to the same extent and in the same manner as if fiduciary investment companies were expressly named in Subtitle 3 of Chapter 286 of the Kentucky Revised Statutes.

➔Section 1921. KRS 393.082 is amended to read as follows:

- (1) Unclaimed sums delivered to the Kentucky State Treasurer pursuant to KRS 393.080(3) shall be placed in a special expendable trust fund established by the Kentucky Workers' Compensation Funding Commission. The Kentucky Workers' Compensation Funding Commission shall establish a separate trust account with respect to each final determination or order providing for a refund that the Attorney General determines to have a reasonable relationship to the workers' compensation liability of a bankrupt employer.
- (2) The ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims shall be the administrator of the resulting trust fund established pursuant to this section. The ***commissioner***~~[executive director]~~ or his or her designee shall be authorized to determine the value of all workers' compensation claims against the bankrupt employer and to prepare a comprehensive distribution plan. Eligible claimants may elect to participate in a comprehensive distribution plan in exchange for the release of all related claims against the Commonwealth and all of its cabinets, departments, offices, bureaus, agencies, officers, agents, and employees, with the exception of the special fund in the ~~[Department of]~~ Labor ***Cabinet***. A claimant shall agree as part of a release under this section not to file any future motions to reopen the named workers' compensation claim or claims, and not to file new claims with respect to the same injury or occupational disease.
- (3) A comprehensive distribution plan for unclaimed utility refunds placed in a trust account pursuant to this section shall consist of the full payment of workers' compensation income benefits for eligible claimants until the fund is exhausted, subject to the exceptions noted in KRS 393.080 and this section, and may include lump-sum settlements in addition to biweekly payment plans. An initial distribution shall be made to eligible claimants after the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims, or the ***commissioner's***~~[executive director's]~~ designee, has made an initial determination of the number of eligible claimants, the amount of income benefits due, and the amount to be retained as a reserve for pending claims. The initial distribution shall include payment of all past due income benefits, without interest, for eligible claimants.
- (4) Neither the special fund nor the uninsured employers' fund shall be considered to be claimants for the purposes of this section. Medical and related benefits shall not be considered in the valuation of the claims unless the amount available in the trust fund clearly exceeds the estimated value of income benefits for all claims. If a workers' compensation surety bond, letter of credit, or other form of security for the payment of the workers' compensation liabilities of a bankrupt employer has been collected by the ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims or the Workers' Compensation Board for distribution to claimants in a manner to be determined by court order, it may be assumed in the valuation of the claims in a comprehensive distribution plan that the security will be distributed by the court on a pro rata basis and an appropriate deduction may be taken.
- (5) In preparing the valuation of claims for inclusion in a comprehensive distribution plan, the ***commissioner***~~[executive director]~~ or the ***commissioner's***~~[executive director's]~~ designee shall deduct special fund payments. Settlement of a workers' compensation claim as part of a comprehensive distribution plan under this section shall not accelerate the date on which the special fund's liability becomes due.
- (6) If the bankrupt employer ceased business operations at least three (3) years prior to establishment of a trust account pursuant to this section, only claimants who file workers' compensation claims within sixty (60) days of the establishment of the trust account or before shall be eligible to receive payments from the trust fund.
- (7) All claimants shall cooperate with information requests from the ***Department***~~[Office]~~ of Workers' Claims concerning prior payments of workers' compensation benefits. The ***commissioner***~~[executive director]~~ of the ***Department***~~[Office]~~ of Workers' Claims or his or her designee may subpoena witnesses, including present or

past managers and officers of the bankrupt employer, and may conduct evidentiary hearings under oath relating to the past and present workers' compensation liabilities of the bankrupt employer or information relevant to unpaid workers' compensation benefits. Administrative subpoenas issued under the authority of the ***commissioner***~~{executive director}~~ of the ***Department***~~{Office}~~ of Workers' Claims for this purpose may be enforced in the Franklin Circuit Court.

- (8) The Attorney General shall provide representation of the comprehensive distribution plan as a named defendant in the event the establishment of the trust fund is challenged.
- (9) The provisions of KRS 393.080(3) or this section shall not be construed to constitute an admission of the validity of any workers' compensation claims, nor shall these provisions be interpreted in a manner that would transfer or create liability on behalf of the ***commissioner***~~{executive director}~~ of the ***Department***~~{Office}~~ of Workers' Claims, any agency, or employee, beyond that expressly set forth in a comprehensive distribution plan.
- (10) The special fund shall issue trust fund checks in the amounts and to the claimants or claimants' representatives as directed by the ***commissioner***~~{executive director}~~ of the ***Department***~~{Office}~~ of Workers' Claims.
- (11) The personnel and other costs of administering a trust fund established pursuant to this section shall be paid out of the investment income of the trust fund.
- (12) Attorney fees shall be subject to the limitations and maximum amounts for the payment of attorney's fees established by KRS 342.320, as well as the approval of the ***commissioner***~~{executive director}~~ or his or her designee.
- (13) If a workers' compensation claimant elects not to participate in a comprehensive distribution plan proposed by the ***commissioner***~~{executive director}~~ of the ***Department***~~{Office}~~ of Workers' Claims or the ***commissioner's***~~{executive director's}~~ designee, that claimant shall not be entitled to any portion of the utility refund for the payment of the workers' compensation benefits. A claimant shall have sixty (60) days following issuance of a comprehensive distribution plan in which to make an election to participate or not.

➔Section 1922. KRS 393.280 is amended to read as follows:

- (1) The department, through its employees or authorized representatives, may at reasonable times and upon reasonable notice examine all relevant records of any person except any banking organization or financial organization where there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period. Records shall be considered relevant to the examination of the preceding reporting period if they document the period necessary, for that type of property, to establish presumed abandonment. The department may avail itself of enforcement technologies and programs designed to increase compliance among businesses with Kentucky's unclaimed property law.
- (2) The ***Department***~~{Office}~~ of Financial Institutions may at reasonable times and upon reasonable notice examine all relevant records of any banking organization or financial organization if there is reason to believe that there has been or is a failure to report property that should be reported under this chapter during the preceding reporting period.
- (3) Documents and working papers obtained or compiled by the department or the ***Department***~~{Office}~~ of Financial Institutions in the course of conducting an examination are confidential and are not open records under KRS 61.870 to 61.884.
- (4) The State Treasurer may promulgate administrative regulations pursuant to KRS Chapter 13A and any reasonable and necessary rules for the enforcement of this chapter, and govern hearings held before him. He may delegate in writing to any employee of the department authority to perform any of the duties imposed on him by this chapter, except the promulgation of rules.

➔Section 1923. KRS 393.300 is amended to read as follows:

No person shall institute proceedings to escheat real property the title to which was acquired by any lending corporation in satisfaction of debts previously contracted in the course of its business, or that it purchases under a judgment for any such debt in its favor, if such lending corporation is under the supervision of the ***Department***~~{Office}~~ of Financial Institutions of this state, comptroller of currency of the United States or any other duly constituted supervising banking authority, state or Federal, without first obtaining the consent of the supervising authority having supervision over that corporation.

➔Section 1924. KRS 411.493 is amended to read as follows:

- (1) Notwithstanding any other provision of law, except as provided in subsection (2) of this section, a person is not liable for removal costs or damages which result from actions taken, or not taken, in the course of rendering care, assistance, or advice consistent with the national contingency plan or as otherwise directed by the federal on-scene coordinator or by the secretary of the ***Energy and Environment***~~*Environmental and Public Protection*~~ Cabinet, or his designee.
- (2) Subsection (1) of this section does not apply:
 - (a) To a responsible party;
 - (b) To any person who is grossly negligent or who engages in willful misconduct; or
 - (c) With respect to personal injury or wrongful death.
- (3) A responsible party is liable for any removal costs and damages that another person is relieved of under subsection (1) of this section.
- (4) Nothing in this section affects the liability of a responsible party for oil spill response under Kentucky law.

➔Section 1925. KRS 438.310 is amended to read as follows:

- (1) No person shall sell or cause to be sold any tobacco product at retail to any person under the age of eighteen (18), or solicit any person under the age of eighteen (18) to purchase any tobacco product at retail.
- (2) Any person who sells tobacco products at retail shall cause to be posted in a conspicuous place in his establishment a notice stating that it is illegal to sell tobacco products to persons under age eighteen (18).
- (3) Any person selling tobacco products shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective buyer or recipient is under the age of eighteen (18).
- (4) A person who violates subsection (1) or (2) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for a first violation and a fine of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) for any subsequent violation. The fine shall be administered by the ***Department***~~*Office*~~ of Alcoholic Beverage Control using a civil enforcement procedure.

➔Section 1926. KRS 438.311 is amended to read as follows:

- (1) Except for the provisions of KRS 438.330, it shall be unlawful for a person who has not attained the age of eighteen (18) years to purchase or accept receipt of or to attempt to purchase or accept receipt of a tobacco product, or to present or offer to any person any purported proof of age which is false, fraudulent, or not actually his or her own, for the purpose of purchasing or receiving any tobacco product. It shall not be unlawful for such a person to accept receipt of a tobacco product from a family member, except if the child has been committed to the custody of the state under KRS Chapters 600 to 645, or from an employer when required in the performance of the person's duties.
- (2) Violation of this section shall be punishable by a fine of fifty dollars (\$50) and twenty (20) hours of community service work for a first offense within a one (1) year period, and a fine of two hundred dollars (\$200) and forty (40) hours of community service work for a second or subsequent offense within a one (1) year period.
- (3) This offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the ***Department***~~*Office*~~ of Alcoholic Beverage Control may issue a uniform citation, but not make an arrest or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to the section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1927. KRS 438.313 is amended to read as follows:

- (1) No wholesaler, retailer, or manufacturer of cigarettes or tobacco products may distribute cigarettes or tobacco products, including samples thereof, free of charge or otherwise, to any person under the age of eighteen (18).
- (2) Any person who distributes cigarettes or tobacco products, including samples thereof, free of charge or otherwise shall require proof of age from a prospective buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).

- (3) Any person who violates the provisions of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500) for each offense. The fine shall be administered by the **Department**~~{Office}~~ of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (4) All peace officers with general law enforcement authority and employees of the **Department**~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1928. KRS 438.315 is amended to read as follows:

- (1) The sale of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (2) The purchase of tobacco products dispensed through a vending machine is prohibited to any person under the age of eighteen (18) years.
- (3) Except for vending machines located in factories or vending machines located in bars or taverns to which minors are not permitted access, beginning one (1) year after July 15, 1994, any vending machine from which tobacco products are dispensed shall be located in the line of sight of the cashier for the retail establishment.
- (4) Any owner of a retail establishment violating this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the **Department**~~{Office}~~ of Alcoholic Beverage Control using a civil enforcement procedure for persons eighteen (18) years of age or older. For persons under the age of eighteen (18) years, the offense shall be deemed a status offense and shall be under the jurisdiction of the juvenile session of the District Court.
- (5) All peace officers with general law enforcement authority and employees of the **Department**~~{Office}~~ of Alcoholic Beverage Control may issue a uniform citation, but may not make an arrest, or take a child into custody, for a violation of this section. If a child fails to appear in court in response to a uniform citation issued pursuant to this section, the court may compel the attendance of the defendant in the manner specified by law.

➔Section 1929. KRS 438.317 is amended to read as follows:

- (1) No person shall sell or cause to be sold at retail cigarettes packaged in units of fewer than twenty (20) cigarettes.
- (2) No resident wholesaler, nonresident wholesaler, or subjobber shall make available to a retail establishment cigarettes packaged for retail sale in units of less than twenty (20) cigarettes.
- (3) Any person violating subsection (1) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Any person violating subsection (2) of this section shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand five hundred dollars (\$2,500). These penalties shall be enforced by the **Department**~~{Office}~~ of Alcoholic Beverage Control through civil enforcement procedures.

➔Section 1930. KRS 438.320 is amended to read as follows:

Each resident wholesaler, nonresident wholesaler, or subjobber making tobacco products available to a retail establishment for sale or distribution shall report the name and address of the owner of the retail establishment to the **Department**~~{Office}~~ of Alcoholic Beverage Control in a manner specified by administrative regulations promulgated pursuant to KRS Chapter 13A.

➔Section 1931. KRS 438.325 is amended to read as follows:

- (1) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that the sale of tobacco products to any person under the age of eighteen (18) years and the purchase of tobacco products by any person under the age of eighteen (18) years are prohibited.
- (2) Each owner of a retail establishment selling or distributing tobacco products shall notify each individual employed in the retail establishment as a retail sales clerk that proof of age is required from a prospective

buyer or recipient if the person has reason to believe that the prospective purchaser or recipient is under the age of eighteen (18).

- (3) The notice to employees that is required in subsection (1) of this section shall be provided before the person commences work as a retail sales clerk, or, in the case of a person employed as a retail sales clerk on July 15, 1994, within thirty (30) days of that date. The employee shall signify receipt of the notice required by this section by signing a form that states as follows:

"I understand that under the law of the Commonwealth of Kentucky it is illegal to sell or distribute tobacco products to persons under the age of eighteen (18) years and that it is illegal for persons under the age of eighteen (18) years to purchase tobacco products."

- (4) The owner of the retail establishment shall maintain the signed notice that is required pursuant to subsection (3) of this section in a place and in a manner so as to be easily accessible to any employee of the ~~Department~~~~Office~~ of Alcoholic Beverage Control or the Department of Agriculture conducting an inspection of the retail establishment for the purpose of monitoring compliance in limiting the sale or distribution of tobacco products to persons under the age of eighteen (18) as provided in KRS 438.305 to 438.340.
- (5) Any owner of the retail establishment violating subsections (1) to (4) of this section shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation. The fine shall be administered by the ~~Department~~~~Office~~ of Alcoholic Beverage Control in a civil enforcement procedure.

➔Section 1932. KRS 438.330 is amended to read as follows:

- (1) The ~~Department~~~~Office~~ of Alcoholic Beverage Control and the Department of Agriculture shall carry out annually-conducted random, unannounced inspections of retail establishments where tobacco products are sold or distributed for the purpose of enforcing the provisions of KRS 438.305 to 438.340. The inspections shall be conducted to the extent necessary to assure that the Commonwealth remains in compliance with Public Law 102-321 and applicable federal regulations. The ~~Department of Alcoholic Beverage Control~~~~Office~~ and the ~~Department of Agriculture~~~~Department~~ shall also ensure that targeted inspections are conducted at those retail establishments where, and at those times when, persons under the age of eighteen (18) years are most likely to purchase tobacco products. Persons under the age of eighteen (18) years may be used to test compliance with the provisions of KRS 438.305 to 438.340 only if the testing is conducted under the direct supervision of the ~~Department~~~~Office~~ of Alcoholic Beverage Control, sheriff, or chief of police, or their employees, and written parental consent has been obtained. The ~~Department~~~~Office~~ of Alcoholic Beverage Control shall prepare annually, for submission by the Governor to the Secretary of the United States Department of Health and Human Services, the report required by Section 1926 of Subpart 1 of Part B of Title XIX of the Federal Public Health Service Act.
- (2) The ~~Department~~~~Office~~ of Alcoholic Beverage Control shall develop and implement the survey sampling methodologies to carry out the inspections as described in this section.

➔Section 1933. KRS 438.337 is amended to read as follows:

- (1) Except for violations of the provisions of KRS 438.311, 438.313, and 438.315 by a juvenile, which shall be under the jurisdiction of the juvenile session of the District Court, the ~~Department~~~~Office~~ of Alcoholic Beverage Control shall carry out the enforcement provisions of KRS 438.305 to 438.340.
- (2) The ~~Department~~~~Office~~ of Alcoholic Beverage Control shall be entitled to the revenue produced by one-twentieth of one cent (\$0.0005) of the three-cent (\$0.03) per pack revenue collected by the Finance and Administration Cabinet from the state excise tax on the sale of cigarettes as imposed by KRS 138.140 to be deposited in a trust and agency account created in the State Treasury, and to keep fifty percent (50%) of any fines collected under KRS 438.305 to 438.340 to offset the costs of enforcement of KRS 438.305 to 438.340.
- (3) The ~~Department~~~~Office~~ of Alcoholic Beverage Control shall be responsible for maintaining statistics for compilation of required reports to be submitted to the United States Department of Health and Human Services.
- (4) The ~~Department~~~~Office~~ of Alcoholic Beverage Control shall devise a plan and time frame for enforcement to determine by random inspection if the percentage of retailers or distributors making illegal sales to minors does or does not exceed federal guidelines preventing tobacco sales to minors.

➔Section 1934. KRS 438.340 is amended to read as follows:

The ~~Department~~~~[Office]~~ of Alcoholic Beverage Control and the Department of Agriculture are authorized to promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to implement and carry out the provisions of KRS 438.305 to 438.340.

➔Section 1935. KRS 528.110 is amended to read as follows:

- (1) Any person who, either for himself or as agent or employee of another, wagers money or anything of value on a horse race run or about to be run or advertised, posted or reported as being run at any race track in or out of this state, or who engages in the occupation of receiving, making, transmitting or negotiating, either in person or by messenger, telephone or telegraph, wagers on horse races run or about to be run or advertised, posted or reported as being run or about to be run at any race track in or out of the state, shall, except in the case of wagers made within the enclosure of a race track licensed by the Kentucky Horse Racing ~~Commission~~~~[Authority]~~ during an authorized race meeting at that track, or an enclosure during regular meetings in which running, trotting or pacing races are being conducted by associations regularly organized for that purpose, be guilty of a Class A misdemeanor.
- (2) In any prosecution under subsection (1) of this section, the state need not prove that the horse race upon which the wager was placed was actually run. Proof that the wager was made upon what purported to be or what was advertised, reported or understood to be a horse race shall be sufficient to establish a prima facie case for the state.

➔Section 1936. The following KRS sections are repealed:

56.790 Energy Policy Advisory Council -- Membership -- Meetings.

152.725 Reports of findings and legislative recommendations.

216A.045 Board placed in Division of Occupations and Professions.

224.10-025 Office of Inspector General -- Executive Director -- Responsibilities -- Secretary's power to organize office.

224.10-103 Powers and duties of Environmental and Public Protection Cabinet.

342.495 Kentucky Employee's Insurance Association created -- Attached to Department of Labor for administrative purposes.

342.500 Board of directors -- Selection -- Term.

342.505 Board officers elected annually.

342.510 Quorum of board -- Vacancies.

342.515 Representation of subscribers.

342.520 Subscriptions required to issue first policy.

342.525 Procedure required before first policy issued.

342.530 Board to group subscribers -- Amount of premiums.

342.535 Association to fix contingent liability -- Limit.

342.540 Assessments.

342.545 Dividends -- All funds available for contingent liability.

342.550 Executive director of insurance to approve premiums, etc.

342.555 Board to make safety regulations -- Inspections -- Review of regulation.

➔Section 1937. Notwithstanding KRS 12.028, the General Assembly confirms Executive Order 2009-535, dated June 12, 2009, relating to the abolition of the Environmental and Public Protection Cabinet and the establishment of the Public Protection Cabinet; Executive Order 2009-537, dated June 12, 2009, relating to the establishment of the Labor Cabinet; Executive Order 2009-538, dated June 12, 2009, relating to the establishment of the Energy and Environment Cabinet; and Executive Order 2009-1086, dated November 6, 2009, relating to the reorganization of the Public Protection Cabinet, to the extent these executive orders are not otherwise confirmed or superseded by this Act.

➔Section 1938. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities in this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

Signed by the Governor March 25, 2010.

CHAPTER 25

(HB 126)

AN ACT relating to insurance.

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

➔Section 1. KRS 304.2-210 is amended to read as follows:

- (1) As used in KRS 304.2-210 to 304.2-300, unless the context requires otherwise, "examination workpaper" means a written or recorded document, note, memorandum, critique, comment, recommendation, or other information copied, established, created, or retained by the executive director or his designee for the purpose of conducting an examination or drafting an examination report.
- (2) For the purpose of determining financial condition, ability to fulfill and manner of fulfillment of its obligations, the nature of its operations, and compliance with law, the executive director shall examine the affairs, transactions, accounts, records, and assets of each authorized insurer as often as reasonably necessary. He shall so examine each domestic insurer not less frequently than every *five (5)* ~~three (3)~~ years. Examination of a reciprocal insurer may include examination of its attorney-in-fact as to its transactions relating to the insurer. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States, except as the executive director otherwise requires.
- (3) In scheduling and determining the nature, scope, and frequency of the examinations, the executive director shall consider the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the Examiner's Handbook *prescribed by the executive director* ~~adopted by the National Association of Insurance Commissioners~~.
- (4) For purposes of completing an examination of an insurer, the executive director may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the executive director, necessary and material to the examination of the insurer.
- (5) The executive director shall in like manner examine each insurer applying for an initial certificate of authority to transact insurance in this state.
- (6) In lieu of making his own examination, the executive director may, in his discretion, accept a full report of the most recently completed examination of a foreign, or alien, insurer, certified to by the insurance supervisory official of another state. Reports shall only be accepted if ~~if~~:
- ~~(a) The insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners' Financial Regulation Standards and Accreditation Program; or~~
- ~~(b) the examination is performed under the supervision of an accredited insurance department or with the participation of one (1) or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.~~
- (7) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officers of other states in which the insurer transacts business, and for the purpose thereof, the executive director may participate in joint examinations of insurers or be represented in an examination by an examiner of another state.

➔Section 2. KRS 304.2-320 is amended to read as follows:

- (1) Notice of hearings shall be given in accordance with the provision of this chapter and KRS Chapter 13B. If the persons to be given notice are not specified in the provision pursuant to which the hearing is held, the

executive director shall give notice to all persons whose pecuniary interest, to the executive director's knowledge or belief, are to be directly and immediately affected by the hearing.

- (2) If any hearing is to be held for consideration of matters which, under subsection (1) of this section, would otherwise require separate notice to more than thirty (30) persons, in lieu of other notice the executive director may give notice of the hearing by publication pursuant to KRS Chapter 424; but the executive director shall mail this notice to all persons who had requested the same in writing in advance and have paid to the executive director the reasonable amount fixed by him to cover the cost thereof. ***The costs associated with the publication of a notice of hearing shall be borne by the person seeking the hearing.***

➔Section 3. KRS 304.3-180 is amended to read as follows:

- (1) A certificate of authority shall continue in force as long as the insurer is entitled thereto under this code, and until suspended or revoked by the executive director or terminated at the insurer's request; subject, however, to continuance of the certificate by the insurer each year by:
 - (a) Payment of the continuation fee provided in Subtitle 4 by March 1, or, if paid by mail, postmarked no later than March 1;
 - (b) Due filing by the insurer of its annual statement for the next preceding calendar year as required by KRS 304.3-240;
 - (c) Payment by the insurer of premium taxes with respect to the preceding calendar year; and
 - (d) Due filing by domestic companies of quarterly statements ***as ordered by the executive director***~~as approved by the National Association of Insurance Commissioners~~.
- (2) If not so continued by the insurer, its certificate of authority shall expire at midnight on the June 30 next following the failure of the insurer to continue it in force, unless earlier revoked for failure to pay taxes as provided in KRS 304.4-040. The executive director shall promptly notify the insurer of the occurrence of any failure resulting in impending expiration of its certificate of authority.
- (3) The executive director may, in his discretion, upon the insurer's request made within three (3) months after expiration, reinstate a certificate of authority which the insurer has inadvertently permitted to expire, after the insurer has fully cured all its failures which resulted in the expiration. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority in this state.
- (4) ***Beginning with the statutory audits for the year 2010***, an insurer shall not use the same ***lead or coordinating***~~accountant or~~ partner of an accounting firm responsible for preparing the audited financial statement for more than ***five (5)***~~seven (7)~~ consecutive years.

➔Section 4. KRS 304.3-242 is amended to read as follows:

- (1) ***Every insurer authorized to transact property or casualty insurance, unless otherwise exempt in accordance with subsection (7) of this section, shall annually submit the opinion of an appointed actuary entitled "Statement of Actuarial Opinion," which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241.***
- (2) ***Every insurer authorized to transact property or casualty insurance that is required to submit a statement of actuarial opinion shall annually submit an actuarial opinion summary written by the company's appointed actuary, which shall be provided with the annual statement required by KRS 304.3-240 and 304.3-241 and considered as a document supporting the statement of actuarial opinion.***
- (3) ***An actuarial report and underlying workpapers shall be prepared to support each statement of actuarial opinion.***
- (4) ***The executive director may engage a qualified actuary at the expense of the insurer to review the opinion and the basis for the opinion and prepare the supporting actuarial report or workpapers if:***
 - (a) ***The insurer fails to provide a supporting actuarial report or workpapers at the request of the executive director; or***
 - (b) ***The executive director determines that the supporting actuarial report or workpapers provided by the insurer is otherwise unacceptable to the executive director.***

- (5) *The appointed actuary shall not be liable for damages to any person other than the insurer and the executive director for any act, error, omission, decision, or conduct with respect to the actuary's opinion, except in cases of gross negligence, fraud, or willful misconduct on the part of the appointed actuary.*
- (6) (a) *The statement of actuarial opinion shall be provided with the annual statement prepared in accordance with KRS 304.3-240 and 304.3-241 and shall be available for public inspection.*
- (b) *Documents, materials, or other information in the possession or control of the office that are considered an actuarial report, workpapers, or actuarial opinion summary provided in support of the opinion, and any other material provided by the insurer to the executive director in connection with the actuarial report, workpapers, or actuarial opinion summary, shall be confidential and privileged. The confidentiality and privilege protections contained in this paragraph shall not extend to any nonregulatory person or entity holding the documents, materials, or other information.*
- (c) *Paragraph (b) of this subsection shall not be construed to limit the executive director's authority to:*
1. *Release the documents to the Actuarial Board for Counseling and Discipline if the material is required for the purpose of professional disciplinary proceedings and the Actuarial Board for Counseling and Discipline establishes procedures satisfactory to the executive director for preserving the confidentiality of the documents; or*
 2. *Use the documents, materials, or other information in furtherance of any regulatory or legal action brought as part of the executive director's official duties.*
- (d) *Neither the executive director nor any person who received documents, materials, or other information while acting under the authority of the executive director shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection.*
- (e) *In order to assist in the performance of his or her duties as set forth in KRS 304.2-100, the executive director:*
1. *May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to this subsection, with other state, federal, and international regulatory agencies and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, or other information and has the legal authority to maintain confidentiality;*
 2. *May receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and*
 3. *May enter into agreements governing the sharing and use of information consistent with this subsection.*
- (f) *No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the executive director under this section or as a result of sharing as authorized in paragraph (e) of this subsection.*

~~[As used in this section, a "qualified loss reserve specialist" means a person who is not a director, principal, or direct or indirect owner of an insurer and is a member in good standing of the Casualty Actuarial Society, and the American Academy of Actuaries, and who has been approved as qualified for signing casualty loss reserve opinions by the Casualty Practice Council of the American Academy of Actuaries, or has other experience acceptable to the executive director to assure a professional opinion on the adequacy of loss and loss adjustment expense reserves.~~

- ~~(2) The board of directors of every insurer authorized to transact property or casualty insurance and required to file an annual statement with the executive director pursuant to KRS 304.3-240 shall engage a qualified loss reserve specialist to certify the adequacy of the insurer's loss and loss adjustment expense reserves. The report shall be filed with the annual statement required by KRS 304.3-240.~~

~~(3) The statement of opinion required by this section shall consist of at least the following information:~~

- ~~(a) Identification of the qualified loss reserve specialist;~~
- ~~(b) Identification of the subjects on which the opinion is to be expressed and a description of the scope of the qualified loss reserve specialist's work;~~
- ~~(c) An expression of the qualified loss reserve specialist's opinion with respect to the subjects required to be described in paragraph (b) of this subsection; and~~
- ~~(d) Additional information which the qualified loss reserve specialist considers necessary to state a qualification of opinion or to explain any aspect of the annual statement which is not already sufficiently explained in the annual statement.]~~

~~(7)(4)}~~ It shall not be necessary to file the **actuarial** report required by this section in the following instances:

- (a) An insurer that has less than one million dollars (\$1,000,000) total direct plus assumed written premiums during a calendar year, or that has less than one thousand (1,000) policyholders or certificate holders at the end of a calendar year. An insurer which intends to utilize this exemption shall submit a letter of intent to the insurance regulatory official in its domiciliary state no later than December 1 of the calendar year for which the exemption is to be claimed;
- (b) An insurer which is under rehabilitation, liquidation, or any other delinquency proceeding ordered pursuant to a statutory provision, unless ordered to make the report by the insurance regulatory official in its domiciliary state;
- (c) An insurer writing property insurance only if the exemption is agreed to by the insurance regulatory official in the insurer's domiciliary state; or
- (d) Filing the report would constitute financial hardship, which is presumed to exist if the projected reasonable cost of the report would exceed the lesser of:
 1. One percent (1%) of the insurer's capital and surplus reflected in the insurer's annual statement for the calendar year for which the exemption is sought; or
 2. Three percent (3%) of the insurer's net direct plus assumed premiums written during the calendar year for which the exemption is sought as reflected in the insurer's annual statement filed with the insurance regulator official in its domiciliary state.

➔SECTION 5. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director shall develop a notice by promulgation of administrative regulation to inform the owner of a policy of life insurance issued in this state of his or her rights as an owner of a life insurance policy. The notice shall be made available free of charge to insurance companies and life insurance producers, and shall be written in nontechnical language.*
- (2) *The notice developed under subsection (1) of this section shall:*
 - (a) *Inform the consumer that life insurance is a critical part of a broader financial plan;*
 - (b) *Inform the consumer that alternatives to lapse or surrender of the policy exist;*
 - (c) *Provide the consumer with a general description of life settlements and state that life settlements are a regulated transaction in Kentucky;*
 - (d) *Provide the consumer with a general description of other common products and services that may be available to owners of life insurance policies prior to lapse or surrender of a policy; and*
 - (e) *Include a statement that advises recipients of the notice that life insurance, life settlements, or any of the products or services described in the notice may or may not be available to the recipient depending on a number of circumstances, including but not limited to the age and health of the insured or the terms of a life insurance policy. The statement shall also advise recipients that owners of life insurance policies are encouraged to contact their financial advisor, agent, or broker to seek further assistance or advice.*

- (3) *For each policy issued, the life insurance company shall provide the notice required by subsection (1) of this section to the owner of an individual life insurance policy:*
- (a) *When the insured is sixty (60) years of age or older; or*
 - (b) *If the insurer has been notified that the insured person under the policy is terminally or chronically ill, upon the occurrence of one (1) of the following:*
 - 1. *The life insurance company receives from the owner a request to surrender, in whole or in part, an individual policy;*
 - 2. *The life insurance company receives from the owner a request to receive an accelerated death benefit under an individual policy;*
 - 3. *The life insurance company sends to the owner all notices of lapse of an individual policy; provided, however, that the life insurance company shall not be required to include the notice developed pursuant to subsection (1) of this section to the owner of the policy more than one (1) time within a twelve (12) month period from the date of the first notice of lapse of the policy; or*
 - 4. *The occurrence of any other event as set forth by the executive director in administrative regulation.*
- (4) *In addition to the conditions set forth in subsection (3) of this section, the executive director may promulgate administrative regulations to establish that the notice be made only with respect to policies with a net death benefit that is one hundred thousand dollars (\$100,000) or greater, if the executive director finds that this additional condition is in the best interest of the citizens of the Commonwealth and does not discriminate against owners of life insurance policies based on other factors such as race, religion, national origin, age, disability, marital status, or economic means.*

Signed by the Governor March 25, 2010.

CHAPTER 26

(SB 17)

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 510.060 is amended to read as follows:

- (1) A person is guilty of rape in the third degree when:
 - (a) He engages in sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
 - (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;~~{or}~~
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position; *or*
 - (e) *Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.*
- (2) Rape in the third degree is a Class D felony.

➔Section 2. KRS 510.090 is amended to read as follows:

- (1) A person is guilty of sodomy in the third degree when:
 - (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;
 - (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or
 - (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;~~or~~
 - (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position; **or**
 - (e) ***Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.***
- (2) Sodomy in the third degree is a Class D felony.

➔Section 3. KRS 510.120 is amended to read as follows:

- (1) A person is guilty of sexual abuse in the second degree when:
 - (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is mentally retarded;
 - (b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
 - (c) Being ***a jailer, or*** an employee, contractor, vendor, or volunteer of the Department of Corrections, ***Department of Juvenile Justice,*** or a detention facility as defined in KRS 520.010, or of an entity under contract with either ~~the~~ department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects ***a person who is at least eighteen (18) years old and***~~an offender~~ who ***he or she knows*** is incarcerated, supervised, evaluated, or treated by the Department of Corrections, ***Department of Juvenile Justice,***~~the~~ detention facility, or~~the~~ contracting entity, to sexual contact.~~[In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he or she engaged in the conduct constituting the offense, he or she and the offender were married to each other.]~~
- (2) In any prosecution under subsection (1)(b) of this section, it is a defense that:
 - (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
 - (b) The other person was at least fourteen (14) years old; and
 - (c) The actor was less than five (5) years older than the other person.
- (3) Sexual abuse in the second degree is a Class A misdemeanor.

Signed by the Governor March 25, 2010.

CHAPTER 27**(SB 85)**

AN ACT relating to the Kentucky Milk Commission.

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

➔Section 1. KRS 260.662 is amended to read as follows:

The Kentucky Milk Commission is hereby established and shall consist of the following **thirteen (13)**~~ten (10)~~ members:

- (1) The Commissioner or the Commissioner's designee, who shall serve as chair;
- (2) **Four (4) nonvoting members as follows:**
 - (a) ***President of the Kentucky Farm Bureau or the president's designee;***
 - (b) ***Director of the Division of Public Health Protection and Safety, Cabinet for Health and Family Services, or the director's designee;***
 - (c) ***Director of the University of Kentucky Agriculture Experiment Station or the director's designee; and***
 - (d) ~~A nonvoting~~ representative of the Kentucky Dairy Development Council (KDDC) designated by the KDDC; and
- (3) Eight (8) members appointed by the Governor, who shall be residents of the state. The members shall be as follows:
 - (a) Two (2) milk producers who are actively and principally engaged in dairy farming in Kentucky;
 - (b) One (1) milk processor or a designee of the processor;
 - (c) One (1) retailer;
 - (d) Two (2) consumers;
 - (e) One (1) employee representative of a milk marketing agency or dairy cooperative; and
 - (f) One (1) representative of the Cabinet for Health and Family Services who has experience in the administration of the Special Supplemental Nutrition Program for Women, Infants, and Children.

➔Section 2. The General Assembly confirms Executive Order 2009-754, relating to the Kentucky Milk Commission and dated August 11, 2009, to the extent that it is not otherwise confirmed or superseded by this Act.

Signed by the Governor March 25, 2010.

CHAPTER 28**(SB 117)**

AN ACT relating to financial services.

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

➔Section 1. KRS 286.2-685 is amended to read as follows:

- (1) ***No person may use the term "bank," "banker," "banking," "trust," or a similar term or a character, ideogram, phonogram, phrase, or foreign language word in its name, stationery, or advertising in a manner that would imply to the public that the person is engaged in the banking or trust business.***
- (2) ***Subsection (1) of this section does not apply to a depository institution or other entity organized under the laws of this state, another state, or the United States to the extent that the depository institution or other entity is:***
 - (a) ***Authorized under its charter or the laws of this state or the United States to use a term, word, character, ideogram, phonogram, or phrase prohibited by subsection (1) of this section; and***

(b) Authorized by the laws of this state or the United States to conduct the activities in which it is engaged in this state.

(3) For purposes of this section, unless the context requires otherwise, "financial institution" means any person or entity operating in the Commonwealth of Kentucky, as permitted under the laws of this state, any other state, or the United States, as a bank, bank holding company, credit union, savings and loan association, or any wholly owned subsidiary thereof.

~~(4)(2)~~ Except as provided in subsection **~~(5)(3)~~** of this section, no person that is not a financial institution may use the trade name, trademark, service mark, logo, or symbol, or any combination thereof, of any financial institution, or any trade name, trademark, service mark, logo, or symbol, or any combination thereof, that is similar to the trade name, trademark, service mark, logo, or symbol of such a financial institution, in any marketing material, solicitation, or advertising provided or directed to another person in a manner such that a reasonable person may be confused, mistaken, or deceived that the marketing material, solicitation, or advertising originated from, is endorsed by, or has been consented to by the financial institution.

~~(5)(3)~~ Subsection **~~(4)(2)~~** of this section shall not apply to a person who uses the trade name, trademark, service mark, logo, or symbol of a financial institution with the written consent of the financial institution.

~~(6)(4)~~ The financial institution whose trade name, trademark, service mark, logo, or symbol has been used in violation of this section may institute an action in the Franklin Circuit Court or any court of competent jurisdiction against any person or entity in violation of subsection **~~(4)(2)~~** of this section to enjoin a continuance of any activity in violation of subsection **~~(4)(2)~~** of this section and, if injured thereby, for the recovery of damages at three (3) times the amount of any actual damages sustained and for civil penalties in the amount of one thousand dollars (\$1,000). It shall not be necessary that actual damages be alleged or proved in order to recover injunctive relief or civil penalties. The penalties prescribed by this subsection shall be cumulative.

➔SECTION 2. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

(1) *The executive director shall approve an application for a bank or trust company charter upon a finding that the public convenience and advantage will be served by opening of the proposed institution. To determine whether public convenience and advantage will be served, the executive director shall consider the following factors:*

- (a) Whether conditions in the community indicate reasonable assurance of successful operation for the proposed institution;***
- (b) Whether the organizational and capital structure and amount of capitalization is adequate for the business plan; and***
- (c) Whether the officers and directors have sufficient experience, ability, standing, and reputation to provide reasonable assurance of successful operation and of compliance with the law.***

(2) *Before any institution shall commence business it shall obtain from the executive director a charter authorizing it to commence doing business and shall comply with the following requirements:*

- (a) The oaths of all directors have been taken;***
- (b) The executive director has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and***
- (c) The executive director has received satisfactory proof that the institution has subscribed and paid in the required capital and has otherwise fully complied with all pertinent laws and administrative regulations.***

➔SECTION 3. A NEW SECTION OF SUBTITLE 3 OF KRS CHAPTER 286 IS CREATED TO READ AS FOLLOWS:

An institution shall not transact any business, except business which is incidental or preliminarily necessary to its organization, until it has been issued a charter under Section 2 of this Act.

➔Section 4. KRS 286.3-030 is amended to read as follows:

- (1) As used in this section, "person" includes a natural person, partnership, corporation, association, business trust, voting trust, or similar organization.
- (2) No persons, except corporations, shall engage in the business of private banking in this state.
- (3) No bank incorporated under the laws of another state or national bank having its principal place of business outside this state shall transact any banking business in this state except to lend money, unless specifically authorized by law or administrative regulation, or except as permitted following a merger transaction within the meaning of Section 44 of the Federal Deposit Insurance Act pursuant to 12 U.S.C. secs. 1811 et seq., approved after June 1, 1997.
- (4) Kentucky chartered banks, or their subsidiaries, are specifically authorized to engage in the sale of insurance.
- (5) No bank incorporated under the laws of the Commonwealth of Kentucky shall make any loan or discount on the security of the shares of its own capital stock, or the shares of stock of a bank holding company which controls the bank to the extent that such loan or discount secured by such shares exceeds the amounts permitted by Section 23(A) of the Federal Reserve Act (12 U.S.C. sec. 371c) as that section reads on July 15, 1986, nor be the purchaser or holder of any such shares, except that a bank may take property of any kind to satisfy or protect a loan previously made in good faith and in the ordinary course of business; and stock so purchased or acquired, shall, within six (6) months from the time of its purchase or acquisition, be sold or disposed of at public or private sale. This subsection shall not affect or modify in any way KRS 386.025, but said section shall remain in full force and effect.
- (6) ***Except as permitted by the executive director***, any state or national bank with branch offices in Kentucky shall use at all times the same name for all its branch offices in Kentucky. ***The executive director shall permit the limited use of a different name at one (1) or more branch offices, upon written request by a state or national bank with branch offices in Kentucky, when necessary to avoid customer confusion.***

➔Section 5. KRS 286.3-040 is amended to read as follows:

- (1) Any five (5) or more ***natural*** persons may organize a banking corporation.
- (2) Any five (5) or more ***natural*** persons may organize a corporation for the purpose of conducting a trust business.
- (3) Any five (5) or more ***natural*** persons may organize a corporation for the purpose of conducting a combined banking and trust business.
- (4) The board of directors of a banking corporation, trust corporation, or combined bank and trust corporation shall be no less than the required number of organizers.

➔Section 6. KRS 286.3-050 is amended to read as follows:

- (1) Before filing the articles of incorporation of any financial institution mentioned in KRS 286.3-040, the organizers shall present a copy of their proposed articles to the executive director ***for approval***~~[who shall investigate the financial standing, moral character, and capability of each of the organizers and proposed executive officers and directors, if known, and determine whether there is reasonable assurance of sufficient volume of business for the proposed corporation to be successful, and whether the public convenience and advantage will be promoted by the opening of the proposed corporation].~~
- (2) In the event that the institution for which a charter is sought is to be created solely for the purpose of effectuating a merger or consolidation to facilitate the formation of a bank holding company, the executive director may waive all or any part of the requirements of this subtitle.
- (3) If the executive director determines that it is expedient and desirable to permit the proposed corporation to engage in business, he shall approve the articles of incorporation in writing, and the articles then may be filed and recorded as provided in the general corporation or limited liability company law.
- (4) All amendments to the articles of incorporation of any financial institution mentioned in KRS 286.3-040 shall be approved by the executive director before filing with the Secretary of State.

➔Section 7. KRS 286.3-060 is amended to read as follows:

- (1) Before any financial institution mentioned in KRS 286.3-040 may transact any banking or trust business, ***each director of the institution shall take an oath which***~~[it shall file a written oath with the executive director. The oath shall be taken by each director of the institution, and]~~ shall state in substance:

- (a) That such director is a citizen of the United States, and the State of Kentucky, or, if not, the place of his residence;
 - (b) That he will faithfully discharge the duties of his office and administer the affairs of the institution, so far as the duties of his office require;
 - (c) That he will uphold the laws of the state, and particularly the banking and trust laws.
- (2) The oath shall be taken before any officer authorized to administer oaths, and shall be *forwarded to the executive director for filing* ~~[taken upon the election of any subsequent director or reelection of any director. The oath shall be maintained by the bank and be subject to review at examinations].~~
- (3) *Upon the election of any subsequent director, or reelection of any director, the oath shall be taken and shall be maintained by the bank and be subject to review at examination* ~~[The executive director shall issue to the institution a certificate entitling it to transact the business for which it was organized after the following requirements have been met:~~
- ~~(a) The oath mentioned in subsections (1) and (2) of this section has been filed; and~~
 - ~~(b) The executive director has received satisfactory proof that the accounts of the banking institution's depositors will be insured by the Federal Deposit Insurance Corporation; and~~
 - ~~(c) The executive director has received satisfactory proof that the institution has subscribed and paid in the required capital and has otherwise fully complied with all pertinent laws and regulations; and~~
 - ~~(d) A period of thirty (30) days has elapsed since the rendition by the executive director of a final order, as defined in KRS 13B.010, and an appeal to the appropriate court has not been taken from such order.~~
 - ~~(e) If an appeal from a final order of the executive director has been timely filed, no certificate shall be issued until all the requirements of paragraphs (a) to (c) of this subsection have been met and until:~~
 - ~~1. The appeal has been finally disposed of by the last possible court of review, including the United States Supreme Court; or~~
 - ~~2. All further opportunities for appeal have expired as a result of the failure to timely file an appeal].~~

➔Section 8. KRS 286.3-070 is amended to read as follows:

The minimum capital stock of any *newly chartered* bank or trust company ~~[organized after May 30, 1938]~~ shall be *five million dollars (\$5,000,000)* ~~[two million five hundred thousand dollars (\$2,500,000)]~~. Additional capital may be required depending upon an investigation of the application, at the discretion of the executive director.

➔Section 9. KRS 286.3-090 is amended to read as follows:

No reduction in the capital stock of a bank or trust company shall be made to an amount less than ~~was~~^{is} required for organization, nor shall any reduction be valid until it has been approved by the executive director upon his finding that the interest of creditors of the bank or trust company will not be prejudiced thereby. *In no event, however, shall the capital stock be less than two million five hundred thousand dollars (\$2,500,000).*

➔Section 10. KRS 286.3-100 is amended to read as follows:

A bank may:

- (1) Hold personal property that has been transferred to it as collateral for the payment of any debt;
- (2) Acquire and hold title to real estate, provided:
 - (a) The real estate is necessary or appropriate for the transaction of legitimate business; and
 - (b) The cost of the real estate, including furniture and fixtures, shall not exceed forty percent (40%) of the total paid-in capital, unimpaired surplus and undivided profits (determined on accrual basis). The investment may exceed the bank's forty percent (40%) limit with prior written approval of the executive director;
- (3) Acquire and hold for not longer than ten (10) years, any real estate conveyed to it in satisfaction of debts previously contracted in the course of its business, or that it may purchase under a judgment in its favor. A

bank acquiring real estate in satisfaction of debts previously contracted in the course of business shall write down the acquisition at ten percent (10%) per year;

- (4) Invest in the bonds of any federal home loan bank;
- (5) Invest in obligations issued separately or collectively by or for federal land banks, federal intermediate credit banks and banks for cooperatives under the Act of Congress known as the Farm Credit Act of 1971, 85 Stat. 583, 12 U.S.C. sec. 2001 and amendments thereto;
- (6) Invest, subject to the approval of the executive director, in the capital stock or bonds or both of any domestic realty corporation organized or existing for the sole purpose of acquiring and holding title to real property used by the bank, through lease or otherwise, for the transaction of the bank's legitimate business;
- (7) Purchase, hold, and convey the shares of any open end registered investment company registered under the Investment Company Act of 1940, or a series of the company, whose shares are registered under the Securities Act of 1933 and whose investments are limited to:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue these instruments of indebtedness;
 - (d) Any other obligations in which national banking associations organized under the laws of the United States are permitted to invest in directly;
- (8) Purchase and hold shares of a bank service corporation as that term is used in the Bank Service Corporation Act (12 U.S.C. sec. 1861) and any amendments thereto;
- (9) Invest in:
 - (a) Bonds or other interest-bearing obligations of the United States, or those for the payment of the principal and interest on which the faith and credit of the United States is pledged;
 - (b) Stocks, bonds, or other interest-bearing or dividend-yielding obligations issued or guaranteed as to the payment of principal and interest or dividend by any instrumentality presently or hereafter incorporated by authority of an Act of Congress;
 - (c) General obligation bonds or revenue bonds issued and guaranteed as to payment of principal and interest by any state, county, or municipal governments legally authorized to issue such instruments of indebtedness;
- (10)
 - (a) Invest in other real estate in the bank's generally accepted banking market. For purposes of this section, "the bank's generally accepted banking market" means the geographic banking market at the time the investment is made as defined by the Federal Reserve Bank in the Federal Reserve District in which the bank is located. The investment shall not exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment; and
 - (b) Investment in other real estate not to exceed ten percent (10%) of the bank's actual paid-in capital and surplus, calculated at the time the investment is made, for each real estate investment, if the bank has acquired the real estate in satisfaction of a debt previously contracted and the investment is for the purpose of improving the real estate for sale. Any real estate acquired in satisfaction of a debt previously contracted and improved by the bank shall be disposed of within five (5) years of the date of acquisition, with the executive director authorized to extend the disposition upon written request of the bank for good cause shown on a year-to-year basis not exceeding an additional five (5) years;
- (11) Own or operate a discount brokerage service either through the bank or a bona fide subsidiary of the bank;
- (12) Own or operate a travel agency either through the bank or a bona fide subsidiary of the bank;
- (13) Invest, with the prior approval of the executive director, in the capital stock or bonds of a trust company; and

- (14) Own or operate a courier service, either through the bank or a bona fide subsidiary of the bank, in any county where the bank has its principal office or a branch.
- (15) ***Except for real estate provided in subsection (3) of this section, acquire and hold for not more than one (1) year, or for an additional period allowed in writing by the executive director, any assets taken as security for debts previously contracted in the ordinary course of business.***

Investments in accordance with subsections (7) and (9) of this section are subject to KRS 286.3-280 and 286.3-290. For purposes of computing the maximum investment of a bank in bonds, notes, and other investments, book value shall be used. For deep discount bonds or zero coupon bonds, accreted book value shall be used.

➔Section 11. KRS 286.3-102 is amended to read as follows:

- (1) As used in this section, a ~~CAMELS~~~~[CAMEL]~~ rating means a system of rating used by examiners of financial institutions to rate the institutions in ~~six (6)~~~~[five (5)]~~ categories: capital adequacy, asset quality, management effectiveness, quantity and quality of earnings, ~~and~~ liquidity, ***and sensitivity to market risk.***
- (2) In addition to all other banking activities permitted by this subtitle, a state bank receiving a ~~CAMELS~~~~[CAMEL]~~ rating of 1 or 2 at its most recent state or federal bank regulatory examination may engage in any banking activity in which the bank could engage and is exempted from any statutes or administrative regulations which would be preempted if:
 - (a) It was operating as a national bank in Kentucky;
 - (b) It was operating as a state bank, state thrift, or state savings bank in any state; or
 - (c) It meets the qualified thrift lender test as determined by the Office of Thrift Supervision or its successor, or was operating as a federally chartered thrift or federal savings bank in any state.
- (3) Before a state bank may engage in any of the banking activities permitted by subsection (2) of this section, the state bank shall obtain a legal opinion specifying the statutory or regulatory provisions that permit the activity in which the state bank intends to engage and the conditions under which such activity is allowed. This legal opinion shall be maintained by the bank and provided to the office upon request.
- (4) This section shall not apply to exempt any laws which regulate Kentucky state banks pertaining to deferred deposit transactions in Subtitle 9 of this chapter, title pledge lending in Subtitle 10 of this chapter, visitorial or examination powers, and interest rates.

➔Section 12. KRS 286.3-172 is amended to read as follows:

- (1) A national banking association may convert into or merge with a state bank under a state charter, provided that the action taken complies with federal law.
- (2) In the case of each conversion, a written plan of conversion shall be submitted, in duplicate, to the executive director. Such plan shall be in form satisfactory to the executive director, shall prescribe the terms and conditions of the conversion and the mode of carrying it into effect, and shall have annexed thereto and forming a part thereof the proposed articles of incorporation of the state bank which is to result from the conversion. Such articles of incorporation shall be in the form prescribed by law for the organization of state banks, with such variations, if any, as shall be satisfactory to the executive director. With such plan of conversion there shall be submitted, in duplicate, to the executive director a certificate of the president, secretary, or cashier of the national banking association certifying that all steps have been taken which are necessary under federal law to the consummation of the conversion. The executive director shall approve or disapprove such plan of conversion within sixty (60) days of the submission thereof to him. In considering the approval or disapproval of the conversion plan the executive director shall take into account:
 - (a) Any pending administrative or judicial action to which the bank or any officer or director of the bank is a party;
 - (b) The performance of the converting national bank for the five (5) years preceding the application for conversion as compared to similarly situated state-chartered banks; and
 - (c) The proposed name of the bank after conversion which shall not be the same as or deceptively similar to any existing state-chartered bank.

If the executive director shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of such certificate submitted therewith and the original of the approval of the executive director, in the office of the executive director~~], and the other duplicate of such plan, together with a duplicate of such certificate and a duplicate of the executive director's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located~~]. After such filing in the office of the commission, the conversion shall become effective upon the filing and recording of the articles of incorporation as provided in KRS 286.3-050, unless a later date is specified in the plan, in which event the conversion shall become effective upon such later date. If the executive director shall disapprove the conversion plan, he shall state his reasons for such disapproval in writing to which the converting national bank shall have the right of appeal as permitted by law.

- (3) In the case of each merger, a written plan of merger shall be submitted, in duplicate, to the executive director. Such plan shall be in form satisfactory to the executive director and shall prescribe the terms and conditions of the merger and the mode of carrying it into effect. Such plan may provide the name to be borne by the state bank, as receiving corporation, if such name is to be changed. Such plan may also name the persons who shall constitute the first board of directors of the state bank after the merger shall have been accomplished, provided that the number and qualifications of such person shall be in accordance with the provisions of Subtitle 3 of KRS Chapter 286 relating to the number and qualifications of directors of a state bank; or such plan may provide for a meeting of the stockholders to elect a board of directors within sixty (60) days after such merger, and may make provision for conducting the affairs of the state bank meanwhile. With such plan of merger there shall be submitted, in duplicate, to the executive director the following:
 - (a) By the national banking association, a certificate of the president, secretary, or cashier of such association certifying that all steps have been taken which are necessary under federal law to the consummation of their merger;
 - (b) By the state bank, a certificate of the president, secretary, or cashier certifying that such plan of merger has been approved by the board of directors of the state bank by a majority vote of all the members thereof, that such plan has been submitted to the stockholders of the state bank at a meeting thereof held; upon notice of at least fifteen (15) days, specifying the time and place and object of such meeting and addressed to each stockholder at the address appearing upon the books of the state bank and published pursuant to KRS Chapter 424, and that such plan of merger has been approved at such meeting by the vote of the stockholders owning at least two-thirds (2/3) in amount of the stock of the state bank.
- (4) The executive director shall approve or disapprove such plan of merger within sixty (60) days of such submission thereof to him. If the executive director shall approve such plan, he shall file one (1) duplicate thereof, together with one (1) duplicate of each of such certificates and the original of the approval of the executive director, in the office of the executive director~~], and the other duplicate of such plan, together with a duplicate of each of such certificates and a duplicate of the executive director's approval, shall be filed in the office of the clerk of the county in which the principal office of the state bank is to be located~~]. Upon such filing in the office of the executive director, the merger shall become effective, unless a later date is specified in the plan, in which event the merger shall become effective upon such later date.
- (5) At the time when such conversion or merger becomes effective:
 - (a) The resulting state bank shall be considered the same business and corporate entity as the national banking association, although as to rights, powers, and duties, the resulting bank is a state bank;
 - (b) All of the property, rights, and powers and franchises of the national banking association shall vest in the resulting state bank and the resulting state bank shall be subject to and deemed to have assumed all of the debts, liabilities, obligations, and duties of the national banking association and to have succeeded to all of its relationships, fiduciary or otherwise, as fully and to the same extent as if such property, rights, powers, franchises, debts, liabilities, obligations, duties, and relationships had been originally acquired, incurred, or entered into by the resulting state bank; provided, however, that the resulting state bank shall not, through such conversion or merger, acquire power to engage in any business or to exercise any right, privilege, or franchise which is not conferred by the provisions of Subtitle 3 of KRS Chapter 286 upon such resulting state bank;
 - (c) Any reference to the national banking association in any contract, will, or document, whether executed or taking effect before or after the conversion or merger, shall be considered a reference to the resulting state bank if not inconsistent with the other provisions of the contract, will, or document;

- (d) A pending action or other judicial proceeding to which the national banking association is a party, shall not be deemed to have abated or to have discontinued by reason of the conversion or merger, but may be prosecuted to final judgment, order, or decree in the same manner as if the conversion or merger had not been made; or the resulting state bank may be substituted as a party to such action or proceeding, and any judgment, order, or decree may be rendered for or against it that might have been rendered for or against the national banking association if the conversion or merger had not occurred.

➔Section 13. KRS 286.3-180 is amended to read as follows:

- (1) Banks authorized under the laws of this state may, except as provided in subsections (2) or (3) of this section, exercise, only at their principal office, powers necessary to carry on the business of banking by discounting and negotiating notes, drafts, bills of exchange, and other evidences of debt, and by purchasing bonds, receiving deposits and allowing interest on these items, buying and selling exchange, coin, and bullion, and lending money on personal or real security.
- (2) A bank may establish *or acquire* within any state, the District of Columbia, or a territory of the United States a branch and may exercise all of the powers conferred in subsection (1) of this section at the branch. A bank, except for a bank that the executive director may designate by the promulgation of administrative regulations, shall apply to the executive director for permission to establish *or acquire* a branch. Before the executive director shall approve or disapprove any application made under this subsection the executive director shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is reasonable probability of the successful operation of the branch based upon the financial and managerial impact of the branch on the bank establishing *or acquiring* the branch. The following conditions shall apply to applications for branches:
 - (a) The permission to open a branch shall lapse one (1) year after the executive director has rendered a final order as defined in KRS 13B.010, unless it shall have been opened and business actually begun in good faith. If, for reasons beyond the control of the applicant, the branch is not opened within this time period, permission to open the branch may, with the approval of the executive director, be extended for any period of time the executive director deems to be necessary; and
 - (b) An application to establish *or acquire* a branch office shall be approved or disapproved by the executive director based upon the facts existing at the date of filing of the application, except for the financial condition of the bank proposing to establish a branch office, which condition shall be subject to review until an order ruling on the application is made.
- (3) Any corporation which on January 1, 1966, was engaged in operating ~~a~~ ~~an agency or~~ branch bank may continue to retain and operate the ~~agency or~~ branch bank under the general banking laws, and the requirements set forth in this section in respect to capital shall not apply to any existing ~~agency or~~ branch bank but only as to those ~~agencies or~~ branch banks which may be established in the future in accordance with the terms of this section.
- (4) The provisions of this section shall not be construed to prohibit the merger of banks in the same county and the operation by the merged corporation of the banks, nor to prohibit the sale of any bank to, and the purchase by, any other bank in the same county and the operation of the bank by the purchasing bank as a branch, provided the executive director shall determine that the public convenience and necessity will be served by the operation. The bank which does not survive the merger shall surrender its charter.
- (5) Any national banking association or any state bank member of the Federal Reserve system whose principal office is located in this state may do all things and perform all acts which state banks are permitted to do or perform under this section, subject to the conditions and restrictions provided for banks as to exercise of these powers.
- (6) When a branch ~~for agency~~ bank has once been established any operation of the branch ~~or agency~~ bank shall not be discontinued, and the branch ~~or agency~~ bank shall not be closed until after ninety (90) days' notice in writing to the executive director. In the discretion of the executive director the branch ~~or agency~~ bank proposing to discontinue operation may be required to give notice of the date when its operation will cease. ***The consolidation of two (2) or more branches into a single location in the same vicinity or immediate neighborhood shall not be considered a branch closure subject to the provisions of this subsection.***

➔Section 14. KRS 286.3-185 is amended to read as follows:

A bank may move its principal office or a branch from one (1) location to another. A bank, except for a bank that the executive director may designate through the promulgation of administrative regulations, shall apply to the executive director for approval to relocate its principal office or a branch. Before the executive director shall approve or disapprove any change of location, he shall ascertain and determine that the public convenience and advantage will be served and promoted and that there is a reasonable probability of the successful operation of the branch or principal office at the new location. ***The relocation of a branch within the same vicinity or immediate neighborhood that does not substantially affect the nature of the business or customers served shall not be considered a branch closure subject to the provisions of subsection (6) of Section 13 of this Act.***

➔Section 15. KRS 286.3-280 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, no bank or trust company shall permit any person to become indebted to it or to become obligated as guarantor or surety to it in an amount exceeding twenty per cent (20%) of its capital stock actually paid in and its actual amount of surplus, unless the person pledges with it good collateral security or executes to it a mortgage upon real or personal property which at the time is of more than the cash value of the indebtedness or obligation above all other encumbrances; but the indebtedness or obligation of any person shall not exceed thirty percent (30%) of the paid-in capital and actual surplus of the bank or trust company. ***When computing the total capital stock and surplus, the negative balance of a bank's undivided profits account shall be deducted.***
- (2) A bank organized as a limited liability company shall not be covered by subsection (1) of this section, but shall comply with the legal lending limits applicable to national banks set forth in 12 U.S.C. sec. 84 and 12 C.F.R. sec. 32.4, as may be amended.
- (3) No bank or trust company shall permit any of its directors or executive officers to become indebted to it or become obligated as guarantor or surety to it in an amount which exceeds that which any other person is authorized by this section to become indebted or obligated.
- (4) In computing the indebtedness of any person, the liability of any partnership in which the person acts as a general partner shall be included, and any obligation entered into for the benefit of a person, partnership or association shall be included in the total liabilities of the person, partnership or association.
- (5) Except as otherwise provided in this section, the same security, both in kind and amount, shall be required from stockholders as from nonstockholders.
- (6) The discount of bills of exchange drawn against actually existing value, and the purchase or discounting of commercial or business paper actually owned by the person negotiating the paper shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness or obligation of any person selling or negotiating the paper to a bank.

➔Section 16. KRS 286.3-290 is amended to read as follows:

In the case of obligations to banks and trust companies, the limitations and restrictions of KRS 286.3-280 shall not apply to:

- (1) Obligations of the United States or of the State of Kentucky;
- (2) Obligations guaranteed as to principal and interest by the United States or the State of Kentucky; or all obligations to the extent secured or covered by guarantees or by commitments or agreements to take over or to purchase the same made by any federal reserve bank or by the United States or by any department, bureau, board, commission or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States; or consolidated bonds issued by or for federal land banks or consolidated debentures issued by or for federal intermediate credit banks under the Act of Congress known as the "Federal Farm Loan Act," and amendments thereto; or consolidated debentures issued by or for banks for cooperatives under the Act of Congress known as the "Farm Credit Act of 1933," and amendments thereto; or obligations issued by the federal home loan banks; or obligations which are insured by the federal housing administrator pursuant to Title 12, Section 12, Section 1713, United States Code, if the debentures to be issued in payment of such insured obligations are guaranteed as to the principal and interest by the United States; or obligations of national mortgage associations; except that the executive director may make, alter and repeal regulations respecting the total liabilities of any person which:
 - (a) Are secured by direct obligations of the United States or the State of Kentucky, and
 - (b) Have a face value at least equal to the amount of such liabilities, and

- (c) Will mature within five (5) years from the date such liabilities were incurred;~~{-}~~
- (3) Obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized by KRS 68.320 and 160.540; *and*
- (4) *Loans secured by a segregated deposit account in the lending bank if the lending bank has a perfected security interest in the segregated deposit account and if the security interest is clearly documented in the bank's books and records.*

➔Section 17. KRS 286.3-630 is amended to read as follows:

- (1) Whenever in the opinion of the commissioner and of a majority of the members of the respective boards of directors of the banks concerned, an emergency exists warranting an immediate transfer of such assets and liabilities, the board of directors of any bank, by a majority vote, may transfer the assets and liabilities of such bank to another bank or banks, without the vote or approval of the stockholders of each bank which is a party to the proposed transfer.
- (2) No such transfer shall be made without the consent of the commissioner and each bank which is a party to such transfer shall file with the commissioner, certified copies of all proceedings had by its board of directors, with a complete copy of the agreement entered into by such banks.
- (3) Notice of a transfer of assets and liabilities made pursuant to the provisions of this section shall be given *to all stockholders*~~[by publication pursuant to KRS Chapter 424]~~ and a certified copy thereof shall be filed in the office of the commissioner.

➔Section 18. KRS 286.3-915 is amended to read as follows:

- (1) Notwithstanding any other provision of Subtitle 1, 2, or 3 of KRS Chapter 286:
 - (a) An individual or bank holding company that controls two (2) or more banks having their principal offices in this Commonwealth may, from time to time, combine any or all of the commonly controlled banks in this Commonwealth into and with any one (1) of the banks, and thereafter the surviving bank, which shall have its principal office in this Commonwealth, shall continue to operate its principal office and may operate the other authorized offices of the banks so combined as branches of the surviving bank; and
 - (b) Any combination authorized by this section shall not require the approval of the executive director of financial institutions, but on or before thirty (30) days prior to consummation of any combination, the proposed surviving bank shall notify the executive director of the combination, and on the effective date of any such combination the charter of any combined bank organized under the laws of this Commonwealth shall be surrendered.
- (2) Following any combination authorized by this section:
 - (a) The surviving bank may, subject to the approval of the executive director as provided in KRS 286.3-180(2), establish and operate additional branches in any county where any bank involved in the combination had established a branch or main office;
 - (b) ~~[Any combined bank which is being operated as a branch of the surviving bank shall have a board of directors, a majority of which shall be residents of the combined bank's community, which shall meet not less often than quarterly to advise the branch in a nonfiduciary capacity with respect to the branch's community activities and affairs, customer relations, and local charitable activities;~~
 - ~~(c) —~~ The surviving bank shall maintain a record of the deposits in each of its offices resulting from such combination or thereafter established as provided in paragraph (a) of this subsection; and
 - ~~(c){(d)}~~ With the approval of the executive director, all of a bank's offices in a county may be transferred, by a purchase and assumption or other transaction, by the bank to a newly chartered bank having its principal office in the same county, or to an existing bank.
- (3) For purposes of this section:
 - (a) The term "combine" or "combination" includes a merger or the acquisition of all or substantially all of the assets of a bank already controlled by an individual or bank holding company;

- (b) An individual or bank holding company "controls" a bank if that individual or company, directly or indirectly, owns, controls, or has the power to vote at least eighty percent (80%) of the issued and outstanding voting securities of the bank;
- (c) "Combined bank" means any bank participating in a combination authorized by this section other than the surviving bank;
- (d) "Surviving bank" means a bank into which a combined bank has been combined;
- (e) "Bank" includes a national bank, savings and loan association, and federal savings bank; and
- (f) "Individual," "bank holding company," and "deposit" shall have the same meanings attributed to them in KRS 286.3-900(1).

➔Section 19. KRS 387.111 is amended to read as follows:

Guardians, limited guardians, and conservators shall receive reasonable compensation for services rendered and reimbursement for reasonable and necessary expenses incurred in the exercise of their assigned duties and powers, including reimbursement for room, board, and clothing personally provided to the ward ***and shall not exceed that provided for in Section 20 of this Act.*** The compensation and reimbursement shall be paid from the estate of the ward.

➔Section 20. KRS 387.760 is amended to read as follows:

- (1) No court costs shall be charged to a respondent or ward in any proceeding under KRS 387.500 to 387.770, if the respondent or ward is a poor person as defined in KRS 453.190.
- (2) Limited guardians, guardians, limited conservators and conservators are entitled to reasonable compensation for services rendered and to reimbursement for reasonable and necessary expenses incurred in the exercise of their assigned guardianship or conservatorship duties and powers. Such compensation and reimbursement shall be paid from the financial resources of the ward ***and shall not exceed:***
 - (a) ***A commission of not more than six percent (6%) of the income collected by the fiduciary, payable at the time the income is collected; and***
 - (b) ***Either, but not both, of the following, as elected by the fiduciary:***
 - 1. ***An annual commission of three-tenths of one percent (0.3%) of the fair market value of the real and personal property in the care of the fiduciary; or***
 - 2. ***An annual commission of not more than six percent (6%) of the fair market value of the principal distributed by the fiduciary, payable at the time the principal is distributed.***

In the absence of an agreement to the contrary, a commission on income shall be paid out of the income of the estate and a commission on principal shall be paid out of the principal of the estate.

- (3) ***Upon submitted proof showing that in the handling of the estate the fiduciary has performed additional and necessary services which have been unusual or extraordinary and not normally incident to the care and management of a similar estate, the court may allow the fiduciary additional compensation as is fair and reasonable for the additional services rendered.*** ~~Compensation and reimbursement of limited guardians, guardians, limited conservators, and conservators shall not exceed six percent (6%).~~

➔Section 21. KRS 286.4-533 is amended to read as follows:

Notwithstanding the provisions of KRS 286.4-530(10) or of any other law, in any extension of credit in accordance with Subtitle 4 of KRS Chapter 286, the licensee may charge and collect the following:

- (1) A fee, or premium for insurance, in lieu of perfecting a security interest to the extent that the fee or premium does not exceed the fee payable to public officials for perfecting the security interest;
- (2) A bad check charge of twenty-five dollars (\$25), or the amount passed on from other financial institutions, whichever is greater, for any check, draft, negotiable order of withdrawal, or like instrument returned or dishonored for any reason by a depository institution, which charge licensee may charge and collect, through regular billing procedures, or otherwise from the borrower;
- (3) A reasonable attorney's fee, in connection with the collection of a loan, actually incurred by the licensee and paid to an attorney who is not an employee of the licensee;

- (4) A charge for credit investigations of one dollar and fifty cents (\$1.50) for each fifty dollars (\$50) or fraction thereof of the principal amount of the loan. This charge shall be permitted only on the first two thousand dollars (\$2,000) of the principal amount of the loan. No charge shall be collected unless a loan has been made as a result of the investigation;
- (5) An alternative to the default charge described in KRS 286.4-530(4), not to exceed five percent (5%) of each scheduled installment, or fifteen dollars (\$15), whichever is greater. Only one (1) charge may be collected for each scheduled installment; and
- (6) Costs or other expenses authorized for a secured party in accordance with KRS 355.9-207 *and* 355.9-607.

➔Section 22. The following KRS section is repealed:

286.3-420 Publication of financial statement -- Contents -- Disposition of copies.

Signed by the Governor March 25, 2010.

CHAPTER 29

(HB 80)

AN ACT relating to the Kentucky Licensed Practical Nurses Organization.

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

➔Section 1. KRS 314.121 is amended to read as follows:

- (1) The Governor shall appoint a Board of Nursing consisting of sixteen (16) members;
 - (a) Nine (9) members shall be registered nurses licensed to practice in the Commonwealth;
 - (b) Three (3) members shall be practical nurses licensed to practice in the Commonwealth;
 - (c) One (1) member shall be a nurse service administrator who is a registered nurse licensed to practice in the Commonwealth;
 - (d) One (1) member shall be engaged in practical nurse education who is a registered nurse licensed to practice in the Commonwealth; and
 - (e) Two (2) members shall be citizens at large, who are not associated with or financially interested in the practice or business regulated.
- (2) Each appointment shall be for a term of four (4) years expiring on June 30 of the fourth year. The cycle for appointments and expiration of terms shall be as follows:
 - (a) The first year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) licensed practical nurse shall expire;
 - (b) The second year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) citizen at large shall expire;
 - (c) The third year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and the one (1) member engaged in practical nurse education who is a registered nurse shall expire; and
 - (d) The fourth year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and one (1) citizen at large shall expire.
- (3)
 - (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a list of members qualified for appointment as R.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments necessary by July 1.
 - (b) By March 1, ~~the~~ ~~Kentucky Licensed Practical Nurses Organization Incorporated~~ ~~State Association of Licensed Practical Nurses~~ shall submit to the Governor a list of names qualified for appointment as L.P.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments as necessary by July 1.

- (c) By March 1 of the year in which the nurse service administrator's term shall expire, the Kentucky Organization of Nurse Executives, an affiliate of the Kentucky Hospital Association, shall submit to the Governor two (2) names of qualified individuals for appointment as the nurse service administrator from which list the Governor shall make an appointment as necessary by July 1.
 - (d) By March 1, the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc., shall submit to the Governor two (2) names of qualified individuals for appointments as its R.N. representative to the board, from which the Governor shall make an appointment by July 1.
 - (e) By March 1 of the year in which the Kentucky Association of Health Care Facilities representative's term shall expire, the Kentucky Association of Health Care Facilities shall submit to the Governor two (2) names of qualified individuals for appointment as its R.N. representative to the board, from which list the Governor shall make an appointment as necessary by July 1.
 - (f) Initially, the Governor shall appoint one (1) member to serve as the registered nurse who is engaged in practical nurse education to serve the term remaining according to the cycle specified in subsection (2) of this section. By August 1, 1996, ~~the~~ Kentucky **Licensed Practical Nurses Organization Incorporated**~~State Association of Licensed Practical Nurses~~ shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by September 1, 1996. Thereafter, by March 1 of the year in which the practical nurse educator's term expires, ~~the~~ Kentucky **Licensed Practical Nurses Organization Incorporated**~~State Association of Licensed Practical Nurses~~ shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by July 1.
 - (g) The Governor shall appoint two (2) members who shall be citizens at large, who are not associated with or financially interested in the practice or business regulated. The Governor shall make the appointments by July 1 of the year in which the citizen members' terms expire.
- (4) A vacancy on the board shall be filled by the Governor as provided for under subsection (1) of this section.
 - (5) The Governor may remove any member from the board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.
 - (6) Each R.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of nursing, and a registered nurse in this state. All shall have had at least five (5) years of experience in nursing, three (3) of which shall immediately precede such appointment. Five (5) members shall be engaged in nursing practice; three (3) shall be engaged in nursing education; one (1) shall be engaged in advanced registered nursing practice; and one (1) shall be in nursing administration.
 - (7) Each L.P.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of practical nursing or its equivalent, licensed as a licensed practical nurse in this state, have at least five (5) years of experience in nursing, three (3) of which shall immediately precede this appointment, and be currently engaged in nursing practice.

Signed by the Governor March 25, 2010.

CHAPTER 30

(HB 24)

AN ACT relating to highway signs.

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

➔Section 1. KRS 177.078 is amended to read as follows:

- (1) An application from an historical site or from a tourist area or attraction for the erection of a limited supplemental guide sign shall be made to the commissioner of the Department of Highways. The application shall include, but not be limited to:
 - (a) Evidence that demonstrates the average annual attendance;
 - (b) Evidence that the tourist area or attraction is established as a permanent business; and

- (c) Evidence that the tourist area or attraction has all necessary and proper licenses, that normal business hours shall be maintained, that it is open to the traveling public, and that it provides recreational or educational opportunities.
- (2) An application fee of two hundred dollars (\$200) shall be paid to the Department of Highways by each applicant.
- (3) Upon approval of the application, the applicant shall **reimburse the Transportation Cabinet for**~~[pay a fee not to exceed five hundred dollars (\$500) per year for a period of ten (10) years or]~~ the total cost of the sign and its installation. **The applicant shall have the option to pay the reimbursement cost in full or amortize the reimbursement cost**~~[, amortized]~~ for a period **not to exceed**~~[of]~~ ten (10) years~~[, whichever is less, to the Transportation Cabinet].~~

Signed by the Governor March 25, 2010.

CHAPTER 31

(HB 98)

AN ACT relating to inspections of manufactured homes.

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

➔Section 1. KRS 227.570 is amended to read as follows:

- (1) The office shall enforce such standards and requirements for the installation of plumbing, heating, and electrical systems in manufactured homes and mobile homes and for previously owned recreational vehicles as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board.
- (2) The office shall enforce such standards and requirements for the body and frame design, construction, and installation of manufactured homes and mobile homes as it determines are reasonably necessary in order to protect the health and safety of the occupants and the public. These standards and requirements shall be those adopted by the Manufactured Home Certification and Licensure Board. If any part of 1976 Ky. Acts ch. 136 conflicts with Title 6 of the Federal Housing and Community Development Act of 1974, the federal act shall take precedence.
- (3) All installations of manufactured homes and mobile homes shall be performed by an installer certified under the provisions of KRS 227.560 in accordance with the manufacturer's instructions, if available, or ANSI A225.1, Manufactured Home Installations.
- (4) A certified installer shall apply for a certified installer seal prior to installing a manufactured home or a mobile home. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A. The administrative regulations shall provide for the fees, purchase and application of the seal, report procedures, and attachment of the certified installer seal.
- (5) ***The installation of a new manufactured home shall be inspected under subsection (3) of this section. The retailer of the inspected property shall pay a new manufactured home installation inspection fee in an amount not to exceed one hundred fifty dollars (\$150).***
- (6) ***The board shall specify the new manufactured home installation fee established in subsection (5) of this section through the promulgation of an administrative regulation. The board may increase the fee, but by no more than ten percent (10%) per year, and at no time shall the fee exceed one hundred fifty dollars (\$150).***
- (7) ***All fees received by the office under this section shall be deposited in the trust and agency fund specified in KRS 227.620(5).***

Signed by the Governor March 25, 2010.

CHAPTER 32**(HB 171)**

AN ACT relating to deeds.

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

➔Section 1. KRS 382.135 is amended to read as follows:

- (1) In addition to any other requirement imposed by law, a deed to real property shall contain the following:
 - (a) The mailing addresses of the grantor and grantee;
 - (b) A statement of the full consideration;
 - (c) A statement indicating the in-care-of address to which the property tax bill for the year in which the property is transferred may be sent; and
 - (d)
 1. In the case of a transfer other than by gift, or with nominal or no consideration a sworn, notarized certificate signed by the grantor or his agent and the grantee or his agent, or the parent or guardian of a person under eighteen (18) years old, that the consideration reflected in the deed is the full consideration paid for the property; or
 2. In the case of a transfer either by gift or with nominal or no consideration, a sworn, notarized certificate signed by the grantor or his agent and the grantee or his agent, or the parent or guardian of a person under eighteen (18) years old, stating that the transfer is by gift and setting forth the estimated fair cash value of the property.
- (2) The deed filing requirements listed in subsection (1)(b), (c), and (d) of this section shall not apply to:
 - (a) Deeds which only convey utility easements;
 - (b) Deeds which transfer property through a court action pursuant to a divorce proceeding;
 - (c) Deeds which convey rights-of-way that involve governmental agencies;
 - (d) Deeds which convey cemetery lots;
 - (e) Deeds which correct errors in previous deeds conveying the same property from the same grantor to the same grantee; or
 - (f) Deeds which convey real property to a local airport board.
- (3) In the case of an exchange of properties, the fair cash value of the property being exchanged shall be stated in the body of the deed.
- (4) In the event of a transfer of property by will or under the laws of intestate succession, the personal representative of the estate, prior to closing out the estate, shall file an affidavit with the county clerk of each county in which any of the property is located, which shall contain the following:
 - (a) The names and addresses of the persons receiving each property passing by will or intestate succession; and
 - (b) The full or fair market value of each property as estimated or established for any purpose in the handling of the estate, or a statement that no such values were estimated or established.
- (5) No county clerk or deputy clerk shall lodge for record, and no county clerk or deputy shall receive and permit to be lodged for record, any deed that does not comply with the provisions of this section.

Signed by the Governor March 25, 2010.

CHAPTER 33**(HB 261)**

AN ACT relating to special Gold Star Fathers license plates.

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

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

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.
- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
 - (a) Disabled veterans who receive assistance to purchase a vehicle from the United States Veterans' Administration and recipients of the Congressional Medal of Honor:
 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard and recipients of the Purple Heart:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (d) Members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; and disabled veterans who have been declared to be at least fifty percent (50%) service-connected disabled by the United States Department of Veterans' Affairs, or who receive total service-connected disability rating for compensation on individual unemployability and have not received assistance from the United States Department of Veterans' Affairs toward the purchase of a motor vehicle:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).

2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
 1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
- (f) Disabled license plates:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (g) Historic vehicles:
 1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: Do not renew annually.
- (h) Members of Congress:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Firefighters:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (j) Emergency management:
 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (l) Law Enforcement Memorial:
 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).

- (p) Amateur radio:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
 - 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
 - 1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
- (u) Independent Colleges:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
 - 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).

(z) Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses:

1. Initial Fee: \$0 (\$0 SF/\$0 CF/ \$0 EF).
2. Renewal Fee:\$0 (\$0 SF/\$0 CF/ \$0 EF).

- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
- (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).

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

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

appropriate federal agency stating the period of time the person or person's spouse was a prisoner of war. If a former prisoner of war dies with a vehicle licensed as authorized under this section, the person's surviving spouse may retain the license plate for use on the same vehicle or on another vehicle that complies with KRS 186.164(7).

- (5) A person who is certified by the Kentucky chapter of the Pearl Harbor Survivors Association as being a survivor of the attack on Pearl Harbor shall be eligible for a Pearl Harbor license plate and shall be required to attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:
 - (a) Was a member of the United States Armed Forces on December 7, 1941;
 - (b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;
 - (c) Was discharged honorably from the United States Armed Forces; and
 - (d) Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.
- (6) A person who is eligible to receive a Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses license plate under KRS 186.164(15)(a) may receive up to two (2) Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses license plates annually for vehicles he or she owns or leases.
- (7) The surviving spouse of a Kentucky National Guard member or a retired member, who possessed a vehicle licensed with the Kentucky National Guard special license plate, may retain the license plate for use on the same vehicle or another vehicle that complies with KRS 186.164(7). The surviving spouse may renew the license plate indefinitely, provided the appropriate registration fee is paid annually.

➔Section 3. KRS 186.164 is amended to read as follows:

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

- (b) If a special license plate issued under this chapter is lost, stolen, or damaged in an accident, the county clerk shall issue a new plate upon payment of a three dollar (\$3) county clerk fee, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
- (6) Upon the sale, transfer, or termination of a lease of a vehicle with any special license plate issued under this chapter, the owner or lessee shall remove the special plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and a certificate of registration upon payment of a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special plate upon payment of a three dollar (\$3) county clerk fee for use on any other vehicle of the same classification and category owned, leased, or acquired by the person during the current licensing period. If the owner or lessee has the special plate reissued to a vehicle which has been previously registered in this state, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.
- (7) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, airport limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).
- (8) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.
- (9) A group wanting to create a special license plate that is not authorized under this chapter on June 20, 2005, shall comply with the following conditions before being eligible to apply for a special license plate:
 - (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
 - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
 - (c) The group, or the group's lettering, logo, image, or message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
 - (d) The group shall not be a political party and shall not have been created primarily to promote a specific political belief;
 - (e) The group shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
 - (f) The name of the group shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
 - (g) The group's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (10) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (9) of this section, the group may appeal the denial to the next regularly scheduled session of the General Assembly for review of the denial and action on the group's request for a special license plate. The cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of both the House and Senate Transportation Committees of the General Assembly of the denial and the reasons upon which the cabinet based the denial. The House and Senate chairpersons shall be required to present the information to his or her respective committee for consideration within the first ten (10) days of the next regularly scheduled session of the General Assembly, if requested to do so in writing by the group who was denied a special license plate. A person seeking a personalized license plate under KRS 186.174 shall be subject to the conditions specified in subsection (9)(c) to (g) of this section.
- (11) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after the group collects a minimum of nine hundred (900) applications with each application being

accompanied by a twenty-five dollar (\$25) state fee. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently.

- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate may, at the time of application, make a voluntary contribution that the county clerk shall forward to the cabinet. The entity that sponsors a special plate established by the process outlined in this section may set a requested donation amount, not to exceed ten dollars (\$10), that will automatically be added to the cost of registration or renewal, unless the individual registering or renewing the vehicle registration opts out of contributing that recommended amount. The cabinet shall, on an annual basis, remit the voluntary contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding voluntary contributions designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall submit the information required under subsection (13)(a) and (c) of this section to the Transportation Cabinet within thirty (30) days of June 20, 2005.
- (13) If a group wants to receive a donation when the group or organization's special license plate is initially purchased or renewed under subsection (12) of this section, the group shall, at the time the nine hundred (900) applications are submitted to the Transportation Cabinet, also submit a notarized affidavit to the cabinet attesting to:
 - (a) The name, address, and telephone number for the group or organization. If the group or organization does not have its headquarters in the Commonwealth, then the name, address, and telephone number for the group or organization's Kentucky state chapter shall be required. The names of the officers of the group or organization shall also be required. If the entity receiving funds under subsection (12) of this section is not a state governmental agency, a program unit within a state governmental agency, or is a group or organization that does not have a statewide chapter, then an extra donation for use by the group or organization shall be prohibited;
 - (b) The amount of the monetary donation the group wants to receive when a person purchases the group or organization's special license plate; and
 - (c) The purpose for which the donated funds will be used by the group or organization. Donated funds shall not be limited for use by members of the group or organization, and shall not be used for administrative or personnel costs of the group or organization.
- (14) All funds received by a group or organization under subsection (12) of this section shall be deposited into an account separate from all other accounts the group or organization may have, and the account shall be audited yearly at the expense of the group or organization. The completed audit shall be forwarded to the Transportation Cabinet in Frankfort. One hundred percent (100%) of the funds received by a group or organization under subsection (12) of this section shall be used for the express purpose identified by the group in subsection (13) of this section. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall comply with the provisions of this subsection.
- (15) The secretary of the Transportation Cabinet shall promulgate administrative regulations under KRS Chapter 13A to establish additional rules to implement the issuance of special license plates issued under this chapter, including but not limited to:
 - (a) Documentation that will be required to accompany an application for a special license plate to provide proof of election to the United States Congress or the Kentucky General Assembly; election or appointment to the Kentucky Court of Justice; membership in a Masonic Order, Fraternal Order of Police, or emergency management organization; eligibility for membership in the Gold Star Mothers of America; *eligibility as a father for associate membership in the Gold Star Mothers of America*; eligibility for membership in the Gold Star Wives of America; or ownership of an amateur radio operator license;
 - (b) The time schedule permissible for a group or organization to request a design change for the special license plate; and
 - (c) The procedures for review of proposed license plates and the standards by which proposed special license plates are approved or rejected in accordance with subsection (9) of this section.

- (16) Any individual, group, or organization that fails to audit any funds received under this chapter, or that intentionally uses any funds received in any way other than attested to under subsection (13) of this section or for administrative or personnel costs in violation of subsection (13) of this section, shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

Signed by the Governor March 25, 2010.

CHAPTER 34

(SB 76)

AN ACT relating to management of institutional funds.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

In Sections 1 to 10 of this Act:

- (1) *"Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.*
- (2) *"Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. The term does not include assets that an institution designates as an endowment fund for its own use.*
- (3) *"Gift instrument" means a record or records, including an institutional solicitation, under which property is granted to, transferred to, or held by an institution as an institutional fund.*
- (4) *"Institution" means:*
 - (a) *A person, other than an individual, organized and operated exclusively for charitable purposes;*
 - (b) *A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or*
 - (c) *A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.*
- (5) *"Institutional fund" means a fund held by an institution exclusively for charitable purposes. The term does not include:*
 - (a) *Program related assets;*
 - (b) *A fund held for an institution by a trustee that is not an institution; or*
 - (c) *A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.*
- (6) *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.*
- (7) *"Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.*
- (8) *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.*

- (2) *In addition to complying with duty of loyalty imposed by law other than in Sections 1 to 10 of this Act, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.*
- (3) *In managing and investing an institutional fund, an institution:*
 - (a) *May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and*
 - (b) *Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.*
- (4) *An institution may pool two (2) or more institutional funds for purposes of management and investment.*
- (5) *Except as otherwise provided by a gift instrument, the following rules apply:*
 - (a) *In managing and investing an institutional fund, the following factors, if relevant, shall be considered:*
 - 1. *General economic conditions;*
 - 2. *The possible effect of inflation or deflation;*
 - 3. *The expected tax consequences, if any, of investment decisions or strategies;*
 - 4. *The role that each investment or course of action plays within the overall investment portfolio of the fund;*
 - 5. *The expected total return from income and the appreciation of investments;*
 - 6. *Other resources of the institution;*
 - 7. *The needs of the institution and the fund to make distributions and to preserve capital; and*
 - 8. *An asset's special relationship or special value, if any, to the charitable purposes of the institution.*
 - (b) *Management and investment decisions about an individual asset shall be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the fund and to the institution.*
 - (c) *Except as otherwise provided by law other than Sections 1 to 10 of this Act, an institution may invest in any kind of property or type of investment consistent with this section.*
 - (d) *An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.*
 - (e) *Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of Sections 1 to 10 of this Act.*
 - (f) *A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall*

act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

- (a) *The duration and preservation of the endowment fund;*
 - (b) *The purposes of the institution and the endowment fund;*
 - (c) *General economic conditions;*
 - (d) *The possible effect of inflation or deflation;*
 - (e) *The expected total return from income and the appreciation of investments;*
 - (f) *Other resources of the institution; and*
 - (g) *The investment policy of the institution.*
- (2) *To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.*
 - (3) *Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:*
 - (a) *Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and*
 - (b) *Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to any specific limitation set forth in a gift instrument or in law other than Sections 1 to 10 of this Act, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:*
 - (a) *Selecting an agent;*
 - (b) *Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and*
 - (c) *Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.*
- (2) *In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.*
- (3) *An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.*
- (4) *By accepting delegation of a management or investment function from an institution that is subject to the laws of the Commonwealth, an agent submits to the jurisdiction of the courts of the Commonwealth in all proceedings arising from or related to the delegation or the performance of the delegated function.*
- (5) *An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law of the Commonwealth other than Sections 1 to 10 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

- (1) *If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.*
- (2) *The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of a restriction will further the purposes of the*

fund. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard. To the extent practicable, any modification shall be made in accordance with the donor's probable intention.

- (3) *If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purpose expressed in the gift instrument. The institution shall notify the Attorney General of the application, and the Attorney General shall be given an opportunity to be heard.*
- (4) *If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty (60) days after notification to the Attorney General, may release or modify the restriction, in whole or part, if:*
 - (a) *The institutional fund subject to the restriction has a total value of less than fifty thousand dollars (\$50,000);*
 - (b) *More than twenty (20) years have elapsed since the fund was established; and*
 - (c) *The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

Compliance with Sections 1 to 10 of this Act is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 10 of this Act apply to an institutional fund existing on or established after the effective date of this Act. As applied to institutional funds existing on the effective date of this Act, Sections 1 to 10 of this Act govern only decisions made or actions taken on or after that date.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 10 of this Act modify, limit, and supersede the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify, limit, or supersede Section 101 of that act, 15 U.S.C. sec. 7001(a), or authorize electronic delivery of any of the notices described in Section 103 of that act, 15 U.S.C. sec. 7003(b).

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 273 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 10 of this Act may be cited as the Kentucky Uniform Prudent Management of Institutional Funds Act.

➔Section 11. The following KRS sections are repealed:

- 273.510 Definitions.
- 273.520 Appropriation of net appreciation.
- 273.530 Rule of construction.
- 273.540 Investment authority.
- 273.550 Delegation of investment authority.
- 273.560 Standard of conduct.
- 273.570 Release of restrictions on use or investment.
- 273.580 Uniformity of application and construction.

273.590 Short title.

Signed by the Governor March 25, 2010.

CHAPTER 35

(SJR 169)

A JOINT RESOLUTION ratifying the Bi-State Authority created for the purpose of financing, constructing, and operating the Louisville - Southern Indiana Ohio River Bridges Project, and declaring an emergency.

WHEREAS, The General Assembly passed and the Governor signed into law HB 3 of the 2009 Extraordinary Session of the General Assembly; and

WHEREAS, Sections 75 to 97 of HB 3, codified as KRS Chapter 175B, created the Kentucky Public Transportation Infrastructure Authority, the primary purpose of which is to facilitate the construction, financing, operation, and oversight of projects by entering into bi-state agreements, and by creating bi-state authorities; and

WHEREAS, Pursuant to KRS 175B.030, groups have been appointed by both Indiana and Kentucky to propose creation of a bi-state authority; and

WHEREAS, the appointed group has met and has proposed an agreement to establish a bi-state authority pursuant to KRS 175B.030(2)(c); and

WHEREAS, the Kentucky Public Transportation Infrastructure Authority has met and approved the agreement proposing to create the Bi-State Authority; and

WHEREAS, the Kentucky Public Transportation Infrastructure Authority is directed by KRS 175.030(2)(c) to petition the General Assembly for ratification of the Bi-State Authority;

NOW, THEREFORE,

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

➔Section 1. The General Assembly does hereby ratify the Bi-State Authority created for the purpose of financing, constructing, and operating the Louisville - Southern Indiana Ohio River Bridges Project, pursuant to submission from the Kentucky Public Transportation Infrastructure Authority, and in accordance with KRS Chapter 175B.

➔Section 2. Whereas the planning for and construction of the proposed Ohio River bridges is of immediate concern and there is a need for the proposed Bi-State Authority to take immediate action, an emergency is declared to exist, and this Resolution takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by the Governor March 25, 2010.

CHAPTER 36

(HB 444)

AN ACT relating to assisted-living communities.

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

➔Section 1. KRS 194A.700 is amended to read as follows:

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

- (1) "Activities of daily living" means normal daily activities, including bathing, dressing, grooming, transferring, toileting, and eating;
- (2) "*Assistance with activities of daily living and instrumental activities of daily living*" means any assistance provided by the assisted-living community staff with the client having at least minimal ability to verbally direct or physically participate in the activity with which assistance is being provided;

- (3) "Assistance with self-administration of medication," *unless subject to more restrictive provisions in an assisted-living community's policies that are communicated in writing to clients and prospective clients*, means:
- (a) *Assistance with medication that is prepared or directed by the client, the client's designated representative, or a licensed health care professional who is not the owner, manager, or employee of the assisted-living community. The medication shall:*
 - 1. *Except for ointments, be preset in a medication organizer or be in a single dose unit;*
 - 2. *Include the client's name on the medication organizer or container in which the single dose unit is stored; and*
 - 3. *Be stored in a manner requested in writing by the client or the client's designated representative and permitted by the assisted-living community's policies;*
 - (b) *Assistance by an assisted-living community staff person, which includes:*
 - 1. *Reminding a client when to take medications and observing to ensure that the client takes the medication as directed;*
 - 2. *Handing the client's medication to the client, or if it is difficult for the client or the client requests assistance, opening the unit dose or medication organizer, removing the medication from a medication organizer or unit dose container, closing the medication organizer for the client, placing the dose in a container, and placing the medication or the container in the client's hand;*
 - 3. *Steadying or guiding a client's hand while the client is self-administering medications; or*
 - 4. *Applying over-the-counter topical ointments and lotions;*
 - (c) *Making available the means of communication by telephone, facsimile, or other electronic device with a licensed health care professional and pharmacy regarding a prescription for medication;*
 - (d) *At the request of the client or the client's designated representative, facilitating the filling of a preset medication container by a designated representative or licensed health care professional who is not the owner, manager, or employee of the assisted living community; and*
 - (e) *None of the following:*
 - 1. *Instilling eye, ear, or nasal drops;*
 - 2. *Mixing compounding, converting, or calculating medication doses;*
 - 3. *Preparing syringes for injection or administering medications by any injection method;*
 - 4. *Administering medications through intermittent positive pressure breathing machines or a nebulizer;*
 - 5. *Administering medications by way of a tube inserted in a cavity of the body;*
 - 6. *Administering parenteral preparations;*
 - 7. *Administering irrigations or debriding agents used in the treatment of a skin condition; or*
 - 8. *Administering rectal, urethral, or vaginal preparations*~~[Reminding the client to take medications;~~
 - ~~(b) — Reading the medication's label;~~
 - ~~(c) — Confirming that medication is being taken by the client for whom it is prescribed;~~
 - ~~(d) — Opening the dosage packaging or medication container, but not removing or handling the actual medication;~~
 - ~~(e) — Storing the medication in a manner that is accessible to the client; and~~
 - ~~(f) — Making available the means of communicating with the client's physician and pharmacy for prescriptions by telephone, facsimile, or other electronic device;~~

- (4)(3) "Assisted-living community" means a series of living units on the same site~~[-, operated as one (1) business entity, and]~~ certified under KRS 194A.707 to provide services for five (5) or more adult persons not related within the third degree of consanguinity to the owner or manager;
- (5)(4) "Client," **"resident," or "tenant"** means an adult person who has entered into a lease agreement with an assisted-living community;
- (6)(5) "Danger" means physical harm or threat of physical harm to one's self or others;
- (7) **"Department" means the Department for Aging and Independent Living;**
- (8)(6) "Health services" has the same meaning as in KRS 216B.015;
- (9)(7) "Instrumental activities of daily living" means activities to support independent living including but not limited to housekeeping, shopping, laundry, chores, transportation, and clerical assistance;
- (10)(8) "Living unit" means a portion of an assisted-living community occupied as the living quarters of a client under a lease agreement;
- (11)(9) "Mobile nonambulatory" means unable to walk without assistance, but able to move from place to place with the use of a device including but not limited to a walker, crutches, or wheelchair;~~[-and]~~
- (12) **"Plan of correction" means a written response from the assisted-living community addressing an instance cited in the statement of noncompliance;**
- (13) **"Statement of danger" means a written statement issued by the department detailing an instance where a client is a danger; and**
- (14) **"Statement of noncompliance" means a written statement issued by the department detailing an instance when the department considers the assisted-living community to have been in violation of a statutory or regulatory requirement**~~(10) — "Department" means the Department for Aging and Independent Living.~~

➔Section 2. KRS 194A.703 is amended to read as follows:

- (1) Each living unit in an assisted-living community shall:
- (a) Be at least two hundred (200) square feet for single occupancy, or for double occupancy if the room is shared with a spouse or another individual by mutual agreement;
 - (b) Include at least one (1) unfurnished room with a lockable door, private bathroom with a tub or shower, provisions for emergency response, window to the outdoors, and a telephone jack;
 - (c) Have an individual thermostat control if the assisted-living community has more than twenty (20) units; and
 - (d) Have temperatures that are not under a client's direct control at a minimum of seventy-one (71) degrees Fahrenheit in winter conditions and a maximum of eighty-one (81) degrees Fahrenheit in summer conditions if the assisted-living community has twenty (20) or fewer units.
- (2) Each client shall be provided access to central dining, a laundry facility, and a central living room.
- (3) Each assisted-living community shall comply with applicable building and life safety codes **as determined by the building code or life safety code enforcement authority with jurisdiction.**

➔Section 3. KRS 194A.705 is amended to read as follows:

- (1) The assisted-living community shall provide each client with **access to** the following services according to the lease agreement:
- (a) Assistance with activities of daily living and instrumental activities of daily living;
 - (b) Three (3) meals and snacks made available each day;
 - (c) Scheduled daily social activities that address the general preferences of clients; and
 - (d) Assistance with self-administration of medication.
- (2) Clients of an assisted-living community may arrange for additional services under direct contract or arrangement with an outside agent, professional, provider, or other individual designated by the client if permitted by the policies of the assisted-living community.

- (3) Upon entering into a lease agreement, an assisted-living community shall inform the client in writing about policies relating to the contracting or arranging for additional services.
- (4) ***A client issued a move-out notice shall receive the notice in writing and the***~~Each~~ assisted-living community shall assist each client upon a move-out notice to find appropriate living arrangements. Each assisted-living community shall share information provided from the department regarding options for alternative living arrangements at the time a move-out notice is given to the client.
- (5) ***An assisted-living community shall complete and provide to the client:***
 - (a) ***Upon move-in, a copy of a functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living; and***
 - (b) ***After move-in, a copy of an updated functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living.***

➔Section 4. KRS 194A.707 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish by the promulgation of administrative regulation under KRS Chapter 13A, an initial and annual certification review process for assisted-living communities~~that shall include an on-site visit~~. This administrative regulation shall establish procedures related to applying for, reviewing, and approving, denying, or revoking certification, as well as the conduct of hearings upon appeals as governed by KRS Chapter 13B.
- (2) ***An on-site visit of an assisted-living community shall be conducted by the cabinet:***
 - (a) ***As part of the initial certification review process;***
 - (b) ***On a biennial basis as part of the certification review process if during or since the previous certification review an assisted-living community has not received:***
 - 1. ***Any statement of danger, unless withdrawn by the cabinet; or***
 - 2. ***A finding substantiated by the cabinet that the assisted-living community delivered a health service; and***
 - (c) ***Within one (1) year of the date of the previous certification review if during or since the last certification review an assisted-living community has received:***
 - 1. ***Any statement of danger that was not withdrawn by the cabinet; or***
 - 2. ***A finding substantiated by the cabinet that the assisted-living community delivered a health service.***
- (3) No ~~business~~~~assisted-living community~~ shall ***market its service as an assisted-living community unless it***~~operate unless its owner or manager~~ has:
 - (a) Filed a current application for the ~~business~~~~assisted-living community~~ to be certified by the department ***as an assisted-living community***; or
 - (b) Received certification ***by the department as an***~~of the~~ assisted-living community~~from the department~~.
- (4) ***No business that has been denied or had its certification revoked shall operate or market its service as an assisted-living community unless it has:***
 - (a) ***Filed a current application for the business to be certified by the department as an assisted-living community; and***
 - (b) ***Received certification as an assisted-living community from the department. Revocation of certification may be grounds for the department to not reissue certification for one (1) year if ownership remains substantially the same.***
- (5)~~(3)~~ No business shall ~~operate~~~~market its services~~ as an assisted-living community unless its owner or manager has:
 - (a) Filed a current application for the ~~business~~~~assisted-living community~~ to be certified ***as an assisted-living community*** by the department; ~~and for~~

- (b) Received certification ~~as an~~~~[of the]~~ assisted-living community from the department.
- ~~(6)~~~~(4)~~ The department shall determine the feasibility of recognizing accreditation by other organizations in lieu of certification from the department.
- ~~(7)~~~~(5)~~ Individuals designated by the department to conduct certification reviews shall have the skills, training, experience, and ongoing education to perform certification reviews.
- ~~(8)~~~~(6)~~ Upon ***receipt of an application for certification***~~[conducting a certification review]~~, the department shall assess an assisted-living community certification fee in the amount of twenty dollars (\$20) per living unit that in the aggregate for each assisted-living community is no less than three hundred dollars (\$300) and no more than one thousand six hundred dollars (\$1,600). The department shall submit to the Legislative Research Commission, by June 30 of each year, a breakdown of fees assessed and costs incurred for conducting certification reviews.
- (9) ***The department shall submit to the Legislative Research Commission and make available to any interested person at no charge, by June 30 of each year, in summary format, all findings from certification reviews conducted during the prior twelve (12) months.***
- ~~(10)~~~~(7)~~ Notwithstanding any provision of law to the contrary, the department may request any additional information from an assisted-living community or conduct additional on-site visits to ensure compliance with the provisions of KRS 194A.700 to 194A.729.
- (11) ***Failure to follow an assisted-living community's policies, practices, and procedures shall not result in a finding of noncompliance unless the assisted-living community is out of compliance with a related requirement under KRS 194A.700 to 194A.729.***

➔Section 5. KRS 194A.709 is amended to read as follows:

- (1) The department shall report to the Division of Health Care Facilities and Services any alleged or actual cases of health services being delivered by the staff of an assisted-living community.
- (2) An assisted-living community shall have written policies on reporting and recordkeeping of alleged or actual cases of abuse, neglect, or exploitation of an adult under KRS 209.030. ***The only requisite components of a recordkeeping policy are the date and time of the report, the reporting method, and a brief summary of the alleged incident.***
- (3) Any assisted-living community staff member who has reasonable cause to suspect that a client has suffered abuse, neglect, or exploitation shall report the abuse, neglect, or exploitation under KRS 209.030.

➔Section 6. KRS 194A.711 is amended to read as follows:

A client shall meet the following criteria:

- (1) Be ambulatory or mobile nonambulatory, unless due to a temporary~~[health]~~ condition~~[for which health services are being provided in accordance with KRS 194A.705(2) and (3)]~~; and
- (2) Not be a danger.

➔Section 7. KRS 194A.713 is amended to read as follows:

A lease agreement, in no smaller type than twelve (12) point font, shall be executed by the client and the assisted-living community and shall include ***but not be limited to:***

- (1) Client data, for the purpose of providing service, to include:
 - ~~(a)~~~~[A functional needs assessment pertaining to the client's ability to perform activities of daily living and instrumental activities of daily living;~~
 - ~~(b)~~ Emergency contact person's name;
 - ~~(b)~~~~(e)~~ Name of responsible party or legal guardian, if applicable;
 - ~~(c)~~~~(d)~~ Attending physician's name;
 - ~~(d)~~~~(e)~~ Information regarding personal preferences and social factors; ***and***
 - ~~(e)~~~~(f)~~ Advance directive under KRS 311.621 to 311.643, if desired by the client~~;~~ ***and***
 - ~~(g)~~~~[Optional information helpful to identify services that meet the client's needs].~~

- (2) Assisted-living community's policy regarding termination of the lease agreement;
- (3) Terms of occupancy;
- (4) General services and fee structure;
- (5) Information regarding specific services provided, description of the living unit, and associated fees;
- (6) Provisions for modifying client services and fees;
- (7) Minimum thirty (30) day notice provision for a change in the community's fee structure;
- (8) Minimum thirty (30) day move-out notice provision for client nonpayment, subject to applicable landlord or tenant laws;
- (9) Provisions for assisting any client that has received a move-out notice to find appropriate living arrangements prior to the actual move-out date;
- (10) Refund and cancellation policies;
- (11) Description of any special programming, staffing, or training if an assisted-living community is marketed as providing special programming, staffing, or training on behalf of clients with particular needs or conditions;
- (12) Other community rights, policies, practices, and procedures;
- (13) Other client rights and responsibilities, including compliance with KRS 194A.705(2) and (3); and
- (14) Grievance policies that minimally address issues related to confidentiality of complaints and the process for resolving grievances between the client and the assisted-living community.

➔Section 8. KRS 194A.715 is amended to read as follows:

- (1) An assisted-living community shall provide any interested person with a ***copy of KRS 194A.700 to 194A.729 and relevant administrative regulations***~~;~~
 - (a) ~~Consumer publication, as approved by the department, that contains a thorough description of Kentucky laws and regulations governing assisted living communities;~~
 - (b) ~~Standard consumer checklist provided by the department; and~~
 - (c) ~~Description of any special programming, staffing, or training if the assisted-living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions.~~
- (2) ~~An assisted living community may refer a request for information required in subsection (1)(a) of this section to the department.~~

➔Section 9. KRS 194A.717 is amended to read as follows:

- (1) Staffing in an assisted-living community shall be sufficient in number and qualification to meet the twenty-four (24) hour scheduled ~~and unscheduled~~ needs of ***each client pursuant to the lease agreement and functional needs assessment***~~[its clients and the services provided]~~.
- (2) One (1) awake staff member shall be on site at all times.
- (3) An assisted-living community shall have a designated manager who is at least twenty-one (21) years of age, has at least a high school diploma or a General Educational Development diploma, and has demonstrated management or administrative ability to maintain the daily operations.
- (4) No employee who has an active communicable disease reportable to the Department for Public Health shall be permitted to work in an assisted-living community if the employee is a danger to the clients or other employees.

➔Section 10. KRS 194A.719 is amended to read as follows:

- (1) Assisted-living community staff and management shall receive orientation ~~and in-service~~ education on the following topics as applicable to the employee's assigned duties:
 - (a)~~(1)~~ Client rights;

- ~~(b)(2)~~ Community policies;
- ~~(c)(3)~~ Adult first aid;
- ~~(d)(4)~~ Cardiopulmonary resuscitation *unless the policies of the assisted-living community state that this procedure is not initiated by its staff, and that clients and prospective clients are informed of the policies;*
- ~~(e)(5)~~ Adult abuse and neglect;
- ~~(f)(6)~~ Alzheimer's disease and other types of dementia;
- ~~(g)(7)~~ Emergency procedures;
- ~~(h)(8)~~ Aging process;
- ~~(i)(9)~~ Assistance with activities of daily living and instrumental activities of daily living;
- ~~(j)(10)~~ Particular needs or conditions if the assisted-living community markets itself as providing special programming, staffing, or training on behalf of clients with particular needs or conditions; and
- ~~(k)(11)~~ Assistance with self-administration of medication.

- (2) *Assisted-living community staff and management shall receive annual in-service education applicable to their assigned duties that addresses no fewer than four (4) of the topics listed in subsection (1) of this section.*

➔Section 11. KRS 194A.723 is amended to read as follows:

~~{(1) Any assisted living community that provides services without filing a current application with the department or receiving certification by the department may be fined up to five hundred dollars (\$500) per day.~~

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

➔SECTION 12. A NEW SECTION OF KRS 194A.700 TO 194A.729 IS CREATED TO READ AS FOLLOWS:

An assisted-living community that is issued more than two (2) statements of danger on separate dates within a six (6) month period that are not withdrawn by the department may be fined up to five hundred dollars (\$500).

Signed by Governor March 30, 2010.

CHAPTER 37

(HB 427)

AN ACT relating to pharmacist administration of immunizations.

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

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

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

- (1) "Administer" means the direct application of a drug to a patient or research subject by injection, inhalation, or ingestion, whether topically or by any other means;
- (2) "Association" means the Kentucky Pharmacists Association;
- (3) "Board" means the Kentucky Board of Pharmacy;
- (4) "Collaborative care agreement" means a written agreement between a specifically identified individual practitioner and a pharmacist who is specifically identified, whereby the practitioner outlines a plan of cooperative management of a specifically identified individual patient's drug-related health care needs that fall within the practitioner's statutory scope of practice. The agreement shall be limited to specification of the drug-related regimen to be provided and any tests which may be necessarily incident to its provisions; stipulated conditions for initiating, continuing, or discontinuing drug therapy; directions concerning the monitoring of

drug therapy and stipulated conditions which warrant modifications to dose, dosage regimen, dosage form, or route of administration;

- (5) "Compound" or "compounding" means the preparation or labeling of a drug pursuant to or in anticipation of a valid prescription drug order including, but not limited to, packaging, intravenous admixture or manual combination of drug ingredients. "Compounding," as used in this chapter, shall not preclude simple reconstitution, mixing, or modification of drug products prior to administration by nonpharmacists;
- (6) "Confidential information" means information which is accessed or maintained by a pharmacist in a patient's record, or communicated to a patient as part of patient counseling, whether it is preserved on paper, microfilm, magnetic media, electronic media, or any other form;
- (7) "Continuing education unit" means ten (10) contact hours of board approved continuing pharmacy education. A "contact hour" means fifty (50) continuous minutes without a break period;
- (8) "Dispense" or "dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug;
- (9) "Drug" means any of the following:
 - (a) Articles recognized as drugs or drug products in any official compendium or supplement thereto;
 - (b) Articles, other than food, intended to affect the structure or function of the body of man or other animals;
 - (c) Articles, including radioactive substances, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or
 - (d) Articles intended for use as a component of any articles specified in paragraphs (a) to (c) of this subsection;
- (10) "Drug regimen review" means retrospective, concurrent, and prospective review by a pharmacist of a patient's drug-related history, including but not limited to the following areas:
 - (a) Evaluation of prescription drug orders and patient records for:
 - 1. Known allergies;
 - 2. Rational therapy contraindications;
 - 3. Appropriate dose and route of administration;
 - 4. Appropriate directions for use; or
 - 5. Duplicative therapies.
 - (b) Evaluation of prescription drug orders and patient records for drug-drug, drug-food, drug-disease, and drug-clinical laboratory interactions;
 - (c) Evaluation of prescription drug orders and patient records for adverse drug reactions; or
 - (d) Evaluation of prescription drug orders and patient records for proper utilization and optimal therapeutic outcomes;
- (11) "Immediate supervision" means under the physical and visual supervision of a pharmacist;
- (12) "Manufacturer" means any person, except a pharmacist compounding in the normal course of professional practice, within the Commonwealth engaged in the commercial production, preparation, propagation, compounding, conversion, or processing of a drug, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis, or both, and includes any packaging or repackaging of a drug or the labeling or relabeling of its container;
- (13) "Medical order" means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health care needs. "Medical order" may or may not include a prescription drug order;

- (14) "Nonprescription drugs" means nonnarcotic medicines or drugs which may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government;
- (15) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (16) "Pharmacist intern" means a natural person who is:
- (a) Currently certified by the board to engage in the practice of pharmacy under the direction of a licensed pharmacist and who satisfactorily progresses toward meeting the requirements for licensure as a pharmacist;
 - (b) A graduate of an approved college or school of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) certificate, who is currently licensed by the board for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist;
 - (c) A qualified applicant awaiting examination for licensure as a pharmacist or the results of an examination for licensure as a pharmacist; or
 - (d) An individual participating in a residency or fellowship program approved by the board for internship credit;
- (17) "Pharmacy" means every place where:
- (a) Drugs are dispensed under the direction of a pharmacist;
 - (b) Prescription drug orders are compounded under the direction of a pharmacist; or
 - (c) A registered pharmacist maintains patient records and other information for the purpose of engaging in the practice of pharmacy, whether or not prescription drug orders are being dispensed;
- (18) "Pharmacy technician" means a natural person who works under the immediate supervision, or general supervision if otherwise provided for by statute or administrative regulation, of a pharmacist for the purpose of assisting a pharmacist with the practice of pharmacy;
- (19) "Practice of pharmacy" means interpretation, evaluation, and implementation of medical orders and prescription drug orders; responsibility for dispensing prescription drug orders, including radioactive substances; participation in drug and drug-related device selection; administration of medications or biologics in the course of dispensing or maintaining a prescription drug order; the administration of adult immunizations pursuant to prescriber-approved protocols; ***the administration of immunizations to individuals fourteen (14) to seventeen (17) years of age pursuant to prescriber-approved protocols with the consent of a parent or guardian***; drug evaluation, utilization, or regimen review; maintenance of patient pharmacy records; and provision of patient counseling and those professional acts, professional decisions, or professional services necessary to maintain and manage all areas of a patient's pharmacy-related care, including pharmacy-related primary care as defined in this section;
- (20) "Practitioner" has the same meaning given in KRS 217.015(35);
- (21) "Prescription drug" means a drug which:
- (a) Under federal law is required to be labeled with either of the following statements:
 - 1. "Caution: Federal law prohibits dispensing without prescription";
 - 2. "Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian";
 - 3. "Rx Only"; or
 - 4. "Rx"; or
 - (b) Is required by any applicable federal or state law or administrative regulation to be dispensed only pursuant to a prescription drug order or is restricted to use by practitioners;
- (22) "Prescription drug order" means an original or new order from a practitioner for drugs, drug-related devices or treatment for a human or animal, including orders issued through collaborative care agreements. Lawful

prescriptions result from a valid practitioner-patient relationship, are intended to address a legitimate medical need, and fall within the prescribing practitioner's scope of professional practice;

- (23) "Pharmacy-related primary care" means the pharmacists' activities in patient education, health promotion, assistance in the selection and use of over-the-counter drugs and appliances for the treatment of common diseases and injuries as well as those other activities falling within their statutory scope of practice;
- (24) "Society" means the Kentucky Society of Health-Systems Pharmacists;
- (25) "Supervision" means the presence of a pharmacist on the premises to which a pharmacy permit is issued, who is responsible, in whole or in part, for the professional activities occurring in the pharmacy; and
- (26) "Wholesaler" means any person who legally buys drugs for resale or distribution to persons other than patients or consumers.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 315 IS CREATED TO READ AS FOLLOWS:

Upon the request of an individual or his or her parent or guardian, a pharmacist who administers an immunization to an individual who is fourteen (14) to seventeen (17) years of age, as authorized in subsection (19) of Section 1 of this Act, shall provide notification of the immunization to the individual's primary care provider.

Signed by Governor March 30, 2010.

CHAPTER 38

(HB 35)

AN ACT relating to crimes and punishments.

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

➔Section 1. KRS 532.356 is amended to read as follows:

- (1) Upon a person's conviction and sentencing for any nonstatus juvenile offense, moving traffic violation, criminal violation, misdemeanor, or Class D felony offense, and, for the purposes of paragraph (b) of this subsection, any Class C felony offense listed in subsection (3) of this section, the court shall impose the following sanctions in addition to any imprisonment, fine, court cost, or community service:
 - (a) Reimbursement to the state or local government for the person's incarceration, determined by the per person, per diem, expenses of each prisoner incarcerated by the respective local government, times the number of days he has spent or shall spend in confinement, plus any medical services received by the prisoner, less copayments paid by the prisoner. The convicted person's ability to pay all or part of the reimbursement shall be considered by the sentencing court in imposing the sanction; and
 - (b) Restitution to the crime victim as set out in KRS 439.563, 532.032, and 532.033.
- (2) In addition to any other penalty allowed by law, a court may declare the defendant ineligible to operate a motor vehicle for a period of up to sixty (60) days where the defendant is being sentenced for a conviction of KRS 514.030 involving the theft of gasoline or special fuels from a retail establishment and the defendant has been previously convicted of KRS 514.030 for a theft of gasoline or special fuels from a retail establishment. A retail establishment may post a sign at the location where the fuel is dispensed apprising the public of the sanctions available under this subsection.
- (3) (a) In addition to any other penalty allowed by law, a court ~~may~~~~shall~~ declare the defendant ineligible to operate a motor vehicle for the period of time that any amount of restitution ordered under this section remains unpaid, where the restitution is imposed as the result of the commission of the following offenses:
 - 1. KRS 434.650;
 - 2. KRS 434.655;
 - 3. KRS 434.660;
 - 4. KRS 434.670;

5. KRS 434.690;
 6. KRS 514.030;
 7. KRS 514.040;
 8. KRS 514.050;
 9. KRS 514.060;
 10. KRS 514.070;
 11. KRS 514.080;
 12. KRS 514.090;
 13. KRS 514.110;
 14. KRS 514.120; or
 15. KRS 506.120.
- (b) Upon motion by the defendant with proper notice to the office of the attorney who represented the Commonwealth at sentencing, the court may authorize the defendant to obtain the hardship license authorized under KRS Chapter 189A. The defendant shall be subject to the same operating restrictions and penalties for noncompliance as are set out for a hardship license in that chapter. The court may waive compliance with provisions of KRS Chapter 189A relating to alcohol treatment, *waiting periods*, and ignition interlock installation for the purpose of authorizing issuance of a hardship license under this section.
- (4) Sanctions imposed by the sentencing court shall become a judgment of the court. Reimbursement of incarceration costs shall be paid by the defendant directly to the jailer in the amount specified by written order of the court. Incarceration costs owed to the Department of Corrections shall be paid through the circuit clerk.

Signed by Governor March 30, 2010.

CHAPTER 39

(SB 89)

AN ACT relating to national board-certified teachers.

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

➔Section 1. KRS 157.395 is amended to read as follows:

- (1) Notwithstanding any other statute to the contrary, ~~["a local board of education shall provide"]~~ a public school teacher, ***or a secondary teacher employed in a Kentucky Tech school or program operated by the Education and Workforce Development Cabinet***, who has attained certification from the National Board for Professional Teaching Standards as of July 14, 2000, or thereafter ***shall receive*** ~~[with]~~ an annual national board certification salary supplement of two thousand dollars (\$2,000) for the life of the certificate. The supplement shall be added to:
- (a) The teacher's base salary on the local board's single salary schedule and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System; ***or***
 - (b) ***The state-employed teacher's base salary and shall be considered in the calculation for contributions to the Kentucky Teachers' Retirement System.***

If a nationally certified teacher becomes no longer employed as a classroom teacher or a teacher mentor in the field of his or her national certification, the supplement shall cease.

- (2) A local board of education ***or the Education and Workforce Development Cabinet*** shall request reimbursement for these purposes from the fund to support education excellence described in KRS 157.330.

➔Section 2. KRS 161.133 is amended to read as follows:

- (1) There is hereby established a "Teachers' National Certification Incentive Trust Fund" in the State Treasury for the purposes of:

- (a) Funding stipends for teachers to prepare for certification by the National Board for Professional Teaching Standards;
 - (b) Reimbursing a portion of the certification fee to each teacher who is awarded national board certification;
 - (c) Reimbursing local boards of education *or the Education and Workforce Development Cabinet* for persons who serve as substitute teachers for national board certification candidates; and
 - (d) Funding stipends for national board certified teachers who serve as mentors to other teachers within the school district *or the Kentucky Tech system*.
- (2) Appropriations by the General Assembly in each biennial budget for the purpose of supporting national board certification shall be credited to the fund and invested until needed. All money credited to the fund, including interest earned on money in the fund, shall be retained in the fund for reinvestment and used for the purposes of this section. Funds appropriated to the fund shall not lapse at the end of a fiscal year or a biennium.
- (3) The Education Professional Standards Board shall promulgate administrative regulations that establish the procedures for the administration of the funds as described in this section and the requirements for participating teachers, ~~and~~ local boards of education, *and the Education and Workforce Development Cabinet*. The board shall allocate only those funds to teachers, ~~or~~ school districts, *or the cabinet* for the purposes in this section for which other sources of funds are not being received. The board may limit the number of participants accepted in any given enrollment or application period due to the lack of available funds.
- (4) Money in the fund shall be distributed to local boards of education, *the Education and Workforce Development Cabinet*, and teachers by the *Education Professional Standards Board* ~~Kentucky Department of Education~~ in compliance with the administrative regulations promulgated by the board.

Signed by Governor March 30, 2010.

CHAPTER 40

(HB 40)

AN ACT relating to special license plates.

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

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

- (1) The SF portion of the fee required under KRS 186.162 shall include the fee to reflectorize all license plates under KRS 186.240. All EF fees required under KRS 186.162 shall be collected at the time of an initial or renewal application by the county clerk who shall forward the EF fee to the cabinet. The cabinet shall remit EF fees to the group or organization identified in KRS 186.162 on a quarterly basis. The cabinet may retain any investment income earned from holding EF fees designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of EF fees.
- (2) A special license plate shall be the color and design selected by the group or organization identified in subsection (13) of this section, contingent upon the approval of the Transportation Cabinet. In addition to the design selected for a special license plate, the name "Kentucky," an annual renewal decal, and any combination of letters or numerals required by the cabinet in the design shall also appear on the plate.
- (3) Except as provided in KRS 186.162, the total initial fee for a special license plate created under this chapter shall be twenty-eight dollars (\$28), of which the Transportation Cabinet shall receive twenty-five dollars (\$25) and the county clerk shall receive three dollars (\$3), and the total renewal fee shall be fifteen dollars (\$15), of which the Transportation Cabinet shall receive twelve dollars (\$12) and the county clerk shall receive three dollars (\$3). The twenty-five dollar (\$25) initial fee and twelve dollar (\$12) renewal fee received by the Transportation Cabinet under this subsection shall include an applicant's registration fee required under KRS 186.050.
- (4) An actual metal special license plate shall be issued on the same schedule as regular license plates are issued under KRS 186.240. The cabinet shall have the discretion to extend the time period that will exist between the

date a metal special license plate is issued and the date that regular plates are issued under KRS 186.240. A renewal registration decal shall be issued all other years during the owner's or lessee's birth month, except as provided in KRS 186.041(2), 186.042(5), and 186.174(2). A person seeking a special license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).

- (5) (a) If a special license plate issued under this chapter deteriorates to the point that the lettering, numbering, or images on the face of the plate are not legible, the plate shall be replaced free of charge, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
 - (b) If a special license plate issued under this chapter is lost, stolen, or damaged in an accident, the county clerk shall issue a new plate upon payment of a three dollar (\$3) county clerk fee, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
- (6) Upon the sale, transfer, or termination of a lease of a vehicle with any special license plate issued under this chapter, the owner or lessee shall remove the special plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and a certificate of registration upon payment of a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special plate upon payment of a three dollar (\$3) county clerk fee for use on any other vehicle of the same classification and category owned, leased, or acquired by the person during the current licensing period. If the owner or lessee has the special plate reissued to a vehicle which has been previously registered in this state, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.
- (7) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, airport limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).
- (8) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.
- (9) A group wanting to create a special license plate that is not authorized under this chapter on June 20, 2005, shall comply with the following conditions before being eligible to apply for a special license plate:
 - (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
 - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
 - (c) The group, or the group's lettering, logo, image, or message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
 - (d) The group shall not be a political party and shall not have been created primarily to promote a specific political belief;
 - (e) The group shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
 - (f) The name of the group shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
 - (g) The group's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (10) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (9) of this section, ~~the group may appeal the denial to the next regularly scheduled session of the General Assembly for review of the denial and action on the group's request for a special license plate. The~~ cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of

both the House and Senate ~~*standing*~~~~[Transportation]~~ committees *on transportation*~~[of the General Assembly]~~ of the denial and the reasons upon which the cabinet based the denial.~~[The House and Senate chairpersons shall be required to present the information to his or her respective committee for consideration within the first ten (10) days of the next regularly scheduled session of the General Assembly, if requested to do so in writing by the group who was denied a special license plate.]~~ A person seeking a personalized license plate under KRS 186.174 shall be subject to the conditions specified in subsection (9)(c) to (g) of this section.

- (11) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after the group collects a minimum of nine hundred (900) applications with each application being accompanied by a twenty-five dollar (\$25) state fee. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently.
- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate may, at the time of application, make a voluntary contribution that the county clerk shall forward to the cabinet. The entity that sponsors a special plate established by the process outlined in this section may set a requested donation amount, not to exceed ten dollars (\$10), that will automatically be added to the cost of registration or renewal, unless the individual registering or renewing the vehicle registration opts out of contributing that recommended amount. The cabinet shall, on an annual basis, remit the voluntary contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding voluntary contributions designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall submit the information required under subsection (13)(a) and (c) of this section to the Transportation Cabinet within thirty (30) days of June 20, 2005.
- (13) If a group wants to receive a donation when the group or organization's special license plate is initially purchased or renewed under subsection (12) of this section, the group shall, at the time the nine hundred (900) applications are submitted to the Transportation Cabinet, also submit a notarized affidavit to the cabinet attesting to:
 - (a) The name, address, and telephone number for the group or organization. If the group or organization does not have its headquarters in the Commonwealth, then the name, address, and telephone number for the group or organization's Kentucky state chapter shall be required. The names of the officers of the group or organization shall also be required. If the entity receiving funds under subsection (12) of this section is not a state governmental agency, a program unit within a state governmental agency, or is a group or organization that does not have a statewide chapter, then an extra donation for use by the group or organization shall be prohibited;
 - (b) The amount of the monetary donation the group wants to receive when a person purchases the group or organization's special license plate; and
 - (c) The purpose for which the donated funds will be used by the group or organization. Donated funds shall not be limited for use by members of the group or organization, and shall not be used for administrative or personnel costs of the group or organization.
- (14) All funds received by a group or organization under subsection (12) of this section shall be deposited into an account separate from all other accounts the group or organization may have, and the account shall be audited yearly at the expense of the group or organization. The completed audit shall be forwarded to the Transportation Cabinet in Frankfort. One hundred percent (100%) of the funds received by a group or organization under subsection (12) of this section shall be used for the express purpose identified by the group in subsection (13) of this section. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall comply with the provisions of this subsection.
- (15) The secretary of the Transportation Cabinet shall promulgate administrative regulations under KRS Chapter 13A to establish additional rules to implement the issuance of special license plates issued under this chapter, including but not limited to:
 - (a) Documentation that will be required to accompany an application for a special license plate to provide proof of election to the United States Congress or the Kentucky General Assembly; election or appointment to the Kentucky Court of Justice; membership in a Masonic Order, Fraternal Order of Police, or emergency management organization; eligibility for membership in the Gold Star Mothers of

America; eligibility for membership in the Gold Star Wives of America; or ownership of an amateur radio operator license;

- (b) The time schedule permissible for a group or organization to request a design change for the special license plate; and
 - (c) The procedures for review of proposed license plates and the standards by which proposed special license plates are approved or rejected in accordance with subsection (9) of this section.
- (16) Any individual, group, or organization that fails to audit any funds received under this chapter, or that intentionally uses any funds received in any way other than attested to under subsection (13) of this section or for administrative or personnel costs in violation of subsection (13) of this section, shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

Signed by Governor March 30, 2010.

CHAPTER 41

(HB 374)

AN ACT relating to election of faculty representative to boards of regents.

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

➔Section 1. KRS 164.321 is amended to read as follows:

- (1) Eastern Kentucky University, Morehead State University, Murray State University, Western Kentucky University, Kentucky State University, Northern Kentucky University, and the Kentucky Community and Technical College System shall each be governed by a board of regents appointed for a term set by law pursuant to Section 23 of the Constitution of Kentucky.
 - (a) Each board of the comprehensive universities shall consist of eight (8) members appointed by the Governor, one (1) member of the teaching faculty, one (1) member of the university nonteaching personnel, and one (1) member of the student body of the respective university or college. The members of the board shall select a chairperson annually.
 - (b) The board of the Kentucky Community and Technical College System shall consist of eight (8) members appointed by the Governor, two (2) members of the teaching faculty, two (2) members of the nonteaching personnel, and two (2) members of the student body.
 - 1. No more than three (3) appointed members of the board shall reside in any one (1) judicial district of the Kentucky Supreme Court as of the date of the appointment.
 - 2. A change in residency of a gubernatorial appointee after the date of appointment shall not affect the appointee's ability to serve or eligibility for reappointment, except an appointee who assumes residency outside the fifty (50) United States shall become immediately ineligible to serve. The Council on Postsecondary Education shall notify the appointee of his or her ineligibility to serve.
 - 3. In making initial appointments, the Governor shall act so as to provide equal representation of the two (2) sexes. In filling vacancies, the Governor shall act so as to provide, inasmuch as possible, equal representation of the two (2) sexes by appointing a member of the sex that is the lesser represented at the time of the appointment. If the remaining membership already has an equal number of males and females, the Governor may appoint a member of either sex.
- (2) The terms of appointed members shall be for six (6) years and until their successors are appointed and qualified, except the initial appointments to the board of regents for the Kentucky Community and Technical College System shall be as follows:
 - (a) One (1) member shall serve a one (1) year term;
 - (b) One (1) member shall serve a two (2) year term;
 - (c) Two (2) members shall serve three (3) year terms;
 - (d) One (1) member shall serve a four (4) year term;

- (e) One (1) member shall serve a five (5) year term; and
- (f) Two (2) members shall serve six (6) year terms.

New appointees of a board of regents shall not serve for more than two (2) consecutive terms. Board members serving as of May 30, 1997, may be reappointed at the end of their existing terms and may serve two (2) additional full consecutive terms.

- (3) The gubernatorial appointments may include one (1) graduate of the respective institution who resides outside the Commonwealth. Not more than two (2) appointed members of any board shall be residents of one (1) county. The appointments shall reflect the proportional representation of the two (2) leading political parties of the Commonwealth based on the state's voter registration. Membership on the board shall reflect no less than proportional representation of the minority racial composition of the Commonwealth. Membership on the board shall not be incompatible with any state office. A change in residency after the date of appointment shall not affect a member's ability to serve nor shall it prevent a member's eligibility for reappointment, except a member who assumes residency outside the fifty (50) United States shall become immediately ineligible to serve. The Council on Postsecondary Education shall notify the appointee of his or her ineligibility to serve.
- (4) Appointments to fill vacancies shall be made in the same manner and within the same time after the occurrence of the vacancy as regular appointments. The person appointed shall hold the position for the unexpired term only.
- (5) Each member of the board shall serve for the term for which the member is appointed and until a successor is appointed and qualified.
- (6)
 - (a) The faculty member *of a comprehensive university* shall be a teaching or research member of the faculty of his or her respective university ~~or college~~ of the rank of assistant professor or above. The faculty member shall be elected by secret ballot by all faculty members of his or her university ~~for college~~ of the rank of *instructor*, assistant professor or above. The faculty member shall serve for a term of three (3) years and until his successor is elected and qualified. The faculty member shall be eligible for reelection, but he or she shall not be eligible to continue to serve as a member of the board if he or she ceases being a member of the teaching staff of the university ~~for college~~. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.
 - (b) The faculty members of the Kentucky Community and Technical College System shall be represented by one (1) faculty member elected from the community colleges and one (1) faculty member elected from the technical institutions to serve three (3) year terms and until their successors are named. The faculty representative of each branch shall be elected by means of a process established by the board. The faculty members may be reelected but shall not serve more than two (2) consecutive terms. A faculty member shall be ineligible to continue to serve as a member of the board if he or she ceases to be a member of the faculty at one (1) of the institutions within the system. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election. These two (2) members shall collectively have one (1) vote which may be cast one-half (1/2) vote by each member.
- (7)
 - (a) The nonteaching personnel member in a comprehensive university shall be any full-time staff member excluding the president, vice presidents, academic deans, and academic department chairpersons. He or she shall represent all nonteaching university employees including, but not limited to, building facilities and clerical personnel. The member shall be elected by secret ballot by the nonteaching employees. The nonteaching personnel member shall serve a term of three (3) years and until a successor is elected and qualified. The nonteaching personnel member shall be eligible for reelection, but he or she shall not be eligible to continue to serve as a member of the board if he or she ceases being an employee of the university. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.
 - (b) The nonteaching personnel members in the Kentucky Community and Technical College System shall be any full-time staff member excluding a president, chancellor, vice president, academic dean, academic department chair, or other administrator. They shall represent all nonteaching employees in their respective branch institutions including, but not limited to, support and clerical personnel. One (1) member shall be a representative from the community colleges and one (1) member shall be a representative from the technical institutions. They shall serve three (3) year terms and until their successors are named. These two (2) members shall collectively have one (1) vote which may be cast

one-half (1/2) vote by each member. The nonteaching personnel members of each branch shall be elected by means of a process established by the board. A nonteaching personnel member may be reelected but shall not serve more than two (2) consecutive terms. A nonteaching employee shall be ineligible to continue to serve as a member of the board if that employee ceases to be a nonteaching employee at one (1) of the institutions within the system. Elections to fill vacancies shall be for the unexpired term in the same manner as provided for the original election.

- (8) (a) The student member on a comprehensive university board shall be the president of the student body of the university during the appropriate academic year and may be an out-of-state resident if applicable. If the student member does not maintain his or her position as student body president or status as a full-time student at any time during that academic year, a special election shall be held to select a full-time student member. The student member shall serve for a term of one (1) year beginning with the first meeting of the fiscal year which contains that academic year.
- (b) Two (2) full-time student members shall be elected to the board of regents for the Kentucky Community and Technical College System. One (1) shall represent students of the community colleges and one (1) shall represent the technical institutions. The student members shall be elected by means of a process established by the board. The student members shall serve one (1) year terms beginning with the first meeting of the fiscal year that contains the academic year. If the student member does not maintain his or her status as a full-time student, a special election shall be held to fill the vacancy. The two (2) members shall collectively have one (1) vote which may be cast one-half (1/2) vote by each member.
- (9) All persons appointed after May 30, 1997, shall be required to attend and complete an orientation program prescribed by the council under KRS 164.020, as a condition of their service.
- (10) Board members may be removed by the Governor for cause, which shall include neglect of duty or malfeasance in office, after being afforded a hearing with counsel before the Council on Postsecondary Education and a finding of fact by the council.

Signed by Governor March 30, 2010.

CHAPTER 42

(SB 163)

AN ACT relating to adolescent reading skills.

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

➔Section 1. KRS 158.791 is amended to read as follows:

- (1) The General Assembly hereby finds that reading proficiency is a gateway skill necessary for all of Kentucky students to achieve the academic goals established in KRS 158.6451. It is Kentucky's goal that all children learn to read well before exiting the primary program ***and that all middle and high school students have the skills necessary to read complex materials in specific core subjects and comprehend and constructively apply the information.***
- (2) It is the intent of the General Assembly that:
 - (a) Every elementary school:
 - 1. ~~1. (a)~~ Provide a comprehensive schoolwide reading program;
 - 2. ~~2. (b)~~ Provide diagnostic reading assessments and intervention services for those students who need them to learn to read at the proficient level;
 - 3. ~~3. (c)~~ Ensure quality instruction by highly trained teachers; and
 - 4. ~~4. (d)~~ Provide high quality library media programs;
 - (b) ***Every middle and high school:***
 - 1. ***Provide direct, explicit instruction to students lacking skills in how to read, learn, and analyze information in key subjects, including language, reading, English, mathematics, science, social studies, arts and humanities, practical living skills, and career studies; and***

2. *Ensure that teachers have the skills to help all students develop critical strategies and skills for subject-based reading;*
- (c) *The Kentucky Department of Education provide technical assistance to local school districts in the identification of professional development activities, including teaching strategies to help teachers in each subject area to:*
 1. *Identify and teach the skills that students need to comprehend the concepts and content of each subject area; and*
 2. *Use activities and materials that will help the students comprehend and constructively apply information based on the unique content of each subject area; and*
- (d) *The Education Professional Standards Board review and revise when deemed necessary the teacher certification and licensure requirements to ensure that all teachers, regardless of the subject area taught, are prepared to improve students' subject reading skills.*

➔ Section 2. KRS 158.840 is amended to read as follows:

- (1) The General Assembly hereby finds that reading and mathematics proficiency are gateway skills necessary for all Kentucky students to achieve the academic goals established in KRS 158.6451. It is the General Assembly's intent that:
 - (a) All students in the primary program having difficulty in reading and mathematics receive early diagnosis and intervention services from highly trained teachers;
 - (b) All students demonstrate proficiency in reading and mathematics as they progress through the relevant curricula and complete each assessment level required by the Kentucky Board of Education for the state assessment program established under KRS 158.6453 and in compliance with the requirements of the federal "No Child Left Behind Act of 2001," 20 U.S.C. sec. 6301 et seq.; and
 - (c) Students who are struggling in reading and mathematics or are not at the proficient level on statewide assessments be provided research-based and developmentally appropriate diagnostic and intervention services, and instructional modifications necessary to learn.

The General Assembly, the Kentucky Board of Education, the Kentucky Department of Education, the Council on Postsecondary Education, colleges and universities, local boards of education, school administrators, school councils, teachers, parents, and other educational entities, such as the Education Professional Standards Board, P-16 councils, the Collaborative Center for Literacy Development, and the Center for Middle School Achievement must collaborate if the intentions specified in this subsection are to be met. Intensive focus on student achievement in reading and mathematics does not negate the responsibility of any entity to help students obtain proficiency in other core curriculum content areas.

- (2) The General Assembly's role is to set policies that address the achievement levels of all students and provide resources for the professional growth of teachers and administrators, assessing students' academic achievement, including diagnostic assessment and instructional interventions, technology innovations, targeted reading and mathematics statewide initiatives, research and the distribution of research findings, services for students beyond the regular school day, and other services needed to help struggling learners.
- (3) The Kentucky Board of Education shall regularly review and modify, when appropriate, its statewide assessment policies and practices to enable local school districts and schools to carry out the provisions of the statewide assessment and accountability system, required under KRS 158.6453 to improve student achievement in mathematics and reading.
- (4) The Kentucky Department of Education shall:
 - (a) Provide assistance to schools and teachers, including publicizing professional development opportunities, methods of measuring effective professional development, the availability of high quality instructional materials, and developmentally appropriate screening and diagnostic assessments of student competency in mathematics and reading. The department shall provide access to samples of units of study, annotated student work, diagnostic instruments, and research findings, and give guidance on parental engagement;

- (b) *Work with state and national educators and subject matter experts to identify student reading skills in each subject area that align with the state content standards adopted under KRS 158.6453 and identify teaching strategies in each subject area that can be used explicitly to develop the identified reading skills under this paragraph;*
 - (c) *Encourage the development of comprehensive middle and high school adolescent reading plans to be incorporated into the curricula of each subject area to improve the reading comprehension of all students;*
 - (d) Conduct an annual review of the state grant programs it manages and make recommendations, when needed, to the Interim Joint Committee on Education for changes to statutory requirements that are necessary to gain a greater return on investment; and
 - ~~(e)(e)}~~ Provide administrative support and oversight to programs to train classroom coaches and mentors to help teachers with reading and mathematics instruction.
- (5) The Council on Postsecondary Education, in cooperation with the Education Professional Standards Board, shall exercise its duties and functions under KRS 164.020 to ensure that teacher education programs are fulfilling the needs of Kentucky for highly skilled teachers. The council shall coordinate the federal and state grant programs it administers with other statewide initiatives relating to improving student achievement in reading and mathematics to avoid duplication of effort and to make efficient use of resources.
- (6) The Education Professional Standards Board shall exercise its duties and responsibilities under KRS 161.030 and 161.048 to ensure highly qualified teachers.
- (7) Colleges and universities shall:
- (a) Utilize institution-wide resources to work with elementary and secondary educators and other entities to align curriculum content to ensure that students who achieve proficiency on standards established at the prekindergarten through secondary levels will require no remediation to successfully enter a postsecondary education program;
 - (b) Provide quality undergraduate teacher preparation programs to ensure that those preparing to teach reading or mathematics at all grade levels have the necessary content knowledge, assessment and diagnostic skills, and teaching methodologies *and that teachers in all subject areas have the requisite skills for helping students at all grade levels develop critical strategies and skills for reading and comprehending subject matter;*
 - (c) Deliver appropriate continuing education for teachers in reading and mathematics through institutes, graduate level courses, and other professional development activities that support a statewide agenda for improving student achievement in reading and mathematics;
 - (d) Conduct or assist with research on best practices in assessment, intervention strategies, teaching methodologies, costs and effectiveness of instructional models, and other factors as appropriate to reading and mathematics;
 - (e) Provide staff to consult and provide technical assistance to teachers, staff, and administrators at elementary, middle, and secondary school sites;
 - (f) Assume active roles in the statewide initiatives referenced in KRS 156.553 and 158.842; and
 - (g) Develop written procedures for measuring the effectiveness of activities outlined in paragraphs (a) to (e) of this subsection.
- (8) School councils at all school levels are encouraged to identify and allocate resources to qualified teachers to become coaches or mentors in mathematics or coaches or mentors in reading with a focus on improving student achievement in their respective schools.
- (9) Local school boards and superintendents shall provide local resources, whenever possible, to supplement or match state and federal resources to support teachers, school administrators, and school councils in helping students achieve proficiency in reading and mathematics.
- (10) Local school superintendents shall provide leadership and resources to the principals of all schools to facilitate curriculum alignment, communications, and technical support among schools to ensure that students are academically prepared to move to the next level of schooling.

➔Section 3. KRS 164.0207 is amended to read as follows:

- (1) The Collaborative Center for Literacy Development: Early Childhood through Adulthood is created to make available professional development for educators in reliable, replicable research-based reading programs, and to promote literacy development, including cooperating with other entities that provide family literacy services. The center shall be responsible for:
 - (a) Developing and implementing a clearinghouse for information about programs addressing reading and literacy from early childhood and the elementary grades (P-5) through adult education;
 - (b) Providing advice to the Kentucky Board of Education regarding the Reading Diagnostic and Intervention Grant Program established in KRS 158.792 and in other matters relating to reading;
 - (c) Collaborating with public and private institutions of postsecondary education and adult education providers to provide for teachers and administrators quality preservice and professional development relating to reading diagnostic assessments and intervention and to the essential components of successful reading: phonemic awareness, phonics, fluency, vocabulary, comprehension, and the connections between writing and reading acquisition and motivation to read;
 - (d) Collaborating with the Kentucky Department of Education to assist districts with students functioning at low levels of reading skills to assess and address identified literacy needs;
 - (e) Providing professional development and coaching for early childhood educators and classroom teachers, including adult education teachers, implementing selected reliable, replicable research-based reading programs. The professional development shall utilize technology when appropriate;
 - (f) Developing and implementing a comprehensive research agenda evaluating the early reading models implemented in Kentucky under KRS 158.792;
 - (g) Maintaining a demonstration and training site for early literacy located at each of the public universities;~~and~~
 - (h) *Assisting middle and high schools in the development of comprehensive adolescent reading plans and maintaining a repository of instructional materials or summary materials that identify comprehension best practices in the teaching of each subject area and a list of classroom-based diagnostic reading comprehension assessments that measure student progress in developing students' reading comprehension skills; and*
 - (i) Evaluating the reading and literacy components of the model adult education programs funded under the adult education and literacy initiative fund created under KRS 164.041.
- (2) The center shall review national research and disseminate appropriate research abstracts, when appropriate, as well as conduct ongoing research of reading programs throughout the state. Research activities undertaken by the center shall consist of descriptive as well as empirical studies.
 - (a) The center may contract for research studies to be conducted on its behalf.
 - (b) The research agenda should, at a minimum, consider the impact of various reading and intervention programs:
 1. In eliminating academic achievement gaps among students with differing characteristics, including subpopulations of students with disabilities, students with low socioeconomic status, students from racial minority groups, students with limited English proficiency, and students of different gender;
 2. In schools with differing characteristics, such as urban versus rural schools, poverty versus nonpoverty schools, schools with strong library media center programs versus schools with weak library media center programs, and schools in different geographic regions of the state;
 3. In terms of their costs and effectiveness; and
 4. In maintaining positive student progress over a sustained period of time.
- (3) The center shall submit an annual report of its activities to the Kentucky Department of Education, the Governor, and the Legislative Research Commission no later than September 1 of each year.

- (4) With advice from the Department of Education, the Council on Postsecondary Education shall develop a process to solicit, review, and approve a proposal for locating the Collaborative Center for Literacy Development at a public institution of postsecondary education. The Council on Postsecondary Education shall approve the location. The center, in conjunction with the council, shall establish goals and performance objectives related to the functions described in this section.

Signed by Governor March 30, 2010.

CHAPTER 43

(HB 297)

AN ACT relating to nonprofit motor vehicle dealers.

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

➔SECTION 1. A NEW SECTION OF KRS 190.010 TO 190.080 IS CREATED TO READ AS FOLLOWS:

- (1) *A nonprofit organization, prior to engaging in the business of a nonprofit motor vehicle dealer, shall obtain a nonprofit motor vehicle dealer license from the commission.*
- (2) *A nonprofit motor vehicle dealer, and persons who act as salespersons for a nonprofit motor vehicle dealer shall be licensed and regulated by the commission under the provisions of this chapter, except that a nonprofit motor vehicle dealer shall not be required to:*
 - (a) *Comply with the provisions of subsection (7) of Section 3 of this Act; or*
 - (b) *Comply with the provisions of Section 4 of this Act.*
- (3) *A nonprofit motor vehicle dealer may sell vehicles only to:*
 - (a) *A person who is a client of the nonprofit organization;*
 - (b) *A person referred by other nonprofit organizations or governmental agencies who meets the definition of client as defined in Section 2 of this Act; or*
 - (c) *A licensed motor vehicle dealer or automotive recycling dealer.*
- (4) *The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish requirements for initial application for and renewal of a license to be a nonprofit motor vehicle dealer and standards for disability and disadvantaging condition. In addition, the commission may promulgate additional administrative regulations that are necessary to implement this section.*

➔Section 2. KRS 190.010 is amended to read as follows:

As used in *this chapter* ~~[KRS 190.010 to 190.990]:~~

- (1) "Manufacturer" means any person, partnership, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new motor vehicles, or imports for distribution through distributors of new motor vehicles, or any partnership, firm, association, joint venture, corporation, or trust, resident or nonresident, which is controlled by the manufacturer. Additionally, the term "manufacturer" shall include the following terms:
 - (a) "Distributor" which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers, or who maintains factory representatives, or who controls any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new motor vehicle to new motor vehicle dealers;
 - (b) "Factory branch" which means a branch office maintained by a manufacturer for the purpose of selling, or offering for sale, new motor vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives, and shall further include any sales promotion organization, whether the same be a person, firm, or corporation, which is engaged in promoting the sale of new motor vehicles in this state of a particular brand or make to new motor vehicle dealers;

- (c) "Factory representative" which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of his, its, or their new motor vehicles, or for supervising or contracting with his, its, or their dealers, or prospective dealers;
 - (d) "Distributor branch" which means a branch office similarly maintained by a distributor or wholesaler for the same purposes; and
 - (e) "Distributor representative" which means a representative similarly employed by a distributor, distributor branch, or wholesaler;
- (2) "Motor vehicle dealer" means any person not excluded by subsection (3) of this section, engaged in the business of selling, offering to sell, soliciting, or advertising the same, of new or used motor vehicles, or possessing motor vehicles for the purpose of resale, either on his own account, or on behalf of another, either as his primary business or incidental thereto;
 - (3) The term "motor vehicle dealer" shall not include:
 - (a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any court, and any bank, trust company, or lending institution that is subject to state or federal regulation, with regard to its disposition of repossessed motor vehicles;
 - (b) Public officers while performing their official duties; or
 - (c) Employees of persons enumerated in paragraphs (a) and (b) of this subsection, when engaged in the specific performance of their duties as employees;
 - (4) "New motor vehicle dealer" means a vehicle dealer who holds a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the manufacturer's new motor vehicles;
 - (5) "New motor vehicle dealership facility" means an established place of business which is being used or will be used primarily for the purpose of selling, buying, displaying, repairing, and servicing motor vehicles;
 - (6) "Used motor vehicle dealer" means any person engaged in the business of selling at retail, displaying, offering for sale, or dealing in used motor vehicles, but shall not mean any person engaged in the business of dismantling, salvaging, or rebuilding motor vehicles by means of using used parts, or any public officer performing his official duties;
 - (7) "Motor vehicle leasing dealer" means any person engaged in the business of regularly making available, offering to make available, or arranging for another person to use a motor vehicle pursuant to a bailment, lease, or other contractual arrangement under which a charge is made for its use at a periodic rate for at least a monthly term, and title to the motor vehicle is in a person other than the user, but shall not mean a manufacturer or its affiliate leasing to its employees or to dealers;
 - (8) "Restricted motor vehicle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises specialized motor vehicles including, but not limited to, funeral coaches, emergency vehicles, and an automotive recycling dealer engaged in the business of dismantling, salvaging, or recycling salvage motor vehicles for the purpose of harvesting used parts, components, assemblies, and recyclable materials for resale, reuse, or reclamation;
 - (9) "Motorcycle dealer" means a motor vehicle dealer who exclusively sells, offers to sell, solicits, or advertises motorcycles, including alternative-speed motorcycles as defined in KRS 186.010. Motorcycles shall not include mopeds as defined in this section;
 - (10) "Motor vehicle ~~salesperson~~~~[salesman]~~" means any person who is employed as a ~~salesperson~~~~[salesman]~~ by a motor vehicle dealer to sell motor vehicles, or who is employed as an auctioneer by a motor vehicle auction dealer to sell motor vehicles at auction;
 - (11) "Motor vehicle auction dealer" means any person primarily engaged in the business of offering, negotiating, or attempting to negotiate a sale, purchase, or exchange of a motor vehicle through auction;
 - (12) "Motor vehicle" means every vehicle intended primarily for use and operation on the public highways that is self-propelled including low-speed motor vehicles as defined in KRS 186.010, but shall not include farm tractors and other machines and tools used in the production, harvesting, and care of farm products;

- (13) "New motor vehicle" means a vehicle that is in the possession of the manufacturer, distributor, or wholesaler, or has been sold to the holders of a valid sales and service agreement, franchise, or contract, granted by the manufacturer, distributor, or wholesaler for the sale of the make of new vehicle, which is new, and on which the original title has not been issued from the franchised dealer;
- (14) "Moped" means a motorized bicycle with pedals whose frame design may include one (1) or more horizontal crossbars supporting a fuel tank, or a motorized bicycle with pedals and with a step through type frame rated no more than two (2) brake horsepower, a cylinder capacity not exceeding fifty (50) cubic centimeters, an automatic transmission not requiring clutching or shifting by the operator after the drive system is engaged, and capable of a maximum speed of not more than thirty (30) miles per hour;
- (15) "Commission" means the Motor Vehicle Commission;
- (16) "Commissioner" means the commissioner of the department;
- (17) "Department" means the Department of Vehicle Regulation;
- (18) "Licensor" means the commission;
- (19) "Established place of business" means a permanent, enclosed commercial building located within this state, easily accessible and open to the public at all reasonable times, and at which the business of a vehicle dealer, including the display and repair of vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land use regulatory ordinances;
- (20) "Person" means a person, partnership, firm, corporation, association, trust, estate, or other legal entity;
- (21) "Franchise" means the agreement or contract between any new motor vehicle manufacturer, written or otherwise, and any new motor vehicle dealer that purports to fix the legal rights and liabilities of the parties to an agreement or contract, and pursuant to which the dealer purchases and resells the franchise product;
- (22) "Good faith" means honesty in fact, and the observance of reasonable commercial standards of fair dealing in the trade, as is defined and interpreted in KRS 355.2-103(1)(b);
- (23) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will; or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership; or who, under the laws of intestate succession of this state is entitled to inherit the interest; or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and testamentary trustee of a deceased dealer;
- (24) "Fraud" means a misrepresentation in any manner, whether intentionally false or due to gross negligence, of a material fact; a promise or representation not made in good faith; or an intentional failure to disclose material fact;
- (25) "Sale" means the issuance, transfer, agreement for transfer, exchange, lease, pledge, hypothecation, mortgage in any form, whether by transfer in trust or otherwise, of any motor vehicle or interest in it, or of any franchise related to it, as well as any option, subscription, other contract, or solicitation looking to a sale, offer to attempt to sell in any form, whether spoken or written. A gift or delivery of any motor vehicle or franchise with respect thereto, with or as a bonus on account of the sale of anything, shall be deemed a sale of the motor vehicle or franchise;
- (26) "Automotive mobility dealer" means any motor vehicle dealer who:
 - (a) Exclusively engages in the business of selling, offering to sell, or soliciting or advertising the sale of adapted vehicles;
 - (b) Possesses adapted vehicles exclusively for the purpose of resale, either on his or her own account or on behalf of another, as his or her primary business or incidental thereto; or
 - (c) Engages in the business of selling, installing, or servicing; offering to sell, install, or service; or soliciting or advertising the sale, installation, or servicing of equipment or modifications specifically designed to facilitate use or operation of a motor vehicle by an aging or disabled person;
- (27) "Adapted vehicle" means a new or used motor vehicle especially designed or modified for use by an aging or disabled person;~~and~~

- (28) "Mobility equipment" means equipment specifically designed to facilitate the use of a motor vehicle by an aging or disabled person;
- (29) *"Nonprofit motor vehicle dealer" means a nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that purchases motor vehicles that it may offer for purchase to clients and other individuals who meet the definition of client as defined in this section and who are referred to the organization by public or private social service agencies; and*
- (30) *"Client" means a person who has an open case file with a nonprofit organization or governmental agency and who meets the standards for disability or disadvantaging condition as established in administrative regulations promulgated by the commission pursuant to subsection (4) of Section 1 of this Act.*

➔Section 3. KRS 190.030 is amended to read as follows:

- (1) A motor vehicle dealer, new, used, or auction motor vehicle dealer, ***nonprofit motor vehicle dealer***, motor vehicle leasing dealer, restricted motor vehicle dealer, motorcycle dealer, broker, wholesaler, automotive recycling dealer, or a salesperson of motor vehicles shall not engage in business in this state at any location without a license issued for that location as provided in KRS 190.010 to 190.080. If a person acts as a motor vehicle salesperson, he shall secure a motor vehicle salesperson's license in addition to a license for a motor vehicle dealer. The motor vehicle commission may provide by administrative regulation for other licensee activities and an appropriate fee.
- (2) A manufacturer of motor vehicles, factory branch, distributor, distributor branch, or wholesaler shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (3) A factory representative or distributor representative shall not engage in business in this state without a license as provided in KRS 190.010 to 190.080.
- (4) Application for license shall be made to the licensor, at a time, in a form, and containing information the licensor shall require and shall be accompanied by the required fee. The licensor may require in the application, or otherwise, information relating to the applicant's solvency, his financial standing, or other pertinent matter commensurate with the safeguarding of the public interest in the locality in which the applicant proposes to engage in business. The information may be considered by the licensor in determining the fitness of the applicant to engage in business as set forth in this section.
- (5) All licenses shall be granted or refused within thirty (30) days after submission of a complete application and shall expire, unless revoked or suspended, on December 31 of the calendar year for which they are granted. If a complaint of unfair cancellation of dealer franchise is in the process of being heard, a replacement application for the franchise shall not be considered until a decision is rendered by the commission.
- (6) The license fee for a calendar year, or part thereof, shall be as follows:
 - (a) For new motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof, plus one hundred dollars (\$100) for a supplemental license for each used car lot not immediately adjacent to the office or to a branch;
 - (b) For used motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;
 - (c) For motor vehicle leasing dealers, one hundred dollars (\$100) for each office or branch or agent thereof;
 - (d) For restricted motor vehicle dealers, one hundred dollars (\$100) for each office or branch or agent thereof;
 - (e) For motorcycle dealers, one hundred dollars (\$100) for each office, branch, or agent thereof;
 - (f) For motor vehicle manufacturers, one hundred dollars (\$100); and for each factory branch in this state, one hundred dollars (\$100);
 - (g) For distributors, motor vehicle auction dealers or wholesalers, the same as for dealers;
 - (h) For motor vehicle salespersons, twenty dollars (\$20), to be paid by the licensed dealer for every salesperson the dealer employs;
 - (i) For factory representatives, or distributor branch representatives, one hundred dollars (\$100);~~and~~
 - (j) For automotive mobility dealers, one hundred dollars (\$100);

(k) For nonprofit motor vehicle dealers, one hundred dollars (\$100); and

(l) For nonprofit motor vehicle dealer salespersons, a license fee shall not be imposed.

- (7) The licenses of dealers, manufacturers, factory branches, distributors, and distributor branches shall specify the location of the office or branch and shall be conspicuously displayed there. If the location is changed, the licensor shall endorse the change of location on the license. A licensee shall not be charged a fee for changing locations. A change of location shall require a new application. A licensee may conduct a temporary sale or display if the temporary sale or display is permitted under an enabling ordinance enacted by the city, county, urban-county, or consolidated local government within whose boundaries the temporary sale or display is to be conducted. A temporary sale or display shall be advertised as temporary in nature and shall consist of a representative sampling of the inventory of each participating licensee. ***The provisions of this subsection shall not apply to a nonprofit motor vehicle dealer.***
- (8) Every salesperson, factory representative, or distributor representative shall carry his license when engaged in business, and display it upon request. The license shall name his employer; and in case of a change of employer, the salesperson shall immediately mail his license to the licensor who shall endorse the change on the license without charge.
- (9) If the licensor has reasonable cause to doubt the financial responsibility or the compliance by the applicant or licensee with the provisions of this statute, the licensor may require the applicant or licensee to furnish and maintain a bond in a form, amount and with sureties not less than fifteen thousand dollars (\$15,000), conditioned upon the applicant or licensee complying with the provisions of the statutes applicable to the licensee. The bonds shall be executed in the name of the State of Kentucky for the benefit of any aggrieved parties, but the penalty of the bond shall not be invoked except after a court adjudication. The commission may promulgate administrative regulations to permit the applicant to submit evidence, in lieu of posting bond, that reliable financial arrangements, deposits, or commitments exist providing assurance, substantially equivalent to that afforded by a bond complying with this subsection, for payment on conditions and indemnity set forth in this subsection. The bonding requirements of this subsection shall not apply to manufacturers, factory branches, and their agents.
- (10) Application for dealer's license shall be submitted to the commission and contain information the commission may require. A motor vehicle dealer, unless licensed under KRS 190.010 to 190.080, shall not be permitted to register, receive, or use any motor vehicle registration plates.
- (11) Every motor vehicle dealer licensed in accordance with the provisions of this section shall make reports to the licensor at intervals and show information the licensor may require.

➔Section 4. KRS 190.035 is amended to read as follows:

- (1) *Except as provided in subsection (2) of this section, a***~~No~~ **license shall *not* be issued by the commission for the purposes described in KRS 190.030(1) and to motor vehicle dealers, either as dealer or salesman, unless the applicant for the license has an established place of business as defined in KRS 190.010, and as provided by regulation of the commission consistent with the activity of the license applied for. A licensee may conduct more than one (1) business in a building otherwise meeting the requirements of this chapter providing he has suitable space and adequate facilities therein to properly conduct the business of a motor vehicle dealer. The lot requirement of this section may be waived if the dealer has sufficient space within a building to properly show and display the motor vehicles being sold by him. The dealer shall display a sign easily visible from the street identifying his business.**
- (2) *The provisions of this section shall not apply to a nonprofit motor vehicle dealer.***

Signed by Governor March 30, 2010.

CHAPTER 44

(HB 224)

AN ACT relating to the Kentucky Sports Authority.

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

➔Section 1. KRS 148.590 is amended to read as follows:

- (1) There is created the Kentucky Sports Authority, which shall be attached to the Tourism, Arts and Heritage Cabinet, Office of the Secretary, for administrative purposes.
- (2) The authority shall consist of fifteen (15) members, including the Lieutenant Governor, the secretary of the Tourism, Arts and Heritage Cabinet, the secretary of the Environmental and Public Protection Cabinet, and twelve (12) members appointed by the Governor. The members appointed by the Governor shall include representatives of the Kentucky Racing Authority, the fish and wildlife community, and the Kentucky Boxing and Wrestling Authority.
- (3) The Lieutenant Governor shall serve as chairperson of the authority. Members shall elect other officers as they deem necessary. Of the members initially appointed by the Governor, one-third (1/3) shall serve a term of four (4) years, one-third (1/3) shall serve a term of three (3) years, and one-third (1/3) shall serve a term of two (2) years. All succeeding terms shall be for four (4) years.
- (4) The secretary of the Tourism, Arts and Heritage Cabinet shall appoint an executive director, with the prior written approval of the Governor, to head the authority. The cabinet shall provide additional administrative support to the authority from the cabinet's existing staff as necessary.
- (5) The authority shall meet *no less than biannually*~~[monthly]~~ and at other times as necessary, upon the call of the chairperson. Members shall be reimbursed for expenses incurred in performing the authority's duties, functions, and responsibilities.
- (6) The authority's primary responsibility shall be to recruit, promote, assist, place, and develop sporting events, facilities, attractions, and programs in the Commonwealth, with the ultimate goal of developing commerce, the economy, job opportunities, and revenue streams. The authority's duties shall include but not be limited to the following:
 - (a) Lead efforts to attract national and regional sporting events to Kentucky by working with *national, regional, and local sporting organizations*~~[the National Collegiate Athletic Association, the National Association of Intercollegiate Athletics, the Professional Golf Association, the National Football League, the National Basketball Association, the Professional Bowlers Association, the Professional Tennis Tour, the National Association for Stock Car Auto Racing, the United States Olympic Committee, Bassmasters, and other nationally recognized organizations];~~
 - (b) Work *with communities to recruit professional franchises*~~[toward establishing professional franchises in Kentucky,]~~ and develop an overall strategic plan to recruit and retain all forms of professional and amateur sporting events *to Kentucky*~~[including boxing, motor vehicle racing, baseball, football, soccer, hockey, tennis, gymnastics, volleyball, and figure skating];~~
 - (c) *Collaborate with communities to* identify and propose improvements for sporting activity infrastructure, including opportunities for private and public partnership on infrastructure development; present for the Governor's approval any financial plan that would require state tax dollars to build new athletic facilities; and upon the Governor's approval of a proposed financial plan, present it to the General Assembly;
 - (d) Foster relationships between sporting event organizers and event sponsors, and between and among state agencies, and provide advice and direction for increasing the number and quality of sporting events;
 - (e) Evaluate various sports and sports-related activities and entities~~[such as auto racing, summer instructional camps for cheerleading, and sports agents,]~~ and make written recommendations to the Governor and the General Assembly *if*~~[as to whether]~~ additional regulation, licensing, or taxing are necessary;
 - (f) *Collaborate with communities and Kentucky athletes to develop programs to promote youth wellness and awareness of the benefits of a healthy lifestyle; and*~~[Attempt to involve renowned Kentucky athletes in the war against drugs and the promotion of the Governor's Wellness Initiative;]~~
 - (g)~~[~~ Work with Kentucky Educational Television and other media outlets to establish and develop a twenty-four (24) hour television channel devoted to promoting and highlighting healthy lifestyles, sports, and applicable government programs, such as the state park system and the Department of Fish and Wildlife Resources;

- ~~(h)}~~ Develop and recommend to the Governor, as necessary, legislation and administrative regulations to further the purposes of the authority, *including but not limited to the recruitment and maintenance of professional and amateur sporting events, the facilitation of sporting participation by Kentucky's citizens, the safe and ethical operation of sporting events, and the fiscal impact of sporting events in the Commonwealth*~~[provide additional professional and amateur participation by Kentucky's citizens, provide adequate safety measures and ethical operations for sporting events, recruit and maintain professional and amateur sporting events, and address the fiscal and tax implications of the issues and activities of this section; and~~
- ~~(i)~~ Assume all duties, functions, responsibilities, records, equipment, and staff of the Governor's Commission on Sports, Physical Activity, and Wellness established under KRS 11.190, and establish a council titled the Council on Sports, Physical Activity, and Wellness to implement these transferred statutory responsibilities].

Signed by Governor March 30, 2010.

CHAPTER 45

(SB 141)

AN ACT relating to persistent felony offenders.

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

➔Section 1. The following KRS section is repealed:

210.360 Mental examination of persistent felony offenders.

Signed by Governor March 30, 2010.

CHAPTER 46

(SB 32)

AN ACT relating to inmate civil actions.

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

➔Section 1. KRS 454.400 is amended to read as follows:

As used in KRS 454.405 ~~to 454.415~~~~[and 454.410]~~, "inmate" means any person confined in either a state or federally operated facility, a county jail or other facility of local government, or in a private facility under contract with the Department of Corrections.

➔Section 2. KRS 454.405 is amended to read as follows:

- (1) At any time, and upon its own motion or on motion of a party, a court may dismiss a civil action brought by an inmate or on behalf of an inmate if satisfied that the action is malicious or harassing or if satisfied that the action is legally without merit or factually frivolous. In addition to any other available disposition, a court may dismiss the civil action if satisfied that the affidavit of poverty in support of a request to proceed in forma pauperis is wholly or partly false or misleading.
- (2) This section does not apply to criminal or collateral criminal proceedings.
- (3) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate and to *all persons named as a party defendant in the action*~~[county attorney of the county where the action was filed]~~.
- (4) A court which dismisses a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section may include as part of its order an assessment of fines and costs against the inmate as the court may deem reasonable and prudent. The Department of Corrections, *county jail, or other local or regional correctional facility* may enforce this assessment against the inmate's ~~canteen~~~~[prison]~~ account and against any other assets of the inmate through any other mechanism provided by law.

- (5) No inmate may maintain a civil action for monetary damages in any state court for mental or emotional injury without a prior showing of physical injury.

➔Section 3. KRS 454.415 is amended to read as follows:

- (1) No action shall be brought by or on behalf of an inmate, with respect to:

- (a) ~~An inmate~~~~[a prison]~~ disciplinary proceeding;~~[or]~~
- (b) Challenges to a sentence calculation;~~[or]~~
- (c) Challenges to custody credit; ~~or [to prison]~~
- (d) ~~A conditions of confinement issue;~~~~[]~~

until administrative remedies as set forth in ~~the [Department of Corrections]~~ policies and procedures **of the Department of Corrections, county jail, or other local or regional correctional facility** are exhausted.

- (2) Administrative remedies shall be exhausted even if the remedy the inmate seeks is unavailable.
- (3) The inmate shall attach to any complaint filed documents verifying that administrative remedies have been exhausted.
- (4) *A court shall dismiss a civil action brought by an inmate for any of the reasons set out in subsection (1) of this section if the inmate has not exhausted administrative remedies, and may include as part of its order an assessment of court costs against the inmate as the court may deem reasonable and prudent. The correctional facility may enforce this assessment against the inmate's canteen account and against any other assets of the inmate through any other mechanism provided by law.*
- (5) *A court which dismisses a civil action brought by an inmate for the reasons set out in this section shall include as part of its order specific findings as to the reasons for the dismissal. The court shall, upon issuing the order, direct the circuit clerk to transmit a copy of the entire court order to the official having custody of the inmate, to all persons named as a party defendant in the action, and also, by certified mail, return receipt requested, to the inmate.*
- (6) *The period of limitations applicable to the cause of action after it has been dismissed by a court under this section for failure to exhaust administrative remedies is the period fixed by the applicable statute or ninety (90) days following the exhaustion of administrative remedies if the grievance is filed within the applicable period of limitations, whichever is later. Nothing in this subsection shall be construed to revive a cause of action that is barred by the applicable period of limitations.*

Signed by Governor March 30, 2010.

CHAPTER 47

(HB 124)

AN ACT relating to petroleum storage tanks.

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

➔Section 1. KRS 224.60-142 is amended to read as follows:

- (1) To be eligible to participate in the fund, the owner of any petroleum storage tank containing motor fuels installed and placed in operation after July 15, 2004, shall register the petroleum storage tank with the cabinet as required by KRS 224.60-105 prior to applying for participation in the financial responsibility account.
- (2) The owner of any petroleum storage tank containing motor fuels currently existing, or removed from the ground after January 1, 1974, shall register the petroleum storage tank containing motor fuels with the cabinet prior to applying to the fund, and shall register the petroleum storage tank containing motor fuels by July 15, ~~2013~~~~[2010]~~. Owners or operators may submit affidavits and applications relevant to current petroleum storage tank accounts through July 15, ~~2013~~~~[2010]~~.

➔Section 2. KRS 224.60-130 is amended to read as follows:

- (1) The Environmental and Public Protection Cabinet, Department for Environmental Protection, Division of Waste Management, shall:
- (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;
 - (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division. To ensure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
 - (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the division;
 - (d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
 - (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, ~~2016~~~~2013~~. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division

shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;

- (f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;
- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
- (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income, number of tanks, number of facilities, and types and classes of tanks;
- (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
- (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;
- (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10) days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and
- (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.

- (2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
- (3) The division may sue and be sued in its own name.
- (4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

➔Section 3. KRS 224.60-145 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, there is established a petroleum environmental assurance fee to be paid by dealers on each gallon of gasoline and special fuels received in this state.
- (2) All deductions detailed in KRS 138.240(2) and all credits detailed in KRS 138.358 are exempt from the fee. If a dealer has on file, pursuant to KRS Chapter 138, a statement supporting a claimed exemption, an additional statement shall not be required for claiming exemption from the fee.
- (3) The fee shall be reported and paid to the Department of Revenue at the same time and in the same manner as is required for the reporting and payment of the gasoline and special fuels taxes as provided by law.
- (4) The petroleum environmental assurance fee shall be set at one and four-tenths cent (\$0.014) for each gallon. Four-tenths of a cent (\$0.004) per gallon shall be deposited in the financial responsibility account and one cent (\$0.01) shall be deposited in the petroleum storage tank account.
- (5) Within thirty (30) days of the close of fiscal year 2001-2002 and each fiscal year thereafter, the state budget director shall review the balance of each account to determine if a surplus exists. "Surplus" means funds in excess of the amounts necessary to satisfy the obligations in each account for all eligible facilities, to satisfy future liabilities and expenses necessary to operate each account, and to maintain an appropriate reserve in the financial responsibility account to demonstrate financial responsibility and compensate for third-party claims. The state budget director shall report the determination to the Interim Joint Committee on Appropriations and Revenue. After a determination that a surplus exists, the surplus shall be transferred to a restricted account and retained until appropriated by the General Assembly.
- (6) All provisions of law related to the Department of Revenue's administration and enforcement of the gasoline and special fuels tax and all other powers generally conveyed to the Department of Revenue by the Kentucky Revised Statutes for the assessment and collection of taxes shall apply with regard to the fee levied by KRS 224.60-105 to 224.60-160.
- (7) The Department of Revenue shall refund the fee imposed by KRS 224.60-145(1) to any person who paid the fee provided they are entitled to a refund of motor fuel tax under KRS 138.344 to KRS 138.355 and to any person who paid the fee on transactions exempted under KRS 224.60-145(2).
- (8) Notwithstanding any other provisions of KRS 65.180, 65.182, 68.600 to 68.606, 139.470, 183.165, 224.60-115, 224.60-130, 224.60-137, 224.60-140, 224.60-142, and this section to the contrary, the small operator assistance account and small operator tank removal account established under KRS 224.60-130 shall continue in effect until July 15, ~~2013~~~~2010~~, and thereafter until all eligible claims related to tanks registered by that date are resolved, and sufficient money shall be allocated to and maintained in that account to assure prompt payment of all eligible claims, and to provide for removal of tanks for eligible owners and operators as directed by this chapter.

Signed by Governor March 30, 2010.

CHAPTER 48

(SB 77)

AN ACT relating to self-insurance groups.

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

➔Section 1. KRS 304.33-020 is amended to read as follows:

The proceedings authorized by this subtitle may be applied to:

- (1) All domestic insurers, whether or not they purport to do business in this state;
- (2) All insurers who are doing, or have done, an insurance business in this state, and against whom claims arising from that business may exist now or in the future;
- (3) All insurers who purport to do an insurance business in this state;
- (4) All insurers who have insureds resident in this state;
- (5) All other persons organized or in the process of organizing with the intent to do an insurance business in this state;
- (6) All fraternal benefit societies as defined in Subtitle 29;
- (7) All nonprofit hospital, medical-surgical, dental, and health service corporations, as defined in Subtitle 32;
- (8) All health maintenance organizations as defined in Subtitle 38;
- (9) All limited health service organizations as defined in KRS 304.38A-010;
- (10) Workers' compensation self-insured groups authorized in KRS 342.350; ~~and~~
- (11) Workers' compensation self-insured groups authorized in KRS 304.50-010 and defined in KRS 304.50-015; *and*
- (12) *Liability self-insurance groups defined in KRS 304.48-020 and authorized in KRS 304.48-030.*

➔Section 2. KRS 304.48-090 is amended to read as follows:

- (I) The funds of a liability self-insurance group shall be invested *in*:
 - (a) *United States Government bonds, United States Treasury notes, United States Treasury bills, or other direct obligations guaranteed by the full faith and credit of the United States Government or its agencies;*
 - (b) *Tax exempt obligations issued by the Commonwealth of Kentucky or its agencies with a minimum rating of "A" by Standard & Poor's;*
 - (c) *Obligations issued by a county, district, municipality, or other legal authority within the Commonwealth with a minimum rating of "AA" by Standard & Poor's;*
 - (d) *Investment share accounts in a savings and loan association in the Commonwealth whose deposits are insured by a federal agency;*
 - (e) *Certificates of deposit if issued by a duly chartered commercial bank;*
 - (f) *Equity securities actively traded on the New York or NASDAQ Stock Exchanges or other registered national securities exchanges with no individual equity holding comprising greater than ten percent (10%) of the equity portion of the portfolio, reflected on the most recent quarterly or annual statement of financial condition on file with the executive director, at the time of purchase, as follows:*
 1. *An investment in an individual equity holding shall not represent more than five percent (5%) of the total market value of the security; and*
 2. *Investments in equity securities shall not exceed twenty percent (20%) of the total market value of the investment portfolio of the liability self-insurance group reflected on the most recent quarterly or annual statement of financial condition on file with the executive director;*
 - (g) *Corporate bonds if:*
 1. *The bond is issued, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States, or a state, province, district, or territory;*
 2. *The corporate bond investments do not exceed twenty-five percent (25%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the executive director; and*

3. *The bond has a minimum rating of "A" by Standard and Poor's; or*

(h) *Mutual funds and exchange traded funds if, at the time of purchase, the investments do not exceed twenty percent (20%) of the total market value of the investment portfolio reflected on the most recent quarterly or annual statement of financial condition on file with the executive director.*

(2) *Of the aggregate investments made under this section:*

(a) *Not less than fifty percent (50%) of the total market value of the entire investment portfolio shall be held in cash, cash equivalents, or securities as described in paragraphs (a) to (e) of subsection (1) of this section; and*

(b) *A minimum of five percent (5%) of the total investment portfolio value shall be maintained in cash or cash equivalent accounts or United States Treasury and Federal Agency Securities with a remaining maturity of one (1) year or less.*

(3) *The executive director may permit variation from the requirements of this section for good cause shown*~~{only in securities or other investments permitted by subtitle 7 of this chapter, or such other securities or investments as the executive director may permit by administrative regulation}.~~

➔Section 3. KRS 304.48-140 is amended to read as follows:

(1) Each group shall be operated by a board of trustees which shall consist of not less than two (2) persons selected in the manner prescribed by the liability self-insurance group or by other laws of the Commonwealth.~~{Except for liability self-insurance groups formed by governmental entities,}~~ The trustees shall not be officers, employees, or agents of an administrator or servicing organization. All trustees shall be residents of Kentucky or officers of corporations authorized to do business in Kentucky. The trustees shall have the authority to administer the operations of the liability self-insurance group, such as assuring that there is adequate funding to cover professional or public liabilities, assuring that all claims are paid promptly, and that all necessary precautions are taken to safeguard the assets of the group.

(2) The board of trustees shall:

(a) Maintain responsibility for all moneys collected or disbursed from the group;

(b) Maintain minutes of its meetings and make the minutes available to the executive director; ~~{and,}~~

(c) Designate an administrator to carry out the policies established by the board of trustees and to provide day-to-day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator; *and*

(d) *Establish a formal conflict-of-interest policy or code of conduct applicable to the board of trustees, officers, and employees that includes a description of the system used to monitor compliance with the conflict-of-interest policy or code of conduct.*

(3) The board of trustees shall not:

(a) Extend credit to individual group members for payment of contributions or assessments, except pursuant to payment plans filed with the executive director; or

(b) Permit the loan of any moneys to, or borrow any moneys from, the group or in the name of the group. However, a liability self-insurance group formed by governmental entities may borrow moneys in the name of the group.

(4) In its discretion, the liability self-insurance group may refer to its trustees as directors. If this is done, the provisions of this subtitle referring to trustees shall be construed as referring to directors.

(5) *Upon the request of a group member, a liability self-insurance group shall make available the statement of financial condition required by subsection (1) of this section.*

➔Section 4. KRS 304.48-170 is amended to read as follows:

(1) All liability self-insurance groups shall file with the executive director a statement of financial condition audited by an independent certified public accountant on or before one hundred and twenty (120) days from the end of the group's fiscal year for the immediately preceding fiscal year. The financial statement shall be in a form approved by the executive director and shall include:

(a) Actuarially-appropriate reserves for:

1. Known claims and expenses associated therewith.
 2. Claims incurred but not reported and any expenses associated therewith.
 3. Unearned contributions and assessments.
 4. Bad debts, which reserves shall be known as liabilities.
- (b) An actuarial opinion by a qualified actuary and a supporting reserve study regarding reserves for known claims and expenses associated therewith. The reserve study shall include documentation sufficient for another actuary practicing in the same field to evaluate the work. The documentation shall describe clearly the sources of data, material assumptions, and methods.
- (2) ***Within forty-five (45) days from the end of each fiscal quarter, all liability self-insurance groups shall file with the executive director a statement of financial condition along with an acknowledgment signed by the board of trustees or its authorized agent indicating that the statement has been presented to the board and any other relevant financial information requested by the executive director, including a balance sheet and income and cash flow statement, on a form prescribed by the executive director.***
- (3) No person shall make a deceptive statement or fail to correct a misstatement in connection with the solicitation of membership of a group.
- ~~(4)~~~~(3)~~ The financial statements required by this section shall be completed in accordance with administrative regulations promulgated by the executive director.
- (5) ***Upon the request of a group member, a liability self-insurance group shall make available the statement of financial condition required by subsection (1) of this section.***

➔Section 5. KRS 304.48-180 is amended to read as follows:

Liability self-insurance groups shall file with the executive director their rates, underwriting guidelines, evidence of coverage, and any changes therein ***in accordance with KRS 304.13-051 and 304.14-120 and administrative regulations promulgated thereunder.*** The filing shall be accompanied by a filing fee of five dollars (\$5) per filing.

➔Section 6. KRS 304.48-240 is amended to read as follows:

- (1) No person shall make any deceptive statement or omit material facts in connection with solicitation for membership in a liability self-insurance group.
- (2) Liability self-insurance groups shall not engage in unfair claims settlement practices and shall:
 - (a) Respond to claimant inquiries within fifteen (15) working days.
 - (b) Respond to Office of Insurance inquiries concerning claims within fifteen (15) working days.
 - (c) Complete the investigation of losses within thirty (30) days from the date the group has notice of a loss. An additional thirty (30) day period may be taken if reasonably necessary and upon written notice to the claimant.
 - (d) Not continue negotiations for settlement of a claim directly with a claimant who is neither an attorney nor represented by an attorney until the claimant's rights may be affected by a statute of limitations, a policy, or contract time limit without giving the claimant written notice at least sixty (60) days before the date on which the time limit shall expire and affect the claimant's rights.
 - (e) Not commit any other unfair or deceptive act or practice, ***as described in Subtitle 12 of this chapter,*** relating to claim settlement.
- (3) Liability self-insurance groups shall not commit unfair or deceptive acts or practices, ***as described in Subtitle 12 of this chapter,*** under its certificate of filing from the executive director.

➔Section 7. KRS 304.48-250 is amended to read as follows:

- (1) If the assets of a liability insurance group are at any time insufficient to enable the group to discharge its legal liabilities, other obligations, and to maintain the required reserves under this subtitle, the group shall immediately levy an assessment upon its members for the amount necessary to make up the deficiency.
- (2) If there is a deficiency in any fund year, the deficiency shall be made up immediately, from the following:

- (a) Surplus from a fund year other than the current fund year after prior notice of the transfer has been given to the executive director;
 - (b) Administrative funds;
 - (c) Assessment of membership; or
 - (d) Alternate methods as the executive director may direct or approve.
- (3) If a liability self-insurance group fails to assess its members within thirty (30) days to make up a deficit, the executive director shall order it to do so. This subsection shall not apply to liability self-insurance groups formed by governmental entities which do not have joint and several liability.
- (4) If a liability self-insurance group fails to make the required assessment of its members within thirty (30) days after the executive director orders it to do so, or if the deficiency is not fully made up within sixty (60) days after the date on which the assessment is made, or within a longer period of time as may be permitted by the executive director, the group shall be determined to be insolvent ***and may be placed in delinquency proceedings as an insurer pursuant to Subtitle 33 of this chapter.***

➔Section 8. KRS 304.48-260 is amended to read as follows:

- (1) After a hearing or upon agreement by the liability self-insurance group, the executive director may suspend or revoke the certificate of filing of a liability self-insurance group, impose a civil penalty of up to five thousand dollars (\$5,000) per violation on a liability self-insurance group, or both, for:
- (a) Violations of this subtitle or administrative regulations adopted thereunder;
 - (b) Obtaining a certificate of filing by unfair or deceptive means;
 - (c) Operating in a financially hazardous manner;
 - (d) Misappropriation, conversion, illegal withholding, or refusal to pay over upon proper demand any moneys that belong to a member, an employee of a member, or a person otherwise entitled thereto by the group or its administrator; or
 - (e) ***Violations of Subtitle 12 of this chapter or administrative regulations promulgated pursuant thereto***~~[Unfair or deceptive business practices]~~.
- (2) The executive director, in his discretion and without advance notice or a hearing thereon, may suspend or revoke the certificate of filing of any liability self-insurance group upon the commencement of the following proceedings:
- (a) Receivership;
 - (b) Conservatorship;
 - (c) Rehabilitation; or
 - (d) Other delinquency proceedings.

➔SECTION 9. A NEW SECTION OF SUBTITLE 48 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

A liability self-insurance group regulated under this subtitle and administrative regulations promulgated pursuant thereto shall be subject to the provisions of this subtitle, Subtitle 12 of this chapter, and KRS 304.2-310 to 304.2-370, to the extent applicable and not in conflict with the expressed provisions of this subtitle.

➔Section 10. KRS 304.50-155 is amended to read as follows:

A group self-insurance fund regulated under this subtitle and administrative regulations promulgated by the executive director shall be subject to the provisions of this subtitle, ***Subtitle 12 of this chapter***, and~~[the provisions of]~~ KRS 304.2-310 to 304.2-370, to the extent applicable and not in conflict with the expressed provisions of this subtitle.

Signed by Governor March 30, 2010.

CHAPTER 49**(SB 7)**

AN ACT relating to the Kentucky Life and Health Insurance Guaranty Fund.

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

➔Section 1. KRS 304.42-030 is amended to read as follows:

- (1) This subtitle shall provide coverage for the policies and contracts specified in subsection (2) of this section:
 - (a) To persons who, regardless of where they reside (except for nonresident certificate holders under group policies or contracts), are the beneficiaries, assignees, or payees of the persons covered under paragraph (b) of this subsection.
 - (b) To persons who are the owners of or certificate holders under such policies or contracts, other than structured settlement annuities, who:
 1. Are residents; or
 2. Are not residents, but only under the following conditions:
 - a. The insurer which issued the policies or contracts is domiciled in this state;
 - b. The states in which the persons reside have associations similar to the association created by this subtitle; and
 - c. The persons are not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed in the state at the time specified in the state's guaranty association law.
 - (c) For structured settlement annuities covered in subsection (2) of this section, paragraphs (a) and (b) of this subsection shall not apply and this subtitle shall, except as provided in paragraphs (d) and (e) of this subsection, provide coverage to a person who is a payee under a structured settlement annuity, or beneficiary of a payee if the payee is deceased, if the payee is a resident, regardless of where the contract owner resides. If the payee is not a resident, this subtitle shall provide coverage but only under both of the following conditions:
 1.
 - a. The contract owner of the structured settlement annuity is a resident; or
 - b. The contract owner of the structured settlement annuity is not a resident, but the insurer that issued the structured settlement annuity is domiciled in this state and the state in which the contract owner resides has an association similar to the association created by this subtitle; and
 2. Neither the payee, the beneficiary, nor the contract owner is eligible for coverage by the association of the state in which the payee or contract owner resides.
 - (d) This subtitle shall not provide coverage to a person who is a payee or beneficiary of a contract owner resident of this state, if the payee or beneficiary is afforded any coverage by the association of another state.
 - (e) This subtitle is intended to provide coverage to a person who is a resident of this state and, in special circumstances, to a nonresident. In order to avoid duplicate coverage, if a person who would otherwise receive coverage in this subtitle is provided coverage under the laws of any other state, the person shall not be provided coverage under this subtitle. In determining the application of the provisions of this paragraph in situations where a person could be covered by the association of more than one (1) state, whether as an owner, payee, beneficiary, or assignee, this subtitle shall be construed in conjunction with other state laws to result in coverage by only one (1) association.
- (2) (a) This subtitle shall provide coverage to the persons specified in subsection (1) of this section for direct, nongroup life, health, or annuity policies or contracts and supplemental contracts to any of these and for certificates issued under direct group policies and contracts.

- (b) This subtitle shall not provide coverage for:
1. Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract owner;
 2. Any policy or contract of reinsurance, unless assumption certificates have been issued pursuant to the reinsurance policy or contract;
 3. Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - a. Averaged over the period of four (4) years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two (2) percentage points from Moody's corporate bond yield average averaged for that same four (4) year period or for such lesser period if the policy or contract was issued less than four (4) years before the association became obligated; and
 - b. On and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three (3) percentage points from Moody's corporate bond yield average as most recently available;
 4. Any portion of a policy or contract issued to a plan or program of an employer, association, or other person to provide life, health, or annuity benefits to its employees, members, or others to the extent that such plan or program is self-funded or uninsured including, but not limited to, benefits payable by an employer, association, or other person under:
 - a. A multiple employer welfare arrangement as defined in 29 U.S.C. sec. 1144;
 - b. A minimum premium group insurance plan;
 - c. A stop-loss group insurance plan; or
 - d. An administrative services only contract;
 5. Any portion of a policy or contract to the extent that it provides for:
 - a. Dividends or experience rating credits;
 - b. Payment of any fees or allowances to any person, including the policy or contract owner, in connection with the service to or administration of such policy or contract; or
 - c. Voting rights;
 6. Any policy or contract issued in this state by a member insurer at a time when it did not have a certificate of authority to issue such policy or contract in this state;
 7. Any unallocated annuity contract;
 8. A portion of a policy or contract to the extent that the assessments required by KRS 304.42-090 with respect to the policy or contract are preempted by federal or state law;
 9. An obligation that does not arise under the express written terms of the policy or contract issued by the insurer to the contract owner or policy owner, including without limitation:
 - a. Claims based on marketing materials;
 - b. Claims based on side letters, riders, or other documents that were issued by the insurer without meeting applicable policy form filing or approval requirements;
 - c. Misrepresentations of or regarding policy benefits;
 - d. Extracontractual claims; or
 - e. A claim for penalties or consequential or incidental damages;~~and~~
 10. A contractual agreement that establishes the member insurer's obligations to provide a book value accounting guaranty for defined contribution benefit plan participants by reference to a portfolio of assets that is owned by the benefit plan or its trustee which in each case is not an affiliate of the member insurer; **and**

- 11. A policy or contract providing any hospital, medical, prescription drug or other health care benefits pursuant to Medicare Part C or Part D, 42 U.S.C. secs. 1395w-21 to w-152, or any regulations issued pursuant thereto.**
- (3) (a) The benefits that the association may become obligated to cover shall in no event exceed the lesser of ~~1.~~ the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer, ~~1.~~ or ~~2.~~ with respect to any one (1) life, regardless of the number of policies or contracts:
1. ***In life insurance,*** ~~three hundred thousand dollars (\$300,000) in~~ ~~life insurance~~ death benefits, but not more than one hundred thousand dollars (\$100,000) net cash surrender and net cash withdrawal values for life insurance;
 2. ~~One hundred thousand dollars (\$100,000)~~ In health insurance benefits:
 - a. ***One hundred thousand dollars (\$100,000) for coverages not defined as disability insurance or basic hospital, medical and surgical insurance, major medical insurance or long term care insurance,*** including any net cash surrender and net cash withdrawal values;
 - b. ***Three hundred thousand dollars (\$300,000) for disability insurance and three hundred thousand (\$300,000) for long term care insurance; and***
 - c. ***Five hundred thousand dollars (\$500,000) for basic hospital medical and surgical insurance or major medical insurance; and***
 3. ***In annuity benefits, two hundred fifty thousand dollars (\$250,000)*** ~~One hundred thousand dollars (\$100,000)~~ in the present value of annuity benefits, including net cash surrender and net cash withdrawal values; except with respect to each payee of a structured settlement annuity or beneficiary or beneficiaries of the payee if deceased, ***two hundred fifty thousand dollars (\$250,000)*** ~~one hundred thousand dollars (\$100,000)~~ in present value annuity benefits, in the aggregate, including net cash surrender and net cash withdrawal values.
- (b) In no event shall the association be obligated to cover more than:
1. An aggregate of three hundred thousand dollars (\$300,000) in benefits with respect to any one (1) life under subparagraphs 2. and 3. of paragraph (a) of this subsection ***except with respect to benefits for basic hospital, medical and surgical insurance and major medical insurance as stated in paragraph (a) of this subsection, in which case the aggregate liability of the association shall not exceed five hundred thousand dollars (\$500,000) with respect to any one individual;*** or
 2. With respect to one (1) owner of multiple nongroup policies of life insurance, whether the policy owner is an individual, firm, corporation, or other person, and whether the persons insured are officers, managers, employees, or other persons, more than ***five million dollars (\$5,000,000)*** ~~one million dollars (\$1,000,000)~~ in benefits, regardless of the number of policies and contracts held by the owner.
- (c) The limitations set forth in this subsection are limitations on the benefits for which the association is obligated before taking into account either its subrogation and assignment rights or the extent to which those benefits could be provided out of the assets of the impaired or insolvent insurer attributable to covered policies. The costs of the association's obligations under this subtitle may be met by the use of assets attributable to covered policies or reimbursed to the association in accordance with its subrogation and assignment rights.
- (4) In performing its obligations to provide coverage under KRS 304.42-080, the association shall not be required to guarantee, assume, reinsure or perform, or cause to be performed, assumed, reinsured or performed, the contractual obligations of the insolvent or impaired insurer under a covered policy or contract that do not materially affect the economic values or economic benefits of the covered policy or contract.

Signed by Governor March 30, 2010.

CHAPTER 50

(HB 488)

AN ACT relating to the Kentucky Board of Examiners of Psychology.

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

➔Section 1. KRS 319.010 is amended to read as follows:

As used in this chapter unless the context requires otherwise:

- (1) "Association" means the Kentucky Psychological Association;
- (2) "Board" means the Kentucky Board of Examiners of Psychology;
- (3) "Credential holder" means any person who is regulated by the board;
- (4) "EPPP" means the Examination for Professional Practice in Psychology developed by the Association of State and Provincial Psychology Boards;
- (5) ***"IPC" means the Interjurisdictional Practice Certificate developed by the Association of State and Provincial Psychology Boards;***
- (6) "License" means the credential issued by the board to a licensed psychologist, licensed psychological practitioner, certified psychologist with autonomous functioning, certified psychologist, or a licensed psychological associate;
- ~~(7)(6)~~ "Practice of psychology" means rendering to individuals, groups, organizations, or the public any psychological service involving the application of principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, thinking, emotions, and interpersonal relationships; the methods and procedures of interviewing, counseling, and psychotherapy; ***and psychological testing in***~~to~~ constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotion, and motivation. The application of said principles in testing, evaluation, treatment, use of psychotherapeutic techniques, and other methods includes, but is not limited to: diagnosis, prevention, and amelioration of adjustment problems and emotional, mental, nervous, and addictive disorders and mental health conditions of individuals and groups; educational and vocational counseling; the evaluation and planning for effective work and learning situations; and the resolution of interpersonal and social conflicts;
- ~~(8)(7)~~ "Psychotherapy" means the use of learning, conditioning methods, and emotional reactions, in a professional relationship, to assist a person or persons to modify feelings, attitudes, and behavior which are intellectually, socially, or emotionally maladjustive or ineffectual; and
- ~~(9)(8)~~ "Psychologist" means any person who holds himself or herself out by any title or description of services incorporating the words "psychologic," "psychological," "psychologist," "psychology," "psychopractice," or any other term or terms that imply he or she is trained, experienced, or an expert in the field of psychology.

➔Section 2. KRS 319.015 is amended to read as follows:

Nothing in this chapter shall be construed to limit:

- (1) The activities, services, and use of title on the part of a person in the employ of the federal government;
- (2) Persons~~[in the employ of accredited institutions of higher education]~~ from engaging in the teaching of psychology, the conduct of psychological research, the provision of consultation services to organizations or institutions, or the provision of expert testimony, ***provided that such activities do not involve***~~but not including~~ the delivery or supervision of direct psychological services to individuals or groups;
- (3) Persons licensed, certified, or registered under any other provision of the Kentucky Revised Statutes from rendering services consistent with the laws regulating their professional practice and the ethics of their profession. ***The use of written or computerized interpretations of any psychological testing or the administration and use of symptomatic and behavioral assessments by a practitioner of the healing arts as defined in KRS 311.271(2), clinical social worker, marriage and family therapist, professional art therapist, advanced registered nurse practitioner, physician, physical therapist, or occupational therapist who uses***

these interpretations or administers and uses these assessments shall not be limited. They shall not represent themselves to be psychologists or use the term "psychological" in describing their services;

- (4) The activities of a student, intern, or resident in psychology, pursuing a course of study approved by the department of psychology of an educational institution rated acceptable by the board for qualifying training and experience, provided such activities are recognized by transcript as a part of his or her supervised course of study;
- (5) The recognized educational activities of teachers in accredited public and private schools, the authorized duties of guidance counselors who are certified by the Education Professional Standards Board, or the activities of persons using psychological techniques in business and industrial organizations for employment placement, promotion, or job adjustment of their own officers and employees;
- (6) Persons who are credentialed as school psychologists by the Education Professional Standards Board from using the title "school psychologist" and practicing psychology as defined in KRS 319.010, if their practice is restricted to regular employment within a setting under the purview of the Education Professional Standards Board. These individuals shall be employees of the educational institution and not independent contractors providing psychological services to educational institutions;
- (7) A duly ordained minister, priest, rabbi, Christian Science practitioner, or other clergyman from carrying out his or her responsibilities while functioning in a ministerial capacity within a recognized religious organization serving the spiritual needs of its constituency, if he or she does not hold himself or herself out as a psychologist; or
- (8) Any nonresident temporarily employed in this state from rendering psychological services for not more than thirty (30) days every two (2) years, if he or she holds a valid current license or certificate as a psychologist in his or her home state or country and registers with the board prior to commencing practice in the Commonwealth *or if he or she holds a valid current IPC.*

➔Section 3. KRS 319.032 is amended to read as follows:

- (1) The board shall promulgate administrative regulations:
 - (a) Establishing requirements, standards, and tests to determine the moral, intellectual, educational, scientific, technical, and professional qualifications of applicants for licensure; and preparing or selecting and administering examinations on general psychological knowledge. Neither certified psychologists, licensed psychological practitioners, nor licensed psychological associates may participate in the examination of applicants for licensure as licensed psychologists;
 - (b) Establishing and defining the scope of practice within the field of psychology;
 - (c) Setting the requirements for issuing, denying, suspending, restricting, and revoking licenses, and placing credential holders on probation;
 - (d) Developing specific guidelines to follow upon receipt of an allegation of sexual misconduct by a person credentialed by the board. The guidelines shall include investigation, hearing officer, and hearing procedures which ensure that the process does not revictimize the alleged victim or cause harm if a credential holder is falsely accused;
 - (e) Requiring training for the board and investigators hired by the board on the dynamics of sexual misconduct of professionals, including the nature of this abuse of authority, characteristics of the offender, the impact on the victim, the possibility and the impact of false accusations, investigative procedure in sex offense cases, and effective intervention with victims and offenders;
 - (f) Establishing requirements for continuing education not to exceed ***thirty-nine (39)***~~thirty (30)~~ contact hours per three (3) year renewal period as a condition for renewal of licenses, ***the increased requirement to be a condition for renewal of licenses beginning with renewals occurring after June 30, 2013;***
 - (g) Establishing and collecting reasonable fees for directories, transcribing, transferring of records, and other services;
 - (h) Conducting hearings or appointing hearing officers to conduct hearings on any matter under the jurisdiction of the board, in accordance with KRS Chapter 13B;

- (i) Entering into reciprocal agreements with boards of examiners of psychology of other states having qualifications and standards at least as high as those of this state providing for reciprocal licensure;
 - (j) Employing personnel, including hearing officers which it considers necessary for the performance of its functions, determining the duties of personnel, and compensating them within the limits of funds available to the board;
 - (k) Investigating complaints or suspected violations of this chapter and notifying proper law enforcement authorities. For the purpose of enforcing the provisions of this chapter, the board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the productions of books, papers, documents, or other evidence;
 - (l) Governing the supervision of certified psychologists and the supervision and employment of licensed psychological associates and candidates for licensure;
 - (m) Developing specific guidelines to allow school psychologists who are dually credentialed by the Education Professional Standards Board and the board to obtain supervision acceptable to the board from a licensed psychologist who is neither an employee nor contractor of the school system that employs the school psychologist being supervised; and
 - (n) Notwithstanding the fee schedules specified in this chapter, increasing or decreasing fees as it deems appropriate.
- (2) The board shall have the authority to promulgate other administrative regulations as it deems necessary for the proper administration of this chapter.
 - (3) The board, at its discretion, may use funds as necessary to purchase liability insurance for members and executive officers of the board, inspectors, examiners, investigators, and staff members exempt from classified service of the state by KRS 18A.115.

➔Section 4. KRS 319.050 is amended to read as follows:

- (1) Before granting a license to practice psychology and to use the title "Licensed Psychologist" the board shall require the applicant to pass an examination in psychology and to fulfill all requirements for supervised experience.
- (2) The applicant shall:
 - (a) Pay a fee not to exceed three hundred dollars (\$300);
 - (b) Have received a doctoral degree in psychology *that is acceptable to the board* from a regionally accredited educational institution; provided, however, the board may grant a license to an individual otherwise qualified under this chapter who has received a doctoral degree in psychology *that is acceptable to the board* from an educational institution outside the United States, if the educational institution would otherwise be accredited by a regional accrediting body if located in the United States;~~and~~
 - (c) *Have passed the national EPPP examination at the doctoral level; and*
 - (d) Have had at least two (2) years of supervised professional experience satisfactory to the board, one (1) year of which shall be *an internship*~~postdoctoral~~.
- (3) Upon acceptance of the application to sit for the examination in psychology, the applicant may practice psychology under the supervision of a licensed psychologist under conditions of supervision and temporary licensure established by the board. The board shall establish a grace period not to exceed sixty (60) days to allow for the employment and supervision of the applicant by an agency from the time the applicant's degree requirements are completed to the submission of the complete application. During this period of supervision, the applicant for licensure may not supervise certified psychologists, licensed psychological associates, other applicants for licensure, or temporarily licensed persons, nor shall he engage in an independent practice, except under the employment of his supervising psychologist. Upon certification to the board of completion of the *two (2) years*~~one (1) full year~~ of supervision satisfactory to the board, the applicant shall *be examined on psychological practice, ethical principles, and the law*~~be examined in the practice of psychology~~.
- (4) The board shall grade and keep the examinations and results on file for one (1) year. Upon written request to the board, an applicant may arrange to discuss his or her performance on the examination.

- (5) Upon successful completion of the examination process, ***the board shall issue a license to practice psychology and*** the applicant may use the title "Licensed Psychologist."
- (6) Licensed psychologists may function independently without supervision. ***Licensed psychologists who have the designation "Health Service Provider" may retain that designation*** and may employ and supervise certified psychologists and licensed psychological associates. Licensed psychologists ***who have the designation "Health Service Provider"*** may supervise no more than a total of six (6) certified psychologists, licensed psychological associates, or applicants for licensure at one (1) time.
- (7)
 - (a) ***From the effective date of this Act until July 1, 2013, the designation "Health Service Provider" shall be made on the license of those licensed psychologists who have completed one (1) year of supervised experience under conditions of temporary licensure approved by the board or who have completed one (1) year of supervised experience acceptable to the board after achieving licensure status as a licensed psychologist.***
 - (b) ***Beginning July 1, 2013, the board shall after examination issue a license to practice psychology; the designation "Health Service Provider" shall be made on the license of those licensed psychologists who have completed one (1) additional year of supervised experience satisfactory to the board in health care service delivery. This year of supervised experience shall be in addition to the supervised experience requirement for licensure as a licensed psychologist. Health service providers may provide supervision of direct health care services by applicants for licensure, certified psychologists, and licensed psychological associates. Health service providers may supervise no more than a total of six (6) certified psychologists, licensed psychological associates, or applicants for licensure at one (1) time [who perform activities which include the delivery or supervision of direct health care services to individual or groups who are intended beneficiaries of such services and who have completed appropriate training and supervised experience, including an internship, in health service delivery at the doctoral level].***

➔Section 5. KRS 319.053 is amended to read as follows:

- (1) A person holding a credential as a certified psychologist or as a licensed psychological associate may apply for a license to perform certain functions within the practice of psychology without supervision and to use the title of "licensed psychological practitioner" when all of the following conditions are met:
 - (a) Submission of three (3) letters of endorsement to the board to sit for the examination;
 - 1. One (1) of the letters shall be from the applicant's current board-approved supervisor of record and shall include a statement describing the scope of practice demonstrated in the clinical experience of the applicant; and
 - 2. Two (2) letters shall be from licensed mental health professionals who are acceptable to the board and who are familiar with the clinical work of the applicant;
 - (b) Payment of a fee not to exceed two hundred dollars (\$200);
 - (c) Documentation of at least sixty (60) semester hours of graduate study in psychology or a related field or its equivalent acceptable to the board; and
 - (d) Completion, after credentialing by the board as a certified psychologist, psychological associate, or licensed psychological associate, of the equivalent of five (5) full-time years of professional experience under the supervision of a board-approved licensed psychologist.
- (2) An applicant for licensure under this section shall not have been subject to disciplinary action by the board. An applicant who has been the subject of disciplinary action may appeal to the board for an exception.
- (3) An applicant for licensure under this section shall be required by the board to pass the national objective examination known as the EPPP, with a score equal to or exceeding the score required for passage for a licensed psychologist candidate at the doctoral level at the time the examination is taken. The board shall accept the applicant's previous examination results for the objective EPPP examination if the original test score satisfied the licensure requirement at the doctoral level in effect at the time of that test administration. If the applicant's previous score does not meet this criterion, the applicant may retake the examination until the score obtained equals or exceeds the score required for independent practice at the doctoral level at the time the examination is taken.

- (4) The board shall require an applicant for licensure under this section to pass an ~~an oral~~ examination on psychological practice, ethical principles, and the law. The ~~oral~~ examination shall be conducted ***in accordance with procedures established in administrative regulations promulgated by the board in accordance with KRS Chapter 13A*** ~~by an examination team that is designated by the board and that consists of at least one (1) licensed psychologist and either one (1) certified psychologist with autonomous functioning or one (1) licensed psychological practitioner~~. The ~~oral~~ examination shall be evaluated using the same criteria as the ~~oral~~ examination for licensed psychologist candidates.
- (5) The applicant may continue to function under the supervision of a board-approved licensed psychologist until the applicant successfully completes the requirements for licensure as a licensed psychological practitioner.
- (6) The board shall grade and keep the examinations and results on file for one (1) year. Upon written request to the board, an applicant may arrange to discuss his or her performance on the examinations.
- (7) Upon successful completion of all requirements, the board shall issue to the applicant a license to perform certain functions within the practice of psychology without supervision and to use the title "licensed psychological practitioner."
- (8) The licensee under this section shall not supervise certified psychologists, licensed psychological practitioners, or licensed psychological associates.

Signed by Governor March 30, 2010.

CHAPTER 51

(SB 152)

AN ACT relating to business entities.

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

➔Section 1. KRS 271B.5-025 is repealed and reenacted to read as follows

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The mailing address of its principal office prior to the change; and
- (3) The new mailing address of its principal office.

➔Section 2. KRS 271B.12-030 is repealed and reenacted to read as follows:

A corporation may be converted to a limited liability company as provided in KRS 275.376.

➔Section 3. KRS 273.1842 is repealed and reenacted to read as follows:

A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:

- (1) The name of the corporation;
- (2) The mailing address of its principal office prior to the change; and
- (3) The new mailing address of its principal office.

➔Section 4. KRS 275.247 is repealed and reenacted to read as follows:

- (1) Except as may be otherwise provided in a written operating agreement, a limited liability company may sell, lease, exchange, or otherwise dispose of all or substantially all of its property with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by a majority-in-interest of the members.
- (2) Unless otherwise provided in the articles of organization or a written operating agreement, no member shall have the right to dissent from a sale, lease, exchange, or other disposition by a limited liability company of all or substantially all of its property outside the ordinary course of business.

➔Section 5. KRS 275.500 is repealed and reenacted to read as follows:

- (1) A limited liability company may acquire all or part of the outstanding shares of one (1) or more classes or series of a domestic or foreign corporation if the corporation, limited liability company, and a majority of their owners approve the exchange and, if the corporation is a foreign corporation, the share exchange is permitted under the laws of the state or country under which the foreign corporation is incorporated.
- (2) The plan of share exchange shall set forth:
 - (a) The name of the corporation whose shares will be acquired and the name of the acquiring limited liability company;
 - (b) The terms and conditions of the exchange; and
 - (c) The manner and basis of exchanging the shares to be acquired for limited liability company interests, obligations, or other securities of the acquiring limited liability company or for cash or other property, in whole or part.
- (3) The plan of share exchange may set forth other provisions relating to the exchange.
- (4) This section shall not limit the power of a limited liability company to acquire all or part of the shares of one (1) or more classes or series of a corporation through a voluntary exchange or otherwise.
- (5) Unless otherwise provided in the articles of organization, a written operating agreement, or a written plan of share exchange, no member of a limited liability company shall have the right to dissent from a share exchange.

➔Section 6. KRS 275.505 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement, the plan of share exchange described in KRS 275.500 shall be considered for adoption by the members of the limited liability company.
- (2) Each business entity that is a party to the share exchange shall approve the plan of share exchange in the manner and by the vote required by the laws applicable to the business entity.

➔Section 7. KRS 275.510 is repealed and reenacted to read as follows:

- (1) After a plan of share exchange has been approved in accordance with KRS 275.505, the acquiring limited liability company shall deliver to the Secretary of State, for filing, the articles of share exchange setting forth:
 - (a) The plan of share exchange; and
 - (b) A statement that the plan of share exchange was duly authorized and approved by each of the constituent business entities in accordance with the laws applicable to each business entity.
- (2) A share exchange shall take effect upon the effective date of the articles of share exchange.

➔Section 8. KRS 275.515 is repealed and reenacted to read as follows:

When a share exchange takes effect, the shares of each acquired corporation shall be exchanged as provided in the plan, and the former holders of the shares shall be entitled only to the exchange rights provided in the articles of share exchange.

➔Section 9. KRS 275.520 is repealed and reenacted to read as follows:

- (1) A nonprofit limited liability company shall not have or issue membership interests in the limited liability company, and no distribution shall be paid, and no part of the income or profit of the limited liability company shall be distributed to its members or managers.
- (2) A nonprofit limited liability company may pay compensation in a reasonable amount to its members or managers for services rendered and may confer benefits upon its members in conformity with its purposes, and these payments or benefits shall not be deemed to be a distribution of income or profit.

➔Section 10. KRS 275.525 is repealed and reenacted to read as follows:

No loan shall be made by a nonprofit limited liability company to its members or managers, and any member or manager who assents to or participates in the making of a loan violating this prohibition shall be liable to the limited liability company for the amount of the loan until its repayment.

➔Section 11. KRS 275.530 is repealed and reenacted to read as follows:

The assets of a nonprofit limited liability company in the process of dissolution shall be applied and distributed as follows:

- (1) All liabilities and obligations of the nonprofit limited liability company shall be paid and discharged or adequate provisions made for them;
- (2) Assets received and held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred, or conveyed in accordance with the condition's requirements;
- (3) Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit corporations, limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving nonprofit limited liability company, pursuant to a plan of distribution; and
- (4) Any remaining assets may be distributed to those nonprofit corporations, limited liability companies, societies, or organizations as may be specified in a plan of dissolution, including those that are members of the nonprofit limited liability companies.

➔Section 12. KRS 275.535 is repealed and reenacted to read as follows:

- (1) In proceedings to liquidate the assets and affairs of a nonprofit limited liability company, the court shall have the power to issue injunctions and to appoint a receiver or receivers while the action is pending. The receivers shall have those powers and duties as the court from time to time may direct, to take action to preserve the corporate assets wherever situated, and to carry on the affairs of the nonprofit limited liability company until a full hearing can be held.
- (2) After holding a hearing, upon notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the nonprofit limited liability company. The liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey, and dispose of all or any part of the assets of the nonprofit limited liability company wherever situated, either at public or private sale. The order appointing the liquidating receiver or receivers shall state their powers and duties. The powers and duties may be increased or diminished at any time during the proceedings.
- (3) The assets of the nonprofit limited liability company or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:
 - (a) All costs and expenses of the court proceedings and all liabilities and obligations of the nonprofit limited liability company shall be paid, satisfied, and discharged, or adequate provision for them shall be made;
 - (b) Assets held by the nonprofit limited liability company upon condition requiring return, transfer, or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred, or conveyed in accordance with the condition's requirements;
 - (c) Assets received and held by the nonprofit limited liability company subject to limitations permitting their use only for a nonprofit purpose, but not held upon a condition requiring return, transfer, or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one (1) or more domestic or foreign nonprofit limited liability companies, societies, or organizations engaged in activities substantially similar to those of the dissolving or liquidating nonprofit limited liability company, as the court may direct; and
 - (d) Any remaining assets may be distributed to those persons, societies, organizations, or domestic or foreign limited liability companies, whether for profit or nonprofit, specified in the plan of distribution adopted or, if no plan of distribution has been adopted, as the court may direct.
- (4) The court shall have power to allow, from time to time, as expenses of the liquidation, compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the nonprofit limited liability company or the proceeds of any sale or disposition of the assets.
- (5) A receiver of a nonprofit limited liability company appointed under the provisions of this section shall have authority to sue and defend in all courts in the receiver's own name as receiver of the nonprofit limited liability

company. The court appointing the receiver shall have exclusive jurisdiction of the nonprofit limited liability company and its property, wherever situated.

➔Section 13. KRS 275.540 is repealed and reenacted to read as follows:

A nonprofit limited liability company may be involuntarily dissolved by a decree of the Circuit Court in an action filed by the Attorney General when it is established that:

- (1) The nonprofit limited liability company is guilty of abuse or misuse of its powers, privileges, or franchises, or the nonprofit limited liability company has become detrimental to the interest and welfare of this Commonwealth or its citizens; or
- (2) The nonprofit limited liability company procured its articles of organization through fraud.

➔Section 14. KRS 275.454 is repealed and reenacted to read as follows:

Any action brought by the Attorney General for the involuntary dissolution of a nonprofit limited liability company may be commenced in Franklin Circuit Court or in the Circuit Court of the county in which the registered office of the nonprofit limited liability company is situated.

➔Section 15. KRS 275.177 is repealed and reenacted to read as follows:

If a written operating agreement contains a provision to the effect that any amendment to the operating agreement of the limited liability company shall be in writing and adopted in accordance with the provisions of the operating agreement, then the provision shall be enforceable in accordance with its terms, and any agreement as to the conduct of the business and affairs of the limited liability company which is not in writing and adopted in accordance with the provisions of the operating agreement shall not be considered part of the operating agreement and shall be void and unenforceable.

➔Section 16. KRS 275.376 is repealed and reenacted to read as follows:

- (1) A corporation may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of the conversion of a corporation to a limited liability company shall be set forth in a written plan of conversion and approved by the board of directors and by the shareholders of the corporation.
- (3) The plan of conversion shall set forth:
 - (a) The name of the corporation planning to convert;
 - (b) The terms and conditions of the conversion, including the articles of organization and the written operating agreement, if any, of the limited liability company into which the corporation will convert; and
 - (c) The manner and basis of converting the shares of the corporation into membership interests, obligations, or other securities of the limited liability company or into cash or other property in whole or part.
- (4) The plan of conversion may set forth any other provision relating to the conversion.
- (5) For a plan of conversion to be approved:
 - (a) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with a plan; and
 - (b) The shareholders entitled to vote shall approve the plan.
- (6) The board of directors may condition its submission of the proposed conversion on any basis.
- (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy or summary of the plan.
- (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors acting pursuant to subsection (6) of this section, require a greater vote or vote by voting groups, the plan of conversion to be authorized shall

be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.

- (9) Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040.
- (10) After a conversion is authorized, and at any time before articles of organization are filed, the planned conversion may be abandoned subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.
- (11) After the conversion is approved, the corporation shall file articles of organization with the office of the Secretary of State that satisfy the requirements of KRS 275.025 and also include:
 - (a) A statement that the corporation was converted to a limited liability company;
 - (b) Its former name;
 - (c) A statement that any assumed name held by the corporation has been canceled; and
 - (d) The designation, number of outstanding shares, and number of votes to be cast by each voting group entitled to vote separately on the plan of conversion and either the total number of undisputed votes cast for the plan separately by each voting group or a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (12) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, subject to KRS 275.060, at a later date specified in the articles of organization.

➔Section 17. KRS 275.377 is repealed and reenacted to read as follows:

- (1) A corporation that has been converted pursuant to this chapter shall be for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of the converting corporation shall remain vested in the converted limited liability company without assignment, reversion, or impairment;
 - (b) All obligations of the converting corporation shall continue as obligations of the converted limited liability company;
 - (c) An action or proceeding pending against the converting corporation may be continued as if the conversion had not occurred, and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting corporation; and
 - (d) The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.

➔Section 18. KRS 275.372 is repealed and reenacted to read as follows:

- (1) A limited liability company may convert into a limited partnership as provided in KRS 362.2-1102(4).
- (2) The terms and conditions of the conversion of a limited liability company into a limited partnership shall be approved by all of the members notwithstanding any provision to the contrary in the operating agreement.

➔Section 19. KRS 386.382 is repealed and reenacted to read as follows:

- (1) Except as authorized by subsections (2) and (3) of this section, the name of a business trust or foreign business trust qualified to transact business in this Commonwealth shall be distinguishable from any name of record with the Secretary of State.
- (2) A business trust or foreign business trust may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:

- (a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (3) A business trust or foreign business trust may use the name, including the fictitious name, of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth, and the business trust or foreign business trust:
- (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the other business entity; or
 - (c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- (4) This chapter shall not control the use of assumed names.
- (5) The filing of a declaration of trust or an application to transact authority in the Commonwealth under the particular name of a business trust or foreign business trust shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 20. KRS 386.384 is repealed and reenacted to read as follows:

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

➔Section 21. KRS 386.386 is repealed and reenacted to read as follows:

- (1) A business trust, or a foreign business trust authorized to transact business in the Commonwealth, may change its registered office or registered agent, or both, upon filing in the office of the Secretary of State a statement of change on a form supplied by the Secretary of State that sets forth:
- (a) The name of the business trust or foreign business trust;
 - (b) The street address of its current registered office;
 - (c) If the current registered office is to be changed, the street address of the new registered office;
 - (d) The name of its current registered agent;
 - (e) If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent; and
 - (f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

- (2) If a registered agent changes the street address of the registered agent's business office to another place within this Commonwealth, the registered agent shall change the street address of the registered office of any business trust or foreign business trust of which the registered agent is a registered agent by notifying the business trust or foreign business trust in writing of the change, and delivering to the Secretary of State, for filing, a statement that complies with the requirements of subsection (1) of this section and recites that the business trust or foreign business trust has been notified of the change.
- (3) The change of address of the registered office or registered agent shall be effective on delivery of the statement to the Secretary of State. The appointment of a new registered agent shall be effective on delivery of the statement to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted appointment pursuant to KRS 386.384.

➔Section 22. KRS 386.388 is repealed and reenacted to read as follows:

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

➔Section 23. KRS 386.441 is repealed and reenacted to read as follows:

- (1) A domestic or foreign business trust's registered agent shall be the business trust's agent for service of process, notice, or demand required or permitted by law to be served on the business trust.
- (2) If a domestic or foreign business trust has no registered agent in this Commonwealth, or the registered agent cannot with reasonable diligence be served, the business trust may be served by registered or certified mail, return receipt requested, addressed to the business trust at its principal office. Service shall be perfected under this subsection at the earliest of:
 - (a) The date the business trust receives the mail;
 - (b) The date shown on the return receipt, if signed on behalf of the business trust; or
 - (c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (3) This section shall not prescribe the only means, or necessarily the required means, of serving a domestic or foreign business trust.

➔Section 24. KRS 386.392 is repealed and reenacted to read as follows:

- (1) Each domestic business trust, and each foreign business trust authorized to transact business in this Commonwealth, shall deliver to the Secretary of State, for filing, an annual report that sets forth:
 - (a) The name of the business trust and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its trustees.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the business trust.
- (3) With respect to a business trust organized or a foreign business trust first qualifying to transact business on or after June 26, 2007, the first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic business trust was organized or a foreign business trust was authorized to transact business. A business trust organized or a foreign business trust qualified to transact business on or before June 26, 2007, shall file its first annual report between January 1 and June 30, 2008. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.

- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign business trust in writing and return the report to it for correction.
- (5) A domestic or foreign business trust may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.
- (6) The filing fee for an annual report or an amended annual report is fifteen dollars (\$15).

➔Section 25. KRS 386.432 is repealed and reenacted to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a business trust if:
 - (a) The business trust does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The business trust is without a registered agent or registered office in Kentucky for at least sixty (60) days; or
 - (c) The business trust does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued.
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a business trust, the Secretary of State shall serve the business trust with written notice of the determination.
 - (b) If the business trust does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the business trust by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the business trust by mailing the notice by first class mail to the business trust at its registered office.
- (3)
 - (a) A business trust administratively dissolved under subsection (2) of this section may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 - 1. State the name of the business trust and the effective date of its administrative dissolution;
 - 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 - 3. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the business trust have been paid; and
 - 4. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report.
 - (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
 - 1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 - 2. Serve a copy on the business trust.
 - (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the business trust shall resume carrying on business as if the administrative dissolution had never occurred.
- (4)
 - (a) If the Secretary of State denies a business trust's application for reinstatement following administrative dissolution, the Secretary of State shall serve the business trust with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the business trust at its registered office or, if none, to the last principal office identified on the most recent annual report.

- (b) The business trust may appeal the denial of reinstatement to the Circuit Court of the county where the business trust's principal office, or, if there is none in Kentucky, its registered office in Kentucky, is located within thirty (30) days after service of the notice of denial by doing the following:
 - 1. Filing a petition with the court to set aside the dissolution; and
 - 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the business trust's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

➔Section 26. KRS 386.4420 is repealed and reenacted to read as follows:

- (1) Subject to the Constitution of this Commonwealth:
 - (a) Except as provided in subsection (2) of this section, the laws of the state or other jurisdiction under which a foreign business trust is organized shall govern its organization and internal affairs, including the liability of its trustees and beneficial owners for the debts and obligations of the business trust and the inspection by a trustee or a beneficial owner of the books and records of the business trust; and
 - (b) A foreign business trust shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign business trust is organized and the laws of this Commonwealth.
- (2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign business trust to exercise any powers or engage in any business that a domestic business trust is forbidden to exercise or engage in by the laws of this Commonwealth.

➔Section 27. KRS 386.4422 is repealed and reenacted to read as follows:

- (1) A foreign business trust shall not transact business in this Commonwealth until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any action, suit, or proceeding;
 - (b) Holding meetings of its members or managers or carrying on other activities concerning its internal affairs;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the business trust's securities, or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail, through employees or agents, or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; or
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section shall not be considered exhaustive. This section shall not apply in determining the contracts or activities that may subject a foreign business trust to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

- (4) The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 28. KRS 386.4424 is repealed and reenacted to read as follows:

- (1) A foreign business trust transacting business in this Commonwealth without a certificate of authority shall not maintain an action, suit, or proceeding in any court in this Commonwealth until it obtains a certificate of authority.
- (2) The successor to a business trust that transacted business in this Commonwealth without a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign business trust or its successor obtains a certificate of authority.
- (3) A court may stay a proceeding commenced by a foreign business trust, its successor, or assignee, until it determines whether the foreign business trust or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the business trust or its successor obtains the certificate of authority.
- (4) A foreign business trust shall be liable for a civil penalty of two dollars (\$2) for each day, but not to exceed a total of five hundred dollars (\$500) for each year, it transacts business in this Commonwealth without a certificate of authority. The Attorney General may collect all penalties due under this subsection.
- (5) Notwithstanding subsections (1) and (2) of this section, the failure of a foreign business trust to obtain a certificate of authority shall not impair the validity of any contract or act of the foreign business trust or prevent it from defending any proceeding in this Commonwealth.

➔Section 29. KRS 386.4426 is repealed and reenacted to read as follows:

- (1) A foreign business trust may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign business trust, or if its name is unavailable for use in this Commonwealth, a name that satisfies the requirements of KRS 386.382;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the business trust has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign business trust;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current trustees; and
 - (g) A statement that, as of the date of filing, the foreign business trust validly exists as a business trust under the laws of the jurisdiction of its organization.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the application for a certificate of authority.

➔Section 30. KRS 386.4428 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:
 - (a) Its name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.

- (2) The requirements of KRS 386.4426 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

➔Section 31. KRS 386.4430 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign business trust to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.
- (2) A foreign business trust with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic business trust.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs of a foreign business trust authorized to transact business in this Commonwealth.

➔Section 32. KRS 386.4432 is repealed and reenacted to read as follows:

- (1) If the name of a foreign business trust does not satisfy the requirements of KRS 386.382, the foreign business trust, to obtain or maintain a certificate of authority to transact business in this Commonwealth, may use a fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a trustee that the business trust has adopted the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign business trust shall be distinguishable from the name of any other business entity upon the records of the Secretary of State.
- (3) A foreign business trust may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable upon the Secretary's records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
- (a) The business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying business trust; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A foreign business trust may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign business trust:
- (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the business entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other business entity.
- (5) If a foreign business trust authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under KRS 386.4428.

➔Section 33. KRS 386.4434 is repealed and reenacted to read as follows:

Each foreign business trust authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

- (1) A registered office that may be the same as any of its places of business; and
- (2) A registered agent, who may be:
- (a) An individual who resides in this Commonwealth and whose business office is identical with the registered office;

- (b) A domestic corporation, not-for-profit corporation, or limited liability company whose business office is identical with the registered office; or
 - (c) A foreign corporation, not-for-profit corporation, or limited liability company authorized to transact business in this Commonwealth whose business office is identical with the registered office.
- (3) The registered agent shall execute and deliver to the Secretary of State a document accepting the agency appointment, and the appointment of the agent shall not be effective until delivered to the Secretary of State.

➔Section 34. KRS 386.4436 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth may change its registered office or registered agent by delivering to the Secretary of State for filing a statement of change that sets forth:
- (a) Its name;
 - (b) The street address of its current registered office;
 - (c) If the current registered office is to be changed, the street address of its new registered office;
 - (d) The name of its current registered agent;
 - (e) If the current registered agent is to be changed, the name of its new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and
 - (f) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.
- (2) If a registered agent changes the street address of its business office, the agent shall change the street address of the registered office of any foreign business trust for which the agent is the registered agent by notifying the business trust in writing of the change and signing, either manually or in facsimile, and delivering to the Secretary of State for filing a statement of change that complies with the requirements of subsection (1) of this section and recites that the business trust has been notified of the change.

➔Section 35. KRS 386.4438 is repealed and reenacted to read as follows:

- (1) The registered agent of a foreign business trust may resign its agency appointment by signing and delivering to the Secretary of State, for filing, the original and two (2) exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.
- (2) After filing the statement, the Secretary of State shall attach the filing receipt to one (1) copy and mail the copy and receipt to the registered office, if not discontinued. The Secretary of State shall mail the other copy to the foreign business trust at its principal office address shown in its most recent annual report.
- (3) The agency appointment shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. A foreign business trust that fails to maintain a registered agent in this Commonwealth shall be subject to revocation of its certificate of authority under KRS 386.4444.

➔Section 36. KRS 386.4440 is repealed and reenacted to read as follows:

- (1) The registered agent of a foreign business trust authorized to transact business in this Commonwealth shall be the company's agent for service of process, notice, or demand required or permitted by law to be served on the foreign business trust.
- (2) A foreign business trust may be served by registered or certified mail, return receipt requested, addressed to the appropriate representative of the foreign business trust at its principal office shown in its application for a certificate of authority or in its most recent annual report, if the foreign business trust:
- (a) Has no registered agent or its registered agent cannot with reasonable diligence be served;
 - (b) Has withdrawn from transacting business in this Commonwealth under KRS 386.4442; or
 - (c) Has had its certificate of authority revoked under KRS 386.4446.
- (3) Service is perfected under subsection (2) of this section at the earliest of:
- (a) The date the foreign business trust receives service by mail;

- (b) The date shown on the return receipt, if signed on behalf of the foreign business trust; or
 - (c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.
- (4) This section shall not prescribe the only means, or necessarily the required means, of serving a foreign business trust.

➔Section 37. KRS 386.4442 is repealed and reenacted to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth shall not withdraw from this Commonwealth until it obtains a certificate of withdrawal from the Secretary of State.
- (2) A foreign business trust authorized to transact business in this Commonwealth may apply for a certificate of withdrawal by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign business trust and the name of the state or country under whose law it is organized;
 - (b) A statement that it is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth;
 - (c) A statement that it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this Commonwealth;
 - (d) A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under subsection (2)(c) or (3) of this section; and
 - (e) A commitment to notify the Secretary of State in the future of any change in its mailing address.
- (3) After the withdrawal of the business trust is effective, service of process on the Secretary of State under this section shall be service on the foreign business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign business trust at the mailing address set forth under subsection (2) of this section.

➔Section 38. KRS 386.4444 is repealed and reenacted to read as follows:

The Secretary of State may commence a proceeding under KRS 386.4446 to revoke the certificate of authority of a foreign business trust authorized to transact business in this Commonwealth if:

- (1) The foreign business trust does not file its annual report to the Secretary of State within sixty (60) days after it is due;
- (2) The foreign business trust is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign business trust does not inform the Secretary of State under KRS 386.4434 and 386.4436 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;
- (4) A trustee of the business trust or person organizing the foreign business trust signed a document the trustee or person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of business trust records in the state or country under whose law the foreign business trust is organized stating that it has been dissolved or disappeared as the result of a merger or other event.

➔Section 39. KRS 386.4446 is repealed and reenacted to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 386.4444 for revocation of a certificate of authority, the Secretary of State shall serve the foreign business trust with written notice of its determination by mailing the notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.
- (2) If the foreign business trust does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist

within sixty (60) days after the mailing of the notice, the Secretary of State shall revoke the foreign business trust's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy to the foreign business trust by mailing notice by first-class mail to the foreign business trust at its principal place of business address as shown on the records of the Secretary of State.

- (3) The authority of a foreign business trust to transact business in this Commonwealth shall cease on the date shown on the certificate of revocation.
- (4) The Secretary of State's revocation of a foreign business trust's certificate of authority shall have the effect of appointing the Secretary of State as the foreign business trust's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign business trust was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign business trust. Upon receipt of process, the Secretary of State shall mail a copy of the process to the appropriate representative of the foreign business trust at its principal office as shown in its most recent annual report or in any subsequent communication received from the foreign business trust stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.
- (5) Revocation of a foreign business trust's certificate of authority shall not terminate the authority of the registered agent of the foreign business trust.

➔Section 40. KRS 386.4448 is repealed and reenacted to read as follows:

- (1) A foreign business trust may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after the service of certificate of revocation. The foreign business trust may petition the court to set aside the revocation by attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.
- (2) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (3) The court's final decision may be appealed as in other civil proceedings.

➔Section 41. KRS 14.105 is repealed and reenacted to read as follows:

- (1) The Secretary of State may accept electronic signatures to meet the filing requirements for a:
 - (a) Corporation as required in KRS Chapter 271B;
 - (b) Nonprofit corporation as required in KRS Chapter 273;
 - (c) Professional service corporation as required in KRS Chapter 274;
 - (d) Limited liability company as required in KRS Chapter 275;
 - (e) Partnership as required in KRS Chapter 362;
 - (f) Partnership as required in Subchapter 1 of KRS Chapter 362;
 - (g) Limited partnership as required in Subchapter 2 of KRS Chapter 362;
 - (h) Cooperative corporations and associations as required in KRS Chapter 272;
 - (i) Business trust as required in KRS Chapter 386;
 - (j) Rural electric and rural telephone cooperative corporation as required in KRS Chapter 279; and
 - (k) Assumed name filing under KRS Chapter 365.
- (2) The electronic signature shall satisfy the requirements set forth in KRS 369.101 to 369.120.

➔Section 42. KRS 141.010 is repealed and reenacted to read as follows:

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

- (1) "Commissioner" means the commissioner of the Department of Revenue;
- (2) "Department" means the Department of Revenue;

- (3) "Internal Revenue Code" means the Internal Revenue Code in effect on December 31, 2006, exclusive of any amendments made subsequent to that date, other than amendments that extend provisions in effect on December 31, 2006, that would otherwise terminate, and as modified by KRS 141.0101, except that for property placed in service after September 10, 2001, only the depreciation and expense deductions allowed under Sections 168 and 179 of the Internal Revenue Code in effect on December 31, 2001, exclusive of any amendments made subsequent to that date, shall be allowed, and including the provisions of the Military Family Tax Relief Act of 2003, Pub. L. No. 108-121, effective on the dates specified in that Act;
- (4) "Dependent" means those persons defined as dependents in the Internal Revenue Code;
- (5) "Fiduciary" means "fiduciary" as defined in Section 7701(a)(6) of the Internal Revenue Code;
- (6) "Fiscal year" means "fiscal year" as defined in Section 7701(a)(24) of the Internal Revenue Code;
- (7) "Individual" means a natural person;
- (8) "Modified gross income" means the greater of:
 - (a) Adjusted gross income as defined in Section 62 of the Internal Revenue Code of 1986, including any subsequent amendments in effect on December 31 of the taxable year, and adjusted as follows:
 - 1. Include interest income derived from obligations of sister states and political subdivisions thereof; and
 - 2. Include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2); or
 - (b) Adjusted gross income as defined in subsection (10) of this section and adjusted to include lump-sum pension distributions taxed under the special transition rules of Pub. L. No. 104-188, sec. 1401(c)(2);
- (9) "Gross income," in the case of taxpayers other than corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code;
- (10) "Adjusted gross income," in the case of taxpayers other than corporations, means gross income as defined in subsection (9) of this section minus the deductions allowed individuals by Section 62 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter, and except that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
 - (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States and Kentucky;
 - (b) Exclude income from supplemental annuities provided by the Railroad Retirement Act of 1937 as amended and which are subject to federal income tax by Public Law 89-699;
 - (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude employee pension contributions picked up as provided for in KRS 6.505, 16.545, 21.360, 61.560, 65.155, 67A.320, 67A.510, 78.610, and 161.540 upon a ruling by the Internal Revenue Service or the federal courts that these contributions shall not be included as gross income until such time as the contributions are distributed or made available to the employee;
 - (e) Exclude Social Security and railroad retirement benefits subject to federal income tax;
 - (f) Include, for taxable years ending before January 1, 1991, all overpayments of federal income tax refunded or credited for taxable years;
 - (g) Deduct, for taxable years ending before January 1, 1991, federal income tax paid for taxable years ending before January 1, 1990;
 - (h) Exclude any money received because of a settlement or judgment in a lawsuit brought against a manufacturer or distributor of "Agent Orange" for damages resulting from exposure to Agent Orange by a member or veteran of the Armed Forces of the United States or any dependent of such person who served in Vietnam;
 - (i)
 - 1. For taxable years ending prior to December 31, 2005, exclude the applicable amount of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.

The "applicable amount" shall be:

- a. Twenty-five percent (25%), but not more than six thousand two hundred fifty dollars (\$6,250), for taxable years beginning after December 31, 1994, and before January 1, 1996;
 - b. Fifty percent (50%), but not more than twelve thousand five hundred dollars (\$12,500), for taxable years beginning after December 31, 1995, and before January 1, 1997;
 - c. Seventy-five percent (75%), but not more than eighteen thousand seven hundred fifty dollars (\$18,750), for taxable years beginning after December 31, 1996, and before January 1, 1998; and
 - d. One hundred percent (100%), but not more than thirty-five thousand dollars (\$35,000), for taxable years beginning after December 31, 1997.
2. For taxable years beginning after December 31, 2005, exclude up to forty-one thousand one hundred ten dollars (\$41,110) of total distributions from pension plans, annuity contracts, profit-sharing plans, retirement plans, or employee savings plans.
 3. As used in this paragraph:
 - a. "Distributions" includes but is not limited to any lump-sum distribution from pension or profit-sharing plans qualifying for the income tax averaging provisions of Section 402 of the Internal Revenue Code; any distribution from an individual retirement account as defined in Section 408 of the Internal Revenue Code; and any disability pension distribution;
 - b. "Annuity contract" has the same meaning as set forth in Section 1035 of the Internal Revenue Code; and
 - c. "Pension plans, profit-sharing plans, retirement plans, or employee savings plans" means any trust or other entity created or organized under a written retirement plan and forming part of a stock bonus, pension, or profit-sharing plan of a public or private employer for the exclusive benefit of employees or their beneficiaries and includes plans qualified or unqualified under Section 401 of the Internal Revenue Code and individual retirement accounts as defined in Section 408 of the Internal Revenue Code;
- (j)
 1.
 - a. Exclude the portion of the distributive share of a shareholder's net income from an S corporation subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300; and
 - b. Exclude the portion of the distributive share of a shareholder's net income from an S corporation related to a qualified subchapter S subsidiary subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300.
 2. The shareholder's basis of stock held in a S corporation where the S corporation or its qualified subchapter S subsidiary is subject to the franchise tax imposed under KRS 136.505 or the capital stock tax imposed under KRS 136.300 shall be the same as the basis for federal income tax purposes;
 - (k) Exclude for taxable years beginning after December 31, 1998, to the extent not already excluded from gross income, any amounts paid for health insurance, or the value of any voucher or similar instrument used to provide health insurance, which constitutes medical care coverage for the taxpayer, the taxpayer's spouse, and dependents during the taxable year. Any amounts paid by the taxpayer for health insurance that are excluded pursuant to this paragraph shall not be allowed as a deduction in computing the taxpayer's net income under subsection (11) of this section;
 - (l) Exclude income received for services performed as a precinct worker for election training or for working at election booths in state, county, and local primary, regular, or special elections;
 - (m) Exclude any amount paid during the taxable year for insurance for long-term care as defined in KRS 304.14-600;
 - (n) Exclude any capital gains income attributable to property taken by eminent domain;

- (o) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
 - (p) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (q) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (r) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (s) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
 - (t) Exclude all income from all sources for active duty and reserve members and officers of the Armed Forces of the United States or National Guard who are killed in the line of duty, for the year during which the death occurred and the year prior to the year during which the death occurred. For the purposes of this paragraph, "all income from all sources" shall include all federal and state death benefits payable to the estate or any beneficiaries; and
 - (u) For taxable years beginning on or after January 1, 2010, exclude all military pay received by active duty members of the Armed Forces of the United States, members of reserve components of the Armed Forces of the United States, and members of the National Guard, including compensation for state active duty as described in KRS 38.205;
- (11) "Net income," in the case of taxpayers other than corporations, means adjusted gross income as defined in subsection (10) of this section, minus the standard deduction allowed by KRS 141.081, or, at the option of the taxpayer, minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions allowed individuals by Chapter 1 of the Internal Revenue Code as modified by KRS 141.0101 except those listed below, except that deductions shall be limited to amounts allocable to income subject to taxation under the provisions of this chapter and that nothing in this chapter shall be construed to permit the same item to be deducted more than once:
- (a) Any deduction allowed by the Internal Revenue Code for state or foreign taxes measured by gross or net income, including state and local general sales taxes allowed in lieu of state and local income taxes under the provisions of Section 164(b)(5) of the Internal Revenue Code;
 - (b) Any deduction allowed by the Internal Revenue Code for amounts allowable under KRS 140.090(1)(h) in calculating the value of the distributive shares of the estate of a decedent, unless there is filed with the income return a statement that such deduction has not been claimed under KRS 140.090(1)(h);
 - (c) The deduction for personal exemptions allowed under Section 151 of the Internal Revenue Code and any other deductions in lieu thereof; and
 - (d) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;
- (12) "Gross income," in the case of corporations, means "gross income" as defined in Section 61 of the Internal Revenue Code and as modified by KRS 141.0101 and adjusted as follows:
- (a) Exclude income that is exempt from state taxation by the Kentucky Constitution and the Constitution and statutory laws of the United States;
 - (b) Exclude all dividend income received after December 31, 1969;

- (c) Include interest income derived from obligations of sister states and political subdivisions thereof;
 - (d) Exclude fifty percent (50%) of gross income derived from any disposal of coal covered by Section 631(c) of the Internal Revenue Code if the corporation does not claim any deduction for percentage depletion, or for expenditures attributable to the making and administering of the contract under which such disposition occurs or to the preservation of the economic interests retained under such contract;
 - (e) Include in the gross income of lessors income tax payments made by lessees to lessors, under the provisions of Section 110 of the Internal Revenue Code, and exclude such payments from the gross income of lessees;
 - (f) Include the amount calculated under KRS 141.205;
 - (g) Ignore the provisions of Section 281 of the Internal Revenue Code in computing gross income;
 - (h) Exclude income from "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - (i) Exclude any amount received by a producer of tobacco or a tobacco quota owner from the multistate settlement with the tobacco industry, known as the Master Settlement Agreement, signed on November 22, 1998;
 - (j) Exclude any amount received from the secondary settlement fund, referred to as "Phase II," established by tobacco companies to compensate tobacco farmers and quota owners for anticipated financial losses caused by the national tobacco settlement;
 - (k) Exclude any amount received from funds of the Commodity Credit Corporation for the Tobacco Loss Assistance Program as a result of a reduction in the quantity of tobacco quota allotted;
 - (l) Exclude any amount received as a result of a tobacco quota buydown program that all quota owners and growers are eligible to participate in;
 - (m) For taxable years beginning after December 31, 2004, and before January 1, 2007, exclude the distributive share income or loss received from a corporation defined in subsection (24)(b) of this section whose income has been subject to the tax imposed by KRS 141.040. The exclusion provided in this paragraph shall also apply to a taxable year that begins prior to January 1, 2005, if the tax imposed by KRS 141.040 is paid on the distributive share income by a corporation defined in subparagraphs 2. to 8. of subsection (24)(b) of this section with a return filed for a period of less than twelve (12) months that begins on or after January 1, 2005, and ends on or before December 31, 2005. This paragraph shall not be used to delay payment of the tax imposed by KRS 141.040; and
 - (n) Exclude state Phase II payments received by a producer of tobacco or a tobacco quota owner;
- (13) "Net income," in the case of corporations, means "gross income" as defined in subsection (12) of this section minus the deduction allowed by KRS 141.0202, minus any amount paid for vouchers or similar instruments that provide health insurance coverage to employees or their families, and minus all the deductions from gross income allowed corporations by Chapter 1 of the Internal Revenue Code and as modified by KRS 141.0101, except the following:
- (a) Any deduction for a state tax which is computed, in whole or in part, by reference to gross or net income and which is paid or accrued to any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or to any foreign country or political subdivision thereof;
 - (b) The deductions contained in Sections 243, 244, 245, and 247 of the Internal Revenue Code;
 - (c) The provisions of Section 281 of the Internal Revenue Code shall be ignored in computing net income;
 - (d) Any deduction directly or indirectly allocable to income which is either exempt from taxation or otherwise not taxed under the provisions of this chapter, and nothing in this chapter shall be construed to permit the same item to be deducted more than once;
 - (e) Exclude expenses related to "safe harbor leases" (Section 168(f)(8) of the Internal Revenue Code);
 - (f) Any deduction for amounts paid to any club, organization, or establishment which has been determined by the courts or an agency established by the General Assembly and charged with enforcing the civil rights laws of the Commonwealth, not to afford full and equal membership and full and equal enjoyment

of its goods, services, facilities, privileges, advantages, or accommodations to any person because of race, color, religion, national origin, or sex, except nothing shall be construed to deny a deduction for amounts paid to any religious or denominational club, group, or establishment or any organization operated solely for charitable or educational purposes which restricts membership to persons of the same religion or denomination in order to promote the religious principles for which it is established and maintained;

- (g) Any deduction prohibited by KRS 141.205; and
- (h) Any dividends-paid deduction of any captive real estate investment trust;
- (14) (a) "Taxable net income," in the case of corporations that are taxable in this state, means "net income" as defined in subsection (13) of this section;
- (b) "Taxable net income," in the case of corporations that are taxable in this state and taxable in another state, means "net income" as defined in subsection (13) of this section and as allocated and apportioned under KRS 141.120. A corporation is taxable in another state if, in any state other than Kentucky, the corporation is required to file a return for or pay a net income tax, franchise tax measured by net income, franchise tax for the privilege of doing business, or corporate stock tax;
- (c) "Taxable net income," in the case of homeowners' associations as defined in Section 528(c) of the Internal Revenue Code, means "taxable income" as defined in Section 528(d) of the Internal Revenue Code. Notwithstanding the provisions of subsection (3) of this section, the Internal Revenue Code sections referred to in this paragraph shall be those code sections in effect for the applicable tax year; and
- (d) "Taxable net income," in the case of a corporation that meets the requirements established under Section 856 of the Internal Revenue Code to be a real estate investment trust, means "real estate investment trust taxable income" as defined in Section 857(b)(2) of the Internal Revenue Code, except that a captive real estate investment trust shall not be allowed any deduction for dividends paid;
- (15) "Person" means "person" as defined in Section 7701(a)(1) of the Internal Revenue Code;
- (16) "Taxable year" means the calendar year or fiscal year ending during such calendar year, upon the basis of which net income is computed, and in the case of a return made for a fractional part of a year under the provisions of this chapter or under regulations prescribed by the commissioner, "taxable year" means the period for which the return is made;
- (17) "Resident" means an individual domiciled within this state or an individual who is not domiciled in this state, but maintains a place of abode in this state and spends in the aggregate more than one hundred eighty-three (183) days of the taxable year in this state;
- (18) "Nonresident" means any individual not a resident of this state;
- (19) "Employer" means "employer" as defined in Section 3401(d) of the Internal Revenue Code;
- (20) "Employee" means "employee" as defined in Section 3401(c) of the Internal Revenue Code;
- (21) "Number of withholding exemptions claimed" means the number of withholding exemptions claimed in a withholding exemption certificate in effect under KRS 141.325, except that if no such certificate is in effect, the number of withholding exemptions claimed shall be considered to be zero;
- (22) "Wages" means "wages" as defined in Section 3401(a) of the Internal Revenue Code and includes other income subject to withholding as provided in Section 3401(f) and Section 3402(k), (o), (p), (q), and (s) of the Internal Revenue Code;
- (23) "Payroll period" means "payroll period" as defined in Section 3401(b) of the Internal Revenue Code;
- (24) (a) For taxable years beginning before January 1, 2005, and after December 31, 2006, "corporation" means "corporation" as defined in Section 7701(a)(3) of the Internal Revenue Code; and
- (b) For taxable years beginning after December 31, 2004, and before January 1, 2007, "corporations" means:
 - 1. "Corporations" as defined in Section 7701(a)(3) of the Internal Revenue Code;
 - 2. S corporations as defined in Section 1361(a) of the Internal Revenue Code;

3. A foreign limited liability company as defined in KRS 275.015;
4. A limited liability company as defined in KRS 275.015;
5. A professional limited liability company as defined in KRS 275.015;
6. A foreign limited partnership as defined in KRS 362.2-102(9);
7. A limited partnership as defined in KRS 362.2-102(14);
8. A limited liability partnership as defined in KRS 362.155(7) or in 362.1-101(7) or (8);
9. A real estate investment trust as defined in Section 856 of the Internal Revenue Code;
10. A regulated investment company as defined in Section 851 of the Internal Revenue Code;
11. A real estate mortgage investment conduit as defined in Section 860D of the Internal Revenue Code;
12. A financial asset securitization investment trust as defined in Section 860L of the Internal Revenue Code; and
13. Other similar entities created with limited liability for their partners, members, or shareholders.

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

(25) "Doing business in this state" includes but is not limited to:

- (a) Being organized under the laws of this state;
- (b) Having a commercial domicile in this state;
- (c) Owning or leasing property in this state;
- (d) Having one (1) or more individuals performing services in this state;
- (e) Maintaining an interest in a pass-through entity doing business in this state;
- (f) Deriving income from or attributable to sources within this state, including deriving income directly or indirectly from a trust doing business in this state, or deriving income directly or indirectly from a single-member limited liability company that is doing business in this state and is disregarded as an entity separate from its single member for federal income tax purposes; or
- (g) Directing activities at Kentucky customers for the purpose of selling them goods or services.

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

- (26) "Pass-through entity" means any partnership, S corporation, limited liability company, limited liability partnership, limited partnership, or similar entity recognized by the laws of this state that is not taxed for federal purposes at the entity level, but instead passes to each partner, member, shareholder, or owner their proportionate share of income, deductions, gains, losses, credits, and any other similar attributes;
- (27) "S corporation" means "S corporation" as defined in Section 1361(a) of the Internal Revenue Code;
- (28) "Limited liability pass-through entity" means any pass-through entity that affords any of its partners, members, shareholders, or owners, through function of the laws of this state or laws recognized by this state, protection from general liability for actions of the entity; and
- (29) "Captive real estate investment trust" means a real estate investment trust as defined in Section 856 of the Internal Revenue Code that meets the following requirements:

- (a) 1. The shares or other ownership interests of the real estate investment trust are not regularly traded on an established securities market; or
- 2. The real estate investment trust does not have enough shareholders or owners to be required to register with the Securities and Exchange Commission; and
- (b) 1. The maximum amount of stock or other ownership interest that is owned or constructively owned by a corporation equals or exceeds:
 - a. Twenty-five percent (25%), if the corporation does not occupy property owned, constructively owned, or controlled by the real estate investment trust; or
 - b. Ten percent (10%), if the corporation occupies property owned, constructively owned, or controlled by the real estate investment trust.

The total ownership interest of a corporation shall be determined by aggregating all interests owned or constructively owned by a corporation;
- 2. For the purposes of this paragraph:
 - a. "Corporation" means a corporation taxable under KRS 141.040, and includes an affiliated group as defined in KRS 141.200, that is required to file a consolidated return pursuant to the provisions of KRS 141.200; and
 - b. "Owned or constructively owned" means owning shares or having an ownership interest in the real estate investment trust, or owning an interest in an entity that owns shares or has an ownership interest in the real estate investment trust. Constructive ownership shall be determined by looking across multiple layers of a multilayer pass-through structure; and
- (c) The real estate investment trust is not owned by another real estate investment trust.

➔Section 43. KRS 154.22-010 is repealed and reenacted to read as follows::

The following words and terms as used in KRS 154.22-010 to 154.22-080, unless the context clearly indicates a different meaning, shall have the following meanings:

- (1) "Activation date" means a date selected by an approved company in the tax incentive agreement at any time within a two (2) year period after the date of final approval of the tax incentive agreement by the authority;
- (2) "Affiliate" means the following:
 - (a) Members of a family, including only brothers and sisters of the whole or half blood, spouse, ancestors, and lineal descendants of an individual;
 - (b) An individual, and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for that individual;
 - (c) An individual, and a limited liability company of which more than fifty percent (50%) of the capital interest or profits are owned or controlled, directly or indirectly, by or for that individual;
 - (d) Two (2) corporations which are members of the same controlled group, which includes and is limited to:
 - 1. One (1) or more chains of corporations connected through stock ownership with a common parent corporation, if:
 - a. Stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned by one (1) or more of the other corporations; and
 - b. The common parent corporation owns stock possessing more than fifty percent (50%) of the total combined voting power of all classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of at least one (1) of the other corporations, excluding, in computing the voting power or value, stock owned directly by the other corporations; or
 - 2. Two (2) or more corporations, if five (5) or fewer persons who are individuals, estates, or trusts own stock possessing more than fifty percent (50%) of the total combined voting power of all

classes of stock entitled to vote or more than fifty percent (50%) of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

- (e) A grantor and a fiduciary of any trust;
 - (f) A fiduciary of a trust and a fiduciary of another trust, if the same person is a grantor of both trusts;
 - (g) A fiduciary of a trust and a beneficiary of that trust;
 - (h) A fiduciary of a trust and a beneficiary of another trust, if the same person is a grantor of both trusts;
 - (i) A fiduciary of a trust and a corporation more than fifty percent (50%) in value of the outstanding stock of which is owned, directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (j) A fiduciary of a trust and a limited liability company more than fifty percent (50%) of the capital interest, or the interest in profits, of which is owned directly or indirectly, by or for the trust or by or for a person who is a grantor of the trust;
 - (k) A corporation, a partnership, and a limited partnership, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest, or the profits interest, in the partnership or limited partnership;
 - (l) A corporation and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) in value of the outstanding stock of the corporation; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (m) A partnership, limited partnership, and a limited liability company, if the same persons own:
 - 1. More than fifty percent (50%) of the capital interest or profits in the partnership or limited partnership; and
 - 2. More than fifty percent (50%) of the capital interest or the profits in the limited liability company;
 - (n) An S corporation and another S corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation, S corporation designation being the same as that designation under the Internal Revenue Code of 1986, as amended; or
 - (o) An S corporation and a C corporation, if the same persons own more than fifty percent (50%) in value of the outstanding stock of each corporation; S and C corporation designations being the same as those designations under the Internal Revenue Code of 1986, as amended;
- (3) "Agribusiness" means any activity involving the processing of raw agricultural products, including timber, or the providing of value-added functions with regard to raw agricultural products;
- (4) "Approved company" means any eligible company seeking to locate an economic development project in a qualified county, which eligible company is approved by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (5) "Approved costs" means:
- (a) Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (b) The cost of acquiring land or rights in land and any cost incidental thereto, including recording fees;
 - (c) The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project which is not paid by the contractor or contractors or otherwise provided for;

- (d) All costs of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 - (e) All costs which shall be required to be paid under the terms of any contract or contracts for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 - (f) All other costs of a nature comparable to those described above;
- (6) "Assessment" means the job development assessment fee authorized by KRS 154.22-010 to 154.22-080;
- (7) "Authority" means the Kentucky Economic Development Finance Authority as created in KRS 154.20-010;
- (8) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment in the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (9) "Commonwealth" means the Commonwealth of Kentucky;
- (10) (a) "Economic development project" means and includes:
- 1. The acquisition of ownership in any real estate in a qualified county by the authority, the approved manufacturing or agribusiness company, or its affiliate;
 - 2. The present ownership of real estate in a qualified county by the approved manufacturing or agribusiness company or its affiliate;
 - 3. The acquisition or present ownership of improvements or facilities, as described in paragraph (b) of this subsection, on land which is possessed or is to be possessed by the approved manufacturing or agribusiness company pursuant to a ground lease having a term of sixty (60) years or more;
 - 4. The new construction of an electric generation facility; and
 - 5. The legal possession of facilities by an approved company or its affiliate pursuant to a lease having a term equal to or greater than fifteen (15) years with a third-party entity, negotiated at arm's length, if the facility will be used by the approved company to conduct the approved activity for which the inducement has been granted. An economic development project qualifying under this subparagraph shall only be eligible for credits against equipment and costs related to installation of equipment and for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080 only to the extent of twenty thousand dollars (\$20,000) per job created by and maintained at the economic development project. Notwithstanding KRS 154.22-050(8) and 154.22-060, an economic development project qualifying under this subparagraph shall be eligible only for the aggregate assessments pursuant to KRS 154.22-070 withheld by the approved company each year and shall not be eligible for credit against Kentucky income tax and limited liability entity tax.
- (b) For purposes of paragraph (a)1. and 2. of this subsection, ownership of real estate shall only include fee ownership of real estate and possession of real estate pursuant to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976. With respect to paragraph (a)1., 2., and 3. of this subsection or this paragraph, the construction, installation, equipping, and rehabilitation of improvements, including fixtures and equipment, and facilities necessary or desirable for improvement of the real estate, including surveys; site tests and inspections; subsurface site work; excavation; removal

of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and provision of drainage, storm water retention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; and the acquisition, installation, equipping, and rehabilitation of manufacturing facilities on the real estate, for use and occupancy by the approved company or its affiliates for manufacturing purposes, electric generation, or for agribusiness purposes. Pursuant to paragraph (a)3. and 5. of this subsection, an economic development project shall not include lease payments made pursuant to a ground lease for purposes of the tax credits provided under the provisions of KRS 154.22-010 to 154.22-080;

- (11) "Electric generation" means the generation of electricity for resale by means of combusting at least fifty percent (50%) of the total fuel used to generate electricity from coal or from gas derived from coal;
- (12) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other entity engaged in manufacturing, electric generation, or in agribusiness;
- (13) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
- (14) "Final approval" means the action taken by the authority authorizing the eligible company to receive inducements under this subchapter;
- (15) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
- (16) "Inducements" means the assessment and the tax credits allowed by KRS 154.22-060;
- (17) "Manufacturing" means any activity involving the manufacturing, processing, assembling, or production of any property, including the processing resulting in a change in the conditions of the property and any activity related to it, together with the storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, coal or mineral processing, or extraction of minerals;
- (18) "Preliminary approval" means the action taken by the authority conditioning final approval by the authority upon satisfaction by the eligible company of the requirements under this subchapter;
- (19) "Qualified county" means any county certified as such by the authority pursuant to KRS 154.22-010 to 154.22-080;
- (20) "Revenues" shall not be considered state funds;
- (21) "State agency" shall have the meaning assigned to the term in KRS 56.440(8);
- (22) "Tax incentive agreement" means the agreement entered into, pursuant to KRS 154.22-050, between the authority and an approved company with respect to an economic development project;
- (23) "Kentucky gross receipts" means "Kentucky gross receipts" as defined in KRS 141.0401; and
- (24) "Kentucky gross profits" means "Kentucky gross profits" as defined in KRS 141.0401.

➔Section 44. KRS 154.23-010 is repealed and reenacted to read as follows:

As used in KRS 154.23-005 to 154.23-079, unless the context clearly indicates otherwise:

- (1) "Affiliate" has the same meaning as in KRS 154.22-010;
- (2) "Approved company" means an eligible company that locates an economic development project in a qualified zone, as provided for in KRS 154.23-030;
- (3) "Approved costs" means:
 - (a) For an approved company that establishes a new manufacturing facility or expands an existing manufacturing facility, the following obligations incurred in its economic development project, including rent under leases subject to subsection (8)(b)4. of this section:

1. The cost of labor, contractors, subcontractors, builders, and material workers in connection with the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 2. The cost of acquiring real estate or rights in land and any cost incidental thereto, including recording fees;
 3. The cost of contract bonds and insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, and rehabilitation of an economic development project that is not paid by the contractor or contractors or otherwise provided for;
 4. The cost of architectural and engineering services, including test borings, surveys, estimates, plans and specifications, preliminary investigations, and supervision of construction, as well as for the performance of all duties required by or consequent to the acquisition, construction, installation, equipping, and rehabilitation of an economic development project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, and rehabilitation of an economic development project; and
 6. All other costs of a nature comparable to those described above; or
- (b) For an approved company that establishes a new service or technology business or expands existing service or technology operations, up to a maximum of fifty percent (50%) of the total start-up costs during the term of the service and technology agreement, plus up to a maximum of fifty percent (50%) of the annual rent for each elapsed year of the service and technology agreement;
- (4) "Assessment" means the job development assessment fee authorized by KRS 154.23-055;
- (5) "Authority" means the Kentucky Economic Development Finance Authority, as created in KRS 154.20-010;
- (6) "Average hourly wage" means the wage and employment data published by the Office of Employment and Training within the Department of Workforce Investment within the Education and Workforce Development Cabinet collectively translated into wages per hour based on a two thousand eighty (2,080) hour work year for the following sectors:
- (a) Manufacturing;
 - (b) Transportation, communications, and public utilities;
 - (c) Wholesale and retail trade;
 - (d) Finance, insurance, and real estate; and
 - (e) Services;
- (7) "Commonwealth" means the Commonwealth of Kentucky;
- (8) "Economic development project" or "project" means:
- (a) A new or expanded service or technology activity conducted at a new or expanded site by:
 1. An approved company; or
 2. An approved company and its affiliate or affiliates; or
 - (b) Any of the following activities of an approved company engaged in manufacturing:
 1. The acquisition of or present ownership in any real estate in a qualified zone for the purposes described in KRS 154.23-005 to 154.23-079, which ownership shall include only fee simple ownership of real estate and possession of real estate according to a capital lease as determined in accordance with Statement of Financial Accounting Standards No. 13, Accounting for Leases, issued by the Financial Accounting Standards Board, November 1976;
 2. The acquisition or present ownership of improvements or facilities on land that is possessed or is to be possessed by the approved company in a ground lease having a term of sixty (60) years or more; provided, however, that this project shall not include lease payments made under a ground lease for purposes of calculating the tax credits offered under KRS 154.23-005 to 154.23-079;

3. The construction, installation, equipping, and rehabilitation of improvements, fixtures, equipment, and facilities necessary or desirable for improvement of the real estate owned, used, or occupied by the approved company for manufacturing purposes. Construction activities include surveys; site tests and inspections; subsurface site work; excavation; removal of structures, roadways, cemeteries, and other surface obstructions; filling, grading, and providing drainage and storm water retention; installation of utilities such as water, sewer, sewage treatment, gas, electric, communications, and similar facilities; off-site construction of utility extensions to the boundaries of the real estate; or similar activities as the authority may determine necessary for construction; and
 4. The leasing of real estate and the buildings and fixtures thereon acquired, constructed, and installed with funds from grants under KRS 154.23-060;
- (9) "Eligible company" means any corporation, limited liability company, partnership, limited partnership, sole proprietorship, business trust, or any other legal entity engaged in manufacturing, or service or technology; however, any company whose primary purpose is retail sales shall not be an eligible company;
 - (10) "Employee benefits" means nonmandated costs paid by an eligible company for its full-time employees for health insurance, life insurance, dental insurance, vision insurance, defined benefits, 401(k), or similar plans;
 - (11) "Final approval" means action taken by the authority that authorizes the eligible company to receive inducements in connection with a project under KRS 154.23-005 to 154.23-079;
 - (12) "Full-time employee" means a person employed by an approved company for a minimum of thirty-five (35) hours per week and subject to the state income tax imposed by KRS 141.020;
 - (13) "Inducements" means the assessment and the income tax credits allowed to an approved company under KRS 154.23-050 and 154.23-055;
 - (14) "Local government" means a city, county, or urban-county government;
 - (15) "Manufacturing" means to make, assemble, process, produce, or perform any other activity that changes the form or conditions of raw materials and other property, and shall include any ancillary activity to the manufacturing process, such as storage, warehousing, distribution, and related office facilities; however, "manufacturing" shall not include mining, the extraction of minerals or coal, or processing of these resources;
 - (16) "Person" means an individual, sole proprietorship, partnership, limited partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity or government, whether federal, state, county, city, or otherwise, including without limitation any instrumentality, division, political subdivision, district, court, agency, or department thereof;
 - (17) "Preliminary approval" means action taken by the authority that conditions final approval of an eligible company and its economic development project upon satisfaction by the eligible company of the applicable requirements under KRS 154.23-005 to 154.23-079;
 - (18) "Qualified employee" means an individual subject to Kentucky income tax who has resided in the qualified zone where the project exists for at least twelve (12) consecutive months preceding full-time employment by an approved company;
 - (19) "Qualified statewide employee" means an individual subject to Kentucky income tax who has resided in any census tract or county in the Commonwealth that meets the criteria in KRS 154.23-015, regardless of whether the tract or county is in a qualified zone, for at least twelve (12) consecutive months preceding full-time employment by an approved company;
 - (20) "Qualified zone" means any census tract or county certified as such by the authority in KRS 154.23-015 and 154.23-020;
 - (21) "Rent" means:
 - (a) The actual annual rent or leasing fee paid by an approved company to a bona fide entity negotiated at arm's length for the use of a building by the approved company to conduct the approved project for which the inducement has been granted; or
 - (b) The fair rental value on an annual basis in a building owned by the approved company of the space used by the approved company to conduct the approved project for which the inducement has been granted as

determined by the authority using criteria that are customary in the real estate industry for the type of building being used. The fair rental value shall include an analysis of the cost of amortizing the cost of land and building over the period of time customary in the real estate industry for the type of building and for the land being utilized; and

- (c) Rent shall include the customary cost of occupancy, including but not limited to property taxes, heating and air conditioning, electricity, water, sewer, and insurance;
- (22) "Service and technology agreement" means any agreement entered into under KRS 154.23-040 on behalf of the authority, an approved company engaged in service or technology, and third-party lessors, if applicable, with respect to an economic development project;
- (23) (a) "Service or technology" means either:
 - 1. Any activity involving the performance of work, except work classified by the divisions, including successor divisions, of agriculture, forestry and fishing, mining, utilities, construction, manufacturing, wholesale trade, retail trade, real estate rental and leasing, educational services, accommodation and food services, and public administration in accordance with the "North American Industry Classification System," as revised by the United States Office of Management and Budget from time to time, or any successor publication; or
 - 2. Regional or headquarters operations of an entity engaged in an activity listed in subparagraph 1. of this paragraph.
- (b) Notwithstanding paragraph (a) of this subsection, "service or technology" shall not include any activity involving the performance of work by an individual who is providing direct service to the public pursuant to a license issued by the state or an association that licenses in lieu of the state;
- (24) "Start-up costs" means the acquisition cost associated with the project and related to furnishing and equipping a building for ordinary business functions, including computers, nonrecurring costs of fixed telecommunication equipment, furnishings, office equipment, and the relocation of out-of-state equipment, as verified and approved by the authority in accordance with KRS 154.23-040;
- (25) "Tax incentive agreement" means that agreement entered into pursuant to KRS 154.23-035 between the authority and an approved company with respect to an economic development project;
- (26) "Kentucky gross receipts" means Kentucky gross receipts as defined in KRS 141.0401; and
- (27) "Kentucky gross profits" means Kentucky gross profits as defined in KRS 141.0401.

➔Section 45. KRS 176.150 is repealed and reenacted to read as follows:

- (1) No applicant shall be given a certificate of eligibility unless his financial statement and the investigation made by the department show that he possesses net current assets or working capital sufficient in the judgment of the department to render it probable that he can satisfactorily execute his contracts and meet obligations therein incurred. All applications for certificates shall expressly authorize the department to obtain all information which it deems pertinent with respect to the financial status, assets, and liabilities of the applicant from any persons having business transactions with the applicant, and shall expressly authorize all those persons to furnish any information requested from them by the department.
- (2) No applicant shall be given a certificate of eligibility until the applicant provides the secretary of the Transportation Cabinet with his sworn statement made under penalty of perjury that he has not knowingly violated any provision of the campaign finance laws of the Commonwealth and that the award of a contract to the applicant will not violate any provision of the campaign finance laws of the Commonwealth. "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.
- (3) Certificates of eligibility shall be issued without reference to the residence of applicants and the administrative regulations regarding the issuance of certificates shall apply equally to residents and nonresidents. A certificate of eligibility shall not be denied to any applicant upon the sole issue of nationality or residence.
- (4) When the applicant is a foreign corporation, limited liability company, or limited partnership, the application shall be accompanied by a certificate from the Secretary of State of the jurisdiction in which it is organized certifying that it is validly existing and in good standing and a certificate from the Kentucky Secretary of State certifying that it is authorized to transact business in the Commonwealth of Kentucky.

➔Section 46. KRS 271B.1-200 is repealed and reenacted to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter must require or permit filing the document in the office of the Secretary of State.
- (3) The document shall contain the information required by this chapter. It may contain other information as well.
- (4) The document shall be typewritten, printed, or electronically transmitted. If the document is electronically transmitted, the document shall be in a format that can be retrieved or reproduced in typewritten or printed form.
- (5) The document shall be in the English language. A corporate name may be in a language other than English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations, if not in English, shall be accompanied by a reasonably authenticated English translation.
- (6) The document shall be executed:
 - (a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;
 - (b) If directors have not been selected or the corporation has not been formed, by an incorporator; or
 - (c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:
 - (a) A corporate seal of the corporation;
 - (b) An attestation, acknowledgment, or verification; or
 - (c) A statement regarding the preparer of the document which complies with KRS 382.335.
- (8) If the Secretary of State has prescribed a mandatory form for the document under KRS 271B.1-210, the document shall be in or on the prescribed form.
- (9) The document shall be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission, if and to the extent permitted by the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document, except as provided in KRS 271B.5-030 and 271B.15-090.
- (10) One (1) exact or conformed paper, but not electronic, copy of the document shall then be filed with and recorded by the county clerk of the county in which the registered office of the corporation is situated.
- (11) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, the organization tax, and any penalty required by this chapter or other law to be collected by the office of the Secretary of State with the document shall be paid or provision for payment shall be made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, the liability shall not be finally discharged until the Secretary of State receives final payment or credit of collectible funds.
- (12) Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:
 - (a) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;
 - (b) The facts may include but are not limited to:
 1. Any of the following that is available in a nationally recognized news or information medium either in print or electronically:

- a. Statistical or market indices;
- b. Market prices of any security or group of securities;
- c. Interest rates;
- d. Currency exchange rates; or
- e. Similar economic or financial data;
- 2. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
- 3. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;
- (c) As used in this subsection:
 - 1. "Filed document" means a document filed with the Secretary of State under any provision of KRS Chapter 271B except Subtitle 15 or KRS 271B.16-220; and
 - 2. "Plan" means a plan of nonprofit conversion as provided for in KRS 273.382, conversion into an LLC as provided for in KRS 275.376, merger, or of share exchange;
- (d) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:
 - 1. The name and address of any person required in a filed document;
 - 2. The registered office of any entity required in a filed document;
 - 3. The registered agent of any entity required in a filed document;
 - 4. The number of authorized shares and designation of each class or series of shares;
 - 5. The effective date of a filed document; or
 - 6. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and
- (e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

➔Section 47. KRS 271B.1-210 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
 - (a) An application for a certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) The annual report;
 - (f) An amendment to the annual report;
 - (g) A change of principal address form; and
 - (h) An amended application for certificate of authority.

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use shall not be mandatory.

➔Section 48. KRS 271B.1-220 is repealed and reenacted to read as follows:

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

(a)	Articles of incorporation	\$ 40
(b)	Application for use of indistinguishable name	\$ 20
(c)	Application or renewal of application for reserved name	\$ 15
(d)	Cancellation of application for reserved name.....	\$ 10
(e)	Notice of transfer of reserved name	\$ 15
(f)	Application for registered name	\$ 36
(g)	Application for renewal of registered name	\$ 36
(h)	Corporation's statement of change of registered agent or registered office, or both	\$ 10
(i)	Corporation's statement of change of principal office address	\$ 10
(j)	Agent's statement of change of registered office for each affected corporation	\$ 10
	not to exceed a total of	\$1,000
(k)	Amendment of articles of incorporation	\$ 40
(l)	Restatement of articles of incorporation	\$ 40
(m)	Amended and restated articles	\$ 80
(n)	Articles of merger or share exchange	\$ 50
(o)	Articles of dissolution	\$ 40
(p)	Articles of revocation of dissolution	\$ 15
(q)	Reinstatement penalty following administrative dissolution	\$ 100
(r)	Application for certificate of authority	\$ 90
(s)	Application for amended certificate of authority	\$ 40
(t)	Application for certificate of withdrawal	\$ 40
(u)	Annual report	\$ 15
(v)	Amendment to annual report.....	\$ 10
(w)	Articles of correction	\$ 20
(x)	Certificate of existence or authorization	\$ 10
(y)	Any other document required or permitted to be filed by this chapter	\$ 15
(z)	Agent's statement of resignation	No fee
(aa)	Certificate of administrative dissolution	No fee
(ab)	Certificate of reinstatement	No fee
(ac)	Certificate of judicial dissolution	No fee

- (ad) Certificate of revocation of authority to transact business No fee
- (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.
- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:
 - (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and
 - (b) Five dollars (\$5) for the certificate.
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to corporations.

➔Section 49. KRS 271B.1-250 is repealed and reenacted to read as follows:

- (1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of KRS 271B.1-200, the Secretary of State shall file it.
- (2) The Secretary of State files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in KRS 271B.5-030 and 271B.15-090, the Secretary of State shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date and time of filing.
- (3) If the Secretary of State refuses to file a document, if filed by paper, the Secretary of State shall return it to the domestic or foreign corporation or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal. If the document was filed electronically, the Secretary of State's brief explanation of the reason for the refusal may be returned electronically.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document shall not:
 - (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

➔Section 50. KRS 271B.1-290 is repealed and reenacted to read as follows:

- (1) A person commits an offense by signing a document knowing it is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) An offense under this section shall be a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).

➔Section 51. KRS 271B.1-400 is repealed and reenacted to read as follows:

In this chapter:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger;
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue;
- (3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlining, shall be considered conspicuous;
- (4) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter;
- (5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurring of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its

shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise;

- (7) "Effective date of notice" is defined in KRS 271B.1-410;
- (8) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;
- (9) "Employee" includes an officer but not a director. A director may accept duties that make him also an employee;
- (10) "Entity" includes a domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
- (11) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state;
- (12) "Governmental subdivision" includes authority, county, district, and municipality;
- (13) "Includes" denotes a partial definition;
- (14) "Individual" means a natural person and includes the estate of an incompetent or deceased individual;
- (15) "Means" denotes an exhaustive definition;
- (16) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity;
- (17) "Notice" is defined in KRS 271B.1-410;
- (18) "Person" includes individual and entity;
- (19) "Principal office" means the office in or out of this state, so designated in writing to the Secretary of State where the principal executive offices of a domestic or foreign corporation are located;
- (20) "Proceeding" includes civil suit and criminal, administrative, and investigatory action;
- (21) "Real name" shall have the meaning set forth in KRS 365.015.
- (22) "Record date" means the date established under Subtitle 6 or 7 of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date, unless another time for doing so is specified when the record date is fixed;
- (23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under KRS 271B.8-400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;
- (24) "Share" means the unit into which the proprietary interests in a corporation are divided;
- (25) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation;
- (26) "Sign" or "signature" includes any manual, facsimile, or conformed or electronic signature;
- (27) "State," when referring to a part of the United States, includes a state and Commonwealth and their agencies and governmental subdivisions, and a territory and insular possession and their agencies and governmental subdivisions of the United States.
- (28) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (29) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States; and
- (30) "Voting group" means all shares of one (1) or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders.

All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

➔Section 52. KRS 271B.1-410 is repealed and reenacted to read as follows:

- (1) Notice under this chapter shall be in writing unless oral notice is reasonable under the circumstances. Notice by electronic transmission is written notice.
- (2) Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other electronic means. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio, television, or other form of public broadcast communication.
- (3) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, shall be effective:
 - (a) Upon deposit in the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or
 - (b) When electronically transmitted to the shareholder in a manner authorized and in accordance with the shareholder's instructions, if any.
- (4) Written notice to a domestic or foreign corporation authorized to transact business in this state may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a domestic corporation that has not yet delivered an annual report, in its articles of incorporation or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.
- (5) Except as provided in subsections (3) and (4) of this section, written notice, if in a comprehensible form, shall be effective at the earliest of the following:
 - (a) When received;
 - (b) Five (5) days after its deposit in the United States mail, if mailed postpaid and correctly addressed; or
 - (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.
- (6) Oral notice shall be effective when communicated, if communicated in a comprehensible manner.
- (7) If this chapter prescribes notice requirements for particular circumstances, those requirements, shall govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements shall govern.

➔Section 53. KRS 271B.2-030 is repealed and reenacted to read as follows:

- (1) Unless a delayed effective date is specified, the corporate existence shall begin when the articles of incorporation are filed by the Secretary of State.
- (2) The Secretary of State's filing of the articles of incorporation shall be conclusive proof that the incorporators satisfied all conditions precedent to incorporation, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

➔Section 54. KRS 271B.2-050 is repealed and reenacted to read as follows:

- (1) After incorporation:
 - (a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
 - (b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:
 1. To elect directors and complete the organization of the corporation; or
 2. To elect a board of directors who shall complete the organization of the corporation.

- (2) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one (1) or more written consents describing the action taken and signed by each incorporator.

- (3) An organizational meeting may be held in or out of this state.

➔Section 55. KRS 271B.2-070 is repealed and reenacted to read as follows:

- (1) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (4) of this section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:
 - (a) Procedures for calling a meeting of the board of directors;
 - (b) Quorum requirements for the meeting; and
 - (c) Designation of additional or substitute directors.
- (2) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.
- (3) Corporate action taken in good faith in accordance with the emergency bylaws:
 - (a) Shall bind the corporation; and
 - (b) Shall not be used to impose liability on a corporate director, officer, employee, or agent.
- (4) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

➔Section 56. KRS 271B.3-010 is repealed and reenacted to read as follows:

- (1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.
- (2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

➔Section 57. KRS 271B.4-010 is repealed and reenacted to read as follows:

- (1) A corporate name:
 - (a) Shall contain the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co.," or "Ltd." or words or abbreviations of like import in another language; and
 - (b) Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by KRS 271B.3-010 and its articles of incorporation.
- (2) Except as authorized by subsections (3) and (4) of this section, a corporate name must be distinguishable from any name of record with the Secretary of State.
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A corporation may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated or authorized to transact business in this state, and the proposed user corporation:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or

(c) Has acquired all or substantially all of the assets, including the corporate name, of the other entity.

(5) This chapter does not control the use of assumed names.

(6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 58. KRS 271B.4-020 is repealed and reenacted to read as follows:

(1) A person may reserve the exclusive use of a corporate name, including a fictitious name, for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a one hundred twenty (120) day period. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.

(2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.

(3) The holder of a reserved corporate name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 59. KRS 271B.4-030 is repealed and reenacted to read as follows:

(1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, if the name is distinguishable upon the records of the Secretary of State as required under KRS 271B.4-010(2).

(2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 271B.15-060, by delivering to the Secretary of State, for filing, an application:

(a) Setting forth its corporate name, or its corporate name with any addition required by KRS 271B.15-060, the state or country and date of its incorporation and a brief description of the nature of the business in which it is engaged; and

(b) Accompanied by a certificate of existence or a document of similar import from the state or country of incorporation.

(3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.

(4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed shall renew the registration for the following calendar year.

(5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

➔Section 60. KRS 271B.6-010 is repealed and reenacted to read as follows:

(1) The articles of incorporation shall prescribe the classes of shares and series of shares within a class and the number of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and, prior to the issuance of shares of a class or series, the preferences, limitations, and relative rights of that class or series must be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by KRS 271B.6-020.

(2) The articles of incorporation shall authorize:

- (a) One (1) or more classes or series of shares that together have unlimited voting rights; and
 - (b) One (1) or more classes or series of shares which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one (1) or more classes or series of shares that:
- (a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;
 - (b) Are redeemable or convertible as specified in the articles of incorporation:
 - 1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 - 2. For cash, indebtedness, securities, or other property; or
 - 3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with KRS 271B.1-200(12).
- (5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be considered exhaustive.

➔Section 61. KRS 271B.6-270 is repealed and reenacted to read as follows:

- (1) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction shall not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.
- (2) A restriction on the transfer or registration of transfer of shares shall be valid and enforceable against the holder, or a transferee of the holder if the restriction is authorized by this section, and the holder or transferee has actual knowledge of the restriction or its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by KRS 271B.6-260(2). Unless so noted or contained, a restriction is not enforceable against a person without knowledge of the restriction.
- (3) A restriction on the transfer or registration of transfer of shares shall be authorized:
 - (a) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;
 - (b) To preserve exemptions under federal or state securities law;
 - (c) In connection with shares issued by the corporation to its officers, directors, employees, or independent contractors, including as equity-based compensation under the Internal Revenue Code; or
 - (d) For any other reasonable purpose.
- (4) A restriction on the transfer or registration of transfer of shares may without limitation:
 - (a) Obligate the shareholder first to offer the corporation or other persons, separately, consecutively, or simultaneously, an opportunity to acquire the restricted shares;
 - (b) Obligate the corporation or other persons, separately, consecutively, or simultaneously, to acquire or transfer the restricted shares;
 - (c) Obligate a shareholder to transfer the restricted shares to the corporation or other persons for an agreed price or a price based on a valuation formula, including an obligation to transfer the shares for an amount equal to the original consideration paid for the shares;

- (d) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or
 - (e) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.
- (5) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

➔Section 62. KRS 271B.7-210 is repealed and reenacted to read as follows:

- (1) Except as provided in subsections (2) and (4) of this section or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, shall be entitled to one (1) vote on each matter voted on at a shareholders' meeting. Only shares shall be entitled to vote.
- (2) Absent special circumstances, the shares of a corporation shall not be entitled to vote if they are owned, directly or indirectly, by an entity, domestic or foreign, and the corporation controls, directly or indirectly, the entity's determination to vote, and how to vote, the shares.
- (3) Subsection (2) of this section shall not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.
- (4) Redeemable shares shall not be entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

➔Section 63. KRS 271B.7-270 is repealed and reenacted to read as follows:

- (1) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.
- (2) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement shall meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

➔Section 64. KRS 271B.7-400 is repealed and reenacted to read as follows:

- (1) A person shall not commence a proceeding in the right of a domestic or foreign corporation unless he was a shareholder of the corporation when the transaction complained of occurred or unless he became a shareholder through transfer by operation of law from one who was a shareholder at that time. The derivative proceeding shall not be maintained if it appears that the person commencing the proceeding does not fairly and adequately represent the interests of the shareholders in enforcing the right of the corporation.
- (2) A complaint in a proceeding brought in the right of a corporation shall be verified and allege with particularity the demand made, if any, to obtain action by the board of directors and either that the demand was refused or ignored or why he did not make the demand. Whether or not a demand for action was made, if the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.
- (3) A proceeding commenced under this section may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given the shareholders affected.
- (4) On termination of the proceeding the court may require the plaintiff to pay any defendant's reasonable expenses, including counsel fees, incurred in defending the proceeding if it finds that the proceeding was commenced without reasonable cause.
- (5) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or held by a nominee on his behalf.
- (6) In any derivative proceedings in the right of a foreign corporation, the matters covered by this section shall be governed by the laws of the jurisdiction of incorporation.

➔Section 65. KRS 271B.8-220 is repealed and reenacted to read as follows:

- (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.
- (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors shall be preceded by at least two (2) days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

➔Section 66. KRS 271B.8-570 is repealed and reenacted to read as follows:

A corporation may purchase and maintain insurance on behalf of an individual who is or was a director, officer, employee, or agent of the corporation, or who, while a director, officer, employee or agent of the corporation, is or was serving at the request of the corporation as a director, officer, manager, partner, trustee, employee, or agent of another entity, or of an employee benefit plan or other enterprise, against liability asserted against or incurred in that capacity or arising from the status as a director, officer, manager, employee, or agent, whether or not the corporation would have power to indemnify against the same liability under KRS 271B.8-510 or 271B.8-520.

➔Section 67. KRS 271B.13-020 is repealed and reenacted to read as follows:

- (1) A shareholder shall be entitled to dissent from, and obtain payment of the fair value of his shares in the event of, any of the following corporate actions:
 - (a) Consummation of a plan of merger to which the corporation is a party:
 1. If shareholder approval is required for the merger by KRS 271B.11-030 or the articles of incorporation and the shareholder is entitled to vote on the merger; or
 2. If the corporation is a subsidiary that is merged with its parent under KRS 271B.11-040;
 - (b) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
 - (c) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one (1) year after the date of sale;
 - (d) Consummation of a plan of conversion of the corporation as provided for in KRS 275.376;
 - (e) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:
 1. Alters or abolishes a preferential right of the shares to a distribution or in dissolution;
 2. Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase of the shares;
 3. Excludes or limits the right of the shares to vote on any matter other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
 4. Reduces the number of shares owned by the shareholder to a fraction of a share, if the fractional share so created is to be acquired for cash under KRS 271B.6-040;
 - (f) Any transaction subject to the requirements of KRS 271B.12-210 or exempted by KRS 271B.12-220(2); or
 - (g) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.
- (2) A shareholder entitled to dissent and obtain payment for his shares under this chapter shall not challenge the corporate action creating his entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

➔Section 68. KRS 271B.14-050 is repealed and reenacted to read as follows:

- (1) A dissolved corporation shall continue its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its shareholders;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its shareholders according to their interests; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (2) Dissolution of a corporation shall not:
 - (a) Transfer title to the corporation's property;
 - (b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
 - (c) Subject its directors or officers to standards of conduct different from those prescribed in Subtitle 8 of this chapter;
 - (d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
 - (e) Prevent commencement of a proceeding by or against the corporation in its corporate name;
 - (f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution;
 - (g) Terminate the authority of the registered agent of the corporation;
 - (h) Alter the obligations and responsibilities of the corporation as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
 - (i) Abate or suspend KRS 271B.6-220.

➔Section 69. KRS 271B.14-210 is repealed and reenacted to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 271B.14-200 for dissolving a corporation, he shall serve the corporation with written notice of his determination, by mailing such notice by first-class mail to the corporation at its principal place of business address.
- (2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation by mailing such notice by first-class mail to the corporation at its principal place of business address.
- (3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.
- (4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

➔Section 70. KRS 271B.14-220 is repealed and reenacted to read as follows:

- (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;

- (c) State that the corporation's name satisfies the requirements of KRS 271B.4-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid;
 - (e) Contain a certificate from the Division of Unemployment Insurance in the Department for Workforce Investment reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid; and
 - (f) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report provided for in KRS 271B.1-220.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, he shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites his determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its registered office.
 - (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.
 - (4) Notwithstanding any other provision to the contrary, any corporation which was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 271B.14-050, and notify claimants under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.
 - (5) A corporation administratively dissolved upon the expiration of its period of duration may, in the sixty (60) day period of KRS 271B.14-210(2), amend its articles to extend its period of duration or to delete its period of duration, which amendment will relate back to the day immediately preceding the expiration of the period of duration. A corporation which fails to so amend its articles of incorporation in the sixty (60) day period of KRS 271B.14-210(2) may not thereafter be reinstated, and shall liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.

➔Section 71. KRS 271B.15-010 is repealed and reenacted to read as follows:

- (1) A foreign corporation, except a foreign insurance company, shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any proceeding;
 - (b) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositaries with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one in the course of repeated transactions of a like nature; and
 - (k) Transacting business in interstate commerce.

- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) This section shall not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.

➔Section 72. KRS 271B.15-050 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign corporation to which it is issued to transact business in this state subject, however, to the right of the state to revoke the certificate as provided in this chapter.
- (2) A foreign corporation with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.
- (3) This chapter shall not authorize this state to regulate the organization or internal affairs, including the inspection of corporate books, records, and documents, of a foreign corporation authorized to transact business in this state.

➔Section 73. KRS 271B.15-060 is repealed and reenacted to read as follows:

- (1) If the real name of a foreign corporation does not satisfy the requirements of KRS 271B.4-010, the foreign corporation to obtain or maintain a certificate of authority to transact business in this state:
 - (a) May add the word "corporation," "incorporated," "company," or "limited" or the abbreviation "corp.," "inc.," "co.," or "ltd." to its real name for use in this state; or
 - (b) May use a fictitious name to transact business in this state if its real name is unavailable and it delivers to the Secretary of State for filing a copy of the resolution of its board of directors, certified by its secretary, adopting the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the real or fictitious name of a foreign corporation shall be distinguishable upon the records of the Secretary of State from any name of record with the Secretary of State.
- (3) A foreign corporation may apply to the Secretary of State for authorization to use in this state a name that is not distinguishable upon his records from the name applied for. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A foreign corporation may use in this state the name, including the fictitious name, of another domestic or foreign entity that is used in this state if the other entity is incorporated or authorized to transact business in this state and the foreign entity:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the corporate name, of the other entity.
- (5) If a foreign corporation authorized to transact business in this state changes its real name to one that does not satisfy the requirements of KRS 271B.4-010, it shall not transact business in this state under the changed name until it adopts a fictitious name satisfying the requirements of KRS 271B.4-010 and obtains an amended certificate of authority under KRS 271B.15-040.

➔Section 74. KRS 271B.16-220 is repealed and reenacted to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the corporation and the state or country under whose law it is incorporated;

- (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its directors and principal officers;
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
 - (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
 - (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.
 - (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 75. KRS 272.010 is repealed and reenacted to read as follows:

- (1) As used in KRS 272.020 to 272.050:
 - (a) "Cooperative corporation" means a business concern that distributes the net profit of its business by first paying a fixed dividend upon its stock, if any, and then prorating the remainder of its profits as patronage refunds to its stockholders, members or customers, as provided in bylaws;
 - (b) "Patronage refund" means the portion of net profit returned to member patrons or to all patrons in proportion to their patronage. In the case of an employee cooperative in which only employees are voting members, "patronage" means the amount or value of work performed by an employee, as provided in bylaws;
 - (c) "Stockholder" means the holder of voting stock in a cooperative corporation organized with shares;
 - (d) "Member" means the holder of a membership in a cooperative corporation organized with memberships;
 - (e) "Membership" means a lifetime payment made to a cooperative corporation to secure or provide services, not made in expectation of dividend or profit, and without any redemption value except at time of dissolution. The articles of incorporation or bylaws may specify the conditions under which a membership may be terminated;
 - (f) "Nonprofit basis" means that no part of the income or profit of the cooperative corporation is distributable to its members, directors or officers except in the form of patronage refunds;
 - (g) "Entity" includes a domestic or foreign corporation and corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust; estate; partnership; limited partnership; limited liability company; trust; two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
 - (h) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and
 - (i) "Real name" shall have the meaning set forth in KRS 365.015.
- (2) As used in KRS 272.360 to 272.510, unless the content for such requires otherwise, the term:
 - (a) "Livestock" shall mean sheep, cattle, hogs, horses, jacks, mules, poultry, or any other animal or bird commonly kept on the farm;
 - (b) "Farmer" shall mean any individual, firm, partnership, limited partnership, limited liability company, corporation, or farm management group which derives a portion or all of its income from the production of live stock domiciled on a farm within the Commonwealth;
 - (c) "Member" shall include actual members of the association organized under KRS 272.360 to 272.510;

- (d) "Association" means any corporation organized under KRS 272.360 to 272.510; and
 - (e) "Department" shall mean the Department of Agriculture.
- (3) Associations organized under KRS 272.360 to 272.510 shall be termed nonprofit inasmuch as they are not organized to make profit for themselves.

➔Section 76. KRS 272.050 is repealed and reenacted to read as follows:

No corporation, partnership, limited partnership, limited liability company, or other entity doing business for profit in this state shall use the title "cooperative" as any part of its name unless it has complied with the provisions of KRS 272.020 to 272.050.

➔Section 77. KRS 272.131 is repealed and reenacted to read as follows:

- (1) The articles of incorporation of each association shall state:
- (a) The name of the association;
 - (b) The purposes for which it is formed;
 - (c) The place where its principal business will be transacted;
 - (d) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may, by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually;
 - (e) The names and addresses, not less than five (5), of those who are to serve as directors for the first term or until the election of their successors;
 - (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with the general rules. These provisions of the articles of incorporation shall not be altered, amended, or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by members present in person, or by proxy, if permitted by the bylaws, and voting thereon at any regular or special meeting; and
 - (g) If organized with capital stock, the authorized amount of the stock and the number of shares into which it is divided and the par value thereof. Capital stock may be divided into preferred and common stock. The articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each. No specific amount of the capital stock authorized is required to be subscribed before the association may transact business with other than its members; the board may determine the amount of capital stock to be issued as the business of the association may justify or demand, from time to time, within the amount of the total authorization.
- (2) The articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; but nothing set forth in this section shall be construed as limiting any of the rights or powers otherwise given to such associations.
- (3) The articles of incorporation must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed and recorded in accordance with the statute relating to corporations generally; and when so filed, the articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of the association. A copy of the articles of incorporation, indorsed by the Secretary of State with the fact and time of recording in his office, shall be filed with the dean of the College of Agriculture of the University of Kentucky and with the Commissioner of the Department of Agriculture.

- (4) Except as authorized by subsections (5) and (6) of this section, the name of an association shall be distinguishable from any name of record with the Secretary of State.
- (5) An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (6) An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (7) This chapter does not control the use of assumed names.
- (8) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 78. KRS 272.390 is repealed and reenacted to read as follows:

- (1) Each association formed under KRS 272.360 to 272.510 must prepare and file articles of incorporation, setting forth:
 - (a) The name of the association;
 - (b) The place where its principal business will be transacted;
 - (c) The term for which it is to exist; the number of directors thereof which must not be less than five (5) and may be any number in excess thereof; the term of office of such directors; and the names and addresses of those who are to serve as incorporating directors for the first term, or until election and qualification of their successors; and
 - (d) The property rights of the members and whether the interest of each member will be equal or unequal; and if unequal, the rule or rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.
- (2) Except as authorized by subsections (3) and (4) of this section, the name of an association must be distinguishable from any name of record with the Secretary of State.
- (3) An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from any name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying association; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:

- (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (5) This chapter does not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 79. KRS 273.161 is repealed and reenacted to read as follows:

As used in KRS 273.163 to 273.387, unless the context otherwise requires, the term:

- (1) "Corporation" or "domestic corporation" means a nonprofit corporation subject to the provisions of KRS 273.163 to 273.387, except a foreign corporation;
- (2) "Foreign corporation" means a nonprofit corporation organized under laws other than the laws of this state;
- (3) "Nonprofit corporation" means a corporation no part of the income or profit of which is distributable to its members, directors or officers;
- (4) "Articles of incorporation" means the original or restated articles of incorporation or articles of consolidation and all amendments thereto, including articles of merger;
- (5) "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated;
- (6) "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws;
- (7) "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which group is designated;
- (8) "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs;
- (9) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (10) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility for custody of the minutes of the meetings of the board of directors and the members and for authenticating records of the corporation;
- (11) "Individual" includes the estate of an incompetent or deceased individual;
- (12) "Entity" includes a domestic or foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust, estate, partnership, limited partnership, limited liability company, trust, and two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
- (13) "Person" includes individual and entity.
- (14) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity; and
- (15) "Real name" shall have the meaning set forth in KRS 365.015.

➔Section 80. KRS 273.177 is repealed and reenacted to read as follows:

- (1) The corporate name shall include the word "corporation" or "incorporated" or the abbreviation "Inc." or the word "company" or the abbreviation "Co."; but if the word "company" or the abbreviation "Co." is used, it may not be immediately preceded by the word "and" or the abbreviation "&." The provisions of this subsection shall not affect the right of any corporation existing on June 13, 1968, to continue the use of its name.
- (2) Except as authorized by subsection (3) of this section, a corporate name shall be distinguishable from any name of record with the Secretary of State.

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

➔Section 81. KRS 273.178 is repealed and reenacted to read as follows:

- (1) A person may reserve the exclusive use of a corporate name, including a fictitious name for a foreign corporation whose corporate name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the corporate name applied for is available, he shall reserve the name for the applicant's exclusive use for a nonrenewable period of one hundred twenty (120) days. Within thirty (30) days of the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.
- (3) The holder of a reserved corporate name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 82. KRS 273.179 is repealed and reenacted to read as follows:

- (1) A foreign corporation may register its corporate name, or its corporate name with any addition required by KRS 273.364, if the name is distinguishable upon the records of the Secretary of State as required by KRS 273.177(2).
- (2) A foreign corporation shall register its corporate name, or its corporate name with any addition required by KRS 273.364, by delivering to the Secretary of State for filing an application:
 - (a) Setting forth its corporate name, or its corporate name with any addition required by KRS 273.364, the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
 - (b) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.
- (3) The name shall be registered for the applicant's exclusive use upon the effective date of the application.
- (4) A foreign corporation whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application, when filed, shall renew the registration for the following calendar year.

- (5) A foreign corporation whose registration is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter or by another foreign corporation thereafter authorized to transact business in this state. The registration shall terminate when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

➔Section 83. KRS 273.364 is repealed and reenacted to read as follows:

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

➔Section 84. KRS 273.2521 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:
- (a) A certificate of existence;
 - (b) A foreign corporation's application for a certificate of authority to transact business in this state;
 - (c) A foreign corporation's application for a certificate of withdrawal;
 - (d) A change of registered office or registered agent;
 - (e) A change of the principal office address;
 - (f) Application for a reservation of name;
 - (g) Application to renew a reservation of a name;
 - (h) The annual report; and
 - (i) An amendment of the annual report.

If the Secretary of State so requires, use of these forms shall be mandatory.

- (2) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter. Use of these forms shall not be mandatory.

➔Section 85. KRS 273.3671 is repealed and reenacted to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
- (a) The name of the corporation and the state or country under whose law it is incorporated;

- (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its directors and principal officers.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
 - (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
 - (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 273.2527(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned to and accepted by the Secretary of State.
 - (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 86. KRS 274.005 is repealed and reenacted to read as follows:

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

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

➔Section 87. KRS 274.015 is repealed and reenacted to read as follows:

- (1) One (1) or more individuals, each of whom is licensed to render the same professional service or who are licensed to render related professional services such that applicable licensing laws and regulations would not prohibit the practice of such multiple professional services through a single business partnership, may incorporate and form a professional service corporation by filing articles of incorporation in the office of the Secretary of State. Such articles of incorporation shall meet the requirements of KRS Chapter 271B, and in addition to the information required by KRS 271B.2-020, such articles shall contain the following:
 - (a) The designation of the profession or professions to be practiced through the professional service corporation;
 - (b) The names and residence addresses of all the original shareholders of the professional service corporation; and
 - (c) A statement by the incorporator or incorporators that each of the incorporators, shareholders, not less than one-half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person within the meaning of this chapter.

- (2) A professional service corporation formed under the provisions of this chapter, except as this chapter may otherwise provide, shall have the same powers, authority, duties, and liabilities as a corporation formed under KRS Chapter 271B.

➔Section 88. KRS 274.017 is repealed and reenacted to read as follows:

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

➔Section 89. KRS 274.019 is repealed and reenacted to read as follows:

No proxy for shares of a professional service corporation shall be valid unless it shall be given to a qualified person. A voting trust with respect to shares of a professional service corporation shall not be valid unless all the trustees and beneficiaries thereof are qualified persons, except that a voting trust may be validly continued for a period of ten (10) months after the death of a deceased beneficiary or for a period of five (5) months after a beneficiary has become a disqualified person.

➔Section 90. KRS 274.065 is repealed and reenacted to read as follows:

Nothing in this chapter shall restrict or limit in any manner the authority and duty of any regulating board of competent jurisdiction to license individual persons rendering professional services or to regulate the practice of the profession which is within the jurisdiction of such regulating board, even though such person is an officer, director, shareholder, or employee of a professional service corporation or engages in the practice of such profession through a professional service corporation.

➔Section 91. KRS 274.077 is repealed and reenacted to read as follows:

The name of a domestic professional service corporation or of a foreign professional service corporation authorized to transact business in this state:

- (1) Shall contain the words "professional service corporation" or the abbreviation "P.S.C.";
- (2) Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than the purposes contained in its articles of incorporation;
- (3) Shall satisfy the requirements of KRS 271B.4-010(2); and
- (4) Shall otherwise conform to any rule promulgated by a regulating board having jurisdiction of a professional service described in the articles of incorporation of such corporation.

➔Section 92. KRS 275.010 is repealed and reenacted to read as follows:

- (1) Except as otherwise set forth in this chapter or unless the articles of organization or operating agreement provide otherwise, every limited liability company shall have the powers to do all things necessary or convenient to carry out its business and affairs.
- (2) A limited liability company is a legal entity distinct from its members.
- (3) Professional limited liability companies shall be governed by the laws, whether statutory or common law, applicable to other limited liability companies. Except for those provisions concerning the personal liability of

members, managers, employees, and agents of a limited liability company, nothing in this chapter shall restrict, limit, or expand in any manner the authority and duty of any regulating board to:

- (a) License individual persons providing professional services; and
- (b) Regulate the practice of persons providing professional services which are within the jurisdiction of the regulating board, even though the persons are members, managers, employees, or agents of a professional limited liability company, or provide professional services through a professional limited liability company, including the establishment of regulations concerning:
 - 1. The qualifications of members or managers of a professional limited liability company;
 - 2. The transfer of limited liability company interests in a professional limited liability company; or
 - 3. The provision of one (1) or more professional services through a professional limited liability company.

➔Section 93. KRS 275.015 is repealed and reenacted to read as follows:

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

- (1) "Articles of organization" means the articles filed in conformity with the provisions of KRS 275.020 and 275.025, and those articles as amended or restated;
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (3) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (4) "Court" means every court having jurisdiction in the case;
- (5) "Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Dissent" means a right to object to a proposed action or transaction and, in connection therewith, to demand a redemption of a limited liability company interest;
- (7) "Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;
- (8) "Event of disassociation" means an event that causes a person to cease to be a member as provided in KRS 275.280;
- (9) "Foreign limited liability company" means an organization that is:
 - (a) An unincorporated association;
 - (b) Organized under laws of a state other than the laws of this Commonwealth, or under the laws of any foreign country; and
 - (c) Organized under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity;
- (10) "Knowledge" means actual knowledge of a fact;
- (11) "Limited liability company" or "domestic limited liability company" means a limited liability company formed under this chapter having one (1) or more members;
- (12) "Limited liability company interest" or "interest in the limited liability company" means the interest that may be issued in accordance with KRS 275.195;
- (13) "Limited partnership" means a limited partnership formed under the laws of the Commonwealth or any other state or a foreign country;
- (14) "Majority-in-interest of the members" means those members entitled to cast a majority of the votes to be cast by the members on any matter under the terms of the operating agreement described in KRS 275.175(3);

- (15) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its articles of organization that it is to be managed by managers, the person or persons designated in accordance with KRS 275.165;
- (16) "Member" or "members" means a person or persons who have been admitted to membership in a limited liability company as provided in KRS 275.275 and who have not ceased to be members as provided in KRS 275.280;
- (17) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (18) "Nonprofit limited liability company" means a limited liability company formed for a nonprofit purpose;
- (19) "Nonprofit purpose" includes any purpose authorized under KRS 273.167;
- (20) "Operating agreement" means any agreement, written or oral, among all of the members, as to the conduct of the business and affairs of a limited liability company. If a limited liability company has only one (1) member, an operating agreement shall be deemed to include:
 - (a) A writing executed by the member that relates to the affairs of the limited liability company and the conduct of its business regardless of whether the writing constitutes an agreement; or
 - (b) If the limited liability company is managed by a manager, any other agreement between the member and the limited liability company as it relates to the limited liability company and the conduct of its business, regardless of whether the agreement is in writing;
- (21) "Person" means an individual, a partnership, a domestic or foreign limited liability company, a trust, an estate, an association, a corporation, or any other legal entity;
- (22) "Principal office" means the office, in or out of the Commonwealth, so designated in writing with the Secretary of State where the principal executive offices of a domestic or foreign limited liability company are located;
- (23) "Proceeding" means civil suit and criminal, administrative, and investigative action;
- (24) "Professional limited liability company" means a limited liability company organized under this chapter or the laws of another state or foreign country for purposes that include, but are not limited to, the providing of one (1) or more professional services. Except as otherwise expressly provided in this chapter, all provisions of this chapter governing limited liability companies shall be applicable to professional limited liability companies;
- (25) "Professional services" mean the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;
- (26) "Real name" shall have the meaning set forth in KRS 365.015;
- (27) "Regulating board" means the governmental agency which is charged by law with the licensing and regulation of the practice of the profession which the professional limited liability company is organized to provide; and
- (28) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

➔Section 94. KRS 275.020 is repealed and reenacted to read as follows:

- (1) One (1) or more persons may serve as the organizer and form a limited liability company by delivering articles of organization to the Secretary of State for filing. It shall not be necessary that the person or persons be members of the limited liability company.
- (2) Unless a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are filed by the Secretary of State. If a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are effective as specified in KRS 275.060.
- (3) The Secretary of State's filing of the articles of organization shall be conclusive proof that the organizer or organizers satisfied all conditions precedent to organization, except in a proceeding by the state to cancel or revoke the organization or involuntarily dissolve the limited liability company.

➔Section 95. KRS 275.025 is repealed and reenacted to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of KRS 275.100;
 - (b) The street address of the limited liability company's initial registered office, and the name of its initial registered agent at that office;
 - (c) The mailing address of the initial principal office of the limited liability company; and
 - (d) A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members.
- (2) The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.
- (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
- (4) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
- (5) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the articles of organization.
- (6) A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.
- (7) If the limited liability company is a nonprofit limited liability company, then the articles of organization shall state that fact and its nonprofit purpose. This provision of the articles of organization shall not be removed from the articles of organization without written notice to the Attorney General of Kentucky given not less than ten (10) business days prior to the filing of the amendment.
- (8) The fact that the articles of organization are on file with the Secretary of State is notice:
 - (a) That the limited liability company formed by the filing of the articles of organization is a limited liability company formed under the laws of the Commonwealth of Kentucky; and
 - (b) Of all other facts set forth in the articles of organization which are required to be set forth by subsections (1), (3), and (7) of this section.

➔Section 96. KRS 275.030 is repealed and reenacted to read as follows:

- (1) A limited liability company shall amend its articles of organization to add or change a provision that is required by this chapter to be included in the articles of organization. A limited liability company may amend its articles of organization to add, change, or delete a provision that is permitted to be or that is not required to be in the articles of organization. The articles of organization shall be amended if:
 - (a) There is a change in the name of the limited liability company;
 - (b) There is a change in the latest date upon which the limited liability company is to dissolve;
 - (c) There is a change in whether the management of the limited liability company is vested in managers or members; or
 - (d) There is a change in any other matter required to be set forth in the articles of organization under KRS 275.025.
- (2) Except as provided in subsection (3) of this section, or unless the articles of organization or the operating agreement provide otherwise, an amendment to the articles of organization of a limited liability company shall be approved by the members in accordance with KRS 275.175.
- (3) Unless the articles of organization or the written operating agreement provide otherwise, a manager or, if there is no manager, any member may amend the articles of organization of the limited liability company without action by the members to delete:
 - (a) The name and address of the initial registered agent or initial registered office if a statement of change pursuant to KRS 275.120 is on file with the Secretary of State; or

- (b) The mailing address of the initial principal office, if a statement of change pursuant to KRS 275.040 is on file with the Secretary of State.
- (4) To amend its articles of organization, a limited liability company shall file with the Secretary of State articles of amendment setting forth:
 - (a) The name of the limited liability company;
 - (b) The text of each amendment adopted;
 - (c) The date of each amendment's adoption; and
 - (d) A statement that the amendment was duly adopted by the managers or the members in accordance with the articles of organization, the operating agreement of the limited liability company, or this chapter.
- (5) The articles of organization may be amended in any respect as may be desired, if the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.
- (6) Unless the articles of organization provide otherwise, no member of a limited liability company shall have the right to dissent from an amendment to the articles of organization.

➔Section 97. KRS 275.045 is repealed and reenacted to read as follows:

- (1) A document shall satisfy the requirements of this section, and of any other section of this chapter that adds to or varies these requirements, to be entitled to filing by the Secretary of State.
- (2) This chapter shall require or permit filing the document in the Office of the Secretary of State.
- (3) The document shall contain the information required by this chapter. It may also contain other information.
- (4) The document shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Manually-signed photocopies, or other reproduced copies, of typewritten or printed documents may be filed.
- (5) The document shall be in the English language. A limited liability company name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any document that may be filed by a foreign limited liability company which is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the limited liability company is formed may be in a language other than English if accompanied by a reasonably authenticated English translation.
- (6) Unless otherwise provided in any other section of this chapter, any document required by this chapter to be filed with the Secretary of State shall be executed:
 - (a) If management of the limited liability company is vested in one (1) or more managers, by any one (1) of the managers;
 - (b) If management of the limited liability company is reserved to the members, by any one (1) of the members;
 - (c) If the limited liability company has not been formed, by the persons forming a limited liability company; or
 - (d) If the limited liability company is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.
- (7) The persons executing the document shall sign it and state beneath or opposite their signatures the names of the persons and the capacity in which each signs.
- (8) The person executing the document may do so as an attorney-in-fact. Powers of attorney relating to the execution of the document shall not be required to be provided to or filed with the Secretary of State.
- (9) If the Secretary of State has prescribed a mandatory form for a document, then the document shall be in or on the prescribed form.
- (10) The document shall be delivered to the Secretary of State for filing. Delivery may be made by electronic transmission, if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, then the Secretary of State may require that it be accompanied by two (2) exact or conformed copies.

- (11) One (1) of the exact or conformed copies or, if transmitted electronically, a reproduction in paper form, shall be filed with and recorded by the county clerk of the county in which the registered office of the limited liability company is situated.
- (12) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee and any penalty required by this chapter or other law to be collected by the office of the Secretary of State shall be paid or provision for payment made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, debit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.

➔Section 98. KRS 275.050 is repealed and reenacted to read as follows:

- (1) The Secretary of State shall prescribe and furnish on request forms for:
- (a) A certificate of existence or authorization;
 - (b) An application for a certificate of authority;
 - (c) An application for a certificate of withdrawal;
 - (d) A statement of change of registered office or registered agent;
 - (e) A statement of change of principal office address;
 - (f) The annual report;
 - (g) An amendment of the annual report;
 - (h) An application for a reservation of name;
 - (i) An application to renew a reservation of name; and
 - (j) An amended application for certificate of authority.
- (2) The Secretary of State shall have the discretion to make mandatory the use of the forms referred to in subsection (1) of this section.
- (3) The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed pursuant to this chapter, but their use shall not be mandatory.

➔Section 99. KRS 275.055 is repealed and reenacted to read as follows:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:
- (a) Articles of organization\$ 40.00
 - (b) Application for certificate of authority as a
foreign limited liability company\$ 90.00
 - (c) Amendment of article of organization\$ 40.00
 - (d) Restatement of articles of organization\$ 40.00
 - (e) Amendment and restatement of articles of organization\$ 80.00
 - (f) Articles of dissolution with respect to a domestic
limited liability company\$ 40.00
 - (g) Limited liability company's statement of change of
registered agent or change of the address of the registered
office, or both\$ 10.00
 - (h) Registered agent's statement of change of registered office for
each affected limited liability company\$ 10.00

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| | not to exceed a total of | \$ 1,000.00 |
| (i) | Limited liability company's statement of change of the
mailing address of the principal office | \$ 10.00 |
| (j) | Application to reserve a name for use by a domestic
or foreign limited liability company | \$ 15.00 |
| (k) | Renewal of application to reserve a name for use by
a domestic or foreign limited liability company | \$ 15.00 |
| (l) | Notice of the transfer of a name reserved for use by a
domestic or a foreign limited liability company | \$ 15.00 |
| (m) | Application for use of indistinguishable name | \$ 20.00 |
| (n) | Application for registered name | \$ 36.00 |
| (o) | Application for renewal of registered name | \$ 36.00 |
| (p) | Articles of merger | \$ 50.00 |
| (q) | Application for amended certificate of authority | \$ 40.00 |
| (r) | Application for certificate of withdrawal | \$ 40.00 |
| (s) | Articles of correction | \$ 20.00 |
| (t) | Certificate of existence or authorization | \$ 10.00 |
| (u) | Reinstatement penalty following administrative dissolution | \$ 100.00 |
| (v) | Annual report | \$ 15.00 |
| (w) | Amendment to annual report | \$ 10.00 |
| (x) | Articles of share exchange | \$ 50.00 |
| (y) | Any other document required or permitted to be
filed by this chapter | \$ 15.00 |
- (2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if the party prevails in the proceeding.
- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:
- (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and
 - (b) Five dollars (\$5) for the certificate.
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited liability companies.
- ➔Section 100. KRS 275.060 is repealed and reenacted to read as follows:
- (1) Except as provided in subsection (2) of this section and KRS 275.065(3), a document shall be effective at the time of filing on the date it is filed, as evidenced by any means the Secretary of State may allow for the purpose of recording the date and time of filing, or at the time specified in the document as its effective time on the date it is filed.
 - (2) A document may specify a delayed effective time and date. If the document does so specify and is filed pursuant to subsection (1) of this section, then the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, then the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.

- (3) A document filed in accordance with this section shall be effective regardless of a failure to file the document with the county clerk pursuant to KRS 275.045(11).

➔Section 101. KRS 275.065 is repealed and reenacted to read as follows:

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

➔Section 102. KRS 275.070 is repealed and reenacted to read as follows:

- (1) If a document delivered to the Secretary of State for filing satisfies the requirements of KRS 275.045, then the Secretary of State shall file it.
- (2) The Secretary of State shall file a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in KRS 275.125 and 275.420, the Secretary of State shall deliver to the domestic or foreign limited liability company or its representative a copy of the document with an acknowledgment of the date and time of filing.
- (3) If the Secretary of State refuses to file a document, then the Secretary of State shall return it to the domestic or foreign limited liability company or its representative within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.
- (4) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document by the Secretary of State shall not:
- (a) Affect the validity or invalidity of the document in whole or part;
 - (b) Relate to the correctness or incorrectness of information contained in the document; or
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

➔Section 103. KRS 275.080 is repealed and reenacted to read as follows:

A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State shall be conclusive evidence that the original document is on file with the Secretary of State.

➔Section 104. KRS 275.095 is repealed and reenacted to read as follows:

All persons purporting to act as or on behalf of a limited liability company, knowing there has been no organization under this chapter, or who assume to act for a limited liability company without authority to do so, shall be jointly and severally liable for all liabilities created while so acting.

➔Section 105. KRS 275.100 is repealed and reenacted to read as follows:

- (1) The name of each limited liability company as set forth in its articles of organization shall contain the words "limited liability company" or "limited company" or the abbreviations "LLC" or "LC." The name of each limited liability company which is a professional limited liability company shall contain the words "professional limited liability company" or "professional limited company" or the abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd.," and the word "Company" may be abbreviated as "Co."
- (2) Except as authorized by subsections (3) and (4) of this section, the name of a limited liability company shall be distinguishable from any name on record with the Secretary of State.
- (3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A limited liability company may use the name, including the fictitious name, with any modification required by this section or KRS 275.410 of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the limited liability company:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the other business entity; or
 - (c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- (5) This chapter shall not control the use of assumed names.
- (6) The filing of articles of organization under the particular name of the limited liability company shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 106. KRS 275.105 is repealed and reenacted to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a limited liability company name, including the fictitious name, for a foreign limited liability company whose limited liability company name is not available for use in this Commonwealth. If the Secretary of State finds that the limited liability company name applied for is available, the Secretary of State shall reserve the name for the applicant's exclusive use for one (1) nonrenewable period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder of the registration may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The holder of a reserved limited liability company name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved limited liability company name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 107. KRS 275.135 is repealed and reenacted to read as follows:

- (1) Except as provided in subsection (2) of this section, every member shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any member, including but not limited to the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is a member, shall bind the limited liability company, unless the member so acting has, in fact, no authority to act for the limited liability

company in the particular matter, and the person with whom the member is dealing has knowledge or has received notification of the fact that the member has no such authority.

- (2) If the articles of organization provide that management of the limited liability company is vested in a manager or managers:
 - (a) No member, solely by reason of being a member, shall be an agent of the limited liability company; and
 - (b) Every manager shall be an agent of the limited liability company for the purpose of its business or affairs, and the act of any manager, including, but not limited to, the execution in the name of the limited liability company of any instrument, for apparently carrying on in the usual way the business or affairs of the limited liability company of which he is the manager shall bind the limited liability company, unless the manager so acting has, in fact, no authority to act for the limited liability company in the particular matter, and the person with whom the manager is dealing has knowledge or has received notification of the fact that the manager has no such authority.
- (3) An act of a manager or a member which is apparently not for the carrying on in the usual way of the business or affairs of the limited liability company shall not bind the limited liability company unless, at the time of the transaction or at any other time, the act is authorized in accordance with the operating agreement.
- (4) An act of a manager or member in contravention of a restriction on authority shall not bind the limited liability company to persons having knowledge of the restriction.

➔Section 108. KRS 275.165 is repealed and reenacted to read as follows:

- (1) Unless the articles of organization vest management of the limited liability company in a manager or managers, management of the business and affairs of the limited liability company shall vest in the members. Subject to any provisions in the articles of organization, the operating agreement or this chapter restricting or enlarging the management rights and duties of any person or group or class of persons, the members shall have the right and authority to manage the affairs of the limited liability company and to make all decisions with respect thereto.
- (2) If the articles of organization vest management of the limited liability company in one (1) or more managers, except to the extent otherwise provided in the articles of organization, the operating agreement, or this chapter, the manager or managers shall have exclusive power to manage the business and affairs of the limited liability company. Unless otherwise provided in the articles of organization or the operating agreement, managers:
 - (a) Shall be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of the majority-in-interest of the members;
 - (b) Shall not be required to be members of the limited liability company or natural persons; and
 - (c) Unless they are sooner removed or sooner resign, shall hold office until their successors shall have been elected and qualified.
- (3) Unless otherwise set forth in a written operating agreement, a member or manager of a limited liability company has the power and authority to delegate to one (1) or more other persons the member's or manager's powers to manage or control the business and affairs of the limited liability company, including without limitation the power to delegate to agents and employees of a member, manager, or limited liability company or to delegate by an agreement to other persons. This delegation by a member or manager of a limited liability company shall not cause the member or manager to cease to be a member or manager of the limited liability company.

➔Section 109. KRS 275.170 is repealed and reenacted to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) A member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.
- (2) Each member and manager shall account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, or a majority-in-interest of the members from:

- (a) Any transaction connected with the conduct or winding up of the limited liability company; or
 - (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his status as manager or member.
- (3) In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, shall not be counted in a vote of the members to determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written operating agreement, exists to consider whether to consent.
- (4) A member of a limited liability company in which management is vested in managers under KRS 275.165(2) and who is not a manager shall have no duties to the limited liability company or the other members solely by reason of acting in his or her capacity as a member.

➔Section 110. KRS 275.175 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, the affirmative vote, approval, or consent of a majority-in-interest of the members, if management of the limited liability company is vested in the members, or a simple majority of the managers, each having a single vote, if the management of the limited liability company is vested in managers, shall be required to decide any matter connected with the business affairs of the limited liability company.
- (2) Unless otherwise provided in a written operating agreement, the affirmative vote, approval, or consent of the majority-in-interest of the members shall be required to:
- (a) Amend a written operating agreement;
 - (b) Authorize a manager or member to do any act on behalf of the limited liability company that contravenes a written operating agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the limited liability company or the conduct thereof; or
 - (c) Amend the articles of organization to change the management of the limited liability company from members to managers or from managers to members.
- (3) Unless otherwise provided in the articles of organization, a written operating agreement, or this chapter, for all purposes of this chapter, the members of a limited liability company shall vote, approve, or consent in proportion to their contributions, based upon the agreed value as stated in the records of the limited liability company as required by KRS 275.185, made by each member to the extent they have been received by the limited liability company and have not been returned.
- (4) Unless otherwise provided in the articles of organization or the written operating agreement, no member of a limited liability company shall have the right to dissent from an amendment to the operating agreement.

➔Section 111. KRS 275.185 is repealed and reenacted to read as follows:

- (1) A limited liability company shall keep at its principal office or other location as set forth in a written operating agreement, the following:
- (a) A current list, and all past lists, setting forth the full name and last known mailing address of each member and, if any, each manager;
 - (b) A copy of the articles of organization and all amendments thereto, together with executed copies of any power of attorney pursuant to which any articles of amendment have been executed;
 - (c) Copies of the limited liability company's federal, state, and local income tax returns and financial statements, if any, for the three (3) most recent years or, if those returns and statements were not prepared, copies of the information and statements provided to, or which should have been provided to, the members to enable them to prepare their federal, state, and local tax returns for those years;
 - (d) Copies of any effective written operating agreements and all amendments thereto, and copies of any written operating agreements no longer in effect; and
 - (e) Unless contained in writing in an operating agreement:

1. A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each member and the times at which or events upon the happening of which any additional contributions are to be made;
 2. A writing stating events, if any, upon the happening of which the limited liability company is to be dissolved and its affairs wound up; and
 3. Other writings, if any, prepared pursuant to a requirement, if any, in an operating agreement.
- (2) Upon reasonable written request, a member may, at the member's own expense, inspect and copy during ordinary business hours any limited liability company record, where the record is located or at a reasonable location.
 - (3) Members, if the management of the limited liability company is vested in the members, or managers, if management of the limited liability company is vested in managers, shall render, to the extent the circumstances render it just and reasonable, true and full information of all matters affecting the members to any member, and the member's agent, and to the legal representative of any deceased member or of any member under legal disability.
 - (4) Failure of the limited liability company to keep or maintain any of the records or information required pursuant to this section shall not be grounds for imposing liability on any member or manager for the debts and obligations of the limited liability company.
 - (5) A written operating agreement may impose reasonable limitations upon the use of any record of or information with respect to a limited liability company. Except as to limitations set forth in a written operating agreement to which a member requesting information has assented, the limited liability company bears the burden of proof in demonstrating the reasonableness of any restrictions imposed.

➔Section 112. KRS 275.190 is repealed and reenacted to read as follows:

- (1) Each domestic limited liability company, and each foreign limited liability company authorized to transact business in this Commonwealth, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the limited liability company and the state or country under whose law it is organized;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office; and
 - (d) The names and business addresses of its managers, if management is vested in managers, or one (1) or more designated members, if management is vested in members.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the limited liability company.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic limited liability company was organized or a foreign limited liability company was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign limited liability company in writing and return the report to it for completion. For purposes of KRS 275.085(2)(e), an annual report returned for completion pursuant to this subsection shall not be deemed to have been delivered.
- (5) A domestic or foreign limited liability company may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 113. KRS 275.195 is repealed and reenacted to read as follows:

- (1) A limited liability company interest may be issued in exchange for consideration consisting of cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services.

- (2) A person may be admitted to a limited liability company as a member of the limited liability company and may receive a limited liability company interest without making a contribution or being obligated to make a contribution to the limited liability company.

- (3) Unless otherwise provided in the operating agreement, a person may be admitted to a limited liability company as a member without acquiring a limited liability company interest.

➔Section 114. KRS 275.200 is repealed and reenacted to read as follows:

- (1) An obligation of a member to make a contribution to the limited liability company shall not be enforceable unless set forth in a writing signed by the member.
- (2) Unless otherwise provided in an operating agreement, a member shall be obligated to the limited liability company to perform any enforceable promise to contribute cash or property or to perform services, even if the member is unable to perform because of death, disability, or other reason.
- (3) If a member does not make a required contribution of property or services, then the member shall be obligated, at the option of the limited liability company, to contribute cash equal to that portion of value of the stated contribution that has not been made.
- (4) Unless otherwise provided in an operating agreement, an obligation of a member to make a contribution may be compromised only with the unanimous consent of the members.
- (5) Notwithstanding any compromise approved pursuant to subsection (4) of this section, a creditor of a limited liability company who extends credit or otherwise acts in reliance on an obligation after the member executes a writing which reflects that obligation and before any such compromise is reached, may enforce the original obligation.

➔Section 115. KRS 275.225 is repealed and reenacted to read as follows:

- (1) No distribution shall be made if, after giving effect to the distribution:
 - (a) The limited liability company would not be able to pay its debts as they become due in the usual course of business; or
 - (b) The limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution.
- (2) The limited liability company may base a determination that a distribution is not prohibited under subsection (1) of this section either on:
 - (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - (b) A fair valuation or other method that is reasonable under the circumstances.
- (3) Except as provided in subsection (5) of this section, the effect of a distribution under subsection (1) of this section shall be measured as of:
 - (a) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
 - (b) The date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.
- (4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section shall be at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- (5) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, then indebtedness of a limited liability company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under subsection (1) of this section.

- (6) If the indebtedness is issued as a distribution, then each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.
- (7) For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefit program.

➔Section 116. KRS 275.255 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement:
 - (a) A limited liability company interest shall be assignable in whole or in part;
 - (b) An assignment shall entitle the assignee to receive, to the extent assigned, only the distributions to which the assignor would be entitled;
 - (c) An assignment of a limited liability company interest shall not dissolve the limited liability company or entitle the assignee to participate in the management and affairs of the limited liability company or to become or exercise any rights of a member other than the right to receive distributions pursuant to subsection (1)(b) of this section;
 - (d) Until the assignee of a limited liability company interest becomes a member pursuant to KRS 275.265(1), the assignor shall continue to be a member and to have the power to exercise any rights of a member, subject to the members' right to remove the assignor pursuant to KRS 275.280(1)(c)2.;
 - (e) Until an assignee of a limited liability company interest becomes a member, the assignee shall have no liability as a member solely as a result of the assignment; and
 - (f) The assignor of a limited liability company interest shall not be released from liability as a member solely as result of the assignment.
- (2) A written operating agreement may provide that a member's limited liability company interest may be evidenced by a certificate of limited liability company interest issued by the limited liability company and may also provide for the assignment or transfer of any interest represented by the certificate.
- (3) Unless otherwise provided in a written operating agreement, the pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the limited liability company interest of a member shall not constitute an assignment and shall not cause the member to cease to be a member or cease to have the power to exercise any rights or powers of a member.
- (4) Limitations upon the assignment or pledge of a membership interest set forth or adopted in accordance with this section shall be enforced notwithstanding KRS 355.9-406 and 355.9-408.

➔Section 117. KRS 275.260 is repealed and reenacted to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a member or the assignee of a member may satisfy a judgment out of the judgment debtor's limited liability company interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a member or a member's assignee, a court may charge the judgment debtor's interest in the limited liability company with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a assignee and shall have no right to participate in the management or to cause the dissolution of the limited liability company. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company interest and make all other orders, directions, accounts, and inquiries the judgment creditor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's limited liability company interest. A charging order does not of itself constitute an assignment of the limited liability company interest.
- (4) The court may order a foreclosure upon the limited liability company interest subject to the charging order at any time. The purchaser of the liability company interest at the foreclosure sale has the rights of a assignee. At any time before foreclosure, the charged limited liability company interest may be redeemed:

- (a) By the judgment debtor;
 - (b) With property other than limited liability company property, by one (1) or more of the other members; and
 - (c) With limited liability company property, by the limited liability company with the consent of all members whose interest are not so charged.
- (5) This section does not deprive a member or a member's transferee of the benefit of any exemption laws applicable to the member's or transferee's limited liability company interest.

➔Section 118. KRS 275.285 is repealed and reenacted to read as follows:

A limited liability company shall be dissolved, and it shall commence to wind up its affairs upon the happening of the first to occur of the following:

- (1) The expiration of the term of the limited liability company set forth in the articles of organization, if any;
- (2) Upon the occurrence of events specified in the articles of organization or a written operating agreement;
- (3) Unless otherwise set forth in the operating agreement, the written consent of all of the members of a limited liability company;
- (4) There are no remaining members, except that the limited liability company shall not be dissolved and its affairs shall not be wound up when:
 - (a) A member is admitted to the limited liability company in the manner provided for in a written operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or
 - (b) Unless otherwise provided in a written operating agreement, within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, the successor-in-interest of the last remaining member agrees in writing to continue the limited liability company and to the admission of the successor-in-interest of that member or its designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member;
- (5) Entry of a decree of judicial dissolution under KRS 275.290; or
- (6) Filing of a certificate of dissolution by the Secretary of State under KRS 275.295.

➔Section 119. KRS 275.295 is repealed and reenacted to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:
 - (a) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after the annual report is due;
 - (b) The limited liability company is without a registered agent or registered office in Kentucky for at least sixty (60) days;
 - (c) The limited liability company does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued; or
 - (d) The limited liability company's term as set forth in its articles of organization expires.
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination by first-class mail at its principal place of business address.
 - (b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company by mailing the notice by

first-class mail to the limited liability company at its principal place of business address. If a limited liability company is dissolved for having reached the end of its period of duration, and it does not within sixty (60) days of the end of its duration amend the articles of organization to extend its duration, the certificate of dissolution shall be effective as of the end of the period of duration as set forth in the articles of organization.

- (3) (a) A limited liability company administratively dissolved under subsection (2) of this section, other than for failure to amend the articles of organization to extend the duration of the limited liability company within sixty (60) days of the expiration of its term, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 - 1. State the name of the limited liability company and the effective date of its administrative dissolution;
 - 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 - 3. State that the limited liability company's name satisfies the requirements under KRS 275.100;
 - 4. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the limited liability company have been paid; and
 - 5. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report as provided for in KRS 275.055(1).
 - (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
 - 1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 - 2. Serve a copy on the limited liability company in the manner provided in subsection (2)(a) of this section.
 - (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited liability company shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the limited liability company at its registered office or, if none, to the last principal office identified on the most recent annual report, or, if none, the articles of organization.
 - (b) The limited liability company may appeal the denial of reinstatement to the Circuit Court of the county where the limited liability company's principal office, or, if there is none in Kentucky, its registered office, is located within thirty (30) days after service of the notice of denial by doing the following:
 - 1. Filing a petition with the court to set aside the dissolution; and
 - 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.
 - (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
 - (d) The court's final decision may be appealed as are other civil proceedings.

➔Section 120. KRS 275.300 is repealed and reenacted to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) The business or affairs of the limited liability company may be wound up:
 - (a) By the members or managers who have authority pursuant to KRS 275.165 to manage the limited liability company prior to dissolution; or

- (b) If one (1) or more of the members or managers have engaged in wrongful conduct, or upon other cause shown, by the Circuit Court for the county in which the principal office of the limited liability company is located or in which the registered office of the limited liability company is located, on application of any member, any member's legal representative, or assignee.
- (2) A dissolved limited liability company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its members;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its members according to their interests; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (3) Dissolution of a limited liability company shall not:
 - (a) Transfer title to the limited liability company's property;
 - (b) Prevent transfer of a limited liability company interest, although the authorization to dissolve may provide for the limited liability company restricting the transfer of the limited liability company's interest;
 - (c) Subject its members or managers to standards of conduct different from those prescribed herein;
 - (d) Change quorum or voting requirements for its members or managers; change provisions for selection, resignation, or removal of its members or managers; or change provisions for amending its operating agreement;
 - (e) Prevent commencement of a proceeding by or against the limited liability company in its name;
 - (f) Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
 - (g) Terminate the authority of the registered agent of the limited liability company;
 - (h) Alter the obligations and responsibilities of the limited liability company as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
 - (i) Abate or suspend KRS 275.150(1).

➔Section 121. KRS 275.315 is repealed and reenacted to read as follows:

After the dissolution of the limited liability company pursuant to KRS 275.285, the limited liability company shall file articles of dissolution with the Secretary of State which set forth:

- (1) The name of the limited liability company;
- (2) A statement of the subsection of KRS 275.285 pursuant to which the limited liability company has dissolved;
- (3) The effective date, which shall be a date certain, of the dissolution; and
- (4) Any other information the members or managers filing the articles of dissolution shall deem proper.

➔Section 122. KRS 275.345 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in writing in a written operating agreement, and subject to any law applicable to business entities other than limited liability companies, one (1) or more limited liability companies may merge with or into one (1) or more other business entities with the limited liability company or other business entity being the surviving or resulting limited liability company or other business entity.
- (2) Rights or securities of or interests in a business entity that is a party to the merger may be exchanged for or converted into cash, property, obligations, rights, or securities of or interests in the surviving or resulting business entity or of any other business entity.
- (3) Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.

- (4) A nonprofit limited liability company shall not merge with or into any business entity which is not a domestic nonprofit limited liability company.

➔Section 123. KRS 275.350 is repealed and reenacted to read as follows:

- (1) Unless otherwise provided in a written operating agreement, a limited liability company that is a party to a proposed merger shall approve the plan of merger in KRS 275.355 by a majority-in-interest of the members.
- (2) Each business entity that is a party to a proposed merger shall approve the plan of merger in the manner and by the vote required by the laws applicable to the business entity.
- (3) Each business entity that is a party to the merger shall have the rights to abandon the merger as provided for in the plan of merger or in the laws applicable to the business entity.
- (4) Unless otherwise provided in the articles of organization, a written operating agreement, or a written agreement and plan of merger, no member of a limited liability company shall have the right to dissent from a merger.

➔Section 124. KRS 275.370 is repealed and reenacted to read as follows:

- (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall, in the case of a partnership, be approved by all the partners or by a number or percentage specified for conversion in the partnership agreement or, in the case of a limited partnership, by all the partners, notwithstanding any provision to the contrary in the limited partnership agreement.
- (3) After the conversion is approved under subsection (2) of this section, the partnership or limited partnership shall file articles of organization with the office of the Secretary of State which satisfy the requirements of KRS 275.025 and include:
 - (a) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;
 - (b) Its former name;
 - (c) In the case of a partnership, a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement; and
 - (d) If the partnership has filed a statement of registration as a limited liability partnership in accordance with KRS 362.555 or a statement of qualification in accordance with KRS 362.1-1001, each shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020; and
 - (e) In the case of a limited partnership, the limited partnership's certificate of limited partnership shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020.
- (4) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, as provided in KRS 275.020, at a later date specified in the articles of organization.
- (5) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a conversion shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect. If the other party to a transaction with the limited liability company reasonably believes when entering the transaction that the member undertaking the transaction is a partner in a partnership or a general partner in a limited partnership, the member shall be liable for an obligation incurred by the limited liability company within ninety (90) days after the conversion takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the conversion takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a conversion shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.

➔Section 125. KRS 275.375 is repealed and reenacted to read as follows:

- (1) A partnership or limited partnership that has been converted pursuant to this chapter shall be for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of the converting partnership or limited partnership shall remain vested in the converted limited liability company without assignment, reversion, or impairment;
 - (b) All obligations of the converting partnership or limited partnership shall continue as obligations of the converted limited liability company;
 - (c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred and the name of the converted limited liability company may be substituted in any pending action or proceeding for the name of the converting partnership or limited partnership; and
 - (d) The written operating agreement of the converted limited liability company shall be binding upon each person who becomes a member of the limited liability company.

➔Section 126. KRS 275.380 is repealed and reenacted to read as follows:

- (1) Subject to the Constitution of this Commonwealth:
 - (a) The laws of the state or other jurisdiction under which a foreign limited liability company is organized shall govern its organization and internal affairs, including the inspection of the books, records, and documents, and the liability of its members, except as provided in subsection (2) of this section; and
 - (b) A foreign limited liability company shall not be denied registration by reason of any difference between the laws of another jurisdiction under which a foreign limited liability company is organized and the laws of this Commonwealth.
- (2) A certificate of authority obtained pursuant to this chapter shall not authorize a foreign limited liability company to exercise any powers or engage in any business that a domestic limited liability company is forbidden to exercise or engage in by the laws of this Commonwealth.

➔Section 127. KRS 275.395 is repealed and reenacted to read as follows:

- (1) A foreign limited liability company may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign limited liability company, or if its name is unavailable for use in this Commonwealth, a company name that satisfies the requirements of KRS 275.410;
 - (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the limited liability company has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign limited liability company;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current managers, if any; and
 - (g) A statement that, as of the date of filing, the foreign limited liability company validly exists as a limited liability company under the laws of the jurisdiction of its organization.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany an application for the certificate of authority.

➔Section 128. KRS 275.400 is repealed and reenacted to read as follows:

- (1) A foreign limited liability company authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:

- (a) Its real name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.
- (2) The requirements of KRS 275.395 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.

➔Section 129. KRS 275.405 is repealed and reenacted to read as follows:

- (1) A certificate of authority shall authorize the foreign limited liability company to which it is issued to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the certificate as provided in this chapter.
- (2) A foreign limited liability company with a valid certificate of authority shall have the same but no greater rights as, and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic limited liability company.
- (3) This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs, including the inspection of books, records and documents, of a foreign limited liability company authorized to transact business in this Commonwealth.

➔Section 130. KRS 275.410 is repealed and reenacted to read as follows:

- (1) If the real name of a foreign limited liability company does not satisfy the requirements of KRS 275.100, the foreign limited liability company, to obtain or maintain a certificate of authority to transact business in this Commonwealth:
 - (a) May add to its name for use in this Commonwealth:
 - 1. The words "limited liability company," "limited company," "professional limited liability company," or "professional liability company." The word "limited" may be abbreviated as "Ltd.," and the word "Company" may be abbreviated as "Co."; or
 - 2. The abbreviations "LLC," "LC," "PLLC," or "PLC"; or
 - (b) May use a fictitious name to transact business in this Commonwealth if its real name is unavailable and it delivers to the Secretary of State for filing a certificate by a person authorized to execute documents pursuant to KRS 275.045(6) that the limited liability company has adopted the fictitious name.
- (2) Except as authorized by subsections (3) and (4) of this section, the name, including a fictitious name, of a foreign limited liability company shall be distinguishable from any name of record with the Secretary of State.
- (3) A foreign limited liability company may apply to the Secretary of State for authorization to use in this Commonwealth the name of another business entity, organized or authorized to transact business in this Commonwealth, that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A foreign limited liability company may use in this Commonwealth the name, including the fictitious name, of another business entity that is used in this Commonwealth if the business entity is organized or authorized to transact business in this Commonwealth and the foreign limited liability company:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the business entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other business entity.

- (5) If a foreign limited liability company authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and obtains an amended certificate of authorization under KRS 275.400.

➔Section 131. KRS 279.010 is repealed and reenacted to read as follows:

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

- (1) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or by eminent domain, or to obtain by any other lawful means;
- (2) "Board" means the board of directors of a corporation formed under this chapter;
- (3) "Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (4) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (5) "Farm Credit Act" means Section 12 of the Federal Farm Credit Act of 1935 and the amendments thereto;
- (6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities and agencies in the ordinary sense;
- (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- (8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under this chapter, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation organized under this chapter that has capital stock;
- (9) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (10) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under this chapter;
- (11) "Real name" shall have the meaning set forth in KRS 365.015; and
- (12) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the generation, production, transmission, or distribution of electric energy.

➔Section 132. KRS 279.030 is repealed and reenacted to read as follows:

- (1) The articles of incorporation shall set forth:
 - (a) The name of the corporation, which shall be distinguishable from any name of record with the Secretary of State;
 - (b) The purpose for which it is formed;
 - (c) The place, including the county, where its principal office will be located;
 - (d) A reasonable description of the territory in which its operations are to be conducted;
 - (e) The number of directors;
 - (f) The names and post office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until the first meeting called to elect directors, or until the successors of the first directors are elected and have qualified;
 - (g) The period limited for the duration of the corporation, or that the corporation is to be perpetual;
 - (h) If the corporation is organized without capital stock, the terms upon which members may be admitted and the terms upon which their membership shall terminate;
 - (i) If the corporation is organized with capital stock, the amount of the stock, the number of shares into which it is divided and the par value; and

- (j) If the capital stock is divided into common and preferred stock, as it may be, the number of shares to which preference is granted and the number of shares to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.
- (2) The articles of incorporation may contain any other lawful provision that the incorporators choose to insert for the purpose of regulating the business and affairs of the corporation, for the purpose of creating, defining, limiting or regulating the rights, powers and duties of the corporation and its board of directors and members, and the exercise of any such powers, or for the purpose of creating or defining the rights and privileges of the members of the corporation among themselves, including separation of members into classes or districts and providing for representation of each class or district on the board of directors.
- (3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (4) A corporation may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state, and the proposed user corporation:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.
- (5) This chapter does not control the use of assumed names.
- (6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 133. KRS 279.060 is repealed and reenacted to read as follows:

The words "Rural Electric Cooperative" shall not be used in the real, fictitious, or assumed name of any corporation, limited liability company, partnership, limited partnership, or other business entity other than one (1) formed under this chapter.

➔Section 134. KRS 279.310 is repealed and reenacted to read as follows:

As used in KRS 279.320 to 279.600, unless the context requires otherwise:

- (1) "Cooperative" means any corporation organized under KRS 279.320 to 279.600 or which becomes subject to those sections in the manner provided therein;
- (2) "Person" means any natural person, firm, association, corporation, business trust, or partnership;
- (3) As used in this chapter, the term "telephone service" shall include in its meaning communications services of all kinds allowed to any other telephone utility, authorized by regulatory agency and with some unregulated, that being the transmission of voice, data, sounds, signals, pictures, writing, or signs of all kinds, by use of wire, radio, light, electromagnetic impulse, broadband (wideband) spectrum, or any other transmission mode and facility used in rendition of such services; but shall not include in their meaning message telegram service, or radio broadcasting services or facilities within the meaning of Section 153(O) of the Federal Communications Act of 1934, as amended;
- (4) "Acquire" means to construct, purchase, obtain by lease, devise, gift, or eminent domain, or to obtain by any other lawful means;
- (5) "Board" means the board of trustees of a corporation formed under KRS 279.320 to 279.600;
- (6) "Federal agency" means and includes the United States, the President of the United States, and all federal authorities, instrumentalities, and agencies in the ordinary sense;

- (7) "Improve" means to construct, reconstruct, extend, enlarge, alter, better, or repair;
- (8) "Member" means and includes each person signing the articles of incorporation of a corporation formed under KRS 279.320 to 279.600, each person later admitted to membership according to law or according to the articles of incorporation or bylaws of the corporation, and each common stockholder in a corporation, having capital stock, organized under KRS 279.320 to 279.600;
- (9) "Obligations" means and includes negotiable bonds, notes, debentures, interim certificates or receipts, and all other evidences of indebtedness either issued or the payment thereof assumed by a corporation organized under KRS 279.320 to 279.600;
- (10) "System" means and includes any plant, works, facilities, and properties, and all parts thereof and appurtenances thereto, used or useful in the operation and maintenance of telephone communication service;
- (11) "Rural area" shall be deemed to mean any area of this state not included within the boundaries of any incorporated or unincorporated city or of a consolidated local government, having a population in excess of fifteen hundred (1,500) inhabitants;
- (12) "Telephone company" means any natural person, firm, association, corporation, or partnership owning, leasing, or operating any line, facility, or system used in the furnishing of telephone service within this state;
- (13) "Business entity" means a domestic and foreign limited liability company, corporation, general partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association;
- (14) "Corporation" means a profit or nonprofit corporation formed under the laws of any state or a foreign country;
- (15) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and
- (16) "Real name" shall have the meaning set forth in KRS 365.015.

➔Section 135. KRS 279.340 is repealed and reenacted to read as follows:

- (1) The name of a cooperative shall include the words "Telephone," "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.," unless, in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger or conversion, which relate to such cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name. The name may include the word "Cooperative."
- (2) Except as authorized by subsection (3), (4), or (5) of this section, the name of a cooperative shall be distinguishable from any name of record with the Secretary of State.
- (3) This section shall not apply to any corporation which becomes subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does business in this state pursuant to KRS 279.570 and which elects to retain a corporate name which does not comply with this section.
- (4) A cooperative may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying cooperative; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.
- (5) A cooperative may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user cooperative:
 - (a) Has merged with the other entity;
 - (b) Has been formed by reorganization of the other entity; or
 - (c) Has acquired all or substantially all of the assets, including the name, of the other entity.

- (6) This chapter does not control the use of assumed names.
- (7) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 136. KRS 304.38-040 is repealed and reenacted to read as follows:

- (1) A corporation, limited liability company, or partnership may apply to the executive director for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this subtitle.
- (2) Health maintenance organizations which are corporations may be organized by applying the provisions of KRS Chapter 271B, if for profit, and KRS Chapter 273, if for nonstock, nonprofit, to the extent that the same are not inconsistent with the express provisions of this subtitle.
- (3) Each application for a certificate of authority shall be submitted to the executive director upon a form prescribed by him and shall set forth or be accompanied by:
 - (a) Evidence that the applicant has been issued a certificate of need in accordance with the provisions of KRS Chapter 216B or evidence that no certificate of need is required by KRS Chapter 216B;
 - (b) Articles of incorporation, articles of organization, partnership agreement, or other applicable documents in quadruplicate, acknowledged and verified by the applicant;
 - (c) The initial bylaws, operating agreement, or other equivalent documents of the organization in triplicate, or any other similar documents;
 - (d) A statement which shall include describing the health maintenance organization:
 - 1. The health services to be offered;
 - 2. The financial risks to be assumed;
 - 3. The initial geographic area to be served;
 - 4. Pro forma financial projections for the first three (3) years of operations including the assumptions the projections are based upon;
 - 5. The sources of working capital and funding;
 - 6. A description of the persons to be covered by the health maintenance organization;
 - 7. Any proposed reinsurance arrangements;
 - 8. Any proposed management, administrative, or cost-sharing arrangements; and
 - 9. A description of the health maintenance organization's proposed method of marketing;
 - (e) The names, addresses, and positions of the initial board of directors, board of trustees, or other governing body responsible for the conduct of the affairs of the applicant;
 - (f) Any proposed evidence of coverage to be issued by the applicant to individuals, enrollees, groups, or other contract holders; and
 - (g) Evidence of financial responsibility as provided in KRS 304.38-060.

➔Section 137. KRS 304.38-070 is repealed and reenacted to read as follows:

- (1) This subsection applies to a corporation or limited liability company applying for and holding a certificate of authority as a health maintenance organization:
 - (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a corporation or limited liability company shall possess and thereafter maintain unimpaired paid-in capital stock of one million dollars (\$1,000,000), and, when first so authorized, shall possess initial free surplus of not less than two million dollars (\$2,000,000);
 - (b) A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required

for such authority immediately prior to July 15, 1986. Notwithstanding the other provisions hereof, the exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date it has accumulated capital and surplus equal to or in excess of the capital and surplus required by paragraph (a) of this subsection; and

- (c) Each corporation authorized as a health maintenance organization shall at all times maintain bona fide additional surplus in the amount of two hundred fifty thousand dollars (\$250,000) and shall at all times comply with the risk-based capital requirements as established in administrative regulations promulgated by the executive director. A corporation holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency as required for such authority immediately prior to July 15, 1986. The exception provided in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which it has accumulated additional surplus equal to or in excess of the additional surplus required by this subsection.
- (2) This subsection applies to a partnership applying for or holding a certificate of authority as a health maintenance organization:
- (a) Except as provided in paragraph (b) of this subsection, to qualify for authority to act as a health maintenance organization, a partnership shall possess, when first so authorized, a total of at least three million dollars (\$3,000,000) in its capital accounts. Thereafter, a partnership authorized as a health maintenance organization shall possess and maintain a total of at least one million two hundred fifty thousand dollars (\$1,250,000) in its capital accounts and shall comply at all times with the risk-based capital requirement established in administrative regulations promulgated by the executive director;
 - (b) A partnership holding a valid certificate of authority to transact business as a health maintenance organization in Kentucky immediately prior to July 15, 1986, may, if otherwise qualified therefor, continue to be so authorized while meeting the requirements for protection against insolvency required for such authority immediately prior to July 15, 1986. The exception provided for in this paragraph shall cease to apply to any such health maintenance organization from and after the date upon which the total of the funds which it has accumulated in its capital accounts equal or exceed the total of the funds in its capital accounts required by this subsection.
- (3) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with risk-based capital (RBC) requirements as follows:
- (a) For purposes of this subsection, risk-based capital shall be determined in accordance with the risk-based capital requirements for health maintenance organizations established under this subtitle and any administrative regulation promulgated pursuant to KRS Chapter 13A, except as otherwise provided in this subsection. A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization which by contract manages care and processes health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program shall comply with the same risk-based capital requirements as other health maintenance organizations, except that no additional phase-in or risk-based capital reports shall be required for 2000 or 2001, and the risk-based capital levels shall be established in accordance with paragraph (b) of this subsection;
 - (b) For the risk-based capital reports required to be filed by health maintenance organizations which manage care and process health care claims solely for Medicaid-eligible enrollees and the Kentucky Children's Health Insurance Program, the risk-based capital levels shall be defined as follows:
 - 1. "Company Action Level RBC" means the product of two (2.0) and its Authorized Control Level RBC;
 - 2. "Regulatory Action Level RBC" means the product of one and five-tenths (1.5) and its Authorized Control Level RBC;
 - 3. "Authorized Control Level RBC" means the product of four-tenths (.40) and the risk-based capital after covariance determined under the risk-based capital formula in accordance with the RBC instruction; and

4. "Mandatory Control Level RBC" means the product of seven-tenths (.70) and the Authorized Control Level RBC; and
- (c) A corporation, partnership, or limited liability company applying for and holding a certificate of authority as a health maintenance organization managing care, processing health care claims, or providing health benefits to groups or individuals in addition to Medicaid-eligible and Kentucky Children's Health Insurance Program enrollees shall comply with the risk-based capital requirements of subsection (1) of this section and this subtitle, and shall not be eligible to calculate its risk-based capital according to this subsection.

➔Section 138. KRS 311A.070 is repealed and reenacted to read as follows:

- (1) When a complaint is filed against an ambulance service, emergency medical services provider, or an emergency medical services educational institution or an employee or volunteer thereof, or when the office of the board is contemplating action against an ambulance service, emergency medical services provider, or emergency medical services educational institution or an employee or volunteer thereof, written notice of the complaint or proposed action shall be sent to:
 - (a) The county judge/executive, in the event of a county-operated ambulance service, emergency medical services provider, or educational institution;
 - (b) The mayor, in the event of a city-operated ambulance service, emergency medical services provider, or educational institution;
 - (c) The mayor, in the event of an urban-county government-operated ambulance service, emergency medical services provider, or educational institution;
 - (d) The chairman of the fire protection district, in the event of a fire district-operated ambulance service, emergency medical services provider, or educational institution;
 - (e) The head of the public agency, in the event of an ambulance service, emergency medical services provider, or educational institution operated by a public agency other than specified in paragraphs (a) to (d) of this subsection;
 - (f) The president, chancellor, or other officer in charge of an educational institution operated, in the event of an ambulance service or educational institution;
 - (g) The chief operating officer or president of a nonprofit corporation, corporation for profit, limited liability company, or other business entity, in the event of an ambulance service, emergency medical services provider, or educational institution operated by the business entity; and
 - (h) Both the ambulance service, emergency medical services provider, or educational institution officials specified in this subsection and the officials of any public agency contracting for services.
- (2) The notice specified in this section shall be in addition to any notice provided to any other person or organization.

➔Section 139. KRS 313.240 is repealed and reenacted to read as follows:

- (1) (a) No person shall practice or offer to practice dentistry or dental surgery under the name of any company, association, or corporation except the name of a professional service corporation, established under KRS Chapter 274, a professional limited liability company established under KRS Chapter 275, a partnership established under the Kentucky Uniform Partnership Act, or a partnership established under the Kentucky Revised Uniform Partnership Act, or as provided under KRS 313.197. Any person practicing or offering to practice dentistry or dental surgery shall practice under his or her own name; the name of a professional service corporation, professional limited liability company, or partnership, which includes his or her name; or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.
- (b) No such person shall conduct a dental office in his or her name nor advertise his or her name in connection with any dental office unless he or she personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him or her only, and shall not use his or her name in

connection with that of any other dentist, except as provided for deceased or incapacitated dentists in KRS 313.197.

- (2) No person shall be an incorporator, director, officer, member, manager, or shareholder in more than three (3) professional service corporations, three (3) professional limited liability companies, or three (3) partnerships, or any three (3) of these business entities, rendering dental or dental surgery services. No dentist or dental surgeon or group of dentists or dental surgeons shall practice in more than three (3) locations.

➔Section 140. KRS 322.010 is repealed and reenacted to read as follows:

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

- (1) "Board" means the State Board of Licensure for Professional Engineers and Land Surveyors;
- (2) "Engineer" means a person who is qualified to engage in the practice of professional engineering by reason of special knowledge and use of:
 - (a) The mathematical, physical, and engineering sciences; and
 - (b) The principles and methods of engineering analysis and design, acquired by engineering education and practical engineering experience;
- (3) "Professional engineer" means a person who is licensed as a professional engineer by the board;
- (4) "Engineering" means any professional service or creative work, the adequate performance of which requires engineering education, training, and experience as an engineer.
 - (a) "Engineering" shall include:
 1. Consultation, investigation, evaluation, planning, certification, and design of engineering works and systems;
 - a. Engineering design and engineering work associated with design/build projects;
 - b. Engineering works and systems which involve earth materials, water or other liquids, and gases;
 - c. Planning the use of land, air, and waters; and
 - d. Performing engineering surveys and studies;
 2. The review of construction for the purpose of assuring compliance with drawings and specifications; any of which embraces this service or work, either public or private, in connection with any utilities, structures, certain buildings, building systems, machines, equipment, processes, work systems, or projects with which the public welfare or the safeguarding of life, health, or property is concerned, when that professional service or work requires the application of engineering principles and data;
 3. The teaching of engineering design courses in any program accredited by the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology or any engineering program deemed equivalent by the board;
 4. The negotiation or solicitation of engineering services on any project in this state, regardless of whether the persons engaged in the practice of engineering:
 - a. Are residents of this state;
 - b. Have their principal place of business in this state; or
 - c. Are in responsible charge of the engineering services performed; and
 5. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering that does not relate to the location or determination of land boundaries.
 - (b) "Engineering" shall not include the professional services performed by persons who:
 1. Develop or administer construction project safety programs, construction safety compliance, construction safety rules or regulations, or related administrative regulations; or

2. Only operate or maintain machinery or equipment;
- (5) "Practice of engineering" means the performance of any professional service included in subsection (4)(a) of this section;
 - (6) "Engineer in training" means a person who has passed the Fundamentals of Engineering Examination and is otherwise qualified to earn experience toward licensure as a professional engineer;
 - (7) "Responsible charge of engineering" means direct control and personal supervision of engineering, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved engineering program;
 - (8) "Land surveyor" means a person who is qualified to engage in the practice of land surveying by reason of special knowledge and use of mathematics, the physical and applied sciences, and the principles and methods of land surveying, acquired by education and practical experience in land surveying;
 - (9) "Professional land surveyor" means a person who is licensed as a professional land surveyor by the board;
 - (10) "Land surveying" means any professional service or work, the adequate performance of which requires the education, training, and experience as a land surveyor.
 - (a) "Land surveying" shall include but not be limited to the following:
 1. Measuring and locating, establishing, or reestablishing lines, angles, elevations, natural and man-made features in the air, on the surface and immediate subsurface of the earth, within underground workings, and on the beds or surfaces of bodies of water involving the:
 - a. Determination or establishment of the facts of size, shape, topography, and acreage;
 - b. Establishment of photogrammetric and geodetic control that is published and used for the determination, monumentation, or description of property boundaries;
 - c. Subdivision, division, and consolidation of lands;
 - d. Measurement of existing improvements, including condominiums, after construction and the preparation of plans depicting existing improvements, if the improvements are shown in relation to property boundaries;
 - e. Layout of proposed improvements, if those improvements are to be referenced to property boundaries;
 - f. Preparation of subdivision record plats;
 - g. Determination of existing grades and elevations of roads and land;
 - h. Creation and perpetuation of alignments related to maps, record plats, field note records, reports, property descriptions, and plans and drawings that represent them; and
 - i. Certification of documents;
 2. The negotiation or solicitation of land surveying services on any project in this state, regardless of whether the persons engaged in the practice of land surveying:
 - a. Are residents of this state;
 - b. Have their principal office or place of business in this state; or
 - c. Are in responsible charge of the land surveying services or work performed; and
 3. The preparation of survey descriptions for use in legal instruments affecting real property or property rights. "Land surveying" does not include the preparation of a physical description that identifies and describes the tract, parcel, or lot by reference to the tract, parcel, lot, block, or unit number of any subdivision, or other summary identifier appearing on a properly recorded plat of record, or by reference to a deed of record.
 - (b) "Land surveying" shall not include:
 1. The measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or the state of Kentucky;

2. The services of a professional engineer who engages in the practice of land surveying incident to the practice of engineering, if the land surveying work does not relate to the location or determination of land boundaries; or
 3. The design of grades and elevations of roads and land;
- (11) "Practice of land surveying" means the performance of any professional service included in subsection (10)(a) of this section;
- (12) "Land surveyor in training" means a person who has passed the Fundamentals of Land Surveying Examination and is otherwise qualified to earn experience toward licensure as a professional land surveyor;
- (13) "Responsible charge of land surveying" means direct control and personal supervision of land surveying, or teaching experience with the rank equivalent to assistant professor or higher in a board-approved land surveying program;
- (14) "Business entity" means a corporation, partnership, limited liability company, limited partnership, or firm;
- (15) "Offer to practice" means:
- (a) A promise or commitment to engage in any act directly related to engineering or land surveying;
 - (b) Undertaking to engage in the practice of engineering or land surveying; or
 - (c) Any claim, express or implied, by any person representing himself or herself to be a professional engineer or professional land surveyor;
- (16) "Certification" means affixing a seal or stamp, signature, and date by a professional engineer or professional land surveyor to represent that the services or work addressed therein was performed by that professional engineer or professional land surveyor according to his or her knowledge, information, and belief, and that it was completed in accordance with applicable standards of practice. "Certification" shall not mean a guaranty or warranty, either express or implied;
- (17) The "Fundamentals of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (18) The "Fundamentals of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying;
- (19) The "Principles and Practice of Engineering Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying; and
- (20) The "Principles and Practice of Land Surveying Examination" means the examination with that name developed by the National Council of Examiners for Engineering and Surveying.

➔Section 141. KRS 322.060 is repealed and reenacted to read as follows:

- (1) (a) A business entity shall not engage in the practice of engineering in this state unless:
1. At least one (1) of its principals, officers, or a designated employee is a professional engineer who is in responsible charge of the engineering work; and
 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering engineering services in this state shall file with the board, on a form prescribed by the board:
1. The names and addresses of all principals and officers;
 2. The license number of principals, officers, and employees who are professional engineers in responsible charge of the business entity's practice of engineering in this state;
 3. A list of locations of all offices in this state at which the business entity offers professional engineering services;
 4. A statement of qualifications for the permit; and
 5. References as required by administrative regulations promulgated by the board.

- (c) If more than one (1) place of business is maintained in this state, a professional engineer shall be in responsible charge of the engineering work for each office.
 - (d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the engineering work.
 - (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.
 - (f) Individual professional engineers providing engineering services in their own names, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.
- (2) (a) A business entity shall not engage in the practice of land surveying in this state unless:
- 1. At least one (1) of its principals, officers, or a designated employee is a professional land surveyor in direct responsible charge of the land surveying work; and
 - 2. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board:
- 1. The names and addresses of all principals and officers;
 - 2. The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state;
 - 3. A list of locations of all offices in this state at which the business entity offers professional land surveying services;
 - 4. A statement of qualifications for the services relating to the permit; and
 - 5. References as required by administrative regulations promulgated by the board.
- (c) If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.
- (d) A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying activity of the firm.
- (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.
- (f) Individual professional land surveyors providing land surveying services in their own names shall be excluded from the provisions of this subsection.
- (3) (a) After a business entity applies for a professional engineering or professional land surveying permit and pays the proper fees, the board shall review the application and, upon approval, shall issue a permit.
- (b) The board may suspend, revoke, or refuse to issue a permit for violation of the code of professional practice and conduct.
- (c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations promulgated by the board.
- (4) (a) No business entity shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.
- (b) No individual practicing professional engineering or professional land surveying shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a business entity holding a permit under this section.

- (5) Disciplinary action against a business entity holding a permit under this section shall be administered in the same manner and on the same grounds as disciplinary action against an individual professional engineer or professional land surveyor.
- (6) The Secretary of State shall not accept articles of incorporation, articles of organization, statement of qualification or certificate of limited partnership or an application for a certificate of authority to transact business as a foreign corporation, limited liability company or limited partnership or a statement of foreign qualification from a business entity which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," "surveyor," "surveying," "land surveying," or any modification or derivation thereof, unless the filing with the Secretary of State includes a certificate or letter from the board.

➔Section 142. KRS 362.401 is repealed and reenacted to read as follows:

As used in KRS 362.403 to 362.525, unless the context otherwise requires, the term:

- (1) "Certificate of limited partnership" means the certificate referred to in KRS 362.415, or the certificate of limited partnership as amended or restated;
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust and not-for-profit unincorporated association;
- (3) "Contribution" means any cash, property, services rendered, or a promissory note or other obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in his capacity as a partner;
- (4) "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in KRS 362.445;
- (5) "Foreign limited partnership" means a limited partnership formed under the laws of any state other than this state and having as partners one (1) or more general partners and one (1) or more limited partners;
- (6) "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and is named in the certificate of limited partnership as a general partner;
- (7) "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement;
- (8) "Limited partnership" or "domestic limited partnership" means a partnership formed by two (2) or more persons under the laws of this state and having one (1) or more general partners and one (1) or more limited partners;
- (9) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity;
- (10) "Partner" means a limited partner or general partner;
- (11) "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business;
- (12) "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets;
- (13) "Person" means a natural person; trust; estate; or business entity;
- (14) "Real name" shall have the meaning set forth in KRS 365.015; and
- (15) "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

➔Section 143. KRS 362.403 is repealed and reenacted to read as follows:

The name of each limited partnership as set forth in its certificate of limited partnership:

- (1) Shall contain the word "Limited" or its abbreviation, "Ltd.";
- (2) Shall not contain the name of a limited partner unless:
 - (a) That name is also the name of a general partner or the corporate name of a corporate general partner; or

- (b) The business of the limited partnership had been carried on under that name before the admission of that limited partner; and
- (3) Shall be distinguishable from any name of record with the Secretary of State.

➔Section 144. KRS 362.405 is repealed and reenacted to read as follows:

- (1) The exclusive right to the use of a name may be reserved by:
 - (a) Any person intending to organize a limited partnership under KRS 362.403 to 362.525 and to adopt that name;
 - (b) Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name;
 - (c) Any foreign limited partnership intending to register in this state and adopt that name; or
 - (d) Any person intending to organize a foreign limited partnership and intending to have it registered in this state and adopt that name.
- (2) The reservation shall be made by filing with the Secretary of State an application, executed by the applicant, to reserve a specified name. If the Secretary of State finds that the name is available for use by a domestic limited partnership or foreign limited partnership, it shall reserve the name for the exclusive use of the applicant for a nonrenewable period of one hundred twenty (120) days. The right to the exclusive use of a reserved name may be transferred to any other person by filing with the Secretary of State a notice of the transfer, executed by the applicant for whom the name was reserved and specifying the name and address of the transferee. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (3) The holder of a reserved name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 145. KRS 362.555 is repealed and reenacted to read as follows:

- (1) To become and to continue as a registered limited liability partnership, a partnership that is not a limited partnership shall file with the Secretary of State a statement or a renewal statement, as the case may be, stating the name of the partnership; the address of its principal office; the number of partners; the names of the partners; a brief statement of the business in which the partnership engages; and that the partnership registers its status or renews its status, as the case may be, as a registered limited liability partnership.
- (2) The statement or renewal statement shall be executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a statement or renewal statement.
- (3) The statement or renewal statement shall be accompanied by a fee of two hundred dollars (\$200).
- (4) The Secretary of State shall register as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed statement or renewal statement with the required fee.
- (5) Registration shall be effective for one (1) year after the date a statement is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original statement or a renewal statement, as a registered limited liability partnership shall be renewed if, during the sixty (60) day period preceding the date the statement or renewal statement otherwise would have expired, the partnership files with the Secretary of State a renewal statement. Registration pursuant to a renewal statement shall expire one (1) year after the date the registration would have expired if the last renewal of the registration had not occurred.
- (6) The status of a partnership as a registered limited liability partnership shall not be affected by changes made in the information stated in the statement or renewal statement after the filing of the statement or renewal statement.

- (7) The Secretary of State may provide forms for use under this section.

➔Section 146. KRS 362.595 is repealed and reenacted to read as follows:

- (1) The failure of a registered limited liability partnership to comply with any requirements of KRS 362.555 shall not impair the validity of any contract, deed, mortgage, security interest, lien, or act of the registered limited liability partnership or prevent the registered limited liability partnership from defending any action, suit, or proceeding in any court of this Commonwealth.
- (2) Subject to subsection (3) of this section, the protection from liability of a partner of a registered limited liability partnership under KRS 362.220(2) shall not be altered by reason of the failure of the partnership to comply with any requirements of KRS 362.555.
- (3) A partner in a partnership which has previously filed a statement under KRS 362.555, and which has failed to comply with the renewal statement requirements of KRS 362.555, shall not be entitled to protection from liability under KRS 362.220(2) in any action or proceeding brought by any person who did business with the partnership during the period it failed to comply and who did not at that time have actual knowledge that it was a limited liability partnership.

➔Section 147. KRS 362.1-109 is repealed and reenacted to read as follows:

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

(a)	Statement of Partnership Authority	\$40.00
(b)	Statement of Denial	\$20.00
(c)	Statement of Dissociation	\$20.00
(d)	Statement of Dissolution	\$40.00
(e)	Statement of Merger	\$40.00
(f)	Statement of Qualification	\$40.00
(g)	Amendment to a Statement of Qualification	\$40.00
(h)	Statement of Foreign Qualification	\$90.00
(i)	Reinstatement of a Statement of Qualification	\$100.00
(j)	Change of Registered Agent or Change of the Address of the Registered Office, or Both	\$10.00
(k)	Registered Agent's Statement of Change of Registered Office for Each Affected Partnership	\$10.00
	not to exceed a total of.....	\$1,000.00
(l)	Change of the Mailing Address of the Chief Executive Office	\$10.00
(m)	Application to Reserve a Name for Use by a Domestic or Foreign Partnership	\$15.00
(n)	Notice of the Transfer of a Name Reserved for Use by a Domestic or Foreign Partnership	\$15.00
(o)	Application for Registered Name	\$36.00
(p)	Application for Renewal of Registered Name	\$36.00
(q)	Annual report.....	\$15.00
(r)	Amendment to the annual report.....	\$10.00
(s)	All other filings	\$40.00

- (2) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed statements relating to a domestic or foreign partnership:
 - (a) Fifty cents (\$0.50) a page for copying; and
 - (b) Five dollars (\$5) for the certificate.

➔Section 148. KRS 362.1-115 is repealed and reenacted to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a partnership name, including the fictitious name, for a limited liability partnership or for a foreign limited liability partnership whose partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The holder of a reserved partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 149. KRS 362.1-504 is repealed and reenacted to read as follows:

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

- (6) This subchapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

➔Section 150. KRS 362.1-802 is repealed and reenacted to read as follows:

- (1) Subject to subsection (2) of this section, a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.
- (2) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event:

- (a) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred; and
 - (b) The rights of a third party accruing under KRS 362.1-804(1) or arising out of conduct in reliance on the dissolution before the third party has notice of the waiver shall not be adversely affected.
- (3) The dissolution of a partnership that is or was a limited liability partnership shall not abate or suspend KRS 362.1-306(3).

➔Section 151. KRS 362.1-1104 is repealed and reenacted to read as follows:

- (1) Activities of a foreign limited liability partnership which do not constitute transacting business for the purposes of KRS 362.1-1001 to 362.1-1103 include:
- (a) Maintaining, defending, or settling an action or proceeding;
 - (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
 - (g) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
 - (h) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (i) Conducting an isolated transaction that is completed within thirty (30) days and is not one (1) in the course of repeated transactions of a like nature;
 - (j) Owning, without more, real or personal property; or
 - (k) Transacting business in interstate commerce.
- (2) The list of activities in subsection (1) of this section shall not be considered exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign limited liability partnership or any partner therein to service of process, taxation, or regulation under any other law of this Commonwealth. The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 152. KRS 362.2-109 is repealed and reenacted to read as follows:

- (1) A person may apply to the Secretary of State to reserve the exclusive use of a limited partnership name, including the fictitious name for a foreign limited partnership whose limited partnership name is not available for use in this Commonwealth. If the Secretary of State finds that the limited partnership name applied for is available, then the Secretary of State shall reserve the name for the applicant's exclusive use for a period of one hundred twenty (120) days. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the expiration.
- (2) The holder of a reserved limited partnership name may transfer the reservation to another person by delivering to the Secretary of State a notice of the transfer, executed by the holder for whom the name was reserved, and specifying the name and address of the transferee.
- (3) The holder of a reserved limited partnership name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name was reserved, that states the reserved name and its date of reservation.

➔Section 153. KRS 362.2-119 is repealed and reenacted to read as follows:

- (1) The Secretary of State may prescribe and furnish on request forms for:

- (a) A certificate of existence or authorization;
 - (b) An application for a certificate of authority;
 - (c) An application for a certificate of withdrawal;
 - (d) A statement of change of registered office or registered agent;
 - (e) A statement of change of designated office;
 - (f) Application to reserve or renew the reservation of a name;
 - (g) Application to cancel the reservation of a name;
 - (h) Resignation of a registered agent;
 - (i) The annual report;
 - (j) An amendment to the annual report; and
 - (k) Amended application for certificate of authority.
- (2) The Secretary of State may mandate the use of the forms listed in subsection (1) of this section.
- (3) The Secretary of State may prescribe and furnish on request forms for other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.

➔Section 154. KRS 362.2-121 is repealed and reenacted to read as follows:

- (1) A record that satisfies the requirements of this section, and of any other section of this subchapter that adds to or varies these requirements, shall be entitled to filing by the Secretary of State.
- (2) This subchapter shall require or permit filing the record in the Office of the Secretary of State.
- (3) The record shall contain the information required by this subchapter. It may also contain other information.
- (4) The record shall be typewritten or printed or, if electronically transmitted, it shall be in a format that can be retrieved or reproduced in typewritten or printed form. The typewritten or printed portion shall be in black. Manually signed photocopies or other reproduced copies of typewritten or printed records may be filed.
- (5) The record shall be in the English language. A limited partnership name may be in a language other than English if written in English letters or Arabic or Roman numerals. Any record that may be filed by a foreign limited partnership that is duly authenticated by the official having custody of the applicable records in the state, country, or other jurisdiction under whose law the limited liability company is formed may be in a language other than English if accompanied by a reasonably-authenticated English translation.
- (6) The person executing the record shall sign it and print beneath or opposite his or her signature the names of the person and the capacity in which he or she signs.
- (7) The person executing the record may do so as an attorney-in-fact. Powers of attorney relating to the execution of the record shall not be required to be provided to or filed with the Secretary of State.
- (8) A person who executes a record to be filed with the Secretary of State shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.
- (9)
 - (a) It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing.
 - (b) Any person who violates the provisions of this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).
- (10) If the Secretary of State has prescribed a mandatory form for a record, then the record shall be in or on the prescribed form.
- (11) The record shall be delivered to the Secretary of State for filing. Delivery may be made by electronic transmission if and to the extent permitted by the Secretary of State. If it is filed in typewritten or printed form and not transmitted electronically, then the Secretary of State may require that it be accompanied by two (2) exact or conformed copies.

- (12) One (1) exact or conformed copy, or, if transmitted electronically, a reproduction in paper form, shall be filed with and recorded by the county clerk of the county in which the registered office of the limited partnership is located. A county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited partnerships. A document otherwise filed in accordance with this section with the Secretary of State shall be effective regardless of failure to file the document with the county clerk in accordance with this subsection.
- (13) When the record is delivered to the Secretary of State for filing, the correct filing fee and any other moneys required by this subchapter or other law to be collected by the Secretary of State therewith shall be paid or provision for payment made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, debit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, then the liability is not finally discharged until the Secretary of State receives final payment or credit of collectible funds.

➔Section 155. KRS 362.2-210 is repealed and reenacted to read as follows:

- (1) A limited partnership subject to this subchapter or a foreign limited partnership authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report that states:
- (a) The name of the limited partnership or foreign limited partnership and the state or country under whose law it is organized;
 - (b) The street address of its designated office or, if a foreign limited partnership, the street address of its principal office; and
 - (c) The street address of the limited partnership's registered office and the name of its registered agent at that office.
- (2) Information in an annual report shall be current as of the date the annual report is delivered to the Secretary of State for filing.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the ensuing calendar years.
- (4) If a filed annual report contains an address of a designated office or the name of a registered agent or registered office address which differs from the information shown upon the records of the Secretary of State immediately before the filing, then the differing information in the annual report is not considered a statement of change under KRS 362.2-115.
- (5) A limited partnership or foreign limited partnership may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on an appropriate form provided by the Secretary of State.

➔Section 156. KRS 362.2-703 is repealed and reenacted to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.
- (2) On application to a court of competent jurisdiction by any judgment creditor of a partner or a partner's transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee, and shall have no right to participate in the management or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest. A charging order does not of itself constitute an assignment of the transferable interest.
- (4) The court may order a foreclosure upon the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

- (5) At any time before foreclosure, an interest charged may be redeemed:
- (a) By the judgment debtor;
 - (b) With property other than limited partnership property, by one (1) or more of the other partners; or
 - (c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.
- (6) This subchapter does not deprive any partner or a partner's transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.
- ➔Section 157. KRS 362.2-803 is repealed and reenacted to read as follows:
- (1) A limited partnership continues after dissolution only for the purpose of winding up its activities.
 - (2) In winding up its business, the limited partnership:
 - (a) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of cancellation as provided in KRS 362.2-203, and perform other necessary acts; and
 - (b) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.
 - (3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:
 - (a) Has the powers of a general partner under KRS 362.2-804; and
 - (b) Shall promptly amend the certificate of limited partnership to:
 - 1. State that the limited partnership does not have a general partner and that the person has been appointed to wind up the limited partnership; and
 - 2. State the street and mailing address of the person.
 - (4) On the application of any partner, the Circuit Court of the county in which the limited partnership maintains its registered agent may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:
 - (a) A limited partnership does not have a general partner and, within a reasonable time following the dissolution, no person has been appointed pursuant to subsection (3) of this section; or
 - (b) The applicant establishes other good cause.
 - (5) The dissolution of a limited partnership shall not abate or suspend KRS 362.2-303, and the dissolution of a limited partnership that is a limited liability limited partnership shall not abate or suspend KRS 362.2-404(3).
- ➔Section 158. KRS 362.2-901 is repealed and reenacted to read as follows:
- (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern its organization and internal affairs, including the inspection of books, records, and documents, and the liability of its partners as partners.
 - (2) A foreign limited partnership shall not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this Commonwealth.
 - (3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this Commonwealth.
- ➔Section 159. KRS 362.2-903 is repealed and reenacted to read as follows:

- (1) Activities of a foreign limited partnership which do not constitute transacting business in this Commonwealth within the meaning of KRS 362.2-901 to 362.2-908 include:
 - (a) Maintaining, defending, and settling an action or proceeding;
 - (b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
 - (c) Maintaining accounts in financial institutions;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this Commonwealth before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
 - (h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and is not one in the course of similar transactions of a like manner; and
 - (k) Transacting business in interstate commerce.
- (2) The list of activities in subsection (1) of this section shall not be considered exhaustive. This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this Commonwealth.
- (3) The term "transacting business" as used in this section shall have no effect on personal jurisdiction under KRS 454.210.

➔Section 160. KRS 362.2-906 is repealed and reenacted to read as follows:

The Secretary of State may commence a proceeding under KRS 362.2-907 to revoke the certificate of authority of a foreign partnership authorized to transact business in this Commonwealth if:

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

➔Section 161. KRS 362.2-1104 is repealed and reenacted to read as follows:

- (1) After a plan of conversion of a limited liability company into a limited partnership is approved, a converting limited liability company shall deliver to the Secretary of State for filing a certificate of limited partnership, which shall include:
 - (a) A statement that the limited liability company has been converted into a limited partnership;
 - (b) The name of that limited liability company and its jurisdiction;
 - (c) A statement that the conversion was approved as required by this subchapter;
 - (d) A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and

- (e) If the converted limited liability company is a foreign limited liability company not authorized to transact business in this Commonwealth, the street and mailing address of an office which the Secretary of State may use for the purposes of KRS 362.2-1105(3).

- (2) A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.

➔Section 162. KRS 362.2-1108 is repealed and reenacted to read as follows:

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

➔Section 163. KRS 365.015 is repealed and reenacted to read as follows:

- (1) (a) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman.
- (b) The real name of a domestic:

1. General partnership that is not a limited liability partnership and that has not filed a statement of partnership authority is that name which includes the real name of each of the partners;
 2. General partnership that is not a limited liability partnership and that has filed a statement of partnership authority is the name set forth on the statement of partnership authority;
 3. General partnership that is a limited liability partnership is the name stated on the statement of qualification filed pursuant to KRS 362.1-1001 or predecessor law;
 4. Limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS 362.2-201 or predecessor law;
 5. Business trust is the name set forth in the declaration of trust;
 6. Corporation is the name set forth in its articles of incorporation; and
 7. Limited liability company is the name set forth in its articles of organization.
- (c) The real name of a foreign:
1. General partnership is the name recognized by the laws of the jurisdiction under which it is formed as being the real name;
 2. Limited liability partnership is the name stated in its statement of foreign qualification filed pursuant to KRS 362.1-1102 or predecessor law;
 3. Limited partnership is the name set forth in its certificate of limited partnership or the fictitious name adopted for use in this Commonwealth under KRS 362.2-905 or predecessor law;
 4. Business trust is the name recognized by the laws of the jurisdiction under which it is formed as being the real name of the business trust;
 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under KRS 271B.15-060; and
 6. Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this Commonwealth under KRS 275.410.
- (2) (a) No individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
- (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, partnership, limited partnership, business trust, corporation, or limited liability company and his or its address, including street and number, if any;
- (c) A separate certificate shall be filed for each assumed name;
- (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
- (e) The certificate shall be executed for an individual, by the individual; for a general partnership, by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by a trustee; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
- (3) Each certificate of assumed name for an individual shall be filed with the county clerk where the person maintains his or her principal place of business. Each certificate of assumed name for a general partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity maintains its registered agent for service of process or, if no registered agent for service of process is required, then with the county clerk of the county where the entity maintains its principal office. If the entity does not

maintain a registered agent for service of process and does not maintain a principal office in this Commonwealth, then the certificate of assumed name shall be filed only with the Secretary of State.

- (4) An assumed name shall be effective for a term of five (5) years from the date of filing and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
- (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party formerly transacting business under the assumed name and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership by at least one (1) partner authorized to act for the partnership, for a limited partnership by a general partner, for a business trust by a trustee, for a corporation by any person authorized to act for the corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.
- (6) A general partnership, except a limited liability partnership, shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
 - (a) The assumed name and date of original filing;
 - (b) A statement setting out the changes in identity of the partners; and
 - (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- (7) The filing of a certificate of assumed name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (8) In the event of the merger or conversion of a partnership, limited partnership, business trust, corporation, or limited liability company, any certificate of assumed name filed by a party to a merger or conversion shall remain in full force and effect, as provided in subsection (4) of this section, as if originally filed by the business organization which survives the merger or conversion.
- (9) A certificate of assumed name may be amended to revise the real name or the address of the person or business organization holding the certificate of assumed name.
- (10) A certificate of assumed name, or its amendment or cancellation, shall be effective on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document, or at a time specified in the document as its effective time on the date it is filed. The document may specify a delayed effective time and date and, if it does so, the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.
- (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, amendment, and renewal certificate.

➔Section 164. KRS 386.370 is repealed and reenacted to read as follows:

- (1) A business trust is an express trust created by a written declaration of trust whereby property is conveyed to one (1) or more trustees, who hold and manage same for the benefit and profit of such persons as may be or become, the holders of transferable certificates evidencing the beneficial interest in the trust estate. For the purposes of KRS 386.370 to 386.440, business trusts shall include but are not limited to "Real Estate Investment Trusts" as defined by and which comply with the Federal Internal Revenue Code of 1986 as amended or such section or sections of any subsequent Internal Revenue Code as may be applicable to real estate investment trusts.
- (2) "Business entity" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, business or statutory trust, and not-for-profit unincorporated association.
- (3) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity.

➔Section 165. KRS 386.410 is repealed and reenacted to read as follows:

No beneficial owner of certificates in a foreign business trust shall have his interests therein assessed and no beneficial owner of a foreign trust shall be personally liable for any debts or liabilities incurred by the trustees or by the foreign business trust after June 16, 1966.

➔Section 166. KRS 386.420 is repealed and reenacted to read as follows:

- (1) The written declaration of trust may provide for the election of successor trustees in the event of the death, resignation and removal of a trustee and may provide for the amendment of the declaration of trust. The declaration of trust may also contain such other provisions regarding the operating and administration of the business trust as may be necessary or desirable.
- (2) A declaration of trust filed on or after June 26, 2007, shall name or shall be accompanied by a document naming the initial registered agent and registered office conforming to KRS 386.384.
- (3) The declaration of trust shall be recorded in the office of the Secretary of State of the Commonwealth of Kentucky and in the office of the county clerk in the county in which its principal place of business is located and a recording charge of \$15 shall be paid at each of those offices.

➔Section 167. KRS 386.440 is repealed and reenacted to read as follows:

A business trust may be sued for debts and other obligations incurred by the trustees in the performance of their duties under the declaration of trust, and for any damages resulting from the negligence of such trustees and its property shall be subject to attachment and execution in like manner as if it were a corporation.

➔Section 168. KRS 275.090 is repealed and reenacted to read as follows:

- (1) It shall be unlawful for any person to sign a document the person knows is false in any material respect with intent that the document be delivered to the Secretary of State for filing.
- (2) Any person who violates the provisions of this section shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).

➔Section 169. KRS 362.1-105 is repealed and reenacted to read as follows:

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

- (8) (a) It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing.
- (b) Any person who violates this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).
- (9) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The county clerk may collect a fee of ten dollars (\$10) for recording a statement.
- (10) The Secretary of State may prescribe and furnish on request forms for:
 - (a) A statement of change of registered office or registered agent;
 - (b) An application to reserve a name;
 - (c) An application to cancel the reservation of a name;
 - (d) A resignation of a registered agent or registered office or both;
 - (e) An annual report; and
 - (f) An amendment to the annual report.
- (11) The Secretary of State may mandate the use of the forms listed in subsection (10) of this section.
- (12) The Secretary of State may prescribe and furnish on request forms for any other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.

➔Section 170. KRS 362.575 is repealed and reenacted to read as follows:

- (1) A registered limited liability partnership, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, may conduct its business, carry on its operations, and have and exercise the powers granted by KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605 in any state, territory, district, or possession of the United States or in any foreign country.
- (2) It is the intent of the General Assembly that the legal existence of any registered limited liability partnership formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605 shall be recognized outside the boundaries of this Commonwealth and that the laws of this Commonwealth governing any registered limited liability partnership transacting business outside this Commonwealth shall be granted the protection of full faith and credit under the Constitution of the United States.
- (3) It is the policy of this Commonwealth that the internal affairs of registered limited liability partnerships, formed and existing under KRS 362.155, 362.175, 362.190, 362.220, 362.235, 362.315, 362.325, 362.345, and KRS 362.555 to 362.605, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of this Commonwealth.
- (4) Subject to any statutes for the regulation and control of specific types of business limited liability partnerships, formed and existing under the laws of another state or jurisdiction, may engage in any business in this Commonwealth.
- (5) It is the policy of this Commonwealth that the internal affairs of partnerships, including limited liability partnerships, formed and existing under the laws of another state or jurisdiction, including the liability of partners for debts, obligations, and liabilities chargeable to partnerships, shall be subject to and governed by the laws of that other state or jurisdiction.

➔Section 171. KRS 45.560 is repealed and reenacted to read as follows:

As used in KRS 45.570 to 45.640, unless the context requires otherwise:

- (1) "Contract" means any binding legal relationship between the Commonwealth of Kentucky and a contractor for supplies and services, including construction, or for the use of Commonwealth property, in which the parties, respectively, do not stand in the relationship of employer and employee;
- (2) "Contractor" means any prime contractor holding a contract with the Commonwealth of Kentucky government, and shall include subcontractors when the context so indicates;

- (3) "Contracting agency" means the person or persons, board, commission, court, council, governing body, employee, or official which is authorized by law to purchase or contract for supplies, materials, services, or equipment for the state;
- (4) "Subcontractor" means any person, including a corporation, partnership, or business association of any kind, who holds an agreement or purchase order to perform all or any part of the work or to make or furnish any article or service required for the performance of a negotiated contract or of a subcontract entered thereunder;
- (5) "Cabinet" means the Finance and Administration Cabinet; and
- (6) "Equal employment opportunity job categories" means the major employment classifications described by the United States Equal Employment Opportunity Commission.

➔Section 172. KRS 45.570 is repealed and reenacted to read as follows:

- (1) Except in contracts exempted in accordance with KRS 45.590, all government contracting agencies of the Commonwealth of Kentucky, any county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in every directly or indirectly publicly funded contract for supplies, materials, services, or equipment hereinafter entered into the following provisions:
- (2) During the performance of this contract, the contractor agrees as follows:
 - (a) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (b) The contractor shall take affirmative action in regard to employment, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees during employment are treated without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (c) The contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the contractor that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin;
 - (d) The contractor shall post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the nondiscrimination clauses required by this section; and
 - (e) The contractor shall send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.

➔Section 173. KRS 45.590 is repealed and reenacted to read as follows:

A contractor or subcontractor otherwise subject to the provisions of KRS 45.570 is exempt as to any affirmative action or reporting requirements if:

- (1) The contract or subcontract awarded is in the amount of five hundred thousand dollars (\$500,000) or less, and the amount of the contract is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640;
- (2) The contractor or subcontractor utilizes the services of fewer than eight (8) employees during the course of the contract;
- (3) The contractor or subcontractor employs only family members or relatives;
- (4) The contractor or subcontractor employs only persons having a direct ownership interest in the business, and such interest is not a subterfuge to avoid compliance with the provisions of KRS 45.560 to 45.640; or
- (5) The subcontract is below the second-tier level of contracts.

➔Section 174. KRS 45.600 is repealed and reenacted to read as follows:

- (1) Any party not otherwise exempted by KRS 45.590 and intending to submit a bid on any contract covered by the provisions of KRS 45.560 to 45.640 shall within a time frame set by the contracting agency in the bid documents submit to the contracting agency upon being declared the successful bidder:

- (a) A statement of intent to comply in full with all requirements of the Kentucky Civil Rights Act, and to submit data required by KRS 45.560 to 45.640 upon being designated the successful bidder.
- (b) A breakdown of the bidding party's existing work force, indicating the race, ethnicity, gender, and equal employment opportunity job category of each employee.
- (c) A breakdown of subcontracts valued at five hundred thousand dollars (\$500,000) or more, indicating specific items of work on the contract for which the contractor has submitted or intends to submit a bid to the Commonwealth of Kentucky.

The reports shall be submitted in a manner as shall be prescribed by the cabinet and on forms devised by the cabinet and supplied by the contracting agency.

- (2) Within ten (10) days after the receipt of the reports, the cabinet shall determine whether the bidding party's work force is reflective of the percentage of available minorities and women in the area from which the bidding party's employees are drawn. If a determination is made that the bidding party's work force is reflective of the percentage of available minorities and women in this drawn area, the bidding party shall be "certified" and be thereby qualified to bid on any contract covered by KRS 45.560 to 45.640 without filing additional data for a period of one (1) year.
- (3) If it is determined by the cabinet that the bidding party's work force reflects an underutilization of minorities or women, the bidding party and contracting agency shall be so notified, and no certification shall be issued. The bidding party shall then have the option of filing with the contracting agency and the cabinet, an affirmative action program, indicating goals and timetables for recruiting and hiring minorities or women throughout the contractors' work force. The cabinet shall be available, upon the request of any contractor, to furnish technical assistance in fulfilling the requirements of KRS 45.560 to 45.640.
- (4) If the bidding party is subsequently awarded the contract being sought, failure to comply with the goals and timetables set forth in the affirmative action plan shall be an unlawful practice under KRS 45.560 to 45.640 and shall constitute a material breach of the contract.
- (5) If the cabinet determines that the submitted affirmative action program does not fulfill the provisions of KRS 45.560 to 45.640, the bidding party and contracting agency shall be so notified, and no certification shall be granted.
- (6) If the bidding party's work force is not reflective of the percentage of minorities or women in the drawing area and the bidding party has complied with all other affirmative action requirements in KRS 45.560 to 45.640, the bidding party may certify by verified affidavit that the bidding party has made every reasonable effort to comply with said percentage requirements, and the bidding party shall thereafter be entitled to all the benefits of KRS 45.560 to 45.640.

➔Section 175. KRS 45.610 is repealed and reenacted to read as follows:

- (1) For the length of the contract, each contractor shall hire minorities and women from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities or women to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to 45.640 and by such rules, regulations, and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the cabinet for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations, and orders issued pursuant thereto.

➔Section 176. KRS 45.620 is repealed and reenacted to read as follows:

- (1) The Finance and Administration Cabinet may investigate the employment practices of any contractor or subcontractor to determine if any of the provisions of KRS 45.560 to 45.640 have been violated. If any contractor is found by the cabinet to have engaged in an unlawful practice under KRS 45.560 to 45.640 during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the cabinet shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.
- (2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by

the contracting agency and the cabinet. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

- (3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority or woman contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority or woman contractor or subcontractor shall mean a business that is owned and controlled by one (1) or more persons disadvantaged by racial, ethnic, or gender circumstances.

➔Section 177. KRS 45.630 is repealed and reenacted to read as follows:

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee.

➔Section 178. KRS 45.565 is repealed and reenacted to read as follows:

The Finance and Administration Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A to carry out the provisions of KRS 45.560 to 45.640.

➔Section 179. The following KRS sections are repealed:

274.087 Merger or consolidation.

362.495 Law governing foreign limited partnerships. (Effective until January 1, 2008)

362.497 Registration of foreign limited partnership. (Effective until January 1, 2008)

362.499 Filing of application by foreign limited partnership. (Effective until January 1, 2008)

362.501 Name under which foreign limited partnership must register. (Effective until January 1, 2008)

362.503 Changes and amendment. (Effective until January 1, 2008)

362.505 Cancellation of registration of foreign limited partnership. (Effective until January 1, 2008)

362.507 Registration required for access to courts -- Effects of failure to register. (Effective until January 1, 2008)

362.509 Action by Attorney General to restrain foreign limited partnership from transacting business. (Effective until January 1, 2008)

362.585 Registration of foreign limited liability partnership -- Effect of withdrawal -- Injunctive action by Attorney General. (Effective until January 1, 2008)

➔Section 180. The repeals set out in Section 179 of this Act are hereby expressly made retroactive to the first moment of June 26, 2007.

➔Section 181. 2006 Ky. Acts ch. 149, sec. 239 is repealed, and this repeal is expressly made retroactive to June 26, 2007.

➔Section 182. The General Assembly finds and declares that the amendment of KRS 271B.6-210, 271B.6-230, 271B.7-040, 271B.7-280, and 271B.8-080, as provided for in 2002 Ky. Acts, ch. 102, secs. 10, 11, 15, 18, and 19 respectively, are and were effective as of November 15, 2002.

➔Section 183. The specific textual provisions of Sections 1 to 178 of this act which reflect amendments made to those sections by 2007 Ky. Acts. ch. 137 shall be deemed effective as of June 26, 2007, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text of those sections being unaffected by the provisions of this section.

➔Section 184. (1) It is the intent of the General Assembly that the repeal and reenactment of sections in this Act shall not serve to void amendments made to those sections by other bills enacted during the 2010 Regular session of the Kentucky General Assembly, regardless of whether this Act is enacted before or after those other Acts.

(2) Notwithstanding KRS 446.100 or 446.260 or any other statute to the contrary, the Reviser of Statutes shall give force and effect to other 2010 Acts that amend one or more sections contained in this Act, and shall codify those amendments in accordance with KRS 446.250 and other applicable rules of codification.

Signed by Governor March 30, 2010.

CHAPTER 52**(HJR 154)**

A JOINT RESOLUTION relating to Newgrass music.

WHEREAS, Newgrass music legend Sam Bush was born in 1952 in Bowling Green, Kentucky; and

WHEREAS, Sam Bush is an exceedingly talented musician who has mastered performance on the fiddle, mandolin, and guitar; and

WHEREAS, Sam Bush was a musical prodigy who began playing the fiddle in early childhood and was a three time national junior fiddle champion at the National Oldtime Fiddler's Contest in Idaho; and

WHEREAS, Sam Bush has received the Americana Music Association's Lifetime Achievement for an Instrumentalist award in 2009 and has received several awards from the International Bluegrass Music Association, including Instrumental Performer of the Year on the Mandolin in 1990, 1991, 1992, and 2007, and Instrumental Album of the Year and Recorded Event of the Year in 2000; and

WHEREAS, Sam Bush joined the band Bluegrass Alliance while still in his teens; and

WHEREAS, Sam Bush was the founder of New Grass Revival in 1971, a band that revolutionized Bluegrass music by incorporating aspects of other types of music and often performed and rehearsed in the Bowling Green, Kentucky, area; and

WHEREAS, after New Grass Revival disbanded in 1989, Sam Bush joined the all-star Bluegrass band Strength in Numbers at the Telluride Music Festival in Telluride, Colorado and later joined Emmylou Harris' Nash Ramblers, touring and recording with that group for the next five years; and

WHEREAS, Sam Bush founded the Sam Bush Band in 1996 and has firmly established his preeminent reputation in Newgrass music; and

WHEREAS, Sam Bush has long been much in demand as a musician and has performed with a number of top musical acts, including Garth Brooks, Neil Diamond, Bela Fleck, Wynonna Judd, Allison Kraus, Lyle Lovett, Dolly Parton, Ricky Skaggs, Shania Twain, Trisha Yearwood, and many, many more; and

WHEREAS, Sam Bush is internationally renowned as "The King of Newgrass" and "The King of Telluride," and is a native son of the Commonwealth of whom all Kentuckians can be proud; and

WHEREAS, Newgrass music, also known as Progressive Bluegrass music, is one of two major subgenres of Bluegrass music, and may be distinguished from traditional Bluegrass music by four key elements: (1) instrumentation that frequently includes electric instruments, drums, piano, and other instruments; (2) imported songs or imitated styles from other music genres, such as jazz, the blues, and rock and roll; (3) nontraditional chord progressions; and (4) lengthy "jam band" style improvisation; and

WHEREAS, Bowling Green, Kentucky, Sam Bush's birthplace, is also the home of the world's first International Newgrass Festival, which took place August 21-23, 2009 at historic Ballance Farms just north of Bowling Green, Kentucky, and featured among its headlining performers Bowling Green, Kentucky's beloved native son, Sam Bush; and

WHEREAS, the International Newgrass Festival will return to historic Ballance Farms for the second time August 20-22, 2010, and performers will include three members of the band that launched Newgrass music, New Grass Revival, including Curtis Burch, John Cowan, and Bowling Green, Kentucky's own Sam Bush;

NOW, THEREFORE,

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

➔Section 1. The Kentucky General Assembly hereby designates and declares Bowling Green, Kentucky, native Sam Bush as "The Father of Newgrass Music."

➔Section 2. The Kentucky General Assembly hereby designates and declares Bowling Green, Kentucky as "The Birthplace of Newgrass Music."

➔Section 3. The Clerk of the House of Representatives is directed to transmit a copy of this Joint Resolution to the Representative from Warren 21, for presentation to Mr. Sam Bush, International Bluegrass Music Association, 2 Music Circle South, Suite 100, Nashville, Tennessee 37203; the Country Music Hall of Fame and Museum, 222 Fifth Avenue South, Nashville, Tennessee 37203; Bowling Green Mayor Elaine Walker and the City Commission of Bowling Green, Kentucky, 1001 College Street, P.O. Box 430, Bowling Green, Kentucky 42102-0430; and Warren County Judge/Executive Mike Buchanon and the Fiscal Court of Warren County, Kentucky, 429 East 10th Street, Bowling Green, Kentucky 42101.

Signed by Governor March 30, 2010.

CHAPTER 53

(HB 79)

AN ACT relating to the operation of golf carts on public roads.

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

➔Section 1. KRS 189.286 is amended to read as follows:

- (1) As used in this section:
 - (a) "Golf cart" means any self-propelled vehicle that:
 1. Is designed for the transportation of players or maintaining equipment on a golf course, while engaged in the playing of golf, supervising the play of golf, or maintaining the condition of the grounds on a golf course;
 2. Has a minimum of four (4) wheels;
 3. Is designed to operate at a speed of not more than thirty-five (35) miles per hour;
 4. Is designed to carry not more than six (6) persons, including the driver;
 5. Has a maximum gross vehicle weight of two thousand five hundred (2,500) pounds;
 6. Has a maximum rated payload capacity of one thousand two hundred (1,200) pounds; and
 7. Meets the federal motor vehicle safety standards for low-speed vehicles set forth in 49 C.F.R. sec. 571.500; and
 - (b) "Local government" means a city, county, charter county government, urban-county government, consolidated local government, unified local government, or special district.
- (2) The governing body of a local government may authorize and regulate the operation of a golf cart on any public roadway under its jurisdiction ~~[that lies within five (5) road miles of an entrance to a golf course]~~ if the local government adopts an ordinance specifying each roadway that is open for golf cart use.
- (3) An ordinance created under subsection (2) of this section shall require that a golf cart operated on a designated public roadway:
 - (a) Be issued a permit for the golf cart by the local government;
 - (b) Display a sticker or permit that identifies that the golf cart is allowed to be operated on specific roadways within the local government; and
 - (c) Be inspected by a certified inspector designated by the county sheriff and certified through the Department of Vehicle Regulation to ensure that the golf cart complies with the requirements of this section. The inspection fee under this paragraph shall not exceed five dollars (\$5) with an additional fee not to exceed ten dollars (\$10) per trip charged if it becomes necessary for the certified inspector to travel to the site of the golf cart rather than having the golf cart brought to the sheriff's inspection area.
- (4) A person may operate a golf cart on a public roadway pursuant to subsection (2) of this section if:
 - (a) The posted speed limit of the designated public roadway is thirty-five (35) miles per hour or less;
 - (b) The operator of the golf cart does not cross a roadway at an intersection where the roadway being crossed has a posted speed limit of more than thirty-five (35) miles per hour;

- (c) The operator has a valid operator's license in his or her possession;
 - (d) The golf cart is being operated between sunrise and sunset; and
 - (e) The golf cart displays a slow-moving vehicle emblem in compliance with KRS 189.820.
- (5) A golf cart operating on a public roadway under subsection (2) of this section shall be insured in compliance with KRS 304.39-080 by the owner or operator, and the proof of insurance shall be inside the golf cart at all times of operation on a public roadway.
 - (6) Any person operating a golf cart on a public roadway under the provisions of this section shall be subject to the traffic regulations of KRS Chapter 189.
 - (7) A golf cart operating on a public roadway designated by a local government under subsection (2) of this section is not considered to be motor a vehicle and is exempt from:
 - (a) Title requirements of KRS 186.020;
 - (b) Vehicle registration requirements of KRS 186.050; and
 - (c) Emissions compliance certificates pursuant to KRS 224.20-720.
 - (8) A local government may adopt more stringent local ordinances governing golf cart safety equipment and operation than specified in this section.
 - (9) The Transportation Cabinet may prohibit the operation of a golf cart on a public roadway designated under subsection (2) of this section that crosses a state-maintained highway under its jurisdiction if it determines that such prohibition is necessary in the interest of public safety.
 - (10) The provisions of this section shall not apply to a golf cart that is not used on a public roadway except to cross a roadway while following a golf cart path on a golf course.

Signed by Governor March 31, 2010.

CHAPTER 54

(SB 83)

AN ACT relating to gift cards.

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

➔Section 1. KRS 367.890 is amended to read as follows:

- (1) "Gift card," as used in this section, means a certificate, electronic card, or other medium issued by a merchant that evidences the giving of consideration in exchange for the right to redeem the certificate, electronic card, or other medium for goods, food, services, credit, or money of at least an equal value. "Gift card" includes any electronic card issued by a merchant with a monetary value where the issuer has received payment for the full monetary value for the future purchase or delivery of goods or services and any certificate issued by a merchant where the issuer has received payment for the full monetary face value of the certificate for the future purchase or delivery of goods and services. "Gift card" does not include a prepaid calling card used to make telephone calls, or a general-use, prepaid card or other electronic payment device that is issued by a bank or other financial institution that is usable at multiple, unaffiliated merchants, or at automated teller machines, or both, or a gift card issued by a merchant for a promotional program for which no separate monetary consideration is given.
- (2) Subject to subsection (5) of this section, no person or entity shall sell a gift card containing an expiration date that is less than one (1) year after the date the gift card is issued.
- (3) No person or entity shall charge service charges or fees relative to that gift card, including dormancy fees, latency fees, or administrative fees, that have the effect of reducing the total amount for which the holder of the gift card may redeem the gift card until the expiration date on the card has expired.
- (4) A gift card sold without an expiration date printed on the front or back of the card is valid until redeemed or replaced with a new gift card.

- (5) If the expiration date on the card is not less than one hundred twenty (120) days from the date of issue, subsection (2) of this section does not apply to any of the following gift cards:
- (a) ~~[(d)]~~ Distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or anything of value being given in exchange for the gift card by the consumer;
 - ~~(b)~~ Sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes;
 - ~~(b)~~~~(c)~~ Sold by a nonprofit or charitable organization for fundraising purposes; or
 - ~~(c)~~~~(d)~~ Given by an employer to an employee, if use of the card is limited to the employer's business establishment. As used in this paragraph, business establishment may include a group of merchants that are affiliated with that business establishment.
- (6) Any person who violates subsection (3) of this section is liable to the holder of the card for any amount that the redemption value of the gift card was reduced, any court costs incurred, and reasonable attorney's fees.

Signed by Governor April 1, 2010.

CHAPTER 55

(HB 387)

AN ACT relating to the reporting of full-time employees and contractors and declaring an emergency.

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

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

- (1) *Within fifteen (15) days after the effective date of this Act, and on a quarterly basis thereafter, the secretary of the Personnel Cabinet shall report to the Legislative Research Commission the number of employees in each program cabinet and department of the executive branch of state government. The report shall include the number of all full-time classified and unclassified employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department.*
- (2) *Within fifteen (15) days after the effective date of this Act, and on a quarterly basis thereafter, the secretary of the Finance and Administration Cabinet shall report to the Legislative Research Commission the number of individuals working on a full-time equivalent and recurring basis, listed by contract or agreement and cabinet.*
- (3) *As used in this subsection, "recurring basis" means continuous employment for a period of not less than ninety (90) days.*

➔Section 2. KRS 45A.553 is amended to read as follows:

- (1) After approval of a privatization contract by the Finance and Administration Cabinet and issuance and execution of the privatization contract, the contracting agency shall annually evaluate the performance of the contract and report its findings to the Governor, the Auditor of Public Accounts, and the Legislative Research Commission.
- (2) The state agency entering into the contract shall provide for an evaluation of the performance of any privatization contract awarded in excess of five hundred thousand dollars (\$500,000) annually. The review shall include but not be limited to determining whether the contractor is complying with all applicable statutory requirements and the provisions of the contract. The performance evaluation shall be forwarded to the Auditor of Public Accounts and the Legislative Research Commission. The evaluation shall be subject to review by the Auditor of Public Accounts, who shall report any findings to the Legislative Research Commission.
- (3) *The secretary of the Finance and Administration Cabinet shall report the number of individuals working the equivalent of full-time hours under contracts or agreements identified by this section to the Legislative Research Commission on an annual basis.*

➔Section 3. KRS 45A.690 is amended to read as follows:

- (1) As used in KRS 45A.690 to 45A.725:

- (a) "Committee" means the Government Contract Review Committee of the Legislative Research Commission;
- (b) "Contracting body" means each state board, bureau, commission, department, division, authority, university, college, officer, or other entity, except the Legislature, authorized by law to contract for personal services. "Contracting body" includes the Tourism Development Finance Authority with regard to tax incentive agreements;
- (c) "Governmental emergency" means an unforeseen event or set of circumstances that creates an emergency condition as determined by the committee by promulgation of an administrative regulation;
- (d) "Memorandum of agreement" means any memorandum of agreement, memorandum of understanding, program administration contract, interlocal agreement to which the Commonwealth is a party, privatization contract, or similar device relating to services between a state agency and any other governmental body or political subdivision of the Commonwealth ***or entity qualified as nonprofit under 26 U.S.C. sec. 501(c)(3) not authorized under KRS Chapter 65*** that involves an exchange of resources or responsibilities to carry out a governmental function. It includes agreements by regional cooperative organizations formed by local boards of education or other public educational institutions for the purpose of providing professional educational services to the participating organizations and agreements with Kentucky Distinguished Educators pursuant to KRS 158.782. This definition does not apply to:
 - 1. Agreements between the Transportation Cabinet and any political subdivision of the Commonwealth for road and road-related projects;
 - 2. Agreements between the Auditor of Public Accounts and any other governmental agency or political subdivision of the Commonwealth for auditing services;
 - 3. Agreements between state agencies as required by federal or state law;
 - 4. Agreements between state agencies and state universities or colleges ***only when the subject of the agreement does not result in the use of an employee or employees of a state university or college by a state agency to fill a position or perform a duty that an employee or employees of state government could perform if hired***, and agreements between state universities or colleges and employers of students in the Commonwealth work-study program sponsored by the Kentucky Higher Education Assistance Authority;
 - 5. Agreements involving child support collections and enforcement;
 - 6. Agreements with public utilities, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, and transit authorities;
 - 7. Nonfinancial agreements;
 - 8. Any obligation or payment for reimbursement of the cost of corrective action made pursuant to KRS 224.60-140;
 - 9. Exchanges of confidential personal information between agencies;
 - 10. Agreements between state agencies and rural concentrated employment programs; or
 - 11. Any other agreement that the committee deems inappropriate for consideration;
- (e) "Motion picture or entertainment production" means the same as defined in KRS 148.542;
- (f) "Multicontract" means a group of personal service contracts between a contracting body and individual vendors providing the same or substantially similar services to the contracting body that, for purposes of the committee, are treated as one (1) contract;
- (g) "Personal service contract" means an agreement whereby an individual, firm, partnership, or corporation is to perform certain services requiring professional skill or professional judgment for a specified period of time at a price agreed upon. It includes all price contracts for personal services between a

governmental body or political subdivision of the Commonwealth and any other entity in any amount. This definition does not apply to:

1. Agreements between the Department of Parks and a performing artist or artists for less than five thousand dollars (\$5,000) per fiscal year per artist or artists;
 2. Agreements with public utilities, foster care parents, providers of direct Medicaid health care to individuals except for any health maintenance organization or other entity primarily responsible for administration of any program or system of Medicaid managed health care services established by law or by agreement with the Cabinet for Health and Family Services, individuals performing homemaker services, and transit authorities;
 3. Agreements between state universities or colleges and employers of students in the Commonwealth work study program sponsored by the Kentucky Higher Education Assistance Authority;
 4. Agreements between a state agency and rural concentrated employment programs;
 5. Agreements between the State Fair Board and judges, officials, and entertainers contracted for events promoted by the State Fair Board; or
 6. Any other contract that the committee deems inappropriate for consideration;
- (h) "Tax incentive agreement" means an agreement executed under KRS 148.546; and
- (i) "Tourism Development Finance Authority" means the authority established by KRS 148.850.
- (2) Compliance with the provisions of KRS 45A.690 to 45A.725 does not dispense with the requirements of any other law necessary to make the personal service contract or memorandum of agreement valid.

➔Section 4. KRS 45A.695 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
 - (a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;
 - (b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
 - (c) The total projected cost of the contract or agreement and source of funding;
 - (d) The total projected duration of the contract or tax incentive agreement;
 - (e) Payment information, in detail;
 - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
 - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.
- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best

qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.

- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.
- (10) *(a) No payment shall be made on any personal service contract unless the individual, firm, partnership, or corporation awarded the personal service contract submits its invoice for payment on a form established by the committee.*
 - (b) Invoices shall be submitted every ninety (90) days, unless the personal service contract specifies a different submission time period.*
 - (c) Separate invoices shall be submitted for each distinct matter covered by the personal service contract, and shall be signed by the individual responsible for that matter.*
 - (d) Each invoice shall contain the following information:*
 - 1. A description of the matter covered by the invoice;*
 - 2. The date each service was performed;*
 - 3. A full description of each service;*
 - 4. The name and title of each individual who worked on the matter, and the time the individual spent on the matter;*
 - 5. The subject matter and recipient of any correspondence;*
 - 6. A full description of any work product produced, designating the way in which the work product is associated with the matter being invoiced;*

7. *The hourly rate for each individual working on the matter, and the total charge for that individual for each matter invoiced;*
 8. *An itemized list of all disbursements to be reimbursed by the state for each matter invoiced;*
 9. *The total charge for each matter;*
 10. *The combined total for services and disbursements for the billing period;*
 11. *The tax identification number of the entity awarded the personal service contract; and*
 12. *An indication on each invoice of whether or not the invoice is final.*
- (e) *The issuance of an invoice to the Commonwealth constitutes an affirmation by the individual, firm, partnership, or corporation awarded the personal service contract that the invoice truly and accurately represents work actually performed, and expenses actually incurred.*
- (f) *The head of the contracting body shall approve the invoice, indicating that the charges in the invoice reflect the value of the work performed, and all recorded costs and disbursements were reasonably and necessarily incurred in connection with the matter invoiced.*

➔Section 5. Whereas the Commonwealth has been and continues to experience a financial crisis, and this information is necessary to prepare accurate budgets which take into account the financial climate, and to provide for greater scrutiny of, and accountability for, public contracts, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 5, 2010.

CHAPTER 56

(HB 28)

AN ACT relating to water transportation and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

- (1) *The Water Transportation Advisory Board is established as an advisory body to the executive and legislative branches of government on matters pertaining to water transportation.*
- (2) *The Water Transportation Advisory Board shall be composed of seven (7) members, to be appointed as follows:*
 - (a) *Four (4) members representing the Commonwealth's public riverports, to be appointed by the Governor from a list of eight (8) nominees supplied by the Kentucky Association of Riverports. The Governor shall give consideration to including a representative from each river containing an operating public riverport;*
 - (b) *Two (2) at-large members, to be appointed by the Governor from the private sector associated with the waterways industry; and*
 - (c) *One (1) member representing Kentuckians for Better Transportation, to be appointed by the Governor from a list of three (3) nominees supplied by that organization.*
- (3) *After the initial appointments, members of the Water Transportation Advisory Board shall serve terms of four (4) years. Members shall be eligible to succeed themselves and shall serve until their successor is appointed.*
- (4) *Members of the Water Transportation Advisory Board shall not be paid for their service as board members, and shall not be reimbursed for any expenses involved in attending board meetings.*
- (5) *The Water Transportation Advisory Board shall elect a chair and a vice chair from its members who shall serve in those capacities until replaced. A majority of the board shall constitute a quorum for the purposes of conducting business. The board shall be subject to the provisions of the Kentucky Open Records Act, KRS 61.870 to 61.884.*

- (6) *The Water Transportation Advisory Board shall meet biennially, or when called by the chair, or at the request of the secretary of the Transportation Cabinet. The board shall receive assistance in carrying out its administrative functions from the Transportation Cabinet and shall be attached to the Transportation Cabinet for administrative purposes.*

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

The Water Transportation Advisory Board shall:

- (1) *Advise the Transportation Cabinet, the Cabinet for Economic Development, the Governor's Office, and the General Assembly on matters relating to water transportation;*
- (2) *Recommend action to enable the Commonwealth to make best use of its waterways and riverports for future economic growth;*
- (3) *Assist in defining the duties and functions of positions within state government responsible for water transportation;*
- (4) *Recommend criteria for setting priorities for funding riverport marketing initiatives under the riverport marketing assistance trust fund established in Section 3 of this Act;*
- (5) *Evaluate applications submitted by riverports for grants under the riverport marketing assistance trust fund and make recommendations to the granting authority on the disbursement of those funds;*
- (6) *Recommend criteria for setting priorities for funding riverport improvements under the riverport financial assistance trust fund established in Section 4 of this Act; and*
- (7) *Evaluate applications submitted by riverports for grants under the riverport financial assistance trust fund and make recommendations to the granting authority on the disbursement of those funds.*

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 80 OF KRS CHAPTER 154 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created the riverport marketing assistance trust fund, to be administered by the Cabinet for Economic Development.*
- (2) *The riverport marketing assistance trust fund may receive appropriations, federal funds, contributions, gifts, and donations.*
- (3) *The purpose of the riverport marketing assistance trust fund shall be to promote and market Kentucky's riverport to industrial, business, and commercial prospects, to attract economic development. To the extent funds are available, the fund shall make grants to riverport authorities for marketing activities, including research, advertising, participation in trade shows, and preparation of promotional materials. Grants shall not be used for activities such as salaries, administrative expenses, or internal newsletters.*
- (4) *Notwithstanding KRS 45.299, moneys remaining in the fund at the close of a fiscal year shall not lapse but shall carry forward into the succeeding fiscal year. Interest earned on any moneys in the fund shall accrue to the fund. Amounts from the fund shall be disbursed and expended in accordance with this section.*
- (5) *Grants under this section shall not exceed fifteen thousand dollars (\$15,000) per project or thirty thousand dollars (\$30,000) per applicant each year. Projects shall be completed within one (1) year of funding. To receive a grant, an applicant shall provide at least a fifty percent (50%) match, which may be obtained from any public or private source.*
- (6)
 - (a) *Grants shall be reviewed and awarded semiannually.*
 - (b) *The Cabinet for Economic Development shall submit all applications to the Water Transportation Advisory Board established by Section 1 of this Act for evaluation and recommendations prior to awarding any grant funding under this section.*
 - (c) *Higher priority shall be given to applications with a larger share of match money, for those where the match money has already been obtained, and for projects with a detailed riverport marketing plan.*

- (7) *The Cabinet for Economic Development shall on a semiannual basis submit a report detailing all grants awarded under this section to the Water Transportation Advisory Board, the Interim Joint Committee on Transportation, and the Interim Joint Committee on Appropriations and Revenue.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 174 IS CREATED TO READ AS FOLLOWS:

- (1) *There is created a riverport financial assistance trust fund, to be administered by the Transportation Cabinet.*
- (2) *The riverport financial assistance trust fund may receive appropriations, federal funds, contributions, gifts, and donations.*
- (3) *The purpose of the riverport financial assistance trust fund shall be to improve riverport facilities and infrastructure, to capture the economic and trade potential offered by water transportation. To the extent funds are available, the fund shall make grants to riverport authorities for new construction and major replacement or repair projects, including but not limited to improvement of docks, wharves, equipment, port buildings, storage facilities, roads and railroads to facilitate the flow of commerce through the port, other on-site improvements, and related professional services. Eligible projects shall not include routine operations, maintenance, or repair activities.*
- (4) *Notwithstanding KRS 45.299, moneys remaining in the fund at the close of a fiscal year shall not lapse but shall carry forward into the succeeding fiscal year. Interest earned on any moneys in the fund shall accrue to the fund. Amounts from the fund shall be disbursed and expended in accordance with this section.*
- (5) *To be eligible for a grant under this section, the applicant shall provide at least a twenty percent (20%) match, which may be obtained from any public or private source.*
- (6) (a) *Grant applications shall be reviewed and awarded annually.*
- (b) *The Transportation Cabinet shall submit all applications to the Water Transportation Advisory Board established by Section 1 of this Act for evaluation and recommendations prior to awarding any grant funding under this section.*
- (c) *Priority shall be given to applicants with a riverport master plan, for capital-intensive projects for which permits have been obtained, and for projects for which matching funds have been obtained.*
- (7) *The Transportation Cabinet shall submit on an annual basis a report detailing all grants awarded under this section to the Water Transportation Advisory Board, the Interim Joint Committee on Transportation, and the Interim Joint Committee on Appropriations and Revenue.*

➔Section 5. The initial terms for members of the Water Transportation Advisory Board established in Section 1 of this Act shall be as follows:

- (1) One member representing the Commonwealth's public riverports and one at-large member shall serve terms that expire on September 30, 2011;
- (2) One member representing the Commonwealth's public riverports shall serve a term that expires on September 30, 2012;
- (3) One member representing the Commonwealth's public riverports shall serve a term that expires on September 30, 2013; and
- (4) One member representing the Commonwealth's public riverports, one at-large member, and one member representing Kentuckians for Better Transportation shall serve terms that expire on September 30, 2014.

Signed by Governor April 6, 2010.

CHAPTER 57

(HB 347)

AN ACT relating to the Kentucky quarter horse, appaloosa, and Arabian development fund and making an appropriation therefor.

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

➔Section 1. KRS 138.510 is amended to read as follows:

- (1) (a) Except as provided in paragraphs (b) and (d) of this subsection, an excise tax is imposed on all tracks conducting pari-mutuel wagering on live racing under the jurisdiction of the authority.
1. For each track with a daily average live handle of one million two hundred thousand dollars (\$1,200,000) or above, the tax shall be in the amount of three and one-half percent (3.5%) of all money wagered on live races at the track during the fiscal year.
 2. For each track with a daily average live handle under one million two hundred thousand dollars (\$1,200,000), the tax shall be one and one-half percent (1.5%) of all money wagered on live races at the track during the fiscal year.
- (b) 1. If:
- a. A track located in this state is the host track for a live one (1) or two (2) day international horse racing event in 2010 that distributes in excess of a total of fifteen million dollars (\$15,000,000) in purses during the international horse racing event; and
 - b. ***On or before November 4, 2010***, the organization responsible for selecting the location of the same international horse racing event in subsequent years contractually agrees to conduct the international horse racing event at a host track in this state in calendar year 2011 or 2012 or calendar years 2011 and 2012;
- then the excise tax imposed by paragraph (a) of this subsection shall not be imposed on pari-mutuel wagering on any live racing conducted during the one (1) or two (2) day international horse racing event held at a host track within this state in calendar years 2010 through 2012.
2. Beginning January 1, 2013, if the requirements of subparagraph 1. of this paragraph are satisfied, the tax exemption established by subparagraph 1. of this paragraph shall remain in effect for any succeeding one (1) or two (2) day international horse racing event if the event returns within three (3) years of a previously-held international horse racing event.
 3. A minimum of five hundred thousand dollars (\$500,000) of the amount that would have been paid to the Commonwealth but for the exemption provided by this paragraph shall be used by the host track to fund undercard races during each international horse racing event.
 4. ***Notwithstanding paragraph (c) of this subsection, if the requirements of subparagraph 1.a. of this paragraph are satisfied but the requirements of subparagraph 1.b. of this paragraph are not, then the excise tax imposed by paragraph (a) of this subsection shall be imposed on pari-mutuel wagering on any live racing conducted during the one (1) or two (2) day international horse racing event and the total amount of revenue collected shall be distributed as follows:***
 - a. ***Eighty percent (80%) shall be deposited into the thoroughbred development fund established in KRS 230.400;***
 - b. ***Thirteen percent (13%) shall be deposited into the standardbred development fund established in KRS 230.770; and***
 - c. ***Seven percent (7%) shall be deposited into the Kentucky quarter horse, appaloosa, and Arabian development fund established in Section 4 of this Act.***
- (c) Money shall be deducted from the tax paid under paragraph (a) of this subsection and deposited as follows:
1. An amount equal to three-quarters of one percent (0.75%) of all money wagered on live races at the track for thoroughbred racing shall be deposited in the thoroughbred development fund established in KRS 230.400;
 2. An amount equal to one percent (1%) of all money wagered on live races at the track for harness racing shall be deposited in the Kentucky standardbred, ~~quarter horse, Appaloosa, and Arabian~~ development fund established in KRS 230.770;
 3. ***An amount equal to one percent (1%) of all money wagered on live races at the track for quarter horse, appaloosa, and Arabian horse racing shall be deposited in the Kentucky quarter horse, appaloosa, and Arabian development fund established by Section 4 of this Act.***

4. An amount equal to two-tenths of one percent (0.2%) of all money wagered on live races at the track shall be deposited in the equine industry program trust and revolving fund established by KRS 230.550 to support the Equine Industry Program at the University of Louisville;
- 5.~~{4-}~~ a. An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races at the track shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities.
- b. These funds shall not be used for salaries or for operating funds for teaching, research, or administration. Funds allocated under this subparagraph shall not replace other funds for capital purposes or operation of equine programs at state universities.
- c. The Kentucky Council on Postsecondary Education shall serve as the administrative agent and shall establish an advisory committee of interested parties, including all universities with established equine programs, to evaluate proposals and make recommendations for the awarding of funds.
- d. The Kentucky Council on Postsecondary Education may promulgate administrative regulations to establish procedures for administering the program and criteria for evaluating and awarding grants; and
- 6.~~{5-}~~ An amount equal to one-tenth of one percent (0.1%) of all money wagered on live races shall be distributed to the authority to support equine drug testing as provided in KRS 230.265(3).
- (d) The excise tax imposed by paragraph (a) of this subsection shall not apply to pari-mutuel wagering on live harness racing at a county fair.
- (2) (a) Except as provided in paragraphs (c) and (d) of this subsection, an excise tax is imposed on:
 1. All tracks conducting telephone account wagering;
 2. All tracks participating as receiving tracks in intertrack wagering under the jurisdiction of the authority; and
 3. All tracks participating as receiving tracks displaying simulcasts and conducting interstate wagering thereon.
- (b) The tax shall be three percent (3%) of all money wagered on races as provided in paragraph (a) of this subsection during the fiscal year.
- (c) A noncontiguous track facility approved by the authority on or after January 1, 1999, shall be exempt from the tax imposed under this subsection, if the facility is established and operated by a licensed track which has a total annual handle on live racing of two hundred fifty thousand dollars (\$250,000) or less. The amount of money exempted under this paragraph shall be retained by the noncontiguous track facility, KRS 230.3771 and 230.378 notwithstanding.
- (d) **1.** A track located in this state shall be exempt from the excise tax imposed by paragraph (b) of this subsection on wagers placed on all races conducted at a one (1) or two (2) day international horse racing event if:
 - a.~~{1-}~~ The international horse racing event is conducted at a host track in this state; and
 - b.~~{2-}~~ The host track is exempt from the excise tax during the international horse racing event under subsection (1)(b) of this section.
- 2. *Notwithstanding paragraph (e) of this subsection, if the host track is not exempt and is taxed pursuant to subsection (1)(b)4. of this section, then the excise tax imposed by paragraphs (a) and (b) of this subsection shall be imposed on wagers placed on all races conducted at the one (1) or two (2) day international horse racing event and the total amount of revenue collected shall be distributed as follows:***
 - a. *Eighty percent (80%) shall be deposited into the thoroughbred development fund established in KRS 230.400;*
 - b. *Thirteen percent (13%) shall be deposited into the standardbred development fund established in KRS 230.770; and*

- c. ***Seven percent (7%) shall be deposited into the Kentucky quarter horse, appaloosa, and Arabian development fund established in Section 4 of this Act.***
- (e) Money shall be deducted from the tax paid under paragraphs (a) and (b) of this subsection as follows:
 - 1. An amount equal to two percent (2%) of the amount wagered shall be deposited as follows:
 - a. In the thoroughbred development fund established in KRS 230.400 if the host track is conducting a thoroughbred race meeting or the interstate wagering is conducted on a thoroughbred race meeting;~~[-or-]~~
 - b. In the Kentucky standardbred~~[-, quarter horse, Appaloosa, and Arabian]~~ development fund established in KRS 230.770, if the host track is conducting a harness race meeting or the interstate wagering is conducted on a harness race meeting; ***or***
 - c. ***In the Kentucky quarter horse, appaloosa, and Arabian development fund established by Section 4 of this Act, if the host track is conducting a quarter horse, appaloosa, or Arabian horse race meeting or the interstate wagering is conducted on a quarter horse, appaloosa, or Arabian horse race meeting;***
 - 2. An amount equal to one-twentieth of one percent (0.05%) of the amount wagered shall be allocated to the equine industry program trust and revolving fund established by KRS 230.550 to be used to support the Equine Industry Program at the University of Louisville;
 - 3. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be deposited in a trust and revolving fund to be used for the construction, expansion, or renovation of facilities or the purchase of equipment for equine programs at state universities, as detailed in subsection (1)(c)5.~~[-4-]~~ of this section; and
 - 4. An amount equal to one-tenth of one percent (0.1%) of the amount wagered shall be distributed to the authority to support equine drug testing as provided in KRS 230.265(3).
- (3) The taxes imposed by this section shall be paid, collected, and administered as provided in KRS 138.530.

➔Section 2. KRS 230.3771 is amended to read as follows:

- (1) A thoroughbred track licensed to conduct thoroughbred racing may receive interstate simulcasts of thoroughbred, ***quarter horse, appaloosa, and Arabian*** horse races~~[-and quarter horse races]~~, and conduct interstate wagering thereon, subject to the following limitations:
 - (a) A thoroughbred receiving track may receive interstate simulcasts of thoroughbred races and conduct interstate wagering thereon at any time of day and during any live thoroughbred horse race meet conducted in the Commonwealth of Kentucky so long as the thoroughbred receiving track conducting interstate wagering remits to the thoroughbred host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.
 - (b) A thoroughbred host track which receives interstate simulcasts and conducts interstate wagering thereon during the period of time from the first awarded day of its live meet through the last awarded day of its live meet shall offer the simulcasts to all thoroughbred receiving tracks, all harness tracks not subject to the provisions of KRS 230.377(2), and all simulcast facilities through the intertrack wagering system.
 - (c) Except as otherwise prohibited by law, a receiving track shall conduct intertrack wagering on all live races of all thoroughbred host tracks on any day on which it receives an interstate simulcast for the purpose of conducting interstate wagering.
 - (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
 - (e) If more than one (1) thoroughbred track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast of thoroughbred races unless all thoroughbred tracks conducting live racing at the same time of day agree upon all interstate simulcasts to be received and the division of the thoroughbred host track's commission. If more than one (1) thoroughbred track conducts live racing at different times on the same day, the thoroughbred host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes

of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and concludes ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.

- (f) Each thoroughbred track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the authority for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
 - (g) Notwithstanding paragraph (f) of this subsection, any thoroughbred track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Horsemen's Benevolent and Protective Association and the Kentucky Thoroughbred Owners and Breeders Association, Inc.
 - (h) A separate accounting on all interstate simulcasting shall be submitted to the authority. The accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
 - (i) If the only simulcast or simulcasts a track participating as a host track makes available for interstate wagering through this state's intertrack wagering system on any race day are thoroughbred horse races designated as graded stakes races by the Graded Stakes Committee of the Thoroughbred Owners and Breeders Association, Inc., then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a thoroughbred host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
 - (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 2. Twenty-five percent (25%) to the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 4. Twenty-five percent (25%) to the purse program of the thoroughbred host track designated by paragraphs (a) and (e) of this subsection. However, if the race does not occur between the first awarded day of a live meet and the last awarded day of the same live meet, then an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.
 - (k) A simulcast facility's commission on interstate wagering on thoroughbred racing, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (2) A harness track licensed to conduct harness racing may receive interstate simulcasts of harness horse, *quarter horse*, *appaloosa* and *Arabian horse* races and conduct interstate wagering thereon subject to the following limitations:
- (a) A harness receiving track may receive interstate simulcasts of harness races, ~~and~~ quarter horse races, *appaloosa races and Arabian horse races*, and conduct interstate wagering thereon at any time of day and during the course of any live harness horse race meet conducted in the Commonwealth of Kentucky so long as the harness receiving track conducting interstate wagering remits to the harness host track conducting a live meet, from the first awarded day of its live meet through the last awarded day of the same live meet, the amounts provided in paragraph (j) of this subsection.

- (b) A harness host track which receives an interstate simulcast and conducts interstate wagering thereon during its live race meet shall offer the simulcasts to all thoroughbred receiving tracks not subject to the provisions of KRS 230.377(2), all harness tracks, and all simulcast facilities through the intertrack wagering system.
- (c) Except as otherwise prohibited by law, a harness receiving track or a simulcast facility shall conduct intertrack wagering on all live races of a harness host track on any day it receives an interstate simulcast from a harness host track.
- (d) No host track shall require that any receiving track or simulcast facility receive the interstate simulcast.
- (e) If more than one (1) harness track conducts live racing at the same time on the same day, no track or simulcast facility may receive an interstate simulcast on harness races unless all harness tracks conducting live racing at that time of day agree upon the interstate simulcast to be received and the division of the harness host track's commission. If more than one (1) harness track conducts live racing at different times on the same day, the harness host track with the highest average daily handle, based on the preceding year, shall be the host track for purposes of splitting the commissions earned on interstate wagering at receiving tracks within the Commonwealth. For purposes of this subsection, average daily handle includes live handle, intertrack wagering handle, and simulcast facility handle. Also for purposes of this subsection, the time of day during which a host track conducts live racing commences with its first published post time and conclude ten (10) minutes after the published post time of its last race of the day, regardless of actual post times.
- (f) Each harness track which desires to conduct interstate wagering pursuant to the provisions of this subsection shall during each year make application to the authority for no less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 and one hundred percent (100%) of the number of races scheduled to be run by the track in 1993.
- (g) Notwithstanding paragraph (f) of this subsection, any harness track may apply for less than one hundred percent (100%) of the number of racing days awarded to the track in 1994 or one hundred percent (100%) of the number of races scheduled to be run by the track in 1993, if written approval is obtained from the Kentucky Harness Horsemen's Association, or its successor.
- (h) A separate accounting on all interstate simulcasting shall be submitted to the authority. This accounting shall be submitted in the same format and at the same time that the report for intertrack wagering is submitted.
- (i) If the only simulcast or simulcasts a track participating as a harness host track makes available for interstate wagering through this state's intertrack wagering system on any race day are harness horse races (both final and elimination) having a final purse in excess of seventy-five thousand dollars (\$75,000), then the commission of the receiving track on these interstate wagers shall be split as prescribed by KRS 230.378(3); otherwise, the commission of the receiving track shall be split as prescribed by paragraph (j) of this subsection. Interstate simulcasts received by a harness host track under the conditions set forth in this paragraph shall not be subject to the conditions set forth in paragraphs (b), (c), (e), and (f) of this subsection.
- (j) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 - 2. Twenty-five percent (25%) to the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be retained by the receiving track where the interstate wagering occurs;
 - 3. Twenty-five percent (25%) to the purse program of the receiving track where the interstate wagering occurs; and
 - 4. Twenty-five percent (25%) to the purse program of the harness host track designated by paragraphs (a) and (e) of this subsection. However, if no live meet is occurring, an additional twenty-five percent (25%) shall be paid to the purse program of the receiving track where the interstate wagering occurs.

- (k) A simulcast facility's commission on interstate wagering on harness races, after deduction of applicable taxes and any amount required to be paid by contract to the track from which the interstate simulcast originated, shall be split as provided in KRS 230.380(9).
- (3) A harness track may only receive interstate simulcasts of thoroughbred horse races and conduct interstate wagering thereon as provided in subsection (1)(b) of this section. A thoroughbred track may only receive interstate simulcasts of harness horse races and conduct interstate wagering thereon as provided in subsection (2)(b) of this section. A simulcast facility may only receive interstate simulcasts of thoroughbred and harness horse races and conduct interstate wagering thereon as provided in subsections (1)(b) and (2)(b) of this section.
- (4)
 - (a) A thoroughbred track licensed to conduct horse racing may receive interstate simulcasts of quarter horse, *appaloosa*, and *Arabian horse* races and conduct interstate wagering thereon, subject to the limitations stated in paragraph (b) of this subsection.
 - (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the receiving track where the interstate wagering occurs;
 - 2. Twenty-five percent (25%) to the host track; and
 - 3. Fifty percent (50%) to the *Kentucky quarter horse, appaloosa, and Arabian development fund established by Section 4 of this Act*~~[quarter horse purse program within this state, to be allocated by the American Quarter Horse Association or its successor]~~ to supplement purses for quarter horse, *appaloosa*, and *Arabian horse* races in this state.
- (5)
 - (a) A harness track licensed to conduct horse racing may receive interstate simulcasts of quarter horse, *appaloosa*, and *Arabian horse* races and conduct interstate wagering thereon, subject to the limitations stated in paragraphs (b) and (c) of this subsection.
 - (b) A receiving track's commission on interstate wagering, after deduction of applicable taxes and any amounts required to be paid by contract to the track from which the interstate simulcast originated, shall be split as follows:
 - 1. Twenty-five percent (25%) to the purse program of the receiving track;
 - 2. Twenty-five percent (25%) to the purse program of the host track;
 - 3. Twenty-five percent (25%) to the receiving track; and
 - 4. Twenty-five percent (25%) to the host track.
 - (c) When a quarter horse, *appaloosa*, or *Arabian horse* race is run at a Kentucky race track, the commission to the Kentucky *quarter horse, appaloosa, and Arabian development fund established by Section 4 of this Act*~~[Quarter Horse Purse Program]~~ shall be twenty-two percent (22%) from the host track's purse share.
- (6) Other provisions of the Kentucky Revised Statutes notwithstanding, any track in a geographic area that contains more than one (1) track within a fifty (50) mile radius of any other track may only receive interstate simulcasts on racing of the same breed of horse as the track was licensed to race on or before July 15, 1998, except any track may receive interstate simulcasts on quarter horse, *appaloosa*, or *Arabian horse* races.

➔Section 3. KRS 230.770 is amended to read as follows:

- (1) There is hereby created a trust and revolving fund for the Kentucky Horse Racing Authority, designated as the Kentucky standardbred~~[quarter horse, Appaloosa, and Arabian]~~ development fund, consisting of money allocated to the fund under the provisions of KRS 138.510, together with any other money contributed to or allocated to the fund from all other sources. For the purposes of this section, "development fund" or "fund" means the Kentucky standardbred~~[quarter horse, Appaloosa, and Arabian]~~ development fund. Money to the credit of the development fund shall be distributed by the Treasurer for the purposes provided in this section, upon authorization of the Kentucky Horse Racing Authority and upon approval of the secretary of the Finance and Administration Cabinet. Money to the credit of the fund at the end of each fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year.

- (2) The Kentucky Horse Racing Authority shall use the development fund to promote races, and to provide purses for races, for horses sired by stallions standing within the Commonwealth of Kentucky~~[or as provided in subsection (2)(b) of this section]~~. For purposes of this section, the term "stallions standing within the Commonwealth of Kentucky" shall include only stallions registered with the Kentucky Horse Racing Authority.
- (3)~~[(a)]~~ The authority shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed standardbred race tracks within Kentucky on an equitable basis, for the purpose of conducting separate races for two (2) and three (3) year old fillies and colts, both trotting and pacing, sired by standardbred stallions standing within the Commonwealth of Kentucky at the time of conception.~~[Notwithstanding other provisions hereof, a filly or colt foaled prior to January 1, 1978, shall be eligible to participate in races, a part of the purse for which is provided by money of the development fund, if the sire of the filly or colt was standing at stud within the Commonwealth of Kentucky at the time of conception.]~~
- ~~(b) — The authority shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed racetracks within Kentucky conducting quarter horse, Appaloosa, or Arabian racing, on an equitable basis as determined by the authority.]~~
- (4)~~[(3)]~~ Money distributed from the development fund to licensed standardbred race tracks within the Commonwealth shall be used exclusively to promote races and provide purses for races conditioned to admit only standardbred colts and fillies sired by standardbred stallions standing within the Commonwealth of Kentucky.
- (5)~~[(4)]~~ The Kentucky Horse Racing Authority shall fix the amount of money to be paid from the development fund to be added to the purse provided for each race by the licensed operator of the~~[race]~~ track; shall fix the dates and conditions of races to be held by licensed race tracks; and shall promulgate administrative regulations necessary to carry out the provisions of this section.~~[Money from the fund shall be allocated to each breed of horse represented in the fund in an amount equal to the amount the breed has contributed to the fund.]~~
- (6)~~[(5)]~~ The Kentucky Horse Racing Authority may promulgate administrative regulations necessary to determine the eligibility of horses for entry in races for which a portion of the purse is provided by money of the development fund, including administrative regulations for the registration of stallions standing within Kentucky and progeny thereof, including registration of progeny of the stallions foaled prior to June 19, 1976. Registration of stallions standing within Kentucky may occur any time during the breeding season and shall occur no later than **February 1**~~[July 1]~~ of each year.
- (7)~~[(6)]~~ The Kentucky Horse Racing Authority shall appoint qualified personnel necessary to supervise registration of, or determination of eligibility of, horses entitled to entry in races, a portion of the purse of which is provided by the development fund, to assist the authority in determining the conditions, class, and quality of the fund supported race program to be established hereunder so as to carry out the purposes of this section. These persons shall serve at the pleasure of the authority and compensation shall be fixed by the authority. The compensation of personnel and necessary expenses shall be paid out of the development fund. The authority shall promulgate administrative regulations to carry out the provisions of this section, and shall administer the Kentucky sire stakes program created hereby in a manner best designed to promote and aid in the development of the horse industry in Kentucky; to upgrade the quality of racing in Kentucky; and to improve the quality of horses bred in Kentucky.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 230 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created a trust and revolving fund for the Kentucky Horse Racing Authority designated the Kentucky quarter horse, appaloosa, and Arabian development fund, consisting of money allocated to the fund under the provisions of Section 2 of this Act together with any other money contributed to or allocated to the fund from all other sources. For the purposes of this section, "development fund" or "fund" means the Kentucky quarter horse, appaloosa, and Arabian development fund. Money to the credit of the development fund shall be distributed by the Treasurer for the purposes provided in this section, upon authorization of the Kentucky Horse Racing Authority and upon approval of the secretary of the Finance and Administration Cabinet. Notwithstanding KRS 45.229, money to the credit of the fund at the end of the fiscal year shall not lapse but shall be carried forward in the fund to the succeeding fiscal year. Interest*

earnings of the fund shall become a part of the fund and shall not lapse. Moneys in the fund shall be used and are hereby appropriated for purposes specified in this section.

- (2) *The Kentucky Horse Racing Authority shall use the development fund to promote races and to provide purses for races for horses bred and foaled in the Commonwealth. The commission shall provide for distribution of money to the credit of the development fund to persons, corporations, or associations operating licensed tracks within Kentucky conducting quarter horse, appaloosa, or Arabian horse racing, on an equitable basis as determined by the authority and in conformance with subsection (3) of this section.*
- (3) *The Kentucky Horse Racing Authority shall:*
 - (a) *Fix the amount of money to be paid from the development fund to be added to the purse provided for each race by the licensed operator of the track;*
 - (b) *Fix the dates and conditions of races to be held by licensed tracks; and*
 - (c) *Promulgate administrative regulations necessary to carry out the provisions of this section.*

Money from the fund shall be allocated to each breed of horse represented in the fund in an amount equal to the amount the breed has contributed to the fund.

- (4) *The Kentucky Horse Racing Authority shall appoint qualified personnel as necessary to:*
 - (a) *Supervise registration of, or determine the eligibility of horses entitled to entry in races which receive a portion of purse money from the development fund; and*
 - (b) *Assist the authority in determining the conditions, class, and quality of the fund-supported race program established to carry out the purposes of this Section.*

The personnel shall serve at the pleasure of the authority and compensation shall be fixed by the authority with the compensation and necessary expenses of the personnel paid from the development fund.

- (5) *The authority shall promulgate administrative regulations to carry out the provisions of this section and shall administer the Kentucky quarter horse, appaloosa, and Arabian development fund in a manner designed to:*
 - (a) *Promote and aid in the development of the horse industry in Kentucky;*
 - (b) *Upgrade the quality of racing in Kentucky; and*
 - (c) *Improve the quality of horses bred in Kentucky.*

Signed by Governor April 6, 2010.

CHAPTER 58

(HB 395)

AN ACT relating to the Workers' Compensation Funding Commission.

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

➔Section 1. KRS 342.122 is amended to read as follows:

- (1) (a) For calendar year 1997 and for each calendar year thereafter, for the purpose of funding and prefunding the liabilities of the special fund, financing the administration and operation of the Kentucky Workers' Compensation Funding Commission, and financing the expenditures for all programs in the Department of Labor, except the Division of Employment Standards, Apprenticeship and Training and the Office of Labor-Management Relations and Mediation, as reflected in the enacted budget of the Commonwealth and enacted by the General Assembly, the funding commission shall impose a special fund assessment rate of nine percent (9%) upon the amount of workers' compensation premiums received on and after January 1, 1997, through December 31, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his or her own risk.

- (b) The funding commission shall, for calendar year 1998 and thereafter, establish for the special fund an assessment rate to be assessed against all premium received during that calendar year which, when added to the coal severance tax appropriated to the special fund in accordance with paragraph (c) of this section, shall produce enough revenue to amortize on a level basis the unfunded liability of the special fund as of June 30 preceding January 1 of each year, for the period remaining until December 31, ~~2029~~²⁰¹⁸. The interest rate to be used in this calculation shall reflect the funding commission's investment experience to date and the current investment policies of the commission. This assessment shall be imposed upon the amount of workers' compensation premiums received by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provisions of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk. On or before October 1 of each year, the commission shall notify each insurance carrier writing workers' compensation insurance in the Commonwealth, every group of self-insured employers, and each employer carrying his or her own risk, of the rates which shall become effective on January 1 of each year, unless modified by the General Assembly.
 - (c) In addition to the assessment imposed in paragraph (a) or (b) of this subsection, and notwithstanding and prior to the transfer of funds to the Local Government Economic Assistance Program under KRS 42.450 to 42.495, the Kentucky Department of Revenue shall credit nineteen million dollars (\$19,000,000) in coal severance tax revenues levied under KRS 143.020 to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission each year beginning with fiscal year 1998 and all fiscal years thereafter. The annual transfer of nineteen million dollars (\$19,000,000) shall occur in four (4) equal quarterly payments. These transfers shall occur not later than the last day of each quarter of each calendar year and shall consist of four (4) equal payments of four million, seven hundred fifty thousand dollars (\$4,750,000).
 - (d) All assessments imposed by this section shall be paid to the Kentucky Workers' Compensation Funding Commission and shall be credited to the benefit reserve fund within the Kentucky Workers' Compensation Funding Commission.
 - (e) The assessments imposed in this chapter shall be in lieu of all other assessments or taxes on workers' compensation premiums.
- (2) These assessments shall be paid quarterly not later than the thirtieth day of the month following the end of the quarter in which the premium is received. Receipt shall be considered timely through actual physical receipt or by postmark of the United States Postal Service. Employers carrying their own risk and employers defined in KRS 342.630(2) shall pay the annual assessments in four (4) equal quarterly installments.
 - (3) The assessments imposed by this section may be collected by the insurance carrier from his insured. However, the insurance carrier shall not collect from the employer any amount exceeding the assessments imposed pursuant to this section. If the insurance carrier collects the assessment from an insured, the assessment shall be collected at the same time and in the same proportion as the premium is collected. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. Each statement from an insurance carrier presented to an insured reflecting premium and assessment amounts shall clearly identify and distinguish the amount to be paid for premium and the amount to be paid for assessments. No insurance carrier shall collect from an insured an amount in excess of the assessment percentages imposed by this chapter. The assessment for an insurance policy or other evidence of coverage providing a deductible may be collected in accordance with this chapter on a premium amount that equates to the premium that would have applied without the deductible. The percentages imposed by this chapter for an insurance policy issued by an insurance company shall be those percentages in effect on the annual effective date of the policy, regardless of the date that the premium is actually received by the insurance company.
 - (4) A self-insured group may elect to report its premiums and to have its assessments computed in the same manner as insurance companies. This election may not be rescinded for at least ten (10) years, nor may this election be made a second time for at least another ten (10) years, except that the board of directors of the funding commission may, at its discretion, waive the ten (10) year ban on a case-by-case basis after formal petition has been made to the funding commission by a self-insured group.

- (5) The funding commission, as part of the collection and auditing of the special fund assessments required by this section, shall annually require each insurance carrier and each self-insured group to provide a list of employers which it has insured or which are members and the amount collected from each employer. Additionally, the funding commission shall require each entity paying a special fund assessment to report the SIC code for each employer and the amount of premium collected from each SIC code. An insurance carrier or self-insured group may require its insureds or members to furnish the SIC code for each of their employees. However, the failure of any employer to furnish said codes shall not relieve the insurance carrier or self-insured group from the obligation to furnish same to the funding commission. The Office of Employment and Training, Education and Workforce Development Cabinet, is hereby directed to make available the SIC codes assigned in its records to specific employers to aid in the reporting and recording of the special fund assessment data.
- (6) Each self-insured employer, self-insured group, or insurance carrier shall provide any information and submit any reports the Department of Revenue or the funding commission may require to effectuate the provisions of this section. In addition, the funding commission may enter reciprocal agreements with other governmental agencies for the exchange of information necessary to effectuate the provisions of this section.
- (7) The special fund shall be required to maintain a central claim registry of all claims to which it is named a party, giving each such claim a unique claim number and thereafter recording the status of each claim on a current basis. The registry shall be established by January 26, 1988, for all claims on which payments were made since July 1, 1986, or which were pending adjudication since July 1, 1986, by audit of all claim files in the possession of the special fund.
- (8) The fund heretofore designated as the subsequent claim fund is abolished, and there is substituted therefor the special fund as set out by this section, and all moneys and properties owned by the subsequent claim fund are transferred to the special fund.
- (9) Notwithstanding any other provisions of this section or this chapter to the contrary, the total amount of funds collected pursuant to the assessment rates adopted by the funding commission shall not be limited to the provisions of this section.
- (10) All assessment rates imposed for periods prior to January 1, 1997, under KRS 342.122 shall forever remain applicable to premiums received on policies with effective dates prior to January 1, 1997, by every insurance carrier writing workers' compensation insurance in the Commonwealth, by every self-insured group operating under the provision of KRS 342.350(4) and Chapter 304, and against the premium, as defined in KRS 342.0011, of every employer carrying his own risk.

Signed by Governor April 6, 2010.

CHAPTER 59

(HB 378)

AN ACT relating to underground storage tanks.

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

➔Section 1. KRS 224.60-130 is amended to read as follows:

- (1) The Environmental and Public Protection Cabinet, Department for Environmental Protection, Division of Waste Management, shall:
 - (a) Establish by administrative regulation the policy, guidelines, and procedures to administer the financial responsibility and petroleum storage tank accounts of the petroleum storage tank environmental assurance fund. In adopting administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks. The division may establish a range of amounts to be paid from the fund, or may base payments on methods such as pay for performance, task order, or firm fixed pricing, which are designed to provide incentives for contractors to more tightly control corrective action costs, and shall establish criteria to be met by persons who contract to perform corrective action to be eligible for reimbursement from the fund. The criteria may include the certification of individuals, partnerships, and companies. Criteria shall be established to certify laboratories that contract to perform analytical testing related to the underground storage tank program. Owners and operators shall have all required analytical testing performed by a certified laboratory to be eligible for fund participation. Persons who contract with petroleum storage tank

owners or operators shall not be paid more than the amount authorized by the division for reimbursement from the fund for the performance of corrective action. At a minimum, the division shall promulgate administrative regulations that will insure an unobligated balance in the fund adequate to meet financial assurance requirements and corrective action requirements of KRS 224.60-135(2) and (4). If the unobligated balance in the fund is not adequate to meet the requirements of this paragraph, the division shall obligate funds necessary to meet these requirements;

- (b) Establish by administrative regulation the criteria to be met to be eligible to participate in the financial responsibility and petroleum storage tank accounts and to receive reimbursement from these accounts. The division may establish eligibility criteria for the petroleum storage tank account based upon the financial ability of the petroleum storage tank owner or operator. Owners or operators seeking coverage under the petroleum storage tank account shall file for eligibility and for financial assistance with the division. To ensure cost effectiveness, the division shall promulgate administrative regulations specifying the circumstances under which prior approval of corrective action costs shall be required for those costs to be eligible for reimbursement from the fund. In promulgating administrative regulations to carry out this section, the division may distinguish between types, classes, and ages of petroleum storage tanks and the degree of compliance of the facility with any administrative regulations of the cabinet promulgated pursuant to KRS 224.60-105 or applicable federal regulations;
- (c) Establish a financial responsibility account within the fund which may be used by petroleum storage tank owners and operators to demonstrate financial responsibility as required by administrative regulations of the cabinet or the federal regulations applicable to petroleum storage tanks, consistent with the intent of the General Assembly as set forth in KRS 224.60-120(5). The account shall receive four-tenths of one cent (\$0.004) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. To be eligible to use this account to demonstrate compliance with financial responsibility requirements of the cabinet or federal regulations, or to receive reimbursement from this account for taking corrective action and for compensating third parties for bodily injury and property damage, the petroleum storage tank owner or operator shall meet the eligibility requirements established by administrative regulation promulgated by the division;
- (d) Establish a small operator assistance account within the fund which may be used by the division to make or participate in the making of loans, to purchase or participate in the purchase of the loans, which purchase may be from eligible lenders, or to insure loans made by eligible lenders;
- (e) Establish a petroleum storage tank account within the fund to be used to pay the costs of corrective action due to a release from a petroleum storage tank not eligible for reimbursement from the financial responsibility account. Reimbursements of corrective action projects performed under the petroleum storage tank account shall be carried out on or before July 15, 2013. Any corrective action costs incurred after this date shall not be eligible for reimbursement under the petroleum storage tank account. The account shall receive one cent (\$0.01) from the one and four-tenths cent (\$0.014) paid on each gallon of gasoline and special fuels received in this state pursuant to KRS 224.60-145. This account shall not be used to compensate third parties for bodily injury and property damage. Within three (3) months after July 15, 2004, the division shall develop a plan to address the payment of claims and completion of corrective action at facilities eligible for reimbursement from this account. The division shall establish a ranking system to be used for the distribution of amounts from this account for the purpose of corrective action. In promulgating administrative regulations to carry out this section, the division shall consider the financial ability of the petroleum storage tank owner or operator to perform corrective action and the extent of damage caused by a release into the environment from a petroleum storage tank;
- (f) Hear complaints brought before the division regarding the payment of claims from the fund in accordance with KRS 224.10-410 to 224.10-470;
- (g) Establish and maintain necessary offices within this state, appoint employees and agents as necessary, and prescribe their duties and compensation;
- (h) Employ, in accordance with the procedures found in KRS 45A.690 to 45A.725 for awarding personal service contracts, a qualified actuary to perform actuarial studies, as directed by the division, for determining an appropriate reserve in the financial responsibility account and the petroleum storage tank

account sufficient to satisfy the obligations in each account for all eligible facilities and to satisfy future liabilities and expenses necessary to operate each account. The division shall, by administrative regulation, set the entry level for participation in the fund;

- (i) Authorize expenditures from the fund to carry out the purpose of KRS 224.60-105 to 224.60-160, including reasonable costs of administering the fund, the procurement of legal services, and the procurement of analytical testing services when necessary to confirm the accuracy of analytical testing results obtained by a petroleum storage tank owner or operator. The expenditures shall be paid from the appropriate account;
 - (j) Establish a small operators' tank removal account within the fund to reimburse the reasonable cost of tank system removal for small owners and operators. The account shall not be used when an owner or operator is removing the tank with the intention of replacing or upgrading the tank. In promulgating administrative regulations to carry out this paragraph, the division may distinguish among owners and operators based on income, ~~number of tanks, number of facilities,~~ and types and classes of tanks. ***The division shall not place a limit on the number of tanks that an owner or operator has in order to be eligible to participate in the program and receive reimbursement under this paragraph;***
 - (k) Establish by administrative regulation the policy, guidelines, and procedures to perform financial audits of any petroleum storage tank owner or operator receiving reimbursement from the fund or any entity contracting or subcontracting to provide corrective action services for facilities eligible for fund reimbursement. Financial audits shall be limited to those files, records, computer records, receipts, and other documents related to corrective action performed at a facility where the costs of corrective action have been reimbursed by the fund. Files, records, computer records, receipts, and other documents related to corrective action reimbursed by the fund shall be subject to a financial audit for a period of three (3) years after the date of final reimbursement from the fund. Results of the audits shall be protected from disclosure as allowed by KRS 61.878(1)(c). Financial auditing services may be contracted for or personnel may be employed as needed to implement the requirements of this paragraph;
 - (l) Be authorized to enter and inspect any facility intending to seek reimbursement for the cost of corrective action to determine the reasonableness and necessity of the cost of corrective action. The division may collect soil or water samples or require storage tank owners or operators to split samples with the division for analytical testing. Refusal to allow entry and inspection of a facility or refusal to allow the division to collect or split samples shall make the facility ineligible for fund participation;
 - (m) Have inspectors on site at all tank system removals. Failure to comply with this provision shall make the facility ineligible for fund participation. A petroleum storage tank owner or operator may request through certified mail that the division schedule an inspector to be present at an upcoming tank removal. If the request is made at least two (2) weeks before the time for the removal and an inspector fails to be present at the time scheduled, the tank removal may proceed without making the facility ineligible for fund participation unless the owner is notified by the division no later than ten (10) days prior to the proposed date that an inspector is not available on the proposed date, in which event a representative of the division shall contact the operator and schedule a new date. If no inspector is present at the rescheduled date, the removal may then proceed without penalty; and
 - (n) Establish that the deadline for submission of final reimbursement requests under the petroleum storage tank account is two (2) years after receipt of a no further action letter.
- (2) The division may advise the cabinet on the promulgation of administrative regulations concerning petroleum storage tanks.
 - (3) The division may sue and be sued in its own name.
 - (4) The division may transfer funds from the petroleum storage tank account to the small operator tank removal account as needed to satisfy the obligations, future liabilities, and expenses necessary to operate that account. The division may transfer funds to the financial responsibility account as needed to maintain within that account sufficient funds to demonstrate financial responsibility and to ensure payment of claims as provided in subsection (1)(c) of this section.

Signed by Governor April 6, 2010.

CHAPTER 60**(HB 552)**

AN ACT relating to alternative fuels.

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

➔Section 1. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3)
 - (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.
 - (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 and 154.27-060, that were subject to the tax imposed by KRS 143.020;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9)
 - (a) "Capital investment" means:
 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;
 4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance

- of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020;
 - (b) *An energy-efficient alternative fuel facility meeting the investment requirements of Section 2 of this Act; or*
 - (c)~~(b)~~ A renewable energy facility meeting the investment requirements of KRS 154.27-020;
- (16) *"Energy-efficient alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2010, and that, after the new construction, retrofit, or upgrade, will produce for sale energy-efficient alternative fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall produce for sale energy-efficient alternative fuels;*
- (17) *"Energy-efficient alternative fuels" means homogeneous fuels that:*
- (a) *Are produced from processes designed to densify feedstock coal, waste coal, or biomass resources; and*
 - (b) *Have an energy content that is greater than the feedstock coal, waste coal, or biomass resource;*
- (18) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- ~~(19)~~~~(17)~~ (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.

- (b) "Facility" shall not include any mining operations;
- ~~(20)(18)~~ "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- ~~(21)(19)~~ (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;
 2. Synthetic natural gas;
 3. Chemicals;
 4. Chemical feedstocks; or
 5. Liquid fuels;
- from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.
- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- ~~(22)(20)~~ "Kentucky gross profits" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.0401;
- ~~(23)(21)~~ "Kentucky gross receipts" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.0401;
- ~~(24)(22)~~ "Office" means the Governor's Office of Energy Policy created by KRS 152.712;
- ~~(25)(23)~~ "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
- ~~(26)(24)~~ "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:
- (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
 - (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.
- For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;
- ~~(27)(25)~~ "Resident" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.010;
- ~~(28)(26)~~ "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;
- ~~(29)(27)~~ "Synthetic natural gas" has the same meaning as in KRS 152.715;
- ~~(30)(28)~~ "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;
- ~~(31)(29)~~ "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and
- ~~(32)(30)~~ "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 2. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act."
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:
 - (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process;
 - (c) ***Increasing the production and sale of energy-efficient alternative fuels; or***
 - ~~(d)(e)~~ Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
 - (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);
 - (c) ***For an energy-efficient alternative fuel facility, the minimum capital investment shall be twenty-five million dollars (\$25,000,000); and***
 - ~~(d)(e)~~ For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000).
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
 - (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
 - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
 - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility, ***energy-efficient alternative fuel facility***, or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060;
 - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
 - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
 1. Whose job was created as a result of the eligible project;
 2. Who is employed by the approved company to work at the facility; and
 3. Who is on the payroll of the approved company or an affiliate of the approved company;
 as set forth in KRS 154.27-080.

- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.
- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.
- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.
- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 3. KRS 154.27-060 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143, an approved company that purchases or severs coal that:
 - (a) Is subject to the tax imposed under KRS 143.020; and
 - (b) Is used by the approved company exclusively as feedstock for an alternative fuel facility, ***energy-efficient alternative fuel facility***, or a gasification facility;
 may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020 on coal purchased or severed by the approved company that is above the base amount.
- (2) An approved company that has purchased or severed coal subject to the tax imposed under KRS 143.020 prior to the execution of a tax incentive agreement shall not create an affiliate, subsidiary, corporation, or other related entity that would result in a base amount of zero (0).
- (3) The incentive may be requested beginning in the first calendar year after the construction of a new facility or the upgrade or retrofit of an existing facility is completed.
- (4) Upon completion of the construction of a new alternative fuel facility, ***energy-efficient alternative fuel facility***, or gasification facility or the retrofit or upgrade of an existing facility, an approved company shall notify the authority and the department.
- (5) The approved company may obtain the incentive on an annual basis by filing a request for the incentive with the department as provided in KRS 143.024.
- (6) The department shall notify the authority of the incentives requested and the incentives distributed, upon request of the authority.

➔Section 4. KRS 143.024 is amended to read as follows:

- (1) As used in this section:
 - (a) "Alternative fuel facility" has the same meaning as in KRS 154.27-010;
 - (b) "Approved company" has the same meaning as in KRS 154.27-010;
 - (c) "Authority" has the same meaning as in KRS 154.27-010;
 - (d) "Base amount" has the same meaning as in KRS 154.27-010;
 - (e) "Capital investment" has the same meaning as in KRS 154.27-010;
 - (f) "Eligible project" has the same meaning as in KRS 154.27-010;
 - (g) ***"Energy-efficient alternative fuel facility" has the same meaning as in Section 1 of this Act;***
 - (h) "Gasification facility" has the same meaning as in KRS 154.27-010; and
 - (i)~~(h)~~ "Tax incentive agreement" has the same meaning as in KRS 154.27-010.
- (2) Notwithstanding any other provision of KRS 134.580 or this chapter, an approved company that purchases or severs coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by the approved company as feedstock for an alternative fuel facility, ***energy-efficient alternative fuel facility***, or gasification facility may be eligible for an incentive under KRS 154.27-060.

- (3) A company approved for incentives under KRS 154.27-060 shall file a request for the incentive with the department within sixty (60) days of the completion of the construction, retrofit, or upgrade of the facility. In subsequent years, the approved company shall file a request for the incentive within sixty (60) days following the end of each calendar year. The request for incentives shall be in the form prescribed by the department through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The request for incentives shall include but not be limited to the following information:
- (a) Verification of the base amount;
 - (b) Verification of the tons of coal purchased and used or severed and used by the approved company as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility during the calendar year for which the request for incentives is being made;
 - (c) Verification that the minimum capital investment as set forth in the tax incentive agreement has been made;
 - (d) Verification of the output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, *coal-derived energy-efficient alternative fuels*, or other coal-derived chemicals or chemical feedstocks; and
 - (e) Any other information that the department may require.
- (4) To assist in determining the amount of coal purchased and used or severed and used that is eligible for the incentive, the department shall obtain from the University of Kentucky Center for Applied Energy Research a reasonable and typical estimate of the tons of coal needed to produce a given output of coal-derived alternative transportation fuels, coal-derived synthetic natural gas, coal-derived liquid fuels, *coal-derived energy-efficient alternative fuels*, or other coal-derived chemicals or chemical feedstocks, considering:
- (a) The type of coal to be used;
 - (b) Equipment to be employed;
 - (c) Size and output of the facility;
 - (d) Slate of products produced; and
 - (e) Other characteristics of the alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility.
- (5) (a) The department and the authority shall review the request for incentives jointly and shall verify that the request for incentives meets all requirements established by statute and administrative regulation.
- (b) The department shall verify the tax paid pursuant to KRS 143.020 on the coal purchased or severed by the approved company and used as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility during the calendar year for which the application was submitted and shall determine the amount of the tax paid that qualifies for distribution to the approved company pursuant to this section.
- (c) The incentive amount shall be distributed to the approved company in quarterly installments beginning on July 1 of the year following the calendar year for which the request for incentives required under this section was submitted.
- (6) The approved company seeking incentives shall execute information-sharing agreements prescribed by the department with vendors from which it purchased coal to verify the value of coal purchased by the approved company and used as feedstock for an alternative fuel facility, *energy-efficient alternative fuel facility*, or gasification facility and the amount of tax paid under KRS 143.020 on such coal.
- (7) The department shall notify the authority of the incentive distributed to each approved company upon request.

Signed by Governor April 6, 2010.

CHAPTER 61**(HB 363)**

AN ACT relating to the Transportation Cabinet.

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

➔Section 1. KRS 446.010 is amended to read as follows:

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

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;
- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (7) "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (8) "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (9) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (10) "Directors," when applied to corporations, includes managers or trustees;
- (11) "Domestic," when applied to corporations, partnerships, limited partnerships, or limited liability companies, means all those incorporated or formed by authority of this state;
- (12) "Domestic animal" means any animal converted to domestic habitat;
- (13) "Federal" refers to the United States;
- (14) "Foreign," when applied to corporations, partnerships, limited partnerships, or limited liability companies, includes all those incorporated or formed by authority of any other state;
- (15) "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (16) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (17) "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (18) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (19) "Legatee" and "devisee" convey the same idea;
- (20) "May" is permissive;
- (21) "Month" means calendar month;
- (22) "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (23) "Owner" when applied to any animal, means any person having a property interest in such animal;

- (24) "Partnership" includes both general and limited partnerships;
- (25) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (26) "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (27) "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships, registered limited liability partnerships, joint stock companies, and limited liability companies;
- (28) "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (29) "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (30) "Shall" is mandatory;
- (31) "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (32) "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (33) "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (34) "United States" includes territories, outlying possessions, and the District of Columbia;
- (35) "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (36) "Violate" includes failure to comply with;
- (37) "Will" includes codicils; "last will" means last will and testament;
- (38) "Year" means calendar year;
- (39) "City" includes town;
- (40) Appropriation-related terms are defined as follows:
 - (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in a branch budget bill as provided for in KRS Chapter 48;
- (41) "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;
- (42) "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year;~~{and}~~

- (43) "Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet; **and**
- (44) ***"AVIS" means the automated vehicle information system established and maintained by the Transportation Cabinet to collect titling and registration information on vehicles and boats and information on holders of motor vehicle operator's licenses and personal identification cards.***

➔Section 2. KRS 186A.170 is amended to read as follows:

- (1) The Department of Vehicle Regulation shall:
- (a) Within five (5) working days following receipt by it of an application for a certificate of title in proper form, process the application and its supporting documents in the manner provided in this section, and unless it finds discrepancies with respect to it or its supporting documents, issue a certificate of title in the name of the owner and send it postpaid to such owner.
 - (b) Within twenty-four (24) hours following electronic notification by a county clerk's office of an application for a certificate of title, issue a speed title which shall be held for pickup or returned to the owner by mail. The clerk shall take the application for title and process the appropriate paperwork as provided for in this chapter. The department may provide, by administrative regulation, for exceptions to the speed title procedure.
- (2) Upon receiving an application packet from a county clerk, the application receipt clerk of the Department of Vehicle Regulation shall:
- (a) Cause the date and time of receipt to be stamped on both the department's copy and the acknowledgment copy of the application transmittal record and accompanying documents;
 - (b) Cause at least duplicate sets of ~~microfilm~~ images to be made of each transmittal record application and supporting document by a means that will provide rapid, selective, automated retrieval of individual document images by appropriate indexing methods or keys;
 - (c) Compare the application transmittal record with the documents accompanying it, and, if all applications shown upon the record are accompanying the record, endorse the department's copy of the transmittal record and the acknowledgment copy, and forward the acknowledgment copy to the clerk who issued it.
- (3) In the event there is a discrepancy between the application transmittal record and the application attached to it, the Department of Vehicle Regulation shall note the discrepancy upon the department's copy and the acknowledgment copy, and shall promptly contact the issuing clerk and resolve the discrepancy. After resolving the discrepancy, the department shall note the nature of the disposition of the discrepancy and endorse the respective copies and forward the acknowledgment copy with the discrepancy disposition noted thereon to the issuing clerk.
- (4) After executing the acknowledgment of receipt of applications, the Department of Vehicle Regulation shall carry out the following action with respect to each application:
- (a) Examine the owner's application for legibility and proper execution, presence of required information, including required supporting documents, and the presence of required signatures. The Department of Vehicle Regulation shall ensure also that the required supporting documents are consistent in pertinent part with the information shown on the owner's application;
 - (b) The documents supporting an owner's application shall be examined as to authenticity and to determine if fraudulent alteration has occurred;
 - (c) Assure that the vehicle identification number of the subject vehicle is apparently legitimate;
 - (d) Ensure that the vehicle identification number and any other appropriate information with respect to a vehicle for which a certificate of title has been applied for is compared against the National Crime Information Center (NCIC) computerized listings of vehicles reported stolen, unless NCIC is not operational and the department has official notification that it is not expected to be operational within four (4) working days following the day on which an application for a certificate of title is received by it;

- (e) Compare the computer-produced certificate of title for consistency with the owner's application and supporting documents.
- (5) When the title application has been completed, and the application examiner at each significant stage has indicated, by placing his unique symbol upon the application in the space provided thereon, that an application has passed the required examinations, the application shall be examined by a title examination certifier.
- (6) The title application certifier shall ensure that each application has received the required examinations as indicated by the presence of each required examiner's symbol. Upon satisfying himself that an application has passed the required examinations, the title examination certifier shall place his unique symbol together with the date upon the application.
- (7) The Department of Vehicle Regulation shall withhold issuance of a title, until its questions are resolved to its satisfaction, when it finds material discrepancies or has information giving probable cause to believe:
 - (a) That an applicant is not the lawful owner of a vehicle for which he seeks a title;
 - (b) His application is not in order;
 - (c) The documentation supporting an application is insufficient or fraudulent;
 - (d) The vehicle has an illegitimate vehicle identification number;
 - (e) The vehicle is stolen; or
 - (f) That the computer-produced certificate of title is not consistent with the owner's application.
- (8) When the Department of Vehicle Regulation finds that a certificate of title should be issued for a vehicle, the endorsement of the commissioner of the Department of Vehicle Regulation shall be engrossed upon the certificate of title following a preprinted statement which shall read: I certify that the Department of Vehicle Regulation has exercised due diligence in examining an application for a certificate of title for the above-described vehicle, and to the best of our knowledge and belief, the applicant whose name appears above is the lawful owner of the apparently legitimate vehicle described herein. ----- (signature), commissioner, Department of Vehicle Regulation, Kentucky Transportation Cabinet.

➔Section 3. KRS 186.050 is amended to read as follows:

- (1) The annual registration fee for motor vehicles, including taxicabs, airport limousines, and U-Drive-Its, primarily designed for carrying passengers and having provisions for not more than nine (9) passengers, including the operator, and pickup trucks and passenger vans which are not being used on a for-hire basis shall be eleven dollars fifty cents (\$11.50).
- (2) Except as provided in KRS 186.041 and 186.162, the annual registration fee for each motorcycle shall be nine dollars (\$9)~~], and for each sidecar attachment, seven dollars (\$7)].~~
- (3)
 - (a) All motor vehicles having a declared gross weight of vehicle and any towed unit of ten thousand (10,000) pounds or less, except those mentioned in subsections (1) and (2) of this section and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (4) to (14) of this section, shall be eleven dollars and fifty cents (\$11.50).
 - (b) All motor vehicles except those mentioned in subsections (1) and (2) of this section, and those engaged in hauling passengers for hire, operating under certificates of convenience and necessity, are classified as commercial vehicles and the annual registration fee, except as provided in subsections (3)(a) and (4) to (14) of this section, shall be as follows:

Declared Gross Weight of Vehicle and Any Towed Unit	Registration Fee
10,001-14,000	30.00
14,001-18,000	50.00
18,001-22,000	132.00
22,001-26,000	160.00
26,001-32,000	216.00

32,001-38,000	300.00
38,001-44,000	474.00
44,001-55,000	669.00
55,001-62,000	1,007.00
62,001-73,280	1,250.00
73,281-80,000	1,410.00

- (4) (a) Any farmer owning a truck having a gross weight of thirty-eight thousand (38,000) pounds or less may have it registered as a farmer's truck and obtain a license for eleven dollars and fifty cents (\$11.50). The applicant's signature upon the certificate of registration and ownership shall constitute a certificate that he is a farmer engaged in the production of crops, livestock, or dairy products, that he owns a truck of the gross weight of thirty-eight thousand (38,000) pounds or less, and that during the next twelve (12) months the truck shall not be used in for-hire transportation and may be used in transporting persons, food, provender, feed, machinery, livestock, material, and supplies necessary for his farming operation, and the products grown on his farm.
- (b) Any farmer owning a truck having a declared gross weight in excess of thirty-eight thousand (38,000) pounds shall not be required to pay the fee set out in subsection (3) of this section and, in lieu thereof, shall pay forty percent (40%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the registration receipt shall be considered to be a certification that he is a farmer engaged solely in the production of crops, livestock, or dairy products, and that during the current registration year the truck will be used only in transporting persons, food, provender, feed, and machinery used in operating his farm and the products grown on his farm.
- (c) An initial applicant for, or an applicant renewing, his or her registration pursuant to this subsection, may at the time of application make a voluntary contribution to be deposited into the agricultural program trust fund established in KRS 246.247. The recommended voluntary contribution shall be set at ten dollars (\$10) and automatically added to the cost of registration or renewal unless the individual registering or renewing the vehicle opts out of contributing the recommended amount. The county clerk shall collect and forward the voluntary contribution to the cabinet for distribution to the Department of Agriculture.
- (5) Any person owning a truck or bus used solely in transporting school children and school employees may have the truck or bus registered as a school bus and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus is used solely in the transportation of school children and persons employed in the schools of the district, that he has caused to be printed on each side of the truck or bus and on the rear door the words "School Bus" in letters at least six (6) inches high, and of a conspicuous color, and the truck or bus will be used during the next twelve (12) months only for the purpose stated.
- (6) Any church or religious organization owning a truck or bus used solely in transporting persons to and from a place of worship or for other religious work may have the truck or bus registered as a church bus and obtain a license for eleven dollars and fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit stating that the truck or bus will be used only for the transporting of persons to and from a place of worship, or for other religious work, and that there has been printed on the truck or bus in large letters the words "Church Bus," with the name of the church or religious organization owning and using the truck or bus, and that during the next twelve (12) months the truck or bus will be used only for the purpose stated.
- (7) Any person owning a motor vehicle with a gross weight of fourteen thousand (14,000) pounds or less on which a wrecker crane or other equipment suitable for wrecker service has been permanently mounted may register the vehicle and obtain a license for eleven dollars fifty cents (\$11.50) by filing with the county clerk, in addition to other information required, an affidavit that a wrecker crane or other equipment suitable for wrecker service has been permanently mounted on such vehicle and that during the next twelve (12) months the vehicle will be used only in wrecker service. If the gross weight of the vehicle exceeds fourteen thousand (14,000) pounds, the vehicle shall be registered in accordance with subsection (3) of this section. The gross

weight of a vehicle used in wrecker service shall not include the weight of the vehicle being towed by the wrecker.

- (8) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which when operated in this state are used exclusively for the transportation of property within the limits of the city named in the affidavit hereinafter required to be filed, or within ten (10) miles of the city limits of the city if it is a city of the first, second, third, or fourth class, or within five (5) miles of its limits if it is a city of the fifth or sixth class, or anywhere within a county containing an urban-county government, shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof shall pay seventy-five percent (75%) of the fee set forth in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. Nothing in this section shall be construed to limit any right of nonresidents to exemption from registration under any other provisions of the laws granting reciprocity to nonresidents. Operations outside of this state shall not be considered in determining whether or not the foregoing mileage limitations have been observed. When claiming the right to the reduced fee, the applicant's signature on the certificate of registration and ownership shall constitute a certification or affidavit stating that the motor vehicle when used within this state is used only for the transportation of property within the city to be named in the affidavit and the area above set out and that the vehicle will not be used outside of a city and the area above set out during the current registration period.
- (9) Motor vehicles having a declared gross weight in excess of eighteen thousand (18,000) pounds, which are used exclusively for the transportation of primary forest products from the harvest area to a mill or other processing facility, where such mill or processing facility is located at a point not more than fifty (50) air miles from the harvest area or which are used exclusively for the transportation of concrete blocks or ready-mixed concrete from the point at which such concrete blocks or ready-mixed concrete is produced to a construction site where such concrete blocks or ready-mixed concrete is to be used, where such construction site is located at a point not more than thirty (30) air miles from the point at which such concrete blocks or ready-mixed concrete is produced shall not be required to pay the fee as set out in subsection (3) of this section, and in lieu thereof, shall pay seventy-five percent (75%) of the fee set out in subsection (3) of this section and shall be exempt from any fee charged under the provisions of KRS 281.752. The applicant's signature upon the certificate of registration and ownership shall constitute a certification that the motor vehicle will not be used during the current registration period in any manner other than that for which the reduced fee is provided in this section.
- (10) Any owner of a commercial vehicle registered for a declared gross weight in excess of eighteen thousand (18,000) pounds, intending to transfer same and desiring to take advantage of the refund provisions of KRS 186.056(2), may reregister such vehicle and obtain a "For Sale" certificate of registration and ownership for one dollar (\$1). Title to a vehicle so registered may be transferred, but such registration shall not authorize the operation or use of the vehicle on any public highway. No refund may be made under the provisions of KRS 186.056(2) until such time as the title to such vehicle has been transferred to the purchaser thereof. Provided, however, that nothing herein shall be so construed as to prevent the seller of a commercial vehicle from transferring the registration of such vehicle to any purchaser thereof.
- (11) The annual registration fee for self-propelled vehicles containing sleeping or eating facilities shall be twenty dollars (\$20) and the multiyear license plate issued shall be designated "Recreational vehicle." The foregoing shall not include any motor vehicle primarily designed for commercial or farm use having temporarily attached thereto any sleeping or eating facilities, or any commercial vehicle having sleeping facilities.
- (12) The registration fee on any vehicle registered under this section shall be increased fifty percent (50%) when the vehicle is not equipped wholly with pneumatic tires.
- (13) (a) The Department of Vehicle Regulation is authorized to negotiate and execute an agreement or agreements for the purpose of developing and instituting proportional registration of motor vehicles engaged in interstate commerce, or in a combination of interstate and intrastate commerce, and operating into, through, or within the Commonwealth of Kentucky. The agreement or agreements may be made on a basis commensurate with, and determined by, the miles traveled on, and use made of, the highways of this Commonwealth as compared with the miles traveled on and use made of highways of other states, or upon any other equitable basis of proportional registration. Notwithstanding the provisions of KRS 186.020, the cabinet shall promulgate administrative regulations concerning the registration of motor vehicles under any agreement or agreements made under this section and shall provide for direct issuance by it of evidence of payment of any registration fee required under such agreement or agreements. Any proportional registration fee required to be collected under any

proportional registration agreement or agreements shall be in accordance with the taxes established in this section.

- (b) Any owner of a commercial vehicle who is required to title his motor vehicle under this section shall first title such vehicle with the county clerk pursuant to KRS 186.020 for a state fee of one dollar (\$1). Title to such vehicle may be transferred; however title without proper registration shall not authorize the operation or use of the vehicle on any public highway. Any commercial vehicle properly titled in Kentucky may also be registered in Kentucky, and, upon payment of the required fees, the department may issue an apportioned registration plate to such commercial vehicle.
 - (c) Any commercial vehicle that is properly titled in a foreign jurisdiction, which vehicle is subject to apportioned registration, as provided in paragraph (a) of this subsection, may be registered in Kentucky, and, upon proof of proper title and payment of the required fees, the department may issue an apportioned registration plate to the commercial vehicle. The department shall promulgate administrative regulations in accordance with this section.
- (14) Any person seeking to obtain a special license plate for an automobile that has been provided to him pursuant to an occupation shall meet both of the following requirements:
- (a) The automobile shall be provided for the full-time exclusive use of the applicant; and
 - (b) The applicant shall obtain permission in writing from the vehicle owner or lessee on a form provided by the cabinet to use the vehicle and for the vehicle to bear the special license plate.
- (15) An applicant for any motor vehicle registration issued pursuant to this section shall have the opportunity to make a donation of two dollars (\$2) to promote a hunger relief program through specific wildlife management and conservation efforts by the Department of Fish and Wildlife Resources in accordance with KRS 150.015. If an applicant elects to make a contribution under this subsection, the two dollar (\$2) donation shall be added to the regular fee for any motor vehicle registration issued pursuant to this section. One (1) donation may be made per issuance of each registration. The fee shall be paid to the county clerk and shall be transmitted by the State Treasurer to the Department of Fish and Wildlife Resources to be used exclusively for the purpose of wildlife management and conservation activities in support of hunger relief. The county clerk may retain up to five percent (5%) of the fees collected under this subsection for administrative costs associated with the collection of this donation. Any donation requested under this subsection shall be voluntary and may be refused by the applicant at the time of issuance or renewal of a license plate.

➔Section 4. KRS 186.535 is amended to read as follows:

- (1) From the fee for each four (4) year original or renewal operator's license, fifty cents (\$0.50) shall be credited to a special account within the road fund, and shall be used exclusively by the Transportation Cabinet for the purpose of expanding the state driver education program, and fifty cents (\$0.50) shall be paid to the fiscal court of the county where the driver's license is issued to be used by the fiscal court for county road purposes.
- (2) From the fee for each annual registration of a motorcycle ~~and motorcycle sidecar attachments~~, pursuant to KRS 186.050, four dollars (\$4) shall be credited to a special account within the road fund and shall be used exclusively for the purpose of the motorcycle safety education program fund pursuant to KRS 186.050.

Signed by Governor April 6, 2010.

CHAPTER 62

(HCR 115)

A CONCURRENT RESOLUTION honoring and commending Pikeville Medical Center upon being named Hospital of the Year by the American Alliance of Healthcare Providers.

WHEREAS, Pikeville Medical Center admitted its first patient on Christmas Day 1924 and has provided more than 85 years of reliable care to generations of eastern Kentuckians; and

WHEREAS, Pikeville Medical Center has garnered many awards over its years of service, including recognition for cardiothoracic vascular care, obstetrics, oncology, joint replacement, hip fractures, respiratory failure, chest pain, and inpatient rehabilitation; and

WHEREAS, in addition to its patient care, Pikeville Medical Center has won several honors for its dedication to its 1,700 employees, among them recognition by the Kentucky Chamber of Commerce and Modern Healthcare; and

WHEREAS, Pikeville Medical Center has demonstrated a lengthy record of community involvement and leadership, illustrating the need for not only curative and palliative care, but also preventive medicine, community education, and non-medical engagement with the people who utilize its resources; and

WHEREAS, Pikeville Medical Center was recognized in 2009 as a Hospital of Choice by the American Alliance of Healthcare Providers, the only facility in the Commonwealth to garner such acclaim, which honor laid the groundwork for a thorough on-site survey based on six principle areas: standards of conduct, performance management and improvement, staff development and training, systems of communication, good citizenship, and educational and promotional materials for consumers and used to determine further awards; and

WHEREAS, in recognition of its many successes and its dedication to patient care and customer service, Pikeville Medical Center has been named 2009-10 Hospital of the Year by the American Alliance of Healthcare Providers, surpassing such notable institutions as the Mayo Clinic, Johns Hopkins Hospital, Cedars-Sinai Medical Center, and Cleveland Clinic;

NOW, THEREFORE,

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

➔Section 1. The General Assembly honors and commends Pikeville Medical Center on being recognized as Hospital of the Year by the American Alliance of Healthcare Providers for its excellent patient care, performance, and citizenship.

➔Section 2. The Clerk of the House of Representatives is directed to transmit this Resolution to Pikeville Medical Center, in care of Walter E. May, 911 Bypass Road, Pikeville, Kentucky 41501.

Signed by Governor April 6, 2010.

CHAPTER 63

(SB 176)

AN ACT relating to reverse auctions in government purchasing.

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

➔Section 1. KRS 45A.035 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall have power and authority over, and may, except as otherwise expressly provided in this code, adopt regulations pursuant to KRS Chapter 13A and consistent with this code governing the purchasing, management, and control of any and all supplies, services, and construction, and other items required to be purchased by the Commonwealth. The secretary shall consider and decide matters of policy with regard to state procurement. The secretary shall have the power of review with respect to the implementation of regulations and policy determinations.
- (2) Regulations shall be adopted governing the following:
 - (a) Conditions and procedures for delegations of purchasing authority;
 - (b) Prequalification, suspension, debarment, and reinstatement of prospective bidders;
 - (c) Small purchase procedures;
 - (d) Conditions and procedures for the purchase of items for resale;
 - (e) Conditions and procedures for the purchase of agricultural products in accordance with KRS 45A.645;
 - (f) Conditions and procedures for the use of source selection methods authorized by this code, including emergency purchases;
 - (g) Opening and rejection of bids or offers, consideration of alternate bids, and waiver of informalities in offers;

- (h) Confidentiality of technical data and trade secrets information submitted by actual or prospective bidders or offerors;
- (i) Partial, progressive, and multiple awards;
- (j) Supervision of storerooms and inventories, including determination of appropriate stock levels and the management, transfer, sale, or other disposal of state-owned property;
- (k) Definitions and classes of contractual services and procedures for acquiring them;~~and~~
- (l) An appeals process to resolve disputes arising from specifications requiring items deemed to be equivalent or a sole brand as specified in KRS 45A.170; **and**
- (m) *Use of reverse auctions as defined in Section 2 of this Act.***

The secretary may adopt such other regulations as deemed advisable to carry out the purposes of this code.

➔Section 2. KRS 45A.070 is amended to read as follows:

As used in KRS 45A.070 to 45A.180, unless the context in which they are used clearly requires a different meaning:

- (1) "Cost-reimbursement contract" means a contract under which the Commonwealth reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles as provided in KRS 45A.215, and a fee, if any.
- (2) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item;
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- (3) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids.
- (4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.080 of this code.
- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.085, 45A.090, 45A.095, 45A.100, or 45A.180.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) "Responsive bidder" means a person who has submitted a bid under KRS 45A.080 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.
- (8) ***"Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour, and taking place during a previously scheduled time and Internet location, during which multiple bidders, anonymous to each other, submit revised, lower bids to provide the solicited good or leased space. "Reverse auction" does not apply to construction projects, including but not limited to road, bridge, and building projects.***

➔Section 3. KRS 45A.080 is amended to read as follows:

- (1) Contracts exceeding the amount provided by KRS 45A.100 shall be awarded by competitive sealed bidding, ***which may include the use of a reverse auction***, unless it is determined in writing that this method is not practicable. Factors to be considered in determining whether competitive sealed bidding is not practicable shall include:

- (a) Whether specifications can be prepared that permit award on the basis of best value; and
 - (b) The available sources, the time and place of performance, and other relevant circumstances as are appropriate for the use of competitive sealed bidding.
- (2) The invitation for bids shall state that awards shall be made on the basis of best value. In any contract which is awarded under an invitation to bid which requires delivery by a specified date and imposes a penalty for late delivery, if the delivery is late, the contractor shall be given the opportunity to present evidence that the cause of the delay was beyond his control. If it is the opinion of the purchasing officer that there is sufficient justification for delayed delivery, the purchasing officer may adjust or waive any penalty that is provided for in the contract.
 - (3) Adequate public notice of the invitation for bids *and any reverse auction* shall be given a sufficient time prior to the date set forth for the opening of bids *or beginning of the reverse auction*. The notice may include posting on the Internet or publication in a newspaper or newspapers of general circulation in the state as determined by the secretary of the Finance and Administration Cabinet not less than seven (7) days before the date set for the opening of the bids *and any reverse auction*. The provisions of this subsection shall also apply to price contracts and purchase contracts of state institutions of higher education.
 - (4) Bids shall be opened publicly *or entered through a reverse auction* at the time and place designated in the invitation for bids. At the time the bids are opened, *or the reverse auction has ended*, the purchasing agency shall announce the agency's engineer's estimate, if applicable, and make it a part of the agency records pertaining to the letting of any contract for which bids were received. Each *written or reverse auction* bid, together with the name of the bidder and the agency's engineer's estimate, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
 - (5) The contract shall be awarded by written notice to the responsive and responsible bidder whose bid offers the best value.
 - (6) Correction or withdrawal of *written or reverse auction* bids shall be allowed only to the extent permitted by regulations issued by the secretary.

➔Section 4. KRS 45A.085 is amended to read as follows:

- (1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation, *which may include the use of a reverse auction*.
- (2) Adequate public notice of the request for proposals *and any reverse auction* shall be given in the same manner and circumstances as provided in KRS 45A.080(3).
- (3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.
- (4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.
- (5) The request for proposals shall indicate the relative importance of price and other evaluation factors, *and any reverse auction procedures*.
- (6) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals.
- (7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where the prices are fixed by law, *reverse auction*, or administrative regulation, except that consideration shall be given to competitive terms and conditions;

- (b) Where time of delivery or performance will not permit discussions; or
- (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

➔Section 5. KRS 45A.100 is amended to read as follows:

- (1) Procurements may be made in accordance with small purchase administrative regulations promulgated by the secretary of the Finance and Administration Cabinet, pursuant to KRS Chapter 13A, as follows:
 - (a) Up to ten thousand dollars (\$10,000) per project for construction and one thousand dollars (\$1,000) for purchases by any state governmental body, except for those state administrative bodies specified in paragraph (b) of this subsection; and
 - (b) Up to forty thousand dollars (\$40,000) per project for construction or purchases by the Finance and Administration Cabinet, state institutions of higher education, and the legislative branch of government.
- (2) Procurement requirements shall not be artificially divided so as to constitute a small purchase under this section. ***Reverse auctions may be used for small purchase procurements.*** At least every two (2) years, the secretary shall review the prevailing costs of labor and materials and may make recommendations to the next regular session of the General Assembly for the revision of the then current maximum small purchase amount as justified by intervening changes in the cost of labor and materials.
- (3) The secretary of the Finance and Administration Cabinet may grant to any state agency with a justifiable need a delegation of small purchasing authority which exceeds the agency's small purchase limit provided in subsection (1) of this section. Delegations of small purchasing authority shall be granted or revoked by the secretary of the Finance and Administration Cabinet, in accordance with administrative regulations promulgated by the cabinet pursuant to KRS Chapter 13A. These administrative regulations shall establish, at a minimum, the criteria for granting and revoking delegations of small purchasing authority, including the requesting agency's past compliance with purchasing regulations, the level of training of the agency's purchasing staff, and the extent to which the agency utilizes the Kentucky Automated Purchasing System. The administrative regulations may permit the secretary of the Finance and Administration Cabinet to delegate small purchase procurements up to the maximum amount specified in subsection (1)(b) of this section.

➔Section 6. KRS 45A.345 is amended to read as follows:

As used in KRS 45A.343 to 45A.460, unless the context indicates otherwise:

- (1) "Aggregate amount" means the total dollar amount during a fiscal year of items of a like nature, function, and use the need for which can reasonably be determined at the beginning of the fiscal year. Items the need for which could not reasonably be established in advance or which were unavailable because of a failure of delivery need not be included in the aggregate amount.
- (2) "Capital cost avoidance" means moneys expended by a local public agency to pay for an energy conservation measure identified as a permanent equipment replacement and whose cost has been discounted by any additional energy and operation savings generated from other energy conservation measures identified in the guaranteed energy savings contract, except that for school districts capital cost avoidance shall also mean moneys expended by the district from one (1) or more of the following sources:
 - (a) General fund;
 - (b) Capital outlay allotment under KRS 157.420; and
 - (c) State and local funds from the Facilities Support Program of Kentucky under KRS 157.440.
- (3) "Chief executive officer" means the mayor, county judge/executive, superintendent of schools, or the principal administrative officer of a local public agency, or the person designated by the chief executive officer or legislative body of the local public agency to perform the procurement function.
- (4) "Construction" means the process of building, altering, repairing, or improving any public structure or building, or other public improvements of any kind to any public real property. It does not include the routine operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

- (5) "Contract" means all types of local public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing. It does not include labor contracts with employees of local public agencies.
- (6) "Document" means any physical embodiment of information or ideas, regardless of form or characteristic, including electronic versions thereof.
- (7) "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item; and
 - (b) Is either published or otherwise available for inspection by customers; and
 - (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.
- (8) "Evaluated bid price" means the dollar amount of a bid after bid price adjustments are made pursuant to objective measurable criteria, set forth in the invitation for bids, which affect the economy and effectiveness in the operation or use of the product, such as reliability, maintainability, useful life, residual value, and time of delivery, performance, or completion.
- (9) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.365.
- (10) "The legislative body or governing board" means a council, commission, or other legislative body of a city, consolidated local government, or urban-county; a county fiscal court; board of education of a county or independent school district; board of directors of an area development district or special district; or board of any other local public agency.
- (11) "Local public agency" means a city, county, urban-county, consolidated local government, school district, special district, or an agency formed by a combination of such agencies under KRS Chapter 79, or any department, board, commission, authority, office, or other sub-unit of a political subdivision which shall include the offices of the county clerk, county sheriff, county attorney, coroner, and jailer.
- (12) "May" means permissive. However, the words "no person may . . ." mean that no person is required, authorized, or permitted to do the act prescribed.
- (13) "Negotiation" means contracting by either the method set forth in KRS 45A.370, 45A.375, or 45A.380.
- (14) "Noncompetitive negotiation" means informal negotiation with one (1) or more vendor, contractor, or individual without advertisement or notice.
- (15) "Objective measurable criteria" means sufficient information in the invitation to bid as to weight and method of evaluation so that the evaluation may be determined with reasonable mathematical certainty. Criteria which are otherwise subjective, such as taste and appearance, may be established when appropriate.
- (16) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.
- (17) "Procurement" means the purchasing, buying, renting, leasing, or otherwise obtaining any supplies, services, or construction. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection, and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- (18) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.370, 45A.375, 45A.380, or 45A.385.
- (19) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (20) "Responsive bidder" means a person who has submitted a bid under KRS 45A.365 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

- (21) *"Reverse auction" means a real-time, structured bidding process, usually lasting less than one (1) hour, and taking place during a previously scheduled time and Internet location, during which multiple bidders, anonymous to each other, submit revised, lower bids to provide the solicited good or leased space.*
- (22)~~((21))~~ "Services" means the rendering, by a contractor, of its time and effort rather than the furnishing of a specific end product other than reports which are merely incidental to the required performance of service. It does not include labor contracts with employees of local public agencies.
- (23)~~((22))~~ "Shall" means imperative.
- (24)~~((23))~~ "Specifications" means any description of a physical or functional characteristic of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery.
- (25)~~((24))~~ "Supplemental agreement" means any contract modification which is accomplished by the mutual action of the parties.
- (26)~~((25))~~ "Supplies" means all property, including but not limited to leases on real property, printing, and insurance, except land or a permanent interest in land.
- (27)~~((26))~~ "Energy conservation measure" means a training program or facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
- (a) Insulation of the building structure or systems within the building;
 - (b) Storm windows or doors, caulking or weatherstripping, multiglazed windows or doors, heat absorbing or heat reflective glazed and coated window or door systems, additional glazing, reductions in glass area, or other window and door system modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase the energy efficiency of the lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable state or local building code for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings;
 - (h) Energy, water, or wastewater conservation measures that provide long-term operating cost reductions or billable revenue increases;
 - (i) Any life safety measures that provide long-term operating cost reductions;
 - (j) Water and wastewater conservation measures, including plumbing fixtures and infrastructure;
 - (k) Equipment upgrades that improve the accuracy of billable revenue generating systems; or
 - (l) Automated, electronic, or remotely controlled systems or measures that reduce direct personnel costs.
- (28)~~((27))~~ "Guaranteed energy savings contract" means a contract for the evaluation and recommendation of energy, water, and wastewater conservation measures and for implementation of one (1) or more of those measures. The contract shall provide that all payments, except obligations on termination of the contract before its expiration, are to be made over time and the savings are guaranteed to the extent necessary to make payments for the cost of the design, installation, and maintenance of energy, water, and wastewater conservation measures.
- (29)~~((28))~~ "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy, water, and wastewater conservation measures and is determined to be qualified by the local public agency. The qualified provider shall be responsible for and shall provide the local public agency with the following information regarding guaranteed energy, water, and wastewater savings contracts:
- (a) Project design and specifications;

- (b) Construction management;
- (c) Construction;
- (d) Commissioning;
- (e) On-going services as required;
- (f) Measurement and verification of savings for guaranteed energy, water, and wastewater savings contracts; and
- (g) Annual reconciliation statements as provided in KRS 45A.352(8).

➔Section 7. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, ***which may include the use of a reverse auction***, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids.
- (3) Adequate public notice of the invitation for bids ***and any reverse auction*** shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction not less than seven (7) days before the date set for the opening of the bids ***and any reverse auction***. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly ***or entered through a reverse auction*** at the time and place designated in the invitation for bids. Each ***written or reverse auction*** bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.
- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

➔Section 8. KRS 45A.370 is amended to read as follows:

- (1) A local public agency may contract or purchase through competitive negotiation, ***which may include a reverse auction***, upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation and the relative importance of each factor, ***and the procedures to be followed if a reverse auction is used in the procurement***.

- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where such prices are fixed by law, ~~law~~ regulation, **or reverse auction**, except that consideration shall be given to competitive terms and conditions; or
 - (b) Where time of delivery or performance will not permit discussions; or
 - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.
- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals.

➔Section 9. KRS 56.440 is amended to read as follows:

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

- (1) "Commission" means the State Property and Buildings Commission;
- (2) "Real estate" includes lands together with improvements thereon and appurtenances thereto;
- (3) "Building" includes any structure or improvement upon real estate of a permanent nature and additionally includes any sites, structures, equipment, machinery, or devices for the purpose of establishing, developing, or furthering television or related services in aid of education or in aid of any other proper public functions, whether or not the same would otherwise be legally defined as buildings; but only (except for industrial development projects) if used or to be used by the Commonwealth of Kentucky or one (1) of its departments or agencies (not including independent municipal corporations or political subdivisions);
- (4) "Building project" includes the acquisition of any real estate and the acquisition, construction, reconstruction, and structural maintenance of buildings, the installation of utility services, including roads and sewers, and the purchase and installation of equipment, facilities, and furnishings of a permanent nature for buildings; the purchase and installation initially of movable equipment, furnishings, and appurtenances necessary to make a building operable; and for television or related purposes as referred to in subsection (3) of this section, for use by the state government or one (1) of its departments or agencies, not including any independent municipal corporation or political subdivision, or any other capital outlay program authorized by any branch budget bill or other legislation;
- (5) "Industrial development project" means and includes the acquisition of any real estate and the construction, acquisition, and installation thereon and with respect thereto of improvements and facilities necessary and useful for the improvement of such real estate for conveyance to or lease to industrial entities to be used for manufacturing, processing, or assembling purposes, including surveys, site tests and inspections, subsurface site work, excavation, removal of structures, roadways, cemeteries, and other surface obstructions, filling, grading and provision of drainage, storm water detention, installation of utilities such as water, sewer, sewage treatment, gas, electricity, communication, and other similar facilities, off-site construction of utility extensions to the boundaries of such real estate, construction and installation of buildings, including buildings to be used for worker training and education, rail facilities, roads, sidewalks, curbs, and other improvements to such real estate necessary to its manufacturing, processing, or assembling use by industrial entities; provided that an industrial entity must have agreed with the commission, prior to the financing of an industrial development project, to develop, in conjunction with such industrial development project, manufacturing, processing, or assembling facilities satisfactory to the commission;

- (6) "Industrial entity" means any corporation, partnership, person, or other legal entity, whether domestic or foreign, which will itself or through its subsidiaries and affiliates construct and develop a manufacturing, processing, or assembling facility on the site of an industrial development project financed pursuant to this chapter;
- (7) "Incremental taxes" means, for any fiscal year of the Commonwealth, that amount of money which is equal to all tax revenues received by the Commonwealth, as taxing entity, during such fiscal year in respect of an industrial development project and improvements and equipment thereon and the products thereof, and activities carried out by the occupants and users of such industrial development project, minus an amount equal to all tax revenues received by the Commonwealth, as taxing entity, in respect of the site of the industrial development project and the same type of taxable properties and activities during the fiscal year immediately preceding the fiscal year during which construction of the improvements undertaken by an industrial entity as a result of the financing of such industrial development project commenced. Incremental taxes shall include such tax revenues as state corporate income taxes, state income taxes paid by employees of manufacturing, processing, and assembling facilities developed on the site of an industrial development project, state property taxes, state corporation license taxes, and state sales and use taxes, but shall not include any taxes levied specifically for educational purposes;
- (8) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, or any board, commission, institution, or division exercising any function of the state but which is not an independent municipal corporation or political subdivision;
- (9) "Cabinet" means the Finance and Administration Cabinet;
- (10) "Asbestos" means the asbestiform varieties of: chrysotile (serpentine); crocidolite (riebeckite); amosite (cummingtonite-grunerite); anthophyllite; tremolite; and actinolite;
- (11) "Asbestos-containing material" means any material which contains more than one percent (1%) asbestos by weight;
- (12) "Friable material" means any material applied onto ceilings, walls, structural members, piping, ductwork, or any other part of the building structure which, when dry, may be crumbled, pulverized, or reduced to powder by hand pressure;
- (13) "Meeting" means all gatherings of every kind, including video teleconferences;
- (14) "Video teleconference" means one (1) meeting, occurring in two (2) or more locations, where individuals can see and hear each other by means of video and audio equipment;
- (15) "Writing" or "written" shall mean letters, words, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation;~~{and}~~
- (16) "Branch budget" shall have the same meaning as in KRS 48.010; *and*
- (17) ***"Reverse auction" shall have the same meaning as in Section 2 of this Act.***

➔Section 10. KRS 56.803 is amended to read as follows:

- (1) When an agency determines that it will need office or other space, the agency shall submit a request for the acquisition of the additional space to the Department for Facilities Management in the Finance and Administration Cabinet. Except in the case of an emergency as described at KRS 56.805(3), an agency shall submit its space request in writing to the department. In the case of an emergency, an agency shall communicate its space needs to the department pursuant to KRS 56.805(3) as soon as an agency knows that it will need the space. If the commissioner of the Department for Facilities Management determines that insufficient space has been allocated to the agency making the request and that it is appropriate to lease additional space for the agency making the request, the commissioner shall acquire the space required by lease as provided by KRS 43.050, 48.111, and 56.800 to 56.823.
- (2) The Department for Facilities Management shall review each agency space request to determine whether space suitable to meet the agency's reasonable needs may be available in a state-owned or occupied building. If it is determined that there is suitable space available in a state-owned or occupied building, the commissioner shall notify the agency. A copy of the notice shall be kept on file.

- (3) If it is determined that there is no suitable space available in a state-owned or occupied building, the department shall comply with the procedures set forth in this section in the leasing of space, except as otherwise provided in KRS 43.050, 48.111, and 56.800 to 56.823.
- (4) The department shall draw up general requirement specifications for the space required. These general requirement specifications shall not be changed except, at the discretion of the commissioner, when the lease process is initiated again pursuant to paragraph (c) of subsection (15) of this section or pursuant to paragraph (b) of subsection (16) of this section. The general requirement specifications shall be kept on file.
- (5)
 - (a) In soliciting the interest of lessors who have property to let in a county where space is sought, the department shall give adequate public notice to reasonably inform persons having property to let within the county of the type of space required, the general location of the property, and the number of square feet needed. The notice may include posting on the Internet or newspaper advertisements. Each notice shall contain general information concerning the agency requirements for the space sought and shall state the last time, date, and place that written responses shall be received. When it is anticipated that a lease may be negotiated containing deviations or variations from the terms and conditions of the state standard lease form prescribed by the Division of Real Properties, within the department, any deviations or variations shall be stated in the notice.
 - (b) The Department for Facilities Management may use any means available to notify landlords that a notice has been given.
- (6) A property owner, or his representative, shall respond in writing on or before the time and date designated in the notice and shall state in the writing the type and location of the property, the name and address of the property owner, and the date of availability of the property. The department shall deal only with individuals who have submitted written responses on or before the time and date designated in the notice.
- (7) All written responses received on or before the time and date designated shall be opened or downloaded at the same time, publicly read or posted, and kept on file by the department.
- (8) Within ten (10) business days of the opening of written responses, the department shall transmit general requirement specifications to each person who submitted a written response on or before the time and date designated. The same general requirement specifications shall be transmitted to each person. ***The department shall state whether a reverse auction will be used to determine any terms of the proposals and shall specify the procedures for the reverse auction.***
- (9) After the general requirement specifications have been transmitted, except as provided in paragraph (a) of subsection (13) of this section, the commissioner, and department employees under his supervision, may negotiate with persons who submitted written responses on or before the time and date designated. If in the course of negotiations, a person proposes terms and conditions of lease different from those contained in the state standard lease form which are determined to be in the Commonwealth's best interest to accept, but no mention of the acceptability thereof has been made in the notice given pursuant to subsection (5) of this section, all other persons who submitted written responses on or before the time and date designated shall be notified of the terms and conditions and shall be allowed to incorporate the terms and conditions in written proposals when submitted pursuant to subsection (12) of this section. A copy of each notice shall be kept on file.
- (10) The department shall inspect each space proposed to be leased to determine its suitability to the reasonable needs of the agency for whose use the property is sought. The owner of the property, or the owner's representative, shall provide access to the property for the inspection. A report of the findings about each property inspected shall be submitted on a site evaluation form to the commissioner of the department. Completed site evaluation forms shall be kept on file.
- (11) After the commissioner has reviewed the completed site evaluation forms, the commissioner shall inform each owner of property, or his representative, of the steps necessary to bring the property up to general and specific requirement specifications. The commissioner shall also invite each person to submit a written proposal on a form created by the Department for Facilities Management. A copy of the form shall be provided to each bidder. ***The department may require any terms of the proposal to be the subject of a reverse auction.*** A written proposal shall constitute a best and final offer. The department shall not consider a written proposal unless it is submitted on a department form on or before the time and date designated.

- (12) All written *portions of the* proposals submitted on or before the time and date designated shall be opened at the same time, publicly identified by the name of the property owner and the location of the property, and kept on file.
- (13) Except pursuant to paragraph (b) of subsection (15) of this section, when the requirements of paragraph (a) of this subsection shall not apply, from the time that written proposals are opened until the awarding of a lease, the department:
- (a) Shall not negotiate or agree to changes in the terms of written proposals except to correct technical errors;
 - (b) Shall log in all contacts between department employees and any person with an interest in the awarding of a lease. The log shall state the time, date, place, and a summary of the substance of each contact. Each log entry shall be signed by the department employee who was contacted. After the lease is awarded, the log shall be kept as a department record.
- (14) (a) The commissioner shall assess the proposals, taking into account factors including, but not limited to: consultation with the head of the agency for whose use the space is sought; the location and accessibility of the property to the public; its condition and state of repair; its conformity with the requirements of occupational health and safety regulations; its conformity with applicable state fire, health, safety and sanitation requirements; the proposed rental rates; utility and janitorial costs; agency moving costs; *any terms of the proposal determined through a reverse auction*; and whether the property proposed is in substantial conformity with the general and specific requirement specifications.
- (b) The commissioner shall give preference to properties in areas which have received, within the previous five (5) year period, state community development funds for revitalization if properties are offered at a competitive rate and meet the provisions of paragraph (a) of this subsection.
- (15) The commissioner, relying exclusively on his assessment made pursuant to subsection (14) of this section, shall:
- (a) Choose the best proposal in the interest of the Commonwealth;
 - (b) Be permitted to negotiate with a potential lessor if he was the only responsive and responsible potential lessor who submitted a proposal; or
 - (c) Except as provided in paragraph (b) of this subsection, reject all proposals when none is in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section and may, at his discretion, initiate the lease process again.
- (16) (a) The commissioner shall award or decline to award a lease to the potential lessor who submitted the best proposal pursuant to paragraph (a) of subsection (15) of this section or who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section. However, the commissioner shall not award a lease to a potential lessor who negotiated with the commissioner pursuant to paragraph (b) of subsection (15) of this section if that potential lessor's proposal after negotiations was not in the Commonwealth's best interest to accept as assessed according to the factors stated in subsection (14) of this section, and the commissioner shall not award a lease to a person other than a potential lessor prescribed in this paragraph.
- (b) If the commissioner declines to award a lease, he may, at his discretion, initiate the lease process again.
- (17) The commissioner shall put in writing the justifications for his decisions made pursuant to subsections (15) and (16) of this section. This writing shall be kept on file.
- (18) The commissioner, all department employees under the commissioner's supervision who performed a site evaluation or negotiated a lease agreement under this section, the head of the agency that will occupy the leased space, and all agency employees who were directly involved with a site evaluation or lease negotiations shall sign separate certificates, devised by the commissioner, which shall provide the signatory with the option of certifying that, to the best of his knowledge, he is either aware or unaware of circumstances which may constitute a violation of KRS 56.800 to 56.823. The Department for Facilities Management shall keep the certificates on file and shall inform state agencies of the legal requirements concerning lease certification on an annual basis.
- (19) The department shall notify each person who submitted a written response on or before the time and date designated in the public notice pursuant to subsection (6) of this section, but who was not awarded the lease, of

the selected property to be leased, and that the person has a right to examine the leasing records relevant to the lease that was awarded. If the Capital Projects and Bond Oversight Committee, pursuant to KRS 56.823(2), will review the awarding of a lease, each notice shall state that fact. A copy of each notice shall be kept on file.

- (20) Prior to finalization of the lease, the department or the leasing agency shall inspect the property to ensure that any changes described in subsection (11) of this section necessary to bring the property up to specifications have been completed in a manner satisfactory to the agency or department. At the conclusion of the inspection, the owner shall be advised in writing by the department either that the property is approved for occupancy and the lease may be finalized, or that there remain changes to be completed or corrected before the lease may be finalized.

➔Section 11. KRS 160.290 is amended to read as follows:

- (1) Each board of education shall have general control and management of the public schools in its district and may establish schools and provide for courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils, consistent with the administrative regulations of the Kentucky Board of Education. Each board shall have control and management of all school funds and all public school property of its district and may use its funds and property to promote public education. Each board shall exercise generally all powers prescribed by law in the administration of its public school system, appoint the superintendent of schools, and fix the compensation of employees.
- (2) Each board shall make and adopt, and may amend or repeal, rules, regulations, and bylaws for its meetings and proceedings for the management of the schools and school property of the district, for the transaction of its business, and for the qualification and duties of employees and the conduct of pupils. The rules, regulations, and bylaws made by a board of education shall be consistent with the general school laws of the state and shall be binding on the board of education and parties dealing with it until amended or repealed by an affirmative vote of a majority of the members of the board. The rules, regulations, and bylaws shall be spread on the minutes of the board and be open to the public. ***The rules, regulations, and bylaws may include the use of reverse auctions as defined in Section 2 of this Act in the procurement of goods and leases.***
- (3) Local boards of education electing to enter into agreements pursuant to the Interlocal Cooperation Act, KRS 65.210 to 65.300, with other local boards of education to establish consortia to provide services in accordance with the Kentucky Education Reform Act of 1990, 1990 Ky. Acts Ch. 476, may transfer real or personal property to the consortia without receiving fair market value compensation. The joint or cooperative action may employ employees transferred from employment of a local board of education, and the employees shall retain their eligibility for the Kentucky Teachers' Retirement System. The chief state school officer, under administrative regulations of the Kentucky Board of Education, may allot funding to an interlocal cooperative board created by two (2) or more local school districts pursuant to KRS 65.210 to 65.300 to provide educational services for the mutual advantage of the students in the representative districts. All statutes and administrative regulations that apply to the use of these funds in local school districts shall also apply to cooperative boards.

➔Section 12. KRS 164A.575 is amended to read as follows:

- (1) The governing boards of each institution may elect to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, except that competitive bids may not be required for:
 - (a) Contractual services where no competition exists;
 - (b) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
 - (c) Instructional materials available from only one (1) source;
 - (d) Where rates are fixed by law or ordinance;
 - (e) Library books;
 - (f) Commercial items that are purchased for resale;
 - (g) Professional, technical, scientific, or artistic services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725;

- (h) All other commodities, equipment, and services which, in the reasonable discretion of the board, are available from only one (1) source; and
 - (i) Interests in real property.
- (2) Nothing in this section shall deprive the boards from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Services Administration and the vendor affected.
 - (3) The governing board shall require the institution to take and maintain inventories of plant and equipment.
 - (4) The governing board shall establish procedures to identify items of common general usage among all departments to foster volume purchasing. It shall establish and enforce schedules for purchasing supplies, materials, and equipment.
 - (5) The governing board shall have power to salvage, to exchange, and to condemn supplies, equipment, and real property.
 - (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure. Any real property acquired under this section shall be in name of the Commonwealth for the use and benefit of the institution.
 - (7) The governing board shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the board. The determination of the board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the board. Unless the board deems it in the best interest of the institution to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction; provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.
 - (8) Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the institution, based upon a written application by the grantor or lessor approved by the board, that the employee has not either himself or through any other person influenced or attempted to influence either the board requesting the purchase of the property. In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.
 - (9)
 - (a) As used in this section, "construction manager-agency," "construction management-at-risk," "design-bid-build," and "design-build" shall have the same meaning as in KRS 45A.030.
 - (b) For capital construction projects, the procurement may be on a total design-bid-build basis, a design-build basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. Proposals shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with procurement procedures. All specifications shall be written to promote competition. Services for projects delivered on the design-build basis or construction management-at-risk basis shall be procured in accordance with KRS 45A.180 and the regulations promulgated in accordance with KRS 45A.180. Nothing in this section shall prohibit the procurement of construction manager-agency services.
 - (10) The governing board shall attempt in every practicable way to insure the institution's supplying its real needs at the lowest possible cost. To accomplish this the board may enter into cooperative agreements with other public or private institutions of education or health care.
 - (11) The governing board shall have control and supervision over all purchases of energy consuming equipment, supplies, and related equipment purchased or acquired by the institution, and shall designate by regulation the

manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.

- (12) The governing board may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the vice president responsible for business affairs and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively established price for emergency purchases.
- (13)
 - (a) All governing boards that purchase agricultural products, as defined by KRS 45A.630, shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
 - (b) If purchasing agricultural products, a governing board shall encourage the purchase of Kentucky-grown agricultural products in accordance with KRS 45A.645. If a governing board purchases agricultural products through a contract with a vendor or food service provider, the contract shall require that if Kentucky-grown agricultural products are purchased, the products shall be purchased in accordance with KRS 45A.645. Only contracts entered into or renewed after July 15, 2008, shall be required to comply with the provisions of this subsection.
 - (c) All governing boards that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
- (14) ***The governing boards may authorize the use of reverse auctions as defined in Section 2 of this Act for the procurement of goods and leases.***

➔Section 13. KRS 58.600 is amended to read as follows:

As used in KRS 58.600 to 58.610, unless the context requires otherwise:

- (1) "Energy conservation revenue bonds" or "bonds" means securities issued by a local public agency in accordance with the provisions of KRS 58.600 to 58.610 to pay for energy conservation measures under guaranteed energy savings contracts;
- (2) "Energy conservation measure" means a facility alteration designed to reduce energy consumption or operating costs, and may include one (1) or more of the following:
 - (a) Insulation of building structure or systems within buildings;
 - (b) Storm windows or doors, caulking or weatherstripping, multiple pane windows or doors, heat absorbing or heat reflective glazing for windows and doors, additional glazing, reductions in glass area or other window and door systems modifications that reduce energy consumption;
 - (c) Automated or computerized energy control systems;
 - (d) Heating, ventilating, or air conditioning system modifications or replacements;
 - (e) Replacement or modification of lighting fixtures to increase energy efficiency of the lighting system without increasing the overall illumination of the building, unless an increase in illumination is necessary to conform to applicable state or local building codes for the lighting system after the proposed modifications are made;
 - (f) Energy recovery systems;
 - (g) Cogeneration systems that produce steam or forms of energy such as heat as well as electricity for use primarily within a building or complex of buildings;
 - (h) Energy conservation measures that provide long-term operating cost reductions; or
 - (i) Any life safety measures that provide long-term operating cost reductions;

- (3) "Local public agency" means a city, county, charter county, urban-county, school district, special district, or an agency formed by a combination of these agencies under KRS Chapter 79;
- (4) "Capital cost avoidance" has the same definition as in KRS 45A.345~~[(2)]~~; and
- (5) "Guaranteed energy savings contract" has the same definition as in KRS 45A.345~~[(27)]~~.

Signed by Governor April 6, 2010.

CHAPTER 64

(SB 84)

AN ACT relating to health care programs for prisoners.

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

➔Section 1. KRS 441.053 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract pharmacy plan.
- (2) (a) ***Except as provided in paragraph (b) of this subsection***, the Department of Corrections ~~shall~~~~may~~, on a yearly basis, waive the requirement of subsection (1) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:
 - 1.~~[(a)]~~ The prescription plan covers pharmacy services, drugs, and medicine in a manner which is equal to or superior to the Department of Corrections' contract pharmacy plan; and
 - 2.~~[(b)]~~ The cost of the prescription plan is ***equal to or less in total cost, including the product cost and all other costs associated with the delivery of the drugs***, than the Department of Corrections' contract pharmacy plan.
- (b) ***If a unit of local government, combination of units of local government, or regional jail authority contracts with a private provider of comprehensive health services for inmates, then that private provider may elect not to use the Department of Corrections' contract pharmacy plan and a waiver under this subsection shall not be required.***
- (3) Except as provided in subsection (4) of this section, each jail, regional jail, holdover, or other correctional facility owned or operated by a unit of local government, combination of units of local government, or regional jail authority shall utilize the Department of Corrections' contract medical, dental, and psychological care access plan, and the administrative service fee for the plan shall be paid by the Department of Corrections subject to the limits of 2007 Ky. Acts ch. 128, sec. 5.
- (4) The Department of Corrections may, on a yearly basis, waive the requirement of subsection (3) of this section if the unit of local government, combination of units of local government, or regional jail authority proves to the Department of Corrections that the unit of local government, combination of units of local government, or regional jail authority has contracted with another vendor and that:
 - (a) The medical, dental, and psychological care access plan provides services and access which is equal to or superior to the Department of Corrections' contract medical, dental, and psychological care access plan; and
 - (b) The cost of the medical, dental, and psychological care access plan is less in cost than the Department of Corrections' contract medical, dental, and psychological care access plan.
- (5) ***An entity, corporation, or organization of any kind that assists the Department of Corrections in managing claims or evaluating an application for a waiver under subsection (2) or (4) of this section shall not seek or be awarded a contract to provide medical care, dental care, psychological care, pharmaceutical products, or any other health care service to inmates housed in any jail operated by any unit of local government, combination of units of local government, or regional jail authority. The prohibition in this subsection shall also apply to the entity's, corporation's, or organization of any kind's:***

- (a) *Owners;*
- (b) *Incorporators;*
- (c) *Officers;*
- (d) *Employees; or*
- (e) *Other person who has a financial interest in the organization.*

Nothing in this subsection shall be construed to prohibit or limit the ability of the University of Kentucky to provide health care services to prison populations.

- (6) A unit of local government, combination of units of local government, or regional jail authority may appeal a decision of the Department of Corrections denying a waiver under subsection (2) or (4) of this section to the secretary of justice and public safety.

Signed by Governor April 6, 2010.

CHAPTER 65

(HB 456)

AN ACT relating to the Kentucky Department of Travel.

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

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

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

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

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

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Office of Legislative and Intergovernmental Services.
 - (l) Office of Management and Administrative Services.
 - (m) Office of Investigations.
 - (n) Department for Public Advocacy.
2. Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of Legal and Legislative Services.
 1. Client Assistance Program.
 - (c) Office of Communication.
 - (d) Office of Budget and Administration.
 1. Division of Human Resources.
 2. Division of Administrative Services.
 3. Division of Technology Services.
 - (e) Office of Educational Programs.
 - (f) Board of Directors for the Center for School Safety.
 - (g) Council on Postsecondary Education.
 1. Foundation for Adult Education.
 - (h) Department of Education.
 1. Kentucky Board of Education.
 - (i) Department for Libraries and Archives.
 - (j) Department of Workforce Investment.
 1. Office for the Blind.
 2. Office of Vocational Rehabilitation.
 3. Office of Career and Technical Education.
 4. Office of Employment and Training.
 - (k) Foundation for Workforce Development.

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

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

16. Division of Administrative Services.
4. Transportation Cabinet:
 - (a) Department of Highways.
 1. Office of Project Development.
 2. Office of Project Delivery and Preservation.
 3. Office of Highway Safety.
 4. Highway District Offices One through Twelve.
 - (b) Department of Vehicle Regulation.
 - (c) Department of Aviation.
 - (d) Department of Rural and Municipal Aid.
 1. Office of Local Programs.
 2. Office of Rural and Secondary Roads.
 - (e) Office of the Secretary.
 1. Office of Public Affairs.
 2. Office for Civil Rights and Small Business Development.
 3. Office of Budget and Fiscal Management.
 4. Office of Inspector General.
 - (f) Office of Support Services.
 - (g) Office of Transportation Delivery.
 - (h) Office of Audits.
 - (i) Office of Human Resource Management.
 - (j) Office of Information Technology.
 - (k) Office of Legal Services.
5. Cabinet for Economic Development:
 - (a) Office of Administration and Support.
 - (b) Department for New Business Development.
 - (c) Department of Financial Incentives.
 - (d) Department for Existing Business Development.
 - (e) Tobacco Research Board.
 - (f) Kentucky Economic Development Finance Authority.
 - (g) Office of Research and Information Technology.
 - (h) Department of Commercialization and Innovation.
 - (i) Office of Legal Services.
 - (j) Commission on Small Business Advocacy.
6. Cabinet for Health and Family Services:
 - (a) Department for Public Health.
 - (b) Department for Medicaid Services.
 - (c) Department for Mental Health and Mental Retardation Services.

- (d) Kentucky Commission for Children with Special Health Care Needs.
 - (e) Office of Health Policy.
 - (f) Office of the Secretary.
 - (g) Office of Legal Services.
 - (h) Office of Inspector General.
 - (i) Office of Legislative and Public Affairs.
 - (j) Department for Community Based Services.
 - (k) Department for Disability Determination Services.
 - (l) Office of the Ombudsman.
 - (m) Department for Human Support Services.
 - (n) Kentucky Commission on Community Volunteerism and Service.
 - (o) Office of Fiscal Services.
 - (p) Office of Human Resource Management.
 - (q) Office of Technology.
 - (r) Office of Contract Oversight.
 - (s) Governor's Office of Wellness and Physical Activity.
 - (t) Department for Aging and Independent Living.
7. Finance and Administration Cabinet:
- (a) Office of General Counsel.
 - (b) Office of the Controller.
 - (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.
 - (l) Commonwealth Credit Union.
 - (m) State Investment Commission.
 - (n) Kentucky Housing Corporation.
 - (o) Kentucky Local Correctional Facilities Construction Authority.
 - (p) Kentucky Turnpike Authority.
 - (q) Historic Properties Advisory Commission.
 - (r) Kentucky Tobacco Settlement Trust Corporation.
 - (s) Kentucky Higher Education Assistance Authority.
 - (t) Kentucky River Authority.

- (u) Kentucky Teachers' Retirement System Board of Trustees.
- (v) Executive Branch Ethics Commission.
- 8. Tourism, Arts and Heritage Cabinet:
 - (a) Kentucky Department of Travel *and Tourism*.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Administration.
 - (3) Division of Communications and Promotions.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Human Resources.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Facilities Maintenance.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Resort Parks.
 - (12) Division of Recreational Parks and Historic Sites.
 - (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
 - (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
 - (e) Kentucky State Fair Board.
 - (1) Office of Administrative and Information Technology Services.
 - (2) Office of Human Resources and Access Control.
 - (3) Division of Expositions.
 - (4) Division of Kentucky Exposition Center Operations.
 - (5) Division of Kentucky International Convention Center.

- (6) Division of Public Relations and Media.
- (7) Division of Venue Services.
- (8) Division of Personnel Management and Staff Development.
- (9) Division of Sales.
- (10) Division of Security and Traffic Control.
- (11) Division of Information Technology.
- (12) Division of the Louisville Arena.
- (13) Division of Fiscal and Contract Management.
- (14) Division of Access Control.
- (f) Office of the Secretary.
 - (1) Office of Finance.
 - (2) Office of Research and Administration.
 - (3) Office of Governmental Relations and Tourism Development.
 - (4) Office of the Sports Authority.
 - (5) Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.
- (l) Office of Arts and Cultural Heritage.
- (m) Kentucky African-American Heritage Commission.
- (n) Kentucky Foundation for the Arts.
- (o) Kentucky Humanities Council.
- (p) Kentucky Heritage Council.
- (q) Kentucky Arts Council.
- (r) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
- (s) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
- (t) Kentucky Artisans Center at Berea.
- (u) Northern Kentucky Convention Center.
- (v) Eastern Kentucky Exposition Center.
- 9. Personnel Cabinet:
 - (a) Office of the Secretary.

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

III. Other departments headed by appointed officers:

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

➔Section 2. KRS 45.001 is amended to read as follows:

- (1) The Capital Development Committee is created. The committee shall ensure the proper coordination of state government initiatives which impact the City of Frankfort and Franklin County government and are unique to the seat of state government.
- (2) The committee shall meet at least semiannually at a time and place announced by the chairperson.
- (3) The membership of the committee shall consist of the following members or their designees:
 - (a) The mayor of the city of Frankfort;
 - (b) The county judge/executive of Franklin County;
 - (c) The secretary of the Finance and Administration Cabinet;
 - (d) The secretary of the Tourism, Arts and Heritage Cabinet;
 - (e) The secretary of the Education and Workforce Development Cabinet;
 - (f) The commissioner of the Kentucky Department of Travel *and Tourism*;
 - (g) The executive director of the Office of Capital Plaza Operations;
 - (h) The chairman of the Frankfort/Franklin County Tourist and Convention Commission;
 - (i) A citizen at large, who is a resident of Franklin County, appointed by the Franklin County judge/executive; and
 - (j) A citizen at large, who is a resident of Frankfort, appointed by the mayor of the city of Frankfort.

The citizen-at-large members of the committee shall be appointed to a term of four (4) years each.

- (4) The Governor shall appoint the chairperson of the committee.
- (5) Members of the committee shall serve without compensation.
- (6) The Office of Capital Plaza Operations shall provide administrative support to the committee.

➔Section 3. KRS 148.522 is amended to read as follows:

- (1) The Tourism, Arts and Heritage Cabinet shall consist of the Office of the Secretary, the Office of Legal Affairs, the Office of Finance, the Office of Governmental Relations and Tourism Development, the Office of Human Resources, the Office of Public Affairs and Constituent Services, the Office of the Kentucky Sports Authority, the Office of Arts and Cultural Heritage, the Office of Creative Services, the Office of Capital Plaza Operations, the Office of Research and Administration, the Kentucky Department of Travel *and Tourism*, the Kentucky Department of Parks, the Tourism Development Finance Authority, and such other divisions and sections as are from time to time deemed necessary for the proper and efficient operation of the cabinet subject to the provisions of KRS Chapter 12.
- (2) The Tourism, Arts and Heritage Cabinet shall encourage the development of the film industry in Kentucky and shall perform all film promotional functions.
- (3) The Office of Legal Affairs shall be headed by a general counsel appointed by the secretary pursuant to KRS 12.210, shall provide legal services for the cabinet, and shall be directly responsible to the secretary.
- (4) The Kentucky Department of Travel *and Tourism* shall be headed by a commissioner appointed by the Governor pursuant to the provisions of KRS 12.040. The commissioner shall have the authority and responsibility for the promotion, development, and support services for the tourism industry within the Commonwealth.
- (5) The Divisions of Tourism Services, Marketing and Administration, and Communications and Promotions are created within the Kentucky Department of Travel *and Tourism*. Each division shall be headed by a division director who shall be appointed by the commissioner of the department pursuant to the provisions of KRS 12.050.

➔Section 4. KRS 148.527 is amended to read as follows:

- (1) The Kentucky Department of Travel *and Tourism* of the Tourism, Arts and Heritage Cabinet shall, after appropriate research has been conducted, establish and maintain a Kentucky Certified Retirement Community Program whereby retirees and those planning to retire are encouraged to make their homes in Kentucky communities that have met certain criteria to be certified by the Tourism, Arts and Heritage Cabinet as a Kentucky certified retirement community. In support of this program, the Kentucky Department of Travel *and Tourism* shall identify certain issues of interest to retirees or potential retirees in order to inform them of the benefits of living in Kentucky. Issues of interest to retirees may include but are not limited to:
 - (a) Kentucky's state and local tax structure;
 - (b) Housing opportunities and cost;
 - (c) Climate;
 - (d) Personal safety;
 - (e) Working opportunities;
 - (f) Health care services and other services along the continuum of services, including but not limited to home and community based services;
 - (g) Transportation;
 - (h) Continuing education;
 - (i) Leisure living;
 - (j) Recreation;
 - (k) The performing arts;
 - (l) Festivals and events;
 - (m) Sports at all levels; and
 - (n) Other services and facilities that are necessary to enable persons to age in the community and in the least restrictive environment.
- (2) The mission of the Kentucky Certified Retirement Community Program shall be to:
 - (a) Promote the state as a retirement destination to retirees and those persons and families who are planning retirement both in and outside of Kentucky;

- (b) Assist Kentucky communities in their efforts to market themselves as retirement locations and to develop communities that retirees would find attractive for a retirement lifestyle;
 - (c) Assist in the development of retirement communities and lifecare communities for economic development purposes and as a means of providing a potential workforce and enriching Kentucky communities; and
 - (d) Encourage tourism to Kentucky in the form of mature market travel to Kentucky in reference to retirement desirability for the future, and for the visitation of those who have chosen to retire in Kentucky.
- (3) The Tourism, Arts and Heritage Cabinet shall coordinate the development and planning of the Kentucky Certified Retirement Community Program with the Cabinet for Economic Development, the Department for Aging and Independent Living in the Cabinet for Health and Family Services, the Kentucky Commission on Military Affairs, the Department of Veterans' Affairs, and other state and local groups interested in participating in and promoting the program.
- (4) To obtain certification as a Kentucky certified retirement community, the following requirements shall be met:
- (a) Official community support. A resolution by the governing authority endorsing the local retirement recruitment effort is required;
 - (b) Designation of a sponsor. The program shall have an official sponsoring organization that shall appoint an individual who will be accountable to the community and to the state;
 - (c) Funding. The sponsoring organization must commit a minimum of ten thousand dollars (\$10,000) per year for the local program;
 - (d) Health services. There shall be a hospital and emergency medical services that are readily accessible to the community;
 - (e) Available housing. The community shall maintain information on both resale housing and rental housing to ensure that the quantity is sufficient to meet the needs of potential new retiree residents;
 - (f) Retiree desirability assessment. The community shall conduct a retiree desirability assessment that shall focus on a number of factors including, but not limited to, medical services, adult education opportunities, shopping, recreation, cultural opportunities, safety, aging services, and a continuum of care including home and community based services, housing for the elderly, assisted living, personal care, and nursing care facilities;
 - (g) Establishment of subcommittees. Each locality shall have a general retiree attraction committee and a minimum of four (4) subcommittees as follows:
 - 1. Community inventory/assessment subcommittee. This subcommittee shall conduct an unbiased inventory and assessment of whether the community can offer the basics that retirees demand and develop a professional portfolio containing brief biographies of professionals in the community;
 - 2. Community relations/fundraising subcommittee. This subcommittee shall locate retirees living in the community, act as salespersons for the program, raise funds necessary to run the program, recruit subcommittee members, organize special events, and promote and coordinate the program with local entities;
 - 3. Marketing and promotion subcommittee. This subcommittee shall establish a community image, evaluate target markets, develop and distribute promotional material, and coordinate advertising and public relations campaigns; and
 - 4. Ambassadors subcommittee. This subcommittee shall be the first contact with prospective retirees and provide tour guides when prospects visit the community. The subcommittee shall respond to inquiries, log contacts made, provide tours, invite prospects to special community events, and maintain continual contact with prospects until the time that the prospect makes a retirement location decision;
 - (h) Community profile. The sponsor shall develop a community profile similar to that used by many chambers of commerce. It will include factors such as crime statistics, tax information, recreational opportunities, and housing availability; and

- (i) Written marketing plan. The retiree attraction committee shall submit a marketing plan that shall detail the mission, the target market, the competition, an analysis of the community's strengths, weaknesses, opportunities and threats, and the strategies the program will employ to attain its goals.
- (5) During the certification process, a representative of the retirement attraction committee shall attend state training meetings.
- (6) The retiree attraction committee shall work to gain the support of churches, clubs, businesses, and the local media, as this support is necessary for the success of the program.
- (7) Within ninety (90) days of certification, the locality shall submit a complete retiree attraction package to the Kentucky Department of Travel *and Tourism*.
- (8) Before certification is awarded, the retiree attraction committee shall submit a written three (3) year commitment to the program and a long-term plan outlining steps the community will undertake to maintain its desirability as a destination for retirees. The long-range plan shall outline plans to correct any facility and service deficiencies identified in the retiree desirability assessment required by subsection (4)(f) of this section. The written commitment and long-range plan shall be forwarded to the Kentucky Department of Travel *and Tourism* of the Tourism, Arts and Heritage Cabinet.
- (9) Upon being certified as a Kentucky certified retirement community, the Tourism, Arts and Heritage Cabinet shall provide the following assistance to the community:
 - (a) Assistance in the training of local staff and volunteers;
 - (b) Ongoing oversight and guidance in marketing, plus updating on national retirement trends;
 - (c) Inclusion in the state's national advertising and public relations campaigns and travel show promotions, including a prominent feature on the cabinet's Internet Web site;
 - (d) Eligibility for state financial assistance for brochures, support material, and advertising; and
 - (e) An annual evaluation and progress assessment on maintaining and improving the community's desirability as a home for retirees.
- (10) The Tourism, Arts and Heritage Cabinet shall promulgate administrative regulations to implement the provisions of this section.

➔Section 5. KRS 148.795 is amended to read as follows:

- (1) As used in this section:
 - (a) "Agreement" means a recreational land use agreement where at least one (1) party is a governmental entity as defined in this section;
 - (b) "Government" or "governmental entities" means any government entity of the Commonwealth, including state government agency, city, county, urban-county government, consolidated local government, unified local government, or charter county;
 - (c) "Land" means land, roads, water, watercourses, private ways and buildings, structures, and machinery when attached to the realty;
 - (d) "Owner" means a private individual, corporation, or government who possesses a fee interest in the land; and
 - (e) "Recreational purpose" includes but is not limited to any of the following, or any combination thereof: hunting, fishing, rock climbing, swimming, boating, camping, picnicking, hiking, bicycling, horseback riding, pleasure driving, nature study, waterskiing, winter sports, all-terrain vehicle riding, and viewing or enjoying historical, archaeological, scenic, or scientific sites.
- (2) The Kentucky Recreational Trails Authority is hereby established and attached to the Office of the Secretary, Tourism, Arts and Heritage Cabinet, for the purpose of planning and implementing programs to expand tourism opportunities for off-road activities that are pertinent to nonmotorized and motorized vehicle use, including but not limited to pedestrians, bicycles, mountain bicycles, horses, all-terrain vehicles (ATVs), and off-highway vehicles (OHVs), on designated lands in Kentucky. Membership of the authority shall consist of the following:
 - (a) A chairman, selected from its members, to be designated by the Governor;

(b) Membership shall include the following members:

1. Two (2) representatives of the Kentucky Motorcycle Association, to be appointed by the Governor from a list of five (5) nominees selected by the association. The initial term of one (1) member shall expire one (1) year after the date of appointment. The initial term of the other member shall expire two (2) years after the date of appointment;
2. One (1) member of the League of Kentucky Sportsmen, appointed by the Governor. The initial term of this member shall expire one (1) year after the date of appointment;
3. One (1) member of the Kentucky Council of Area Development Districts, appointed by the Governor. The initial term of this member shall expire four (4) years after the date of appointment;
4. Two (2) members selected from ATV associations, with consideration given to geographic diversity. The initial term of one (1) of these members shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire three (3) years after the date of appointment;
5. Two (2) members representing Kentucky Farm Bureau, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment; and
6. Two (2) members representing the coal industry, with consideration to the eastern and western parts of the state. The initial term of one (1) member shall expire two (2) years after the date of appointment, and the initial term of the other member shall expire four (4) years after the date of appointment;

(c) Seven (7) additional members who shall be appointed by the Governor from the following groups:

1. One (1) member shall be chosen from a Kentucky bicycling organization that is affiliated with either the League of American Bicyclists, the United States Cycling Federation, or the International Mountain Bicycling Association. The initial term of this member shall expire three (3) years after the date of appointment;
2. One (1) member shall be from a Kentucky equine organization that has trail riding as its primary focus. The initial term of this member shall expire one (1) year after the date of appointment;
3. One (1) member shall be chosen from a state or national hiking or backpacking organization. The initial term of this member shall expire two (2) years after the date of appointment;
4. Two (2) members shall be chosen from five (5) persons nominated in writing by the Kentucky Horse Council. The initial term of one (1) of these members shall expire four (4) years after the date of appointment, and the initial term of the other member shall expire two (2) years after the date of the appointment;
5. One (1) member shall be chosen by the Governor from the public at large. The initial term of this member shall expire three (3) years after the date of appointment; and
6. One (1) member shall be selected from among the county judges/executive of the Commonwealth. The initial term of this member shall expire two (2) years after the date of appointment;

(d) Additionally, the following shall serve as members by virtue of their official positions:

1. The secretary of the Transportation Cabinet, or the secretary's designee;
2. The secretary of the Tourism, Arts and Heritage Cabinet, or the secretary's designee;
3. The commissioner of the Department of Fish and Wildlife Resources, or the commissioner's designee;
4. The secretary of the Justice and Public Safety Cabinet, or the secretary's designee;

5. The secretary of the Environmental and Public Protection Cabinet, or the secretary's designee; and
6. The Commissioner of the Department of Agriculture, or the Commissioner's designee; and
- (e) Upon the expiration of the terms of the initial members described in paragraphs (b) and (c) of this subsection, the Governor shall appoint thirteen (13) members of the public in such a manner as to ensure equal representation of motorized and nonmotorized use of trails and in accordance with the requirements of paragraphs (b) and (c) of this subsection. Any vacancy on the authority shall be filled by the Governor for the unexpired term.
- (3) (a) Each appointed member shall serve for a term of four (4) years. Sitting members shall be eligible to succeed themselves.
- (b) Any member may be removed from his or her appointment by the Governor for cause.
- (c) Appointed members shall be reimbursed for travel costs incurred in attending meetings, which shall be paid from the funds of the Kentucky Department of Travel *and Tourism* and in compliance with the Tourism, Arts and Heritage Cabinet's procedures for travel and reimbursement.
- (4) (a) The chairman shall set the agenda, place, and time of meetings, which shall be held a minimum of two (2) times per year and conducted in accordance with the Open Meetings Act, KRS 61.805 to 61.850.
- (b) A quorum for all meetings shall consist of seven (7) of the members.
- (c) The chairman shall be a nonvoting member, except in cases of a tie vote, in which case, the chairman may cast the deciding vote.
- (5) (a) An agreement as defined in subsection (1) of this section may be entered into by any owner or owners and any governmental entities as defined in subsection (1)(b) of this section.
- (b) The agreement shall be a contractual arrangement that authorizes the public to utilize the owner's land for a recreational purpose. The allowable recreational purpose or purposes may include but are not limited to all-terrain vehicle riding, public hunting, nature conservation, biking, rock climbing, hiking, and horseback trail riding and may be limited in scope by the terms of the agreement.
- (c) The agreement may specify that the governmental entity or entities may be responsible for the maintenance and upkeep of the land.
- (d) The provisions of KRS 411.190 shall apply to public use of lands for recreational purposes authorized under an agreement entered into pursuant to this section.
- (e) Unless otherwise agreed by the parties, the agreement may be terminated by either party at any time for any reason if thirty (30) days' notice is given.
- (6) An agreement executed pursuant to this section, or the use of land under an agreement created pursuant to this section, shall not:
 - (a) Create in any user any interest in the property;
 - (b) Ripen into a claim of adverse possession;
 - (c) Alter the land or status of the land to make it unsuitable for mining pursuant to KRS 350.610; or
 - (d) Cause a denial of a mining permit pursuant to KRS 350.085 or other statutes or regulations of the Commonwealth of Kentucky or any political subdivision thereof.
- (7) In accordance with the purpose and limitations specified in this section, the governmental entities may:
 - (a) Construct, develop, manage, maintain, operate, improve, renovate, finance, or otherwise provide for recreational activities and facilities on designated public lands and private lands where owners have voluntarily entered into use agreements with the authority or government; and
 - (b) Charge for a general use permit to access the lands for off-road activities as described in subsection (5) of this section that shall be valid for not less than thirty (30) days.
- (8) The Kentucky Recreational Trails Authority may accept, acquire, dispose of, or hold real or personal property, and any interest therein, by deed, grant, loan, gift, devise, bequest, lease, license, easement, or transfer from

any state or federal government agency, or from any person, corporation, or other entity, for the purpose of public use.

- (9) All proceeds derived from the sale of a general use permit pursuant to subsection (7)(b) of this section, or any proceeds derived from property identified in subsection (8) of this section, shall be paid to the State Treasurer, who shall deposit the proceeds in a revolving fund to carry out the purposes of this chapter. The fund shall be administered by the Tourism, Arts and Heritage Cabinet. Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used for the purposes set forth in this section.
- (10) The Tourism, Arts and Heritage Cabinet may promulgate administrative regulations in accordance with the provisions of KRS Chapter 13A in order to carry out the provisions of this section.

➔Section 6. KRS 260.175 is amended to read as follows:

- (1) The Kentucky small farm wineries support fund is created as a separate revolving fund. The support fund shall consist of amounts transferred to the fund pursuant to the provisions of subsection (2) of this section and any other proceeds from grants, contributions, appropriations, or other moneys made available for the purposes of the fund. Fund amounts not expended at the close of the fiscal year shall not lapse but shall be carried forward into the next fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.
- (2) A total of four hundred thousand dollars (\$400,000) shall be deposited in the Kentucky small farm wineries support fund each fiscal year from the general fund. The funds shall be used by the Kentucky Grape and Wine Council as follows:
 - (a) Two hundred thousand dollars (\$200,000) of these funds shall be used for the promotion, advertising, and marketing in Kentucky of wine produced by small farm wineries located in Kentucky. The Grape and Wine Council shall collaborate with the Kentucky Department of Agriculture and the Kentucky Department of Travel *and Tourism* to develop a marketing plan that shall include brand development, direct mail and e-marketing, Web site development, collateral brochures and maps, advertising, familiarization trips, a retail program, and any other topics that the marketing plan developers deem appropriate or that may be established through the promulgation of administrative regulations;
 - (b) One hundred thousand dollars (\$100,000) of these funds shall be used by the Grape and Wine Council, in collaboration with the Kentucky Department of Agriculture and the Kentucky Department of Travel *and Tourism*, to establish a local marketing cost-share program. For the purposes of this section, "local marketing cost-share program" means a mechanism to provide Kentucky small farm wineries with access to matching funds reimbursements for projects that promote and market their products. Standards for the application for, and receipt of, matching funds reimbursements authorized in this section shall be established through the promulgation of administrative regulations;
 - (c) Twenty-five thousand dollars (\$25,000) of these funds shall be used for funding the administrative costs of the Kentucky Grape and Wine Council. The costs shall include but not be limited to reimbursement for the council's appointed members' travel expenses while attending meetings of the council;
 - (d) Seventy-five thousand dollars (\$75,000) shall be used for the payment of fees to licensed wholesalers who apply to the Kentucky Grape and Wine Council to participate in a wine distribution program established by the Kentucky Grape and Wine Council. A licensed wholesaler shall apply and shall be eligible for consideration for the program. The licensed wholesaler shall agree to distribute the wine produced by small farm wineries licensed under KRS 243.155 and shall agree to sell the wine to retailers for the same price the wholesaler paid for the wine; and
 - (e) The funds allocated to each purpose under paragraphs (a) to (d) of this subsection shall be used exclusively for the purpose designated. Use of the funds designated for each purpose shall be strictly adhered to, and the funds shall not be used to support any other purpose. If at the end of any fiscal year funds designated for one (1) of the purposes are unused, the unused funds shall not lapse and shall be carried forth to the succeeding year for the original purpose designated.
- (3) The Kentucky Grape and Wine Council shall advise the Commissioner of the Department of Agriculture regarding promulgation of administrative regulations necessary to carry out the provisions and purposes of subsection (2) of this section. The Department of Agriculture shall collaborate with the Kentucky Department

of Travel *and Tourism* and the Kentucky Grape and Wine Council in developing any administrative regulations promulgated under the authority of this section.

Signed by Governor April 7, 2010.

CHAPTER 66

(HJR 192)

A JOINT RESOLUTION supporting the restoration and management of the Brush Mountain Trail.

WHEREAS, in 1845, Kentucky Governor William Owsley granted 500 acres of land to the Bales brothers, at the headwaters of Martin's Fork and Shillalah Creek, a plateau atop Cumberland Mountain in Harlan and Bell counties. In May, 1903, the Hensley family purchased the property and in 1904, began to build a pioneer community known as the Hensley Settlement in the Cumberland Gap near Brush Mountain. The community, which had no electricity, plumbing nor paved roads into and out of the community, transported all their goods either by foot, or on mule or horseback for the next 50 years; and

WHEREAS, in 1940 Congress authorized the Cumberland Gap National Historical Park, mandating that the region's nationally significant historical and natural resources, such as prehistoric and historic trails, and other features, be preserved. Congress further authorized the Secretary of the Interior to accept donations of land and other property within boundaries of the park. In 1950, the Kentucky National Park Commission filed action against Sherman Hensley and other relatives to transfer the Hensley Settlement lands by condemnation to the Commission for a payment of \$3,750, to insure that these lands would be donated to become part of the national historical park. Because of subsequent lack of funding, in 1960, the National Park Service designated only a portion of Hensley Settlement. The remaining areas adjacent to the national historical park are held in public trust by the Kentucky Division of Water, the Kentucky State Nature Preserves Commission and the Kentucky Department of Fish and Wildlife Resources; and

WHEREAS, in 2005, the Harlan County Fiscal Court authorized formation of the Harlan County Outdoor Recreation Board Authority to promote and develop outdoor recreation and adventure tourism, including equine-based tourism, to improve the county's economic viability in the best long-term interests of the people and the county's economic, cultural, historic and natural resources; and

WHEREAS, the Brush Mountain Trail, which begins in Harlan County and continues along the boundary of the Martin's Fork State Natural Area and Wildlife Management Area, is owned by the Kentucky Division of Water's Wild and Scenic Rivers program. The Brush Mountain Trail also borders the Kentucky Department of Fish and Wildlife Resources' Shillalah Creek Wildlife Management Area, which was purchased for watershed protection and wildlife-related recreation. The Brush Mountain Trail terminates at the Hensley Settlement. The trail remains unprotected and presents opportunities for equine tourism and natural resource education; and

WHEREAS, the Kentucky General Assembly recognizes that state wildlife management areas are managed by the Kentucky Department of Fish and Wildlife Resources primarily for the protection and conservation of the Commonwealth's wildlife resources to insure a permanent supply of wildlife resources to furnish hunting, fishing and wildlife viewing opportunities for present and future Kentucky residents. The General Assembly further recognizes that the primary, intended use of Kentucky's wildlife management areas derives from the special covenant between the Department of Fish and Wildlife Resources and the sportsmen and sportswomen who provide hunting and fishing license dollars and the match for Sport Fish and Wildlife Restoration funds derived from federal excise taxes. The General Assembly agrees that the wildlife management areas with existing equine trails are appreciated by all citizens and that the expansion of equine trails onto other lands owned by the Kentucky Department of Fish and Wildlife Resources are not required. Furthermore, the General Assembly does not intend for actions taken through this resolution to risk the loss of federal funding for these lands; and

WHEREAS, the General Assembly enacted laws authorizing Kentucky's state nature preserves to be held in trust for present and future generations as "living museums of the natural landscape," and as "places where people may observe nature's web of life and our natural heritage, and as reminders of the vital human dependence upon unspoiled natural areas." The General Assembly recognizes and respects the tremendous expertise and management strategies which the Kentucky State Nature Preserves Commission has implemented to hold these lands in special trust for future generations. Moreover, the General Assembly recognizes the opportunities to educate and inform more citizens about the unique natural areas and the critical need for their protection. Further, the General Assembly agrees that due to the special and unique historical and cultural values of the Brush Mountain Trail, that this resolution and

any subsequent memorandum of agreement do not set a precedent for allowing horse access or other prohibited activities on any other state natural area or state nature preserve; and

WHEREAS, the General Assembly recognizes that certain streams of Kentucky possess outstanding and unique scenic, recreational, geological, fish and wildlife, botanical, historical, archaeological and other scientific, aesthetic, and cultural values and that the Kentucky Division of Water may impose reasonable regulations as to the use of private and public land within the authorized boundaries of wild rivers for the general welfare of the people of the Commonwealth; and,

WHEREAS, the unique opportunity presented for enhancing tourism and outdoor recreation opportunities by allowing equine and pedestrian access to the Brush Mountain Trail must be prudently managed in order to assure that the primary purposes for which these lands, including state nature preserves, wildlife management areas and wild rivers, are held in public trust and are not compromised;

NOW, THEREFORE,

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

➔Section 1. The General Assembly recognizes, particularly in these times of economic stress which impacts every taxpayer and all state and local budgets, the critical importance of state and local governments working cooperatively to demonstrate interagency communication, intergovernmental partnerships, and mutually supportive solutions. The General Assembly also recognizes the significant natural resource protection implemented through Kentucky's Department of Fish and Wildlife Resources, the Division of Water's Wild and Scenic Rivers program, and the Kentucky State Nature Preserves Commission and commends these agencies in efforts to work cooperatively and seek additional outdoor experiences for Kentuckians and other visitors to the state.

➔Section 2. The General Assembly encourages the Tourism, Arts and Heritage Cabinet's Kentucky Department of Fish and Wildlife Resources, and the Kentucky Environmental and Public Protection Cabinet's Division of Water and the Kentucky State Nature Preserves Commission to develop a memorandum of agreement with the Harlan County Fiscal Court to allow, for a period not to exceed one year from the date of execution of the agreement, equine access to the Brush Mountain Trail. The General Assembly encourages these agencies, and their designated representatives, to seek additional involvement of other federal, state, educational or nonprofit organizations in accomplishing the goals of trail restoration, including the Cumberland Gap National Historic Park, the Kentucky Horse Council, the Kentucky Backcountry Horsemen, and the Kentucky Chapters of the Sierra Club.

When entered into by the parties described in this section the memorandum of agreement shall include:

(1) A mutually agreed upon statement of the goals and objectives of the Brush Mountain Trail restoration and maintenance project;

(2) Limitations on access to the segment of the trail through the Martin's Fork State Natural Area and Wildlife Management Area and the Shillalah Wildlife Management Area, as necessary to prevent equine access during certain hunting seasons. The memorandum may address methods by which the Tourism, Arts and Heritage Cabinet will assist the Harlan County Fiscal Court in notifying the public about trail access during certain hunting seasons;

(3) Any maintenance or improvements to the trail or trail access road deemed necessary by the agencies in order to prevent erosion or sedimentation of Martin's Fork or other streams and tributaries;

(4) A baseline survey of invasive plant species along the trail and adjacent areas, which shall be conducted by staff of the State Nature Preserves Commission, and which shall be repeated one year after the memorandum of agreement is executed. The memorandum of agreement shall further address the extent to which other entities, including representatives identified by the Harlan County Fiscal Court, may be involved in these surveys. The State Nature Preserves Commission is authorized to seek involvement and support from state universities and qualified nongovernmental entities, to the extent that resources are available and are required for accomplishment of the inventory;

(5) A provision that all costs associated with the surveys and any needed maintenance or improvements in the trail and trail access shall be furnished by the Harlan County Fiscal Court. The agreement shall indicate the manner in which the Harlan County Fiscal Court may request assistance with grants or other funding or in-kind services to assist with these responsibilities, if needed;

(6) Terms and conditions through which the agreement may be amended or revised by agreement of the parties. Additionally, the memorandum of agreement shall include provisions allowing any party to terminate the agreement, providing that the agreement allows at least 30 days notification to be given, in writing, and with duly authorized signatures; and

(7) Other terms and conditions as needed to assure that the use of the trail for equine access shall not adversely affect the values and purposes for which these lands are held in trust.

➔Section 3. Upon execution of the memorandum of agreement under Section 2 of this resolution the Harlan County Fiscal Court shall devise and use a system, agreed to by the agencies, to monitor horseback riding on the Brush Mountain Trail. This may be by a non-fee registration, license, permit or similar system that will provide data on the use of the trail and to help inform an evaluation of the project after one year from the date of execution of the memorandum of agreement.

➔Section 4. One year from the date of execution of a memorandum of agreement under Section 2 of this resolution, the Tourism, Arts and Heritage Cabinet's Department of Fish and Wildlife Resources and the Kentucky Environmental and Public Protection Cabinet's Division of Water and State Nature Preserves Commission shall meet and confer with the Harlan County Fiscal Court as to consider possible extension of the memorandum of agreement, and any changes needed:

- (1) To assure that the use of the trail for equine access does not adversely affect the values and purposes for which these lands are held in trust; or
- (2) To accomplish the mutually agreed upon goals of the Brush Mountain Trail restoration and maintenance project.

➔Section 5. On or before October 1, 2011, the Tourism, Arts and Heritage Cabinet's Department of Fish and Wildlife Resources, the Kentucky Environmental and Public Protection Cabinet's Division of Water and State Nature Preserves Commission, and the Harlan County Fiscal Court shall prepare and present a report to the Interim Joint Committee on Economic Development and Tourism of the Kentucky General Assembly on the status of the Brush Mountain Trail restoration and maintenance project, identifying the projects goals, challenges or obstacles encountered in achieving those goals, actions implemented and recommendations on future equine activities at the Brush Mountain Trail.

Signed by Governor April 7, 2010.

CHAPTER 67

(SB 1)

AN ACT relating to primary stroke center certification.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

(1) *Except as otherwise provided, for purposes of this section:*

(a) *"Acute care hospital" means a licensed facility providing inpatient and outpatient medical or surgical services to an individual that seeks care and treatment, regardless of the individual's ability to pay for services, on an immediate and emergent basis through an established emergency department and a continuous treatment basis on its premises for more than twenty-four (24) hours; and*

(b) *"Primary stroke center certification" means certification for acute care hospitals issued by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or another cabinet-approved nationally recognized organization that provides disease specific certification for stroke care, that:*

1. *Complies with census-based national standards and safety goals;*
2. *Effectively uses evidence-based clinical practice guidelines to manage and optimize care; and*
3. *Uses an organized approach to measure performance.*

(2) *The secretary of the Cabinet for Health and Family Services shall designate as a primary stroke center any acute care hospital which has received a primary stroke center certification.*

- (3) *The secretary shall suspend or revoke an acute care hospital's designation as a primary stroke center if certification is withdrawn by JCAHO or another cabinet-approved certifying organization.*

Signed by Governor April 7, 2010.

CHAPTER 68

(HB 339)

AN ACT relating to military affairs.

WHEREAS, the War of 1812, in the Old Northwest Territory, was fought in large part by Kentucky militiamen, predecessors of today's Kentucky National Guard; and

WHEREAS, during the War of 1812, Kentucky furnished a total of 40 regiments of volunteer militia, as well as a number of battalions and separate companies, totaling more than 25,000 men; and

WHEREAS, these brave men who served their nation deserve to have their service and sacrifice remembered; and

WHEREAS, Americans killed in action during the war totaled 2,260, of which approximately 1,200 were from Kentucky and many of their remains were never recovered nor their final resting places properly marked; and

WHEREAS, not only did Kentucky provide the bulk of men who fought the war, but Kentucky caves, Mammoth Cave in particular, were nearly the only source of nitrate used to make gunpowder for the war after England placed an embargo on the United States at the outbreak of the war; and

WHEREAS, June 1, 2012, will mark the 200th Anniversary of the declaration of war that officially began the War of 1812; and

WHEREAS, efforts are underway in the United States Congress, in several states, and in Canada to plan for the commemoration of the War of 1812; and

WHEREAS, it is appropriate for the Commonwealth of Kentucky to plan and carry out its own commemoration of the War of 1812, and to coordinate those activities with those of the federal government;

NOW, THEREFORE,

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

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

- (1) *There is created the Commonwealth of Kentucky War of 1812 Bicentennial Commission, which shall be attached to the Kentucky Historical Society for administrative purposes.*
- (2) *The Commonwealth of Kentucky War of 1812 Bicentennial Commission shall be composed of eighteen (18) members, as follows:*
 - (a) *Two (2) members of the Kentucky House of Representatives, appointed by the Speaker of the House of Representatives;*
 - (b) *Two (2) members of the Kentucky Senate, appointed by the President of the Kentucky Senate;*
 - (c) *The adjutant general, or the adjutant general's designee;*
 - (d) *The secretary of the Education and Workforce Development Cabinet, or the secretary's designee;*
 - (e) *The secretary of the Tourism, Arts and Heritage Cabinet, or the secretary's designee;*
 - (f) *Two (2) members from the Kentucky Historical Society, appointed by the director of that agency;*
 - (g) *Three (3) members from the Kentucky Heritage Council, appointed by the executive director of that agency, including at least one (1) member each from the Kentucky African-American Heritage Commission and the Kentucky Native American Heritage Commission;*
 - (h) *One (1) member from the Kentucky Humanities Council, appointed by the executive director of that agency; and*

- (i) *Five (5) citizen members from the state at large with a demonstrated interest in history and substantial knowledge and appreciation of the War of 1812, appointed by the Governor.*
- (3) *The chair of the commission shall be elected by the members of the commission.*
- (4) *The first meeting of the commission shall be held no later than July 31, 2010.*
- (5) *The commission may create an advisory board of persons with a demonstrated interest in various aspects of the War of 1812.*
- (6) *Members of the commission shall serve without compensation.*
- (7) *The Commonwealth of Kentucky War of 1812 Bicentennial Commission shall expire on January 31, 2015.*

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

The Commonwealth of Kentucky War of 1812 Bicentennial Commission may:

- (1) *Study and recommend activities that may be carried out by the Commonwealth to honor the Kentuckians that served in the War of 1812;*
- (2) *Educate Kentucky residents and the nation about Kentucky's role in the War of 1812;*
- (3) *Disseminate information to local governments and organizations that may help them with planning, preparation, and grant applications for bicentennial events and projects;*
- (4) *Assist in federal, state, and local bicentennial activities occurring in Kentucky;*
- (5) *Plan and implement appropriate events, including celebrations and educational initiatives, to commemorate the bicentennial;*
- (6) *Perform other duties as necessary to highlight Kentucky's role in the War of 1812;*
- (7) *Cooperate with the governments of the United States, Illinois, Indiana, Ohio, Michigan, Louisiana, and Ontario, Canada and other states and countries commemorating the War of 1812 Bicentennial as resources allow; and*
- (8) *Seek federal grants and philanthropic support for bicentennial activities when possible.*

Signed by Governor April 7, 2010.

CHAPTER 69

(SB 114)

AN ACT relating to school facilities.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 162 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other statute or administrative regulation to the contrary, any nonprofit finance corporation formed under KRS 162.385 may lease land from any government entity or agency for the purposes of constructing a school building on the site. The nonprofit finance corporation shall offer to lease the land for one (1) year and the lease by its terms shall give the lessee the right and option to extend the term from year to year, for a period of one (1) year, for a minimum of fifty (50) years.*
- (2) *In the event a finance corporation leases property from a governmental agency as set forth in subsection (1) of this section, the finance corporation may issue school building revenue bonds on behalf of a school district in accordance with KRS 162.120 to 162.300 just as if the finance corporation held fee simple title to the leased property.*

Signed by Governor April 7, 2010.

CHAPTER 70**(SB 61)**

AN ACT relating to reorganization.

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

➔Section 1. The General Assembly hereby confirms Executive Order 2009-536, dated June 12, 2009, which renames the Office of Legal and Legislative Services the Office of Legal, Legislative, and Communication Services; establishes the Division of Communication, the Division of District Operations and Transportation, and the Division of Financial Data Management; and abolishes several offices and divisions within the Kentucky Department of Education.

Signed by Governor April 7, 2010.

CHAPTER 71**(SB 227)**

AN ACT relating to philanthropy.

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

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

Sections 1 to 7 of this Act shall be known as the "Endow Kentucky Program."

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

The purpose of Sections 1 to 7 of this Act is to enhance the quality of life for citizens of the Commonwealth through increased philanthropic activity by providing capital to new and existing citizen groups of the Commonwealth organized as community foundations and working to establish endowment funds that will address community needs, and also to encourage individuals, businesses, and organizations to give to community foundations.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context requires otherwise:

- (1) *"Affiliate community foundation" means a philanthropic foundation organized or operating to serve an identified geographic area within the Commonwealth, and which:*
 - (a) *Is affiliated with a qualified community foundation; and*
 - (b) *Is certified by the commission pursuant to Section 6 of this Act;*
- (2) *"Commission" means the Endow Kentucky Commission established in Section 7 of this Act;*
- (3) *"County-specific component fund" means a fund of a qualified community foundation that is restricted to serve an individual county;*
- (4) *"Endowment gift" means an irrevocable contribution to a permanent endowment held by a qualified community foundation, county-specific component fund, or affiliate community foundation;*
- (5) *"Fund" means the community endowment fund established by Section 4 of this Act; and*
- (6) *"Qualified community foundation" means a philanthropic foundation organized or operating in the Commonwealth that:*
 - (a) *Substantially complies with the national standards for community foundations established by the National Council on Foundations;*
 - (b) *Is classified as a 501(c)(3) tax-exempt organization by the Internal Revenue Service; and*
 - (c) *Is certified by the commission pursuant to Section 6 of this Act.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *The community endowment fund is established as a separate trust and agency account in the State Treasury. The fund shall consist of funds appropriated from the general fund, and any other proceeds from appropriations, contributions, gifts, or grants made available for the purposes of the fund.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of a fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (4) *The fund shall be administered by the Governor's Office for Local Development, and moneys in the fund shall be used to provide grants under Section 5 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *The Governor's Office for Local Development may:*
 - (a) *Establish a capacity building grant program, through which it may provide qualified community foundations, county-specific component funds, and affiliate community foundations with grants from the fund for the purpose of developing and enhancing the receiving foundation's capacity to operate and execute its mission, subject to the following restrictions:*
 1. *No qualified community foundation, county-specific component fund, or affiliate community foundation may receive more than one (1) capacity building grant during any fiscal year;*
 2. *No single capacity building grant shall exceed fifty thousand dollars (\$50,000); and*
 3. *At least forty percent (40%) of funds awarded as capacity building grants shall be provided to newly established or emerging qualified community foundations, county-specific component funds, or affiliate community foundations that specifically seek to address the needs of rural areas of the Commonwealth;*
 - (b) *Establish a challenge grant program, through which it may provide qualified community foundations, county-specific component funds, and affiliate community foundations with grants from the fund for the purpose of building community-based unrestricted endowment funds by encouraging individuals, businesses, and other organizations to provide endowment gifts, subject to the following restrictions:*
 1. *No qualified community foundation, county-specific component fund, or affiliate community foundation may receive more than one (1) challenge grant during any fiscal year;*
 2. *Challenge grants may be provided in amounts not to exceed fifty percent (50%) of the amount of privately donated endowment gifts provided to the receiving qualified community foundation, county-specific component fund, or affiliate community foundation during the one (1) year period preceding the grant award. However, no single challenge grant shall exceed five hundred thousand dollars (\$500,000); and*
 3. *At least forty percent (40%) of funds awarded as challenge grants shall be provided to newly established or emerging qualified community foundations, county-specific component funds, or affiliate community foundations that specifically seek to address the needs of rural areas of the Commonwealth; and*
 - (c) *Promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.*
- (2) *Upon the establishment of any grant program under this section, the Governor's Office for Local Development shall provide an annual report to the commission, which shall include:*
 - (a) *The total number of grant requests submitted during the year, along with the amount of funds requested and the identity of the foundation making the request; and*
 - (b) *Information regarding all grants actually awarded during the year.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *In order to receive grants from the fund under Section 5 of this Act, a qualified community foundation, county-specific component fund, or affiliate community foundation shall substantially comply with the*

national standards for community foundations established by the National Council on Foundations, and be certified by the commission. The commission may charge a nonrefundable administrative fee to cover the costs associated with the certification process, not to exceed one thousand dollars (\$1,000) per certification application.

- (2) *The commission shall:*
 - (a) *Maintain a current list of all qualified community foundations, county-specific component funds, and affiliate community foundations which are certified. This list shall be:*
 1. *Published on a Web site which is accessible to the general public; and*
 2. *Provided to the Governor's Office for Local Development and the Department of Revenue; and*
 - (b) *Perform a biennial review of each qualified community foundation, county-specific component fund, and affiliate community foundation which has been certified to ensure that it remains in compliance with all requirements mandated by this section or by administrative regulation.*
- (3) *The commission may promulgate administrative regulations in accordance with KRS Chapter 13A to administer this section.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 147A IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby established the Endow Kentucky Commission, which shall be responsible for the planning, implementation, and direction of a strategic and collaborative philanthropic partnership to focus on building endowment funds that will address community needs through community foundations.*
- (2) *The commission shall be attached to the Governor's Office for Local Development for administrative purposes.*
- (3) *The duties of the commission shall include but not be limited to the following:*
 - (a) *Explore opportunities for funding for the community endowment fund established by Section 4 of this Act;*
 - (b) *Consult and advise the Governor and the agencies, departments, boards, and commissions of the Commonwealth, as well as local governments, on matters pertaining to philanthropy;*
 - (c) *Provide technical assistance to qualified community foundations and affiliate community foundations; and*
 - (d) *Review and certify community foundations pursuant to Section 6 of this Act.*
- (4) *The membership of the commission shall consist of:*
 - (a) *The secretary of the Cabinet for Economic Development, or his or her designee;*
 - (b) *One (1) citizen member engaged in private rural development philanthropy, or who represents private rural development philanthropic interests, to be appointed by the Governor;*
 - (c) *One (1) representative of each community foundation that is organized or operating in the Commonwealth and in compliance with the national standards for community foundations established by the National Council on Foundations, to be appointed by the Governor; and*
 - (d) *One (1) representative from the area development districts appointed by the Governor from a list of names submitted by the executive directors of the area development districts.*
- (5) *The Governor shall appoint members for a term of two (2) years, and any member may be reappointed. The members shall designate the chair of the commission from among the membership.*
- (6) *Members shall serve without compensation, but shall be reimbursed for their actual expenses incurred in the performance of commission duties in accordance with KRS 45.101 and administrative regulations promulgated thereunder.*
- (7) *The commission shall meet upon the call of the chair, but not less than twice each year.*

Signed by Governor April 7, 2010.

CHAPTER 72**(SB 71)**

AN ACT relating to special license plates.

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

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

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
 - (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.
- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
 - (a) Disabled veterans who receive assistance to purchase a vehicle from the United States Veterans' Administration and recipients of the Congressional Medal of Honor:
 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard and recipients of the Purple Heart:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - (d) Members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; ***recipients of the Silver Star Medal, or the Bronze Star Medal awarded for valor***; and disabled veterans who have been declared to be at least fifty percent (50%) service-connected disabled by the United States Department of Veterans' Affairs, or who receive total service-connected disability rating for compensation on individual unemployability and have not received assistance from the United States Department of Veterans' Affairs toward the purchase of a motor vehicle:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).

2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
 1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
- (f) Disabled license plates:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (g) Historic vehicles:
 1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: Do not renew annually.
- (h) Members of Congress:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Firefighters:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (j) Emergency management:
 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (l) Law Enforcement Memorial:
 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).

- (p) Amateur radio:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
- (u) Independent Colleges:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).
- (z) Gold Star Mothers or Gold Star Spouses:

1. Initial Fee: \$0 (\$0 SF/\$0 CF/ \$0 EF).
 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/ \$0 EF).
- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
 - (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).

➔Section 2. KRS 186.164 is amended to read as follows:

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

registered in this state, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.

- (7) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, airport limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).
- (8) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.
- (9) A group wanting to create a special license plate that is not authorized under this chapter on June 20, 2005, shall comply with the following conditions before being eligible to apply for a special license plate:
 - (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
 - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
 - (c) The group, or the group's lettering, logo, image, or message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
 - (d) The group shall not be a political party and shall not have been created primarily to promote a specific political belief;
 - (e) The group shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
 - (f) The name of the group shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
 - (g) The group's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (10) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (9) of this section, the group may appeal the denial to the next regularly scheduled session of the General Assembly for review of the denial and action on the group's request for a special license plate. The cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of both the House and Senate Transportation Committees of the General Assembly of the denial and the reasons upon which the cabinet based the denial. The House and Senate chairpersons shall be required to present the information to his or her respective committee for consideration within the first ten (10) days of the next regularly scheduled session of the General Assembly, if requested to do so in writing by the group who was denied a special license plate. A person seeking a personalized license plate under KRS 186.174 shall be subject to the conditions specified in subsection (9)(c) to (g) of this section.
- (11) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after the group collects a minimum of nine hundred (900) applications with each application being accompanied by a twenty-five dollar (\$25) state fee. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently.
- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate may, at the time of application, make a voluntary contribution that the county clerk shall forward to the cabinet. The entity that sponsors a special plate established by the process outlined in this section may set a requested donation amount, not to exceed ten dollars (\$10), that will automatically be added to the cost of registration or renewal, unless the individual registering or renewing the vehicle registration opts out of contributing that recommended amount. The cabinet shall, on an annual basis, remit the voluntary contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding voluntary contributions designated to be remitted under this

subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall submit the information required under subsection (13)(a) and (c) of this section to the Transportation Cabinet within thirty (30) days of June 20, 2005.

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

for administrative or personnel costs in violation of subsection (13) of this section, shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

➔Section 3. KRS 186.166 is amended to read as follows:

- (1) The Transportation Cabinet shall, unless directed otherwise by the General Assembly, perpetually produce the following special license plates: military license plates, U.S. Congressional license plates, firefighter license plates, emergency management license plates, Fraternal Order of Police license plates, Law Enforcement Memorial license plates, street rod license plates, nature license plates, amateur radio license plates, Kentucky General Assembly license plates, Kentucky Court of Justice license plates, Masonic Order license plates, collegiate license plates, independent college and university license plates, child victims' trust fund license plates, Kentucky Horse Council license plates, Ducks Unlimited license plates, Gold Star Mothers license plates, *Silver Star Medal license plates*, *Bronze Star Medal license plates*, and spay neuter license plates.
- (2) The design of the plates identified for perpetual production under this section may be revised upon request of a group or organization requesting a design revision under the provisions of KRS 186.164(15).
- (3) The design of a Purple Heart license plate shall not include any representation of the word "Kentucky" that is a registered trademark or slogan which appears on a general issue license plate.

Signed by Governor April 7, 2010.

CHAPTER 73

(SCR 192)

A CONCURRENT RESOLUTION creating a task force of the Legislative Research Commission to study cost containment strategies for the Kentucky Medicaid program and declaring an emergency.

WHEREAS, Medicaid plays a significant role in Kentucky's health care system as the primary payer of health care services in the state; and

WHEREAS, Medicaid provides coverage to over 789,000 individuals, which represents about 20 percent of the state's total population; and

WHEREAS, the Medicaid program covers nearly half of all births in the state each year and provides health coverage to one out of every three children; and

WHEREAS, Medicaid covers one out of every seven seniors over age 65 and pays for most of the long-term care services in the Commonwealth; and

WHEREAS, there are 40,733 enrolled providers in the Medicaid program; and

WHEREAS, the cost of the Medicaid program is rapidly rising and claiming an increasing share of the state budget with total expenditures in each of state fiscal years 2008 and 2009 of over \$1 billion, or 12 percent, of the General Fund to cover Medicaid costs; and

WHEREAS, the Medicaid program is continually plagued by deficits and in state fiscal year 2009, the deficit totaled \$232 million and the program has experienced an unprecedented growth in the number of new enrollees with a 264 percent increase in the growth of eligible recipients from June 2008 to November 2009; and

WHEREAS, the General Assembly recognizes the important role that the Medicaid program serves as a provider and purchaser of health care services for some of the state's most vulnerable citizens; and

WHEREAS, identifying measures to contain the growth of Medicaid costs and obtain better value from state expenditures for the program will help ensure that increased Medicaid costs do not threaten the viability of other essential state services and the economic growth of the Commonwealth;

NOW, THEREFORE,

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

➔Section 1. The Legislative Research Commission is directed to establish a task force on cost containment strategies for the Kentucky Medicaid program. The task force of the Legislative Research Commission shall study

cost containment strategies for the Kentucky Medicaid program and shall develop an action plan to implement cost containment measures in the Medicaid program.

➔Section 2. The task force shall meet twice per month, beginning no later than June 1, 2010. The task force may hold additional meetings if deemed necessary. Task force meetings under this section shall be held upon the agreement of the task force co-chairs.

➔Section 3. The task force shall consist of the following members appointed by the Legislative Research Commission:

(1) The House of Representatives co-chair and the Senate co-chair of the Medicaid Oversight and Advisory Committee or their designees;

(2) The House of Representatives co-chair and the Senate co-chair of the Interim Joint Committee on Health and Welfare or their designees;

(3) The House of Representatives co-chair and the Senate co-chair of the Interim Joint Committee on Appropriations and Revenue or their designees;

(4) The House of Representatives co-chair of the Budget Review Subcommittee on Human Resources or a designee;

(5) The Senate co-chair of the Budget Review Subcommittee on Human Resources or a designee; and

(6) The Minority Floor Leader of the House of Representatives and the Minority Floor Leader of the Senate or their designees.

➔Section 4. The Speaker of the House of Representatives and the President of the Senate shall each appoint one member to serve as co-chair of the task force. The Speaker of the House of Representatives and the President of the Senate shall serve as ex officio members of the task force.

➔Section 5. The task force shall hear testimony and gather information from state agencies, academic professionals, providers, recipients, and other individuals and entities as deemed necessary and appropriate.

➔Section 6. The task force findings and recommendations shall:

(1) Determine the major cost drivers for the Medicaid program; and

(2) Develop a strategic plan to address the cost drivers and identify cost containment strategies that may be implemented in the Kentucky Medicaid program.

➔Section 7. Issues to be addressed by the task force shall include, but are not limited to the following:

(1) Reforming and restructuring the Medicaid program to provide incentives for efficient and effective care and to reduce variations in the quality and cost of care;

(2) Payment methodologies and purchasing strategies;

(3) The existing statutory and regulatory framework for achieving cost containment;

(4) The current benefit structure and the amount, duration, and scope of services provided;

(5) Prescription drug spending and possible prescription drug management models such as pharmacy lock-in programs;

(6) Administrative simplification;

(7) Strategic planning for contract procurement;

(8) The current service delivery system; and

(9) Long term care.

➔Section 8. The Legislative Research Commission shall provide staff for the task force.

➔Section 9. The task force shall report its recommendations and findings to the Legislative Research Commission by December 31, 2010, and thereafter the task force shall cease to exist.

➔Section 10. Provisions of this Resolution to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

➔Section 11. Due to the critical need to address increasing costs in the Kentucky Medicaid program, an emergency is declared to exist, and this Resolution takes effect upon its passage and approved by the Governor or upon its otherwise becoming a law.

Signed by Governor April 7, 2010.

CHAPTER 74

(SB 131)

AN ACT relating to the Department of Juvenile Justice.

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

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

- (1) *As used in this section, "juvenile facility" means any facility wherein a juvenile or other person under the authority of the Department of Juvenile Justice is confined.*
- (2) *KRS 61.870 to 61.884 to the contrary notwithstanding, a person shall not have access to a record if its disclosure is deemed by the commissioner of the Department of Juvenile Justice or his or her designee to constitute a threat to the security of the juvenile, the juvenile facility, or any other person.*
- (3) *KRS 61.870 to 61.884 to the contrary notwithstanding, the department shall not be required to comply with a request for any record from any person confined in a juvenile facility or any individual on active supervision under the jurisdiction of the department, unless the request is for a record that contains a specific reference to the individual making the request.*
- (4) *KRS 61.870 to 61.884 to the contrary notwithstanding, if a person confined in a juvenile facility wishes to challenge a denial of a request to inspect a public record, he or she shall mail or otherwise send the appropriate documents to the Attorney General within twenty (20) days of the denial pursuant to the procedures set out in KRS 61.880(2) before an appeal can be filed in a Circuit Court.*
- (5) *KRS 61.870 to 61.884 to the contrary notwithstanding, all records relating to juvenile detention containing information expunged pursuant to law shall not be open to the public.*
- (6) *KRS 61.870 to 61.884 to the contrary notwithstanding, upon receipt of a request for a record, the department shall respond to the request within five (5) days after receipt of the request, excepting Saturdays, Sundays, and legal holidays, and shall state whether the record may be inspected or may not be inspected, or that the record is unavailable and when the record is expected to be available.*
- (7) *Nothing in this section shall authorize the department to deny any attorney representing a juvenile access to any record to which the attorney or the juvenile would otherwise be entitled.*

Signed by Governor April 7, 2010.

CHAPTER 75

(HB 298)

AN ACT relating to the collection of property taxes and declaring an emergency.

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

➔Section 1. KRS 134.010 is amended to read as follows:

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

- (1) "Certificate of delinquency" means a tax claim on real property for taxes that:

- (a) Remains unpaid on April 15 under the regular collection schedule, or three (3) full months and fifteen (15) days from the date the taxes were due under an alternative collection schedule as determined under KRS 134.015; and
- (b) Has been filed with the county clerk pursuant to KRS 134.122;
- (2) "Chief executive" means the elected head of the executive branch of government in a city or county;
- (3) "Commissioner" means the commissioner of the department;
- (4) "County" includes counties, urban-county governments, charter county governments, consolidated local governments, and unified local governments;
- (5) "Department" means the Department of Revenue;
- (6) "Governing body of a county" means the elected legislative body of a county;
- (7) "Omitted property" means property described in KRS 132.290;
- (8) "Personal property" includes every species and character of property, tangible and intangible, other than real property;
- (9) "Personal property certificate of delinquency" means a personal property tax claim that:
 - (a) Remains unpaid as of April 15 under the regular collection schedule or three (3) full months and fifteen (15) days from the date the taxes were due under an alternative collection schedule as determined under KRS 134.015; and
 - (b) Has been filed with the county clerk pursuant to KRS 134.122;
- (10) ***"Priority certificate of delinquency" means a certificate of delinquency available for sale that relates to a parcel of property against which a third-party purchaser already holds a certificate of delinquency from a prior tax year;***
- (11) ***"Protected list" means the list submitted to the county clerk by the county attorney of certificates of delinquency not eligible for sale pursuant to subsection (10) of Section 9 of this Act;***
- (12) (a) "Property taxes" means the ad valorem taxes due the state, a county, a county school district, or other taxing district;
- (b) "Property taxes" also includes any other ad valorem taxes imposed by a governmental entity that are included on the same property tax bill as the levies listed in paragraph (a) of this subsection and that the sheriff is responsible for collecting either through a statutory requirement or agreement with a taxing district;
- ~~(13)(11)~~ "Real property" includes all lands within the state and improvements thereon;
- ~~(14)(12)~~ "Taxpayer" means the owner of property on the assessment date;
- ~~(15)(13)~~ "Tax claim" includes the taxes due on a tax bill, the penalties, costs, fees, interest, commissions, the lien provided in KRS 134.420 and any other expenses that have become or are by reason of the delinquent tax bill proper legal charges imposed by this chapter against the delinquent taxpayer at any given time; and
- ~~(16)(14)~~ "Third-party purchaser" means a purchaser of a certificate of delinquency.

➔Section 2. KRS 134.119 is amended to read as follows:

- (1) (a) The sheriff shall be the collector of all state, county, county school district, and other taxing district property taxes unless the payment is directed by law to be made to some other person. The sheriff may contract to collect taxes on behalf of cities, independent school districts, or any other governmental unit with the authority to levy a property tax, if the enabling legislation authorizing imposition of the tax permits the governmental unit to contract for the performance of tax collection duties.
- (b) The provisions of this chapter relating to the collection of property taxes shall apply to other property tax collectors to the extent that the governing body of the city, school district, or taxing district appointing the tax collector has not adopted alternative tax collection processes and procedures.

- (2) Payment to the sheriff may be provided by any commercially acceptable means. The sheriff may limit the acceptable methods of payment to those that ensure that payment cannot be reversed or nullified due to insufficient funds.
- (3) (a) **1.** The sheriff shall accept payment from the day on which the tax bills are mailed by the sheriff to the taxpayer as provided in KRS 133.220 and 133.230, through the day on which the sheriff files the uncollected tax claims with the county clerk pursuant to KRS 134.122. During this time period, the sheriff may accept full or partial payment for any outstanding taxes or tax claims.
- 2. a. Any payments received by the sheriff by mail that:**
- i. Are received after the day on which uncollected tax claims are filed with the county clerk pursuant to KRS 134.122; and**
- ii. Have a postmark that reflects a date on or before the day the uncollected tax claims are filed with the county clerk;**
- shall be accepted and processed, and the amount due shall be the amount due immediately before the transfer of the uncollected tax claims by the sheriff to the county clerk.**
- b. Payments described in this subparagraph may be processed as agreed by the sheriff and county clerk.**
- c. Absent an agreement between the sheriff and the county clerk, the payment shall be accepted and processed by the sheriff.**
- d. If the sheriff accepts and processes the payment, the sheriff shall notify the county clerk, and the county clerk shall update his or her records to reflect payment of the certificate of delinquency.**
- e. The sheriff and the county clerk shall reconcile all transactions addressed by this subparagraph by preparation of an addendum to the original reconciliation provided by the sheriff to the county clerk at the time of transfer. The addendum shall be prepared thirty (30) days after the original transfer, and shall be filed by the county clerk in the clerk's order book.**
- (b) All payments received by the sheriff shall be entered immediately by the sheriff on his or her books. Partial payments shall be credited against the total amount due and shall be apportioned by the sheriff among the entities included on the tax bill in the same proportion the amount due to each bears to the amount paid.
- (c) The acceptance of any payment before the taxpayer's tax liability has been finally determined shall not imply that the payment was the correct amount due and shall not preclude the assessment and collection of additional taxes due or the refund of any part of the amount paid that is in excess of the amount determined to be due.
- (d) The sheriff may accept payment of any tax or tax claim from any other person on behalf of the taxpayer. Any person making a payment on behalf of a taxpayer may, upon the written notarized request of the taxpayer, be treated as a transferee as provided in KRS 134.121.
- (e) The sheriff may accept payment of any amount due on a delinquent tax claim from any of the persons described in subparagraphs 1., 2., and 3. of this paragraph without permission of the taxpayer. The person seeking to make the payment shall provide sufficient proof to the sheriff that he or she meets the requirements to pay under this paragraph. The sheriff shall be held harmless if he or she relies upon information provided and accepts payment from a person not qualified to pay under this paragraph. Any person listed in subparagraph 1., 2., or 3. of this paragraph who makes full payment, may, upon written request to the sheriff, be treated as a transferee under KRS 134.121:
- 1. Any person holding a legal or equitable estate in the real or personal property upon which the delinquent taxes are due, other than a person whose only interest in the property is a lien resulting from ownership of a prior year certificate of delinquency;**
- 2. A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property upon which the delinquent taxes are due; or**

3. Any person having a mortgage on real property or a security interest in real or personal property upon which the delinquent taxes are due.
- (4) If, upon expiration of the five percent (5%) penalty period established by KRS 134.015(2)(c), the real property tax delinquencies of a sheriff exceed fifteen percent (15%) of the amount charged to the sheriff for collection, the department may require the sheriff to make additional reasonable collection efforts. If the sheriff fails to initiate additional reasonable collection efforts within fifteen (15) business days following notification from the department that such efforts shall be made, the department may assume responsibility for collecting the delinquent taxes. If the department assumes the responsibility for collecting delinquent taxes, the department shall receive the amounts that would otherwise be paid to the sheriff as fees or commissions for the collection of tax bills.
- (5) In collecting delinquent taxes, the sheriff:
 - (a) May distraint and sell personal property owned by a delinquent taxpayer in the amount necessary to satisfy the delinquent tax claim. The sale shall be made under execution for cash. If the personal property of the delinquent taxpayer within the county is not sufficient to satisfy the delinquent tax claim, the sheriff may sell so much of the personal property as is available; and
 - (b) Shall retain any amounts that come into his or her possession payable to a delinquent taxpayer, other than claims allowed for attendance as a witness, and shall apply such amounts to the amount due on the delinquent tax claim.
- (6) (a) As compensation for collecting property taxes the sheriff shall be paid the following amounts, regardless of whether the amounts are collected by the sheriff prior to filing the tax claims with the county clerk, or by the county clerk after the tax claims become certificates of delinquency or personal property certificates of delinquency:
 1. From the Commonwealth the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the Commonwealth;
 2. From counties the sheriff shall be paid four and one-quarter percent (4.25%) of the amount collected on behalf of the counties;
 3. The sheriff shall be compensated as provided by law or as negotiated if negotiation is permitted by law, for collecting taxes on behalf of any taxing district;
 4. The sheriff shall be compensated as provided in KRS 160.500 for collecting school district taxes; and
 5. The sheriff shall be compensated as provided in KRS 91A.070 for collecting taxes on behalf of any city.
- (b) The sheriff shall include the amounts he or she is entitled to under the provisions of paragraph (a) of this subsection as part of the delinquent tax claims filed with the county clerk. The amount so included shall become a part of the certificate of delinquency, and shall be paid by the person paying the certificate of delinquency rather than the taxing jurisdiction for which the taxes were collected.
- (7) As additional compensation for the collection of delinquent taxes, the sheriff shall be entitled to an amount equal to ten percent (10%) of the total taxes due plus ten percent (10%) of the ten percent (10%) penalty for all delinquent taxes. This fee shall be added to the total amount due, and shall be paid by the person paying the tax claim if payment is made to the sheriff, or the certificate of delinquency or personal property certificate of delinquency if payment is made after the tax claim has been filed with the county clerk.
- (8) ***If, in the process of collecting property taxes, the sheriff becomes aware of a new address for a taxpayer, the sheriff shall provide, on a form provided by the department, the information relating to the new address to the property valuation administrator, who shall update his or her records to reflect the new address.***

➔Section 3. KRS 134.121 is amended to read as follows:

- (1) (a) Upon receipt of a written request by a person who pays taxes on behalf of another to be treated as a transferee and verification that the request meets the requirements of KRS 134.119(3)(d) or (e), the sheriff shall issue a certificate of transfer in accordance with the provisions of this section.
- (b) 1. Any person making a request and having taxes paid on his or her behalf under this section; and

2. The heirs and assigns of the person;

shall be estopped from claiming any irregularity in the tax or any proceedings related to the tax prior to the time of transfer.
- (2) The sheriff shall give a certificate of transfer to the person making the payment. The certificate of transfer shall specify the:
 - (a) Sheriff's name;
 - (b) County where the property is located;
 - (c) Address of the property;
 - (d) Amount paid;
 - (e) Name of the person making the payment;
 - (f) Account the payment was credited to; and
 - (g) Person in whose name the property is listed as of January 1.
- (3) A transferee shall be subrogated to the lien provided for in KRS 134.420, and shall have the same rights and powers of enforcing collection as provided in KRS 134.546(2).
- (4) The holder of a certificate of transfer shall have the certificate of transfer required by subsection (2) of this section entered on the record of encumbrances on real estate of the county in which the certificate was issued. Failure to enter the certificate of transfer shall result in a loss of the lien upon the property, if the property is transferred in good faith and for valuable consideration before recording and without notice of the existence of the certificate of transfer. The county clerk ~~shall~~^{may} charge a fee pursuant to KRS 64.012 for the recording and release of a certificate of transfer.
- (5) When a transferee has acquired a certificate of transfer that is for any reason invalid, the state, county, city, or taxing district that received payment shall reimburse the transferee by paying to him or her the amount of principal, interest, penalties, and costs expended by him or her in the purchase.
- (6)
 - (a) Any person holding a lien upon property covered by a certificate of transfer may, at any time during the life of the certificate if there has been no sale of property for taxes, cancel the certificate by paying to the last recorded owner of the certificate of transfer, or to his or her order, the amount of the certificate and interest, at the tax interest rate established by KRS 131.183 from the date of the certificate.
 - (b) If both real and personal property are covered by one (1) certificate of transfer, the holder of a lien on any item of the property may obtain a cancellation of the lien on the certificate of transfer against the property on which he or she has a lien by paying to the last recorded owner of the certificate of transfer, before a tax sale under a certificate of delinquency, the amount applicable to the personal property included in the tax referred to by the certificate of transfer, plus the pro rata part of the face value of the certificate of transfer applicable to the property on which release is desired, plus interest on the amount of the certificate of transfer at the tax interest rate established by KRS 131.183.
 - (c) If two (2) or more items of property are included in one (1) certificate of transfer, the transferee may release any item or items. The release shall not affect the lien of the certificate of transfer on the remaining items, but shall be a release only to the extent of the amount of taxes applying to the parcel or parcels released.
 - (d) The provisions of law that apply to the rights of the owner of land sold for taxes by the state, county, city, or taxing district shall also apply to the owner's rights under sales of land made to satisfy a certificate of transfer, and the owner of the land or his or her heirs or assigns may redeem the property within the same length of time, and upon the same terms, as are provided by law for redeeming property sold for taxes.

➔Section 4. KRS 134.122 is amended to read as follows:

- (1)
 - (a) The sheriff shall, on April 15 or three (3) months and fifteen (15) days from the date the taxes were due under an alternative collection schedule, file all tax claims on real and personal property remaining in his or her possession with the county clerk, except that in a consolidated local government the sheriff shall have fourteen (14) working days from the required filing date to file the delinquent tax claims with the county clerk.

- (b) The content of the information provided by the sheriff to the county clerk shall be determined by the department through the promulgation of an administrative regulation.
- (c) The county clerk shall acknowledge receipt of the tax claims by providing the sheriff with a receipt in the format required by the department.
- (d) If the sheriff fails to file the tax claims as required by this subsection, the sheriff shall be liable on his or her bond for the aggregate amount of the tax claims not filed with the clerk.
- (2) (a) Upon filing with the county clerk, a real property tax claim shall become a certificate of delinquency and a personal property tax claim shall become a personal property certificate of delinquency, and the department, rather than the sheriff, shall be responsible for the collection of all amounts due in accordance with KRS 134.504.
- (b) Certificates of delinquency and personal property certificates of delinquency filed with the county clerk are owned by the taxing jurisdictions whose taxes are included as part of the certificate of delinquency or personal property certificate of delinquency.
- (c) The clerk shall accept payment for certificates of delinquency as provided in KRS 134.126 and 134.127.
- (d) A certificate of delinquency or personal property certificate of delinquency shall include:
 - 1. The face amount of the tax due;
 - 2. The ten percent (10%) penalty as provided in KRS 134.015;
 - 3. The sheriff's commission and the ten percent (10%) sheriff's add-on as provided in KRS 134.119; and
 - 4. Any advertising costs incurred by the county as provided in KRS ~~134.128(5)(c)~~~~134.119~~.
- (e) The certificate of delinquency or personal property certificate of delinquency shall be prima facie evidence that:
 - 1. The property represented by the certificate of delinquency or personal property certificate of delinquency was subject to the taxes levied thereon, and that the property was assessed as required by law;
 - 2. The tax claim was valid and correct in all respects; and
 - 3. The taxes were not paid any time before the establishment of the certificate of delinquency or personal property certificate of delinquency.
- (3) *If, in the process of collecting property taxes, the county clerk becomes aware of a new address for a taxpayer, the county clerk shall provide, using a form provided by the department, the information relating to the new address to the property valuation administrator, who shall update his or her records to reflect the new address.*

➔Section 5. KRS 134.125 is amended to read as follows:

- (1) A certificate of delinquency or personal property certificate of delinquency shall bear simple interest at twelve percent (12%) per annum. ***Interest shall initially be*** calculated ***based*** on the base amount established by KRS 134.122(2)(d). ***Interest shall be calculated in subsequent months on the outstanding balance of the base amount***~~from the date it is established~~ until paid. A fraction of a month shall be counted as an entire month.
- (2) If a certificate of delinquency is paid by a third-party purchaser, the amount paid by the third-party purchaser shall become the base amount upon which ***simple*** interest is ***initially*** calculated. ***Interest shall be calculated in subsequent months on the outstanding balance of the base amount***~~from the date of purchase~~ until paid.

➔Section 6. KRS 134.127 is amended to read as follows:

- (1) (a) The following persons may pay to the county clerk at any time the total amount due on a certificate of delinquency or personal property certificate of delinquency that is owned by the taxing jurisdictions and in the possession of the county clerk. It shall be the responsibility of the person seeking to pay the county clerk to provide sufficient proof to the county clerk that he or she meets the requirements to pay under this paragraph. The county clerk shall be held harmless if he or she relies upon information

provided and accepts payment from a person not qualified to pay under this paragraph. The county clerk may also accept partial payments from these persons:

1. The person primarily liable on the certificate of delinquency or personal property certificate of delinquency, or a person paying on behalf of the person primarily liable on the certificate, provided that a person paying on behalf of the person primarily liable on the certificate under this paragraph shall, notwithstanding the provisions of KRS 134.126(5), be treated in the same manner as the person primarily liable on the certificate and shall not be treated as an assignee or a transferee under the provisions of this chapter; and
2. The following persons may pay a certificate of delinquency or personal property certificate of delinquency that relates to the specific property in which he or she has an interest, other than a person whose only interest in the property is an interest resulting from a prior year certificate of delinquency:
 - a. Any person having a legal or equitable estate in real property subject to a certificate of delinquency;
 - b. A tenant or lawful occupant of real property, or a bailee or person in possession of any personal property; or
 - c. Any person having a mortgage on real property or a security interest in real or personal property.

Upon full payment of a certificate of delinquency under this subparagraph, KRS 134.126(5), (6), (7), and (8) shall apply regarding the rights and interests of the person making the payment.

- (b) Any other person may pay the total amount due on a certificate of delinquency that is owned by the taxing jurisdictions and in the possession of the county clerk to the county clerk after ninety (90) days have passed from the filing of the tax claims with the county clerk in accordance with KRS 134.128.
- (c)
 1. Only the persons listed in paragraph (a) of this subsection may pay a personal property certificate of delinquency~~[-, or a certificate of delinquency on unmined coal, oil, or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820].~~ Personal property certificates of delinquency ~~and certificates of delinquency on unmined coal, oil, or gas reserves~~ shall not be included in any sale conducted under KRS 134.128, and may not be purchased by any third party not specifically listed in paragraph (a) of this subsection.
 2. A certificate of delinquency on property of a public service company that is centrally assessed, and that includes personal property and real property on the same certificate of delinquency, shall be treated for all purposes as a certificate of delinquency on real property.
- (2) The duties of the county clerk with regard to payment of a certificate of delinquency or personal property certificate of delinquency by a person other than the person primarily liable on the certificate, are set forth in KRS 134.126(5) and (6).
- (3)
 - (a) The delinquent taxpayer or any person having a legal or equitable estate in the property covered by a certificate of delinquency may, at any time, pay the total amount due to a third-party purchaser of a certificate of delinquency. The third-party purchaser may also accept payment from any other person at any time.
 - (b) When full payment for a certificate of delinquency is made to a third-party purchaser, the third-party purchaser shall execute a release of the lien in accordance with the provisions of KRS 382.365. The remedies included in KRS 382.365 shall apply if the third-party purchaser fails to release the lien as provided in KRS 382.365.
 - (c) Any person other than the person primarily liable on a certificate of delinquency who pays a certificate of delinquency to a third-party purchaser may, by paying a fee pursuant to KRS 64.012, have the county clerk record the payment, and the recordation shall constitute an assignment thereof, and KRS 134.126(6) and (8) shall apply. Failure of an assignee to record the assignment shall render the claim of such person to any real estate represented thereby inferior to the rights of other bona fide purchasers, payors, or creditors.

- (d) If the third-party purchaser fails to release the lien in accordance with the provisions of KRS 382.365, or to surrender the certified copy of the certificate of delinquency to the person making full payment within thirty (30) days after payment has been tendered at the mailing address designated in the notice required by KRS 134.490 or the mailing address of record in the county clerk's office if no notice has been provided as required by KRS 134.490, the person making the payment shall have all of the remedies provided in KRS 382.365.
- (e)
 - 1. A person entitled to make payment under this section who is having difficulty locating the third-party purchaser of the certificate of delinquency to make payment may send a registered letter addressed to the third-party purchaser of record at the address reflected in the most recent notice received from the third-party purchaser pursuant to KRS 134.490, or if no notice has been received, at the address reflected in the records of the county clerk, indicating a desire to make payment. If the letter is returned by mail unclaimed, or if the third-party purchaser fails to respond in writing within thirty (30) days, the sender may take to the county clerk as proof of mailing the certified mail receipts stamped by the post office showing that the certified letter was mailed to the correct address and the date it was mailed. If the letter was returned, the sender shall also provide the returned letter to the clerk. The sender shall attest under oath that the letter was mailed to the correct address, and if the letter was not returned, the attestation shall also provide that the third-party purchaser did not respond in writing within thirty (30) days of the date the letter was mailed. The department shall develop attestation forms for distribution to the county clerks that include a notice that any false statement made in the attestation shall be punishable by law. The form shall be a public record under KRS 519.010(2), subject to KRS 519.060(1)(a). The clerks' taking of such testimony shall be an official proceeding under KRS 523.010(3).
 - 2. Upon the acceptance of proof and attestation by the county clerk that the person has failed in his or her attempt to contact the third-party purchaser about making payment, the person may pay the full amount due as reflected in the records maintained by the county clerk plus applicable interest, and the county clerk shall make the necessary assignment or release of the certificate of delinquency.
 - 3. The county clerk shall deposit the money paid in an escrow account for this specific purpose in a bank having its deposits insured with the Federal Deposit Insurance Corporation. The name of the bank in which the money is deposited shall be noted on the certificate of delinquency. The county clerk may maintain one (1) escrow account for all deposits made pursuant to this subparagraph and shall maintain a record reflecting the amount due each owner of a certificate of delinquency.
 - 4. The county clerk may deduct the sum of twenty dollars (\$20) as a fee for such service.
 - 5. The county clerk shall mail a copy of the certificate of delinquency by regular mail to the third-party purchaser of record at the address on the certificate of delinquency.
 - 6. If any county clerk fails to pay to the person entitled thereto, upon written demand clearly identified as a demand for payment, the money received in payment of a certificate of delinquency, the county clerk and the county clerk's sureties shall be liable for the amount of the payment and twenty percent (20%) interest thereon annually from the fifteenth day after the time the county clerk received the written demand until paid.
- (4) Copies of the records provided for in this section and KRS 134.126, when certified by the county clerk, shall be evidence of the facts stated in them in all the courts of this state.

➔Section 7. KRS 134.128 is amended to read as follows:

- (1) The sale of certificates of delinquency by county clerks to persons other than those listed in KRS 134.127(1)(a) shall be conducted in accordance with the provisions of this section.
- (2) The department shall promulgate administrative regulations to establish a process for the purchase and sale of certificates of delinquency to third parties. The process developed by the department shall:
 - (a) Establish an annual statewide schedule for the sale of certificates of delinquency in each county. The schedule shall be published on the department's Web site at least ten (10) days prior to the first sale. The

sale in each county shall be administered by the county clerk and shall be scheduled at least ninety (90) days but not more than one hundred thirty-five (135) days after the unpaid tax claims are filed by the sheriff with the county clerk. The department may stagger the schedule so that sales are conducted on different dates and times in different counties;

- (b) Except as provided in KRS 134.127(1)(a), prohibit the payment of any newly filed certificates of delinquency by a third party prior to the scheduled annual sale of certificates of delinquency for that year for that county;
- (c) Prohibit the payment of any certificates of delinquency:
 - 1. ~~{known to be}~~ Involved in ***bankruptcy litigation in which the county attorney or department has filed a claim;***
 - 2. ***Involved in other litigation initiated by the county attorney or the department, or in which the county attorney or department responds or files a claim; or***
 - 3. ***Under***~~for for which~~ a payment plan ***that*** has been agreed to by the taxpayer and the county attorney or the department, and on which the payment agreement is in good standing;
- (d) Establish a process to be used by county clerks in determining the order in which interested third-party purchasers may select and pay available certificates of delinquency ***at the annual sale***. The process shall, at a minimum:
 - 1. Be uniform in all counties to the extent practicable;
 - 2. Establish a process, if there is more than one (1) purchaser registered to purchase certificates of delinquency at the sale, that allows all interested purchasers an opportunity to purchase certificates of delinquency on an equitable basis. The sale shall not be structured in such a manner to allow one (1) third party to purchase all of the certificates of delinquency if there are other properly registered third parties that are also interested in purchasing certificates of delinquency;
 - 3. Establish fairness for all participants by prohibiting the participation of multiple related entities, or multiple individuals representing related interests as separate entities in the selection process ***at an annual sale***. The department shall define "related entities" and "related interests" as part of the regulatory process; and
 - 4. ***Establish a process to be used by county clerks in identifying, verifying, and selling priority certificates of delinquency. The process shall:***
 - a. ***Require third-party purchasers to submit a list of priority certificates of delinquency to the county clerk up to ten (10) days before the annual sale so that the clerk may identify and allocate priority certificates of delinquency to third-party purchasers prior to the annual sale;***
 - b. ***Require that all priority certificates of delinquency allocated to a third-party purchaser prior to the annual sale be removed from the annual sale;***
 - c. ***Allow any third-party purchaser holding a certificate of delinquency on a parcel of property from a prior year to submit a priority list and purchase any priority certificates of delinquency to which the third-party purchaser is entitled, notwithstanding that the third-party purchaser may be related to another third-party purchaser participating in the sale; and***
 - d. ***Give priority to the third-party purchaser holding a certificate of delinquency from the most recent tax year*** ~~{Allow any person holding a certificate of delinquency from a prior year to pay a certificate of delinquency on the same property for the current year.} If more than one (1) third party holds an outstanding certificate of delinquency on a parcel of property, the person holding a certificate of delinquency from the most recent tax year shall be given preference;~~
- (e) Require all potential participants in the sale to register at least one (1) week in advance with the county clerk;

- (f) Require a review of the list of registered participants, either by the county clerk or the department, prior to the sale to ensure that:
 - 1. All registered participants seeking to pay multiple certificates of delinquency are properly registered with the department as required by KRS 134.129; and
 - 2. No registered participants or related entities or related interests prohibited from separate participation in the **annual** sale pursuant to the provisions of paragraph (d)3. of this subsection and the administrative regulations promulgated thereunder ***have separately registered to participate in the annual sale;***
- (g) Establish advance deposit requirements for registered participants based upon the maximum amount the registered participant may pay for desired certificates of delinquency;
- (h) Establish a registration fee to be paid to the clerk upon registration for a sale. The registration fee paid to each county shall not exceed two hundred fifty dollars (\$250) and may be tiered;
- (i) Establish payment requirements, which may include nullification of the payment and forfeiture of the advance deposit if a third-party purchaser fails to produce full payment within the specified time; and
- (j) Establish payment methods.
- (3) Any person who, in any calendar year:
 - (a) Pays or plans to pay five (5) or more certificates of delinquency statewide;
 - (b) Pays or plans to pay three (3) or more certificates of delinquency in any county; or
 - (c) Invests or plans to invest more than ten thousand dollars (\$10,000) in the payment of certificates of delinquency on a statewide basis in any calendar year;

shall register with the department annually as provided in KRS 134.129.

- (4) The department shall be responsible for monitoring the sale of certificates of delinquency.
- (5) (a) At least thirty (30) but not more than forty-five (45) days before the scheduled sale date, the county clerk shall cause a notice to be published in accordance with the provisions of KRS Chapter 424. The notice shall list by property owner, property address, and if available, parcel number or lot number, all certificates of delinquency available for sale. The notice shall provide the date, time, and location of the sale. ***In addition, the notice shall list, in a separate section, all personal property certificates of delinquency held by the county clerk.***
 - (b) As compensation for advertising the sale, the county clerk shall receive five dollars (\$5) for each certificate of delinquency ***and personal property certificate of delinquency*** advertised. The fee shall be added to the amount of the certificate of delinquency ***or personal property certificate of delinquency*** and shall be paid by the person paying the certificate of delinquency ***or personal property certificate of delinquency***.
 - (c) The cost of placing the advertisement shall be paid by the county. The cost shall be added to the amount of the certificate of delinquency ***or personal property certificate of delinquency*** and shall be paid by the person paying the certificate of delinquency ***or personal property certificate of delinquency***. The department shall establish a formula that may be used by counties in allocating the advertising costs among the delinquent tax claims. The formula shall take into account that a percentage of delinquent tax claims remains unpaid.
- (6) Any certificate of delinquency not paid at the annual sale, not subject to a payment plan with the department or county attorney, ***and*** not known to be in litigation~~-, and not related to unmined coal, oil, and gas reserves~~ may be paid to the county clerk at any time by any person after the sale, provided that any person required by KRS 134.129 to register with the department shall hold a current certificate of registration at the time of purchase.

➔Section 8. KRS 134.490 is amended to read as follows:

- (1) Within fifty (50) days after the delivery of a certificate of delinquency by the clerk to a third-party purchaser, the third-party purchaser shall send to the delinquent taxpayer by first-class mail with proof of mailing, a notice

informing the delinquent taxpayer that the certificate of delinquency has been purchased by the third-party purchaser. The notice shall include the information required by subsection (3) of this section.

- (2) Anytime after the expiration of the one (1) year tolling period established by KRS 134.546, the third-party purchaser may institute an action to collect the amount due on a certificate of delinquency. At least forty-five (45) days before instituting a legal action, the third-party purchaser shall send to the taxpayer by first-class mail with proof of mailing, a notice informing the taxpayer that enforcement action will be taken. This notice shall also include the information required by subsection (3) of this section.
- (3) (a)
 1. ***For certificates of delinquency for all property except property described in paragraph (b) of this subsection,*** third-party purchasers or their designees shall obtain from the office of the property valuation administrator of the county in which the real property is located the most recent address for the property owner.
 2. To obtain information from the office of the property valuation administrator, the third-party purchaser shall submit a list of addresses, map identification numbers, or parcel numbers for which updated information is requested to the property valuation administrator, who shall:
 - a. Update his or her records with regard to the properties for which information is requested; and
 - b. Provide the updated information to the third-party purchaser within ten (10) days.
 3. For this service, the property valuation administrator may charge a fee not to exceed two dollars (\$2) for each address provided.
 4. Except as provided in subparagraph 5. of this paragraph, the third-party purchaser shall send the notices required by subsections (1) and (2) of this section to the address provided by the property valuation administrator.
 5. If, due to insufficient staffing, the property valuation administrator is unable to provide the requested information to the third-party purchaser within ten (10) days of submission, the property valuation administrator shall immediately notify the third-party purchaser, and the third-party purchaser may send the notices required by subsections (1) and (2) of this section to the address reflected in the public records of the property valuation administrator.
 - ~~6. Any notices sent pursuant to subsections (1) and (2) of this section that are returned as undeliverable shall be re-sent by first class mail with proof of mailing addressed to "Occupant" at the address of the property that is the subject of the certificate of delinquency. These notices shall be sent within ten (10) days of receipt of the returned notice.~~
 - ~~7. The third party purchaser shall maintain complete and accurate records of all notices sent pursuant to this section.~~
- (b)
 1. ***For certificates of delinquency relating to unmined coal, oil, or gas reserves or any other mineral or energy resources assessed separately from the surface real property pursuant to KRS 132.820,*** third-party purchasers or their designees shall obtain from the department the most recent address for the property owner.
 2. ***To obtain information about a particular property, the third-party purchaser shall submit to the department a list of addresses, map identification numbers, parcel numbers, and any other information the department may require. The department shall:***
 - a. ***Update its records with regard to the properties for which information is requested; and***
 - b. ***Provide the updated information to the third-party purchaser within ten (10) business days.***
 3. ***For this service, the department may charge a fee not to exceed two dollars (\$2) for each address provided.***
 4. ***The third-party purchaser shall send the notices required by subsections (1) and (2) of this section to the address provided by the department.***

- (c) 1. *The third-party purchaser shall submit to the department a copy of any notice sent pursuant to subsections (1) and (2) of this section and returned as undeliverable within ten (10) days of receipt of the returned notice.*
- 2. *The department shall attempt to obtain an updated address for the owner of the property subject to the certificate of delinquency from the individual or entity filing the property tax return for the property.*
- 3. *The individual or entity filing the property tax return shall provide an address of the property owner upon request of the department.*
- 4. *The department shall provide any updated address information to the third-party purchaser.*
- 5. *If updated information is provided, the notices sent pursuant to subsections (1) and (2) of this section shall be re-sent by first-class mail with proof of mailing to the updated address of the owner within ten (10) days of the receipt of an updated address from the department.*
- (d) *The third-party purchaser shall maintain complete and accurate records of all notices sent pursuant to this section.*
- (e) The notices required by this section shall include the following information:
 - 1. A statement that the certificate of delinquency is a lien of record against the property for which delinquent taxes are owed;
 - 2. A statement that the certificate bears interest at the rate provided in KRS 134.125;
 - 3. A statement that if the certificate is not paid, it will be subject to collection as provided by law, **and that collection actions may include foreclosure**. The notice required by subsection (2) of this section shall also include a statement of the intent to institute legal action to collect the amount due;
 - 4. A complete listing of the amount due, as of the date of the notice, broken down as follows:
 - a. The purchase price of the certificate of delinquency;
 - b. Interest accrued subsequent to the purchase of the certificate of delinquency; and
 - c. Fees imposed by the third-party purchaser; and
 - 5. Information, in a format and with content as determined by the department, detailing the provisions of the law relating to third-party purchaser fees and charges.
- ~~(f)~~(e) In addition, the notice shall provide the following information to the taxpayer:
 - 1. The legal name of the third-party purchaser;
 - 2. The third-party purchaser's physical address;
 - 3. The third-party purchaser's mailing address for payments, if different from the physical address; and
 - 4. The third-party purchaser's telephone number.

If the information required by this paragraph changes, the third-party purchaser shall, within thirty (30) days of the change becoming effective, send a notice to each taxpayer by first-class mail with proof of mailing with the corrected information. The third-party purchaser shall also update contact information included in the records of the county clerk within ten (10) days of the change becoming effective. Failure to send the original notice or any correction notices shall result in the suspension of the accrual of all interest and any fees incurred by the third-party purchaser after that date until proper notice is given as required by this subsection.

- (4) If a person entitled to pay a certificate of delinquency to a third-party purchaser makes payment on the certificate of delinquency to the county clerk under the conditions described in KRS 134.127(3)(d), the payment shall constitute payment in full, and no other amounts may be collected by the third-party purchaser from the person.

- (5) A third-party purchaser may offer an installment payment plan to a taxpayer. *If an installment payment plan is offered, the third-party purchaser shall not charge, assess, or collect from the taxpayer any fees, charges, interest, or other amounts that exceed the fees, interest, or other amounts expressly authorized by this chapter to be charged, assessed, or collected. The department may establish additional terms and conditions for installment payment plans* ~~under the terms and conditions established by the department~~ in an administrative regulation.
- (6) *Any person to whom a third-party purchaser transfers or assigns a certificate of delinquency shall be considered a third-party purchaser under this chapter.*

➔Section 9. KRS 134.504 is amended to read as follows:

- (1) The department shall be responsible for the collection of certificates of delinquency and personal property certificates of delinquency. The provisions of this section relating to certificates of delinquency shall also apply to personal property certificates of delinquency unless otherwise specifically noted. The department shall offer the collection duties related to certificates of delinquency and personal property certificates of delinquency to the county attorney in each county, unless the department determines that a county attorney has previously failed to perform collection duties in a reasonable and acceptable manner.
- (2) Any county attorney desiring to perform the collection duties shall enter into a contract with the department on an annual basis.
- (3) The terms of the contract shall specify the duties to be undertaken by the county attorney, which shall include, at a minimum, the duties set forth in subsection (4) of this section. The terms of the contract shall also provide that, if the county attorney fails to perform the duties required by the contract during the contract period, the department may assume all collection responsibilities.
- (4) The following duties shall be performed by the department or the county attorney, as the case may be, with regard to each certificate of delinquency:
- (a) Within thirty (30) days after the establishment of a certificate of delinquency, the county attorney or the department shall mail a notice by regular mail to the owner of record on the assessment date at the address on the records of the property valuation administrator, or to the in-care-of address if an in-care-of address is provided as required by subsection (5) of this section. The notice shall:
1. Include the name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;
 2. Advise that:
 - a. The certificate of delinquency is a lien of record against the property on which the taxes are due;
 - b. The amounts due are a personal obligation of the taxpayer on the assessment date; and
 - c. The certificate bears interest at the rate of twelve percent (12%) and, if not paid, will be subject to collection by the county attorney or the department as provided by law;
 3. Include the total amount due as of the date of the notice;
 4. Advise that anytime after ninety (90) days from the creation of the certificate of delinquency, the certificate of delinquency may be paid by a third-party purchaser and, that if so paid, the certificate of delinquency will be subject to collection by the third-party purchaser as provided by law. The notice shall also advise that a third-party purchaser may impose substantial additional administrative costs and fees associated with collection in addition to the amount due on the certificate of delinquency, *and that collection actions may include foreclosure*. This provision shall not be included in notices sent for personal property certificates of delinquency ~~or certificates of delinquency on unmined coal, oil or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820~~; and
 5. Advise that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department, and if terms are agreed to prior to the date of the sale.

- (b) The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the thirty (30) day notice was mailed along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.
- (c)
 - 1. All thirty (30) day notices returned as undeliverable shall be submitted by the county attorney or department to the property valuation administrator, and a list of the returned notices shall be filed with the county clerk, who shall record the list in the order book of the county.
 - 2. The property valuation administrator shall attempt to correct inadequate or erroneous addresses and, if property has been transferred, shall determine the new owner, current mailing address, and in-care-of address, if any, as provided in KRS 382.135.
 - 3. The property valuation administrator shall return the notices with the corrected information to the county attorney or the department within twenty (20) days of receipt.
 - 4. Upon receipt of the new information from the property valuation administrator, the county attorney or the department shall resend the notice required by paragraph (a) of this subsection using the updated information.
- (d)
 - 1. ***At least twenty (20) days after the mailing of the thirty (30) day notice required by paragraph (a) of this subsection, but*** within sixty (60) days of the establishment of a certificate of delinquency, the county attorney or department shall send a second notice, by regular mail, to owners of record whose tax bills remain delinquent, or to the in-care-of addresses or corrected address, if information regarding a new property owner has been received by the county attorney or the department under the provisions of paragraph (c) of this subsection. The notice shall include, at a minimum, the following information:
 - a. The name, address, and telephone number of a contact person in the county attorney's office or the department, as the case may be;
 - b. A statement that a sale of tax claims will be held by the county clerk on the date established by the department for the sale. The text of the statement shall include the actual sale date, as well as a statement noting that the certificate of delinquency may be paid by a third-party purchaser at the sale, and if the certificate of delinquency is paid by a third-party purchaser, it will be subject to collection by the third-party purchaser as provided by law,~~and~~ that significant additional collection fees will be imposed by the third-party purchaser, ***and that collection actions may include foreclosure.*** This statement shall not be included in notices sent to owners of property subject to a personal property certificate of delinquency~~, or certificates of delinquency on unmined coal, oil or gas reserves, or any other mineral or energy resources that are assessed separately from the surface real property pursuant to KRS 132.820~~; and
 - c. A statement that the taxpayer may qualify for a payment plan with the county attorney or the department, if the taxpayer meets the requirements established by the county attorney or the department and if terms are agreed to prior to the date of the sale.
 - 2. The county attorney or the department shall file in the office of the county clerk a list of the names and addresses to which the sixty (60) day notice was mailed, along with a certificate attesting that the notices were mailed in accordance with the requirements of this section.
 - 3. If the notice required by paragraph (c) of this subsection is returned as undeliverable, and the property valuation administrator is not able to provide a corrected or updated address, the county attorney or the department shall address the sixty (60) day notice to "Occupant" and shall mail the notice to the address of the property to which the certificate of delinquency applies.
- (e) The county attorney or the department shall deliver to the property valuation administrator, at the same time the notice required by paragraph (d) of this subsection is sent, a list of the owners whose tax bills remain delinquent. The property valuation administrator shall review this list in accordance with KRS 132.220 to establish that the properties on the list can be identified and physically located.
- (f) Anytime after the expiration of the one (1) year tolling period established by KRS 134.546, the county attorney or department may institute an action to collect the amount due on a certificate of delinquency owned by the taxing jurisdictions and in the possession of the county clerk. At least forty-five (45) days

before instituting a legal action, the county attorney or department shall send, by regular mail, a notice of intent to initiate legal action to enforce the lien. The notice shall be sent to the owner of record of the property or to the in-care-of address or corrected address if either has been provided pursuant to this section.

- (5) If property subject to a certificate of delinquency has been transferred in any year after the assessment date, the property valuation administrator shall determine the in-care-of address supplied in the deed pursuant to KRS 382.135 and shall provide that information to the county attorney or the department.
- (6)
 - (a) Failure of the county attorney or the department to mail the notices required in subsection (4) of this section shall not affect the validity of the claim of the state, county, school district, and taxing district. However, the county attorney or the department shall not receive any compensation, commission, or payment related to any certificate of delinquency for which the notices required by the provisions of subsection (4) of this section are not sent.
 - (b) For each notice mailed, one dollar (\$1) shall be added to the amount of the certificate of delinquency, to offset the cost of mailing, and, upon collection, the county attorney or the department shall be paid such amounts as reimbursement for mailing costs.
- (7)
 - (a) As compensation for the collection duties performed pursuant to a contract with the department, a county attorney shall be paid twenty percent (20%) of the amount due each taxing unit during the contract period, whether the amount is paid voluntarily, through sale, or under court order, and whether the amount is paid to the county clerk or the county attorney. The fee for the county attorney shall be added to the amount of the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.
 - (b) If payment in full is voluntarily made by the taxpayer to the county attorney or county clerk within five (5) days of the filing of the tax claim with the county clerk, the county attorney fee shall be waived.
 - (c) If a county attorney files a court action or files a cross-claim, the county attorney shall be paid an additional fee of thirteen percent (13%) of the amount of the certificate of delinquency and shall be reimbursed for costs incident to the court action. The additional fee and costs incident to the litigation shall be added to the certificate of delinquency and shall be paid by the person paying the certificate of delinquency.
 - (d) If more than one (1) county attorney renders necessary services to collect on a certificate of delinquency, the county attorney serving the last notice or rendering the last substantial service preceding collection shall be entitled to the fee.
- (8)
 - (a) The county attorney shall establish a system to accept installment payments from delinquent taxpayers. The county attorney may, during the contract period, enter into an agreement with a delinquent taxpayer to accept installment payments on the certificates of delinquency. The agreement shall not waive the county attorney's right to initiate court action or other authorized collection activities if the taxpayer does not make payments in accordance with the agreement.
 - (b) The county attorney may, upon written request of the taxpayer for good cause and with agreement of the affected taxing jurisdiction or fee recipient, waive or reduce fees and penalties that are part of a certificate of delinquency during settlement or negotiation with a taxpayer in accordance with guidance provided by the department.
- (9) Any action by the county attorney authorized by this chapter shall be filed on relation of the commissioner. A copy of any judgment obtained by the county attorney shall be sent to the department.
- (10)
 - (a) The county attorney shall notify the county clerk and the department of the filing of a suit at the time the suit is filed and of payment agreements at the time such agreements are entered into. The county clerk shall note on the certificate of delinquency the filing of the lawsuit or the existence of the payment agreement, and these certificates of delinquency shall not be available for purchase or payment by a third-party purchaser.
 - (b) ***The county attorney shall provide to the county clerk at least ten (10) days but not more than twenty (20) days prior to the annual sale date for the county established pursuant to Section 7 of this Act, a protected list of current year certificates of delinquency that are:***
 1. ***Under a payment plan with the county attorney on which payments are current;***

2. *Involved in litigation initiated by the county attorney or in which the county attorney responds or files an answer; and*
3. *Involved in bankruptcy litigation in which the county attorney has filed a claim.*

The list shall include sufficient detail for the county clerk to accurately identify the property.

- (c) The county attorney shall notify the county clerk of the failure of any payment agreement and, upon notification to the clerk, the certificate of delinquency shall be available for purchase.
- (11) The department may make its delinquent tax collection databases and other technical resources, including but not limited to tax refund offsetting, available to the county attorney upon request from the county attorney. The county attorney seeking assistance shall enter into any agreements required by the department to protect taxpayer confidentiality, to ensure database integrity, or to address the concerns of the department.
- (12) (a) If a county attorney chooses not to contract for collection duties, or if a county attorney fails to perform the duties required by the contract, the department shall assume responsibility for all uncollected certificates of delinquency and personal property certificates of delinquency, including, at the option of the department, those with pending court action or for which the county attorney has entered into an installment payment agreement.
- (b) If the department assumes or retains responsibility for the collection of certificates of delinquency and personal property certificates of delinquency, the twenty percent (20%) fee that would have been paid to the county attorney under subsection (7) of this section, and any other fees or costs established by this section for the county attorney shall be paid to the department for deposit in the delinquent tax fund provided for under KRS 134.552.

➔Section 10. KRS 134.546 is amended to read as follows:

- (1) Any action to collect any amount due on a certificate of delinquency or personal property certificate of delinquency may be brought at any time after the passage of one (1) year from the date the taxes became delinquent, and shall be brought within eleven (11) years of the date when the taxes became delinquent.
- (2) A third-party purchaser may:
 - (a) Institute an action against the delinquent taxpayer to collect the amount of the certificate of delinquency and any other certificates of delinquency subsequently issued to the same third-party purchaser against the same delinquent, and shall have all the remedies available for the enforcement of a debt;
 - (b) Institute an action to enforce the lien provided in KRS 134.420, represented by the certificate of delinquency and those certificates subsequently held by the same third-party purchaser against the same delinquent or property; or
 - (c) Institute one (1) action including both types of actions mentioned in paragraphs (a) and (b) of this subsection, and the joinder of actions shall not be defeated if the delinquent taxpayer has disposed of any property covered by the lien, but the purchaser of the property shall be made a defendant if the judgment is to affect his or her interest in the property, and as between them the delinquent taxpayer shall be responsible.
- (3) If the state, county, or a taxing district is the owner of a certificate of delinquency or personal property certificate of delinquency, it shall have, in addition to the remedies provided in subsection (1) of this section, the right to distrain and sell any property owned by the delinquent taxpayer, including that on which the lien provided in KRS 134.420 has attached. Any property sold under distraint proceedings shall be sold in the same manner as provided in KRS 131.500, except that the exercise of the power shall be vested in the county attorney.
- (4) Any property while owned by a delinquent taxpayer shall be subject to foreclosure or execution in satisfaction of a judgment pursuant to an action in rem or an action in personam, or both, to enforce the obligation.
- (5) If property is sold pursuant to a judgment of foreclosure, it shall be appraised pursuant to the provisions of KRS 426.520, and there shall be a right of redemption as provided in KRS 426.530. If there is no purchaser at a foreclosure sale, the master commissioner shall make a deed to the person or persons shown by record to be the owner of the certificate or certificates of delinquency, and that person or persons shall have a pro rata interest in accordance with the amount of their respective certificates.

- (6) *The department may provide to a third-party purchaser factual information related to the owner or lessee of the coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820(1) pursuant to an order entered in a foreclosure action involving a certificate of delinquency for unmined coal, oil, gas, or any other mineral resources. The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subsection. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10).*

➔Section 11. KRS 134.551 is amended to read as follows:

- (1) If a certificate of delinquency or personal property certificate of delinquency held by an individual is declared void by a court of competent jurisdiction because of the irregularity of taxing officers, the amount for which the certificate was issued shall be refunded by the state, county, and taxing districts on a pro rata basis. If a school district or county is unable to make the refund currently when requested, it shall be given preference from the next year's revenue. The application for refund must be made within one (1) year after the judgment. The property covered by the void certificate shall be assessed immediately as omitted property and the tax bill shall be payable as soon as prepared.
- (2) (a) If a certificate of delinquency held by a third-party purchaser who paid the certificate of delinquency to the county clerk:
1. Is unenforceable because:
 - a. It is a duplicate certificate of delinquency;~~[-Because]~~
 - b. The tax liability represented by the certificate of delinquency was satisfied prior to the purchase of the certificate of delinquency;~~[-or because]~~
 - c. All or a portion of the certificate of delinquency is exonerated; *or*
 - d. *The property to which the certificate of delinquency applies was not subject to taxes as a matter of law as certified by the property valuation administrator; or*~~[-]~~
 2. *Should not have been sold because, on the date of the annual sale, the certificate of delinquency met the requirements for inclusion on the protected list pursuant to subsection (10) of Section 9 of this Act and it:*
 - a. *Was included on the protected list;*
 - b. *Was mistakenly left off the protected list; or*
 - c. *Became eligible for inclusion on the protected list between the date the protected list was submitted and the date of sale;*

the third-party purchaser may apply to the county clerk for a refund.

- (b) The application for refund *filed with the county clerk* shall include written proof that one (1) of the situations described in paragraph (a) of this subsection exists with regard to the certificate of delinquency for which a refund is sought.
- (c) 1. Upon acceptance and approval of the application for refund, the county clerk shall approve a refund of the amount paid to the county clerk by the third-party purchaser in satisfaction of the certificate of delinquency.
2. Amounts refunded to the third-party purchaser shall be deducted from amounts in the hands of the county clerk due to the state, county, taxing districts, sheriff, county attorney, and the county clerk on a pro rata basis, if the county clerk has sufficient funds in his or her hands to make the refund.
3. If the county clerk does not have sufficient funds to make the refund at the time the refund is approved, the county clerk may either:
- a. Retain the approved refund claim in his or her office and make the refund payment as soon as he or she has sufficient funds in his or her hands to make the refund payment; *or*
 - b. Provide a signed letter to the person to whom payment is due, which includes the amount due from each taxing jurisdiction or fee office, and which directs each taxing jurisdiction

or fee official to pay to the person the amount due and owing from that taxing jurisdiction or fee official as reflected in the letter.

4. *Upon the making of a refund, to a third-party purchaser, the county clerk shall issue and file a release of the lien on the property assessed for taxes as provided in this subparagraph. The release shall be linked to the encumbrance in the county clerk's indexing system.*
 - a. *The department shall prepare a release form to be used by the county clerk when a refund is paid under this paragraph. The form shall include, at a minimum, the following:*
 - i. *The name and address of the taxpayer;*
 - ii. *The name and address of the third-party purchaser;*
 - iii. *The book and page number of the third-party purchaser's lis pendens filing;*
 - iv. *The property address;*
 - v. *The applicable tax year; and*
 - vi. *The map identification number or tax bill number.*
 - b. *The release form shall be signed by the government official responsible for making the correction.*
 - c. *In addition to the signed release form, information filed by the county clerk shall include a copy of the documentation provided by the government official and a copy of the refund check or letter of refund authorization issued to the third-party purchaser. The county clerk shall record and file this information without a fee.*
 - d. *The county clerk shall also make any necessary corrections to the tax records within the office of the county clerk.*
 - e. *The county clerk shall return the release document to the taxpayer and shall provide a copy of the release document to the third-party purchaser.*
- (d) *If the county clerk denies the application for refund, or the property valuation administrator fails to certify that property was not subject to taxes as a matter of law, the third-party purchaser may appeal the decision of the county clerk or the property valuation administrator to the department. The department shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the process for appeal in accordance with KRS Chapter 13B. ~~The county clerk shall document his or her records to reflect the action taken in response to an approved refund.~~*
- ~~[(d) Any third party purchaser who receives a refund pursuant to this section shall release any liens on the property for which the refund was received within thirty (30) days of receiving the refund. Failure to release the lien shall subject the third-party purchaser to all of the remedies provided in KRS 382.365.]~~

➔Section 12. KRS 134.990 is amended to read as follows:

- (1) Any sheriff who fails to make his or her annual settlement available as required by KRS 134.192, or who fails to remit any amounts which are due to the taxing districts as required by law, shall be subject to indictment in his or her county of residence, and upon conviction shall be fined not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000).
- (2) Any sheriff who violates KRS 134.160(5) shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each offense.
- (3) Any sheriff who fails to maintain accurate records of ad valorem taxes collected, or who fails to collect taxes due that were collectable shall be held liable on his or her bond for the amount of the tax, penalties, interest, and costs due, plus a thirty percent (30%) penalty thereon. Action shall be brought in the Circuit Court of the county in which the tax is due, on motion of the county attorney or department on behalf of the state. All actions shall be prosecuted by the county attorney, who shall be entitled to retain the penalty recovered for services rendered if all amounts otherwise due are recovered and paid to the taxing jurisdictions entitled to receive those amounts.

- (4) Any outgoing sheriff who fails for ten (10) days to comply with KRS 134.215 shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), and be liable on his or her bond for any default.
- (5) In addition to the penalty imposed by KRS 134.191, any sheriff who fails to report as required in KRS 134.191 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who is required to register with the department pursuant to KRS 134.129 who fails to register shall be fined not less than ten dollars (\$10) or more than five hundred dollars (\$500) for each certificate of delinquency purchased while the person was not registered but should have been.
- (7) Any person who willfully fails to comply with any administrative regulation promulgated under KRS 134.547(3) shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).
- (8) Any county attorney who contracts with the department to collect certificates of delinquency and personal property certificates of delinquency who fails to send the notices required by KRS 134.504(4) shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100) for each notice that he or she fails to send.
- (9) Any sheriff who fails to keep his or her books in an intelligible manner and according to the form prescribed by the department, or to make the entries required by law, shall be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) for each offense.
- (10) Any third-party~~[-]~~ purchaser who attempts to circumvent the fairness of the sale process established pursuant to KRS 134.128 by~~[-]~~ ~~establishing multiple entities or~~ involving multiple *entities or* individuals in the bidding process ***at the annual sale:***
 - (a) Shall be guilty of a Class A misdemeanor;
 - (b) ***May have the registration required by KRS 134.129 revoked; and***
 - (c) ***May be prohibited from participating in future sales of priority certificates of delinquency.***

The county attorney and the Attorney General shall have concurrent jurisdiction for the investigation and prosecution of offenses under this section.

- (11) (a) Any third-party~~[-]~~ purchaser who knowingly:
 1. Demands costs or fees in excess of those permitted by KRS 134.452;
 2. Fails to send notices as required by KRS 134.490, or to include in the notices the information required by KRS 134.490; or
 3. Fails to provide revised contact information as required by KRS 134.490;
 shall be subject to a fine of not less than one hundred dollars (\$100) nor more than two hundred fifty dollars (\$250) for the first offense, and for the second and any subsequent offenses, shall be fined not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500).
 - (b) As used in this subsection, "knowingly" has the same meaning as in KRS 501.020.
- (12) Any person who fails to do an act required, or does an act forbidden, by any provision of this chapter for which no other penalty is provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).

➔Section 13. KRS 132.180 is amended to read as follows:

- (1) Any person having custody of distilled spirits in a bonded warehouse or premises on the day as of which the assessment is made shall be liable for all taxes due thereon, together with all interest and penalties that may accrue. Any owner, proprietor, or custodian of such distilled spirits who pays the taxes, interest and penalties on the distilled spirits shall have a lien thereon for the amount paid, with legal interest from day of payment.
- (2) Taxes on distilled spirits which are subject to the provisions of KRS 132.160(1)(a) shall become due and payable in the manner provided by KRS ~~134.015~~~~[-]~~~~134.020~~, except that taxes due the state shall be paid directly to the Department of Revenue.

➔Section 14. KRS 131.190 is amended to read as follows:

- (1) (a) No present or former commissioner or employee of the Department of Revenue, present or former member of a county board of assessment appeals, present or former property valuation administrator or

employee, present or former secretary or employee of the Finance and Administration Cabinet, former secretary or employee of the Revenue Cabinet, or any other person, shall intentionally and without authorization inspect or divulge any information acquired by him of the affairs of any person, or information regarding the tax schedules, returns, or reports required to be filed with the department or other proper officer, or any information produced by a hearing or investigation, insofar as the information may have to do with the affairs of the person's business.

(b) ~~The~~^{This} prohibition *established by paragraph (a) of this subsection* does not extend to:

1. Information required in prosecutions for making false reports or returns of property for taxation, or any other infraction of the tax laws;~~[-, nor does it extend to]~~
2. Any matter properly entered upon any assessment record, or in any way made a matter of public record;~~[-, nor does it preclude]~~
3. Furnishing any taxpayer or his properly authorized agent with information respecting his own return;
4. *Testimony provided by*~~[- Further, this prohibition does not preclude]~~ the commissioner or any employee of the Department of Revenue~~[- from testifying]~~ in any court, or *the introduction*~~[- from introducing]~~ as evidence *of* returns or reports filed with the department, in an action for violation of state or federal tax laws or in any action challenging state or federal tax laws;~~[-]~~
5. *Providing*~~[- The commissioner or the commissioner's designee may provide]~~ an owner of unmined coal, oil or gas reserves, and other mineral or energy resources assessed under KRS 132.820(1), or owners of surface land under which the unmined minerals lie, factual information about the owner's property derived from third-party returns filed for that owner's property, under the provisions of KRS 132.820(2), that is used to determine the owner's assessment. This information shall be provided to the owner on a confidential basis, and the owner shall be subject to the penalties provided in KRS 131.990(2). The third-party filer shall be given prior notice of any disclosure of information to the owner that was provided by the third-party filer; *or*
6. *Providing to a third-party purchaser pursuant to an order entered in a foreclosure action filed in a court of competent jurisdiction, factual information related to the owner or lessee of coal, oil, gas reserves, or any other mineral resources assessed under KRS 132.820(1). The department may promulgate an administrative regulation establishing a fee schedule for the provision of the information described in this subparagraph. Any fee imposed shall not exceed the greater of the actual cost of providing the information or ten dollars (\$10).*

- (2) The commissioner shall make available any information for official use only and on a confidential basis to the proper officer, agency, board or commission of this state, any Kentucky county, any Kentucky city, any other state, or the federal government, under reciprocal agreements whereby the department shall receive similar or useful information in return.
- (3) Statistics of tax-paid gasoline gallonage reported monthly to the Department of Revenue under the gasoline excise tax law may be made public by the department.
- (4) Access to and inspection of information received from the Internal Revenue Service is for Department of Revenue use only, and is restricted to tax administration purposes. Notwithstanding the provisions of this section to the contrary, information received from the Internal Revenue Service shall not be made available to any other agency of state government, or any county, city, or other state, and shall not be inspected intentionally and without authorization by any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the Department of Revenue, or any other person.
- (5) Statistics of crude oil as reported to the Department of Revenue under the crude oil excise tax requirements of KRS Chapter 137 and statistics of natural gas production as reported to the Department of Revenue under the natural resources severance tax requirements of KRS Chapter 143A may be made public by the department by release to the Environmental and Public Protection Cabinet, Department for Natural Resources.
- (6) Notwithstanding any provision of law to the contrary, beginning with mine-map submissions for the 1989 tax year, the department may make public or divulge only those portions of mine maps submitted by taxpayers to the department pursuant to KRS Chapter 132 for ad valorem tax purposes that depict the boundaries of mined-

out parcel areas. These electronic maps shall not be relied upon to determine actual boundaries of mined-out parcel areas. Property boundaries contained in mine maps required under KRS Chapters 350 and 352 shall not be construed to constitute land surveying or boundary surveys as defined by KRS 322.010 and any administrative regulations promulgated thereto.

- (7) Notwithstanding any other provision of the Kentucky Revised Statutes, the department may divulge to the applicable school districts on a confidential basis any utility gross receipts license tax return information that is necessary to administer the provisions of KRS 160.613 to 160.617.

➔Section 15. KRS 134.126 is amended to read as follows:

- (1)
 - (a) The county clerk shall receive and record payments for all certificates of delinquency and personal property certificates of delinquency filed by the sheriff pursuant to KRS 134.122.
 - (b) The county clerk may accept payment by any commercially acceptable means. The county clerk may limit the acceptable methods of payment to those that ensure that the payment cannot be reversed or nullified due to insufficient funds.
- (2) The county clerk shall give a receipt to the person making payment.
- (3) The county clerk shall report by the tenth day of each month to the department, the county treasurer, the sheriff, and the proper officials of the taxing districts. The governing body of a county may require the county clerk to report and pay on a more frequent basis if necessary for bonding requirements; however, the county clerk shall not be required to report and pay more frequently than weekly.
- (4) The county clerk shall allocate payments among the various entities entitled to a portion of the payment. The county clerk shall, at the time he or she makes the reports required by subsection (3) of this section:
 - (a) Pay to the department for deposit in the State Treasury all moneys received due the state;
 - (b) Pay to the county treasurer all moneys received due the county;
 - (c) Pay to the authorized officers of the taxing districts the amount due each taxing district; and
 - (d) Pay the amount of fees, costs, commissions, and penalties to the persons, agencies, or parties entitled thereto.
- (5)
 - (a) Upon full payment of a certificate of delinquency or personal property certificate of delinquency owned by the state, county, and taxing districts, the county clerk shall note on the certificate the name and address of the person making the payment, the amount paid, and any other information the department may require. The clerk shall mark the certificate of delinquency or personal property certificate of delinquency paid in full.
 - (b) If payment in full is made by a person other than the person primarily liable on the certificate, the person making the payment may request that the payment be treated as an assignment. Upon such request, the county clerk shall:
 1. Note the assignment on the certificate of delinquency or personal property certificate of delinquency;
 2. Record the encumbrance represented by the certificate of delinquency in the same manner as a notice of lis pendens; and
 3. Include as part of the encumbrance recording the information required by KRS 134.490(3)(f) ~~(e)}~~.

For recording the assignment and encumbrance, the county clerk shall receive the fee provided in KRS 64.012.

- (c) If a person other than the person primarily liable on the certificate does not request the payment to be treated as an assignment, he or she shall be treated in the same manner as the person primarily liable on the certificate, and any payment made pursuant to this subsection shall not constitute an assignment of the certificate. The payor shall not be subrogated to the lien of the state, county, and taxing districts as provided in subsection (8) of this section, and shall not be considered a third-party purchaser under the provisions of this chapter, or a transferee under KRS 134.121.

- (6) After the initial recording of an assignment of a certificate of delinquency or personal property certificate of delinquency as provided in subsection (5)(b) of this section, all subsequent actions relating to that certificate of delinquency or personal property certificate of delinquency, including assignments and releases shall be made in accordance with the general laws and procedures governing land records, except the additional information required by KRS 134.490(3)(f)~~(e)~~ shall be included. The applicable fees established by KRS 64.012 shall apply.
- (7) A certificate of delinquency or personal property certificate of delinquency shall be assignable. Failure of an assignee to record the assignment shall render the claim of such person to any real estate represented thereby inferior to the rights of other bona fide purchasers, payors, or creditors.
- (8) Any person other than the person primarily liable on a certificate who:
- (a) Pays the certificate of delinquency in full, and who requests to the county clerk that the payment be treated as an assignment pursuant to subsection (5)(b) of this section; or
 - (b) Is the assignee of such a person, if the assignment has been recorded as required by this section or KRS 134.127;

shall be subrogated to the lien priority of the state, county, and taxing districts as provided in KRS 134.420, and the amount due may be collectible as provided in KRS 134.546(2).

- (9) As compensation for collection of payments on certificates of delinquency, personal property certificates of delinquency, and other delinquent taxes, and the processing of delinquent property tax payments, the county clerk shall be paid ten percent (10%) of the amount due each taxing unit for each certificate of delinquency, personal property certificate of delinquency, or other delinquent tax claim. The fee shall be added to the amount of the tax claim and shall be paid by the person paying the tax claim.

➔Section 16. Notwithstanding any other provision of the Kentucky Revised Statutes, or the effective date provisions included in 2009 House Bill 262, the sheriff's fee calculation established by Section 2 of this Act shall apply to tax collections made by sheriffs in calendar year 2009.

➔Section 17. Whereas it is necessary for the provisions of this Act to be effective prior to the scheduled sales of certificates of delinquency in 2010, an emergency is declared to exist, and this Act takes effect upon its passage and approval of the Governor or upon its otherwise becoming law.

Signed by Governor April 7, 2010.

CHAPTER 76

(SB 88)

AN ACT relating to entities affiliated with local government officials.

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

➔Section 1. KRS 212.638 is amended to read as follows:

All work performed or supplies or materials purchased in carrying out the provisions of KRS 212.626 to 212.639 when involving an expenditure of **twenty thousand dollars (\$20,000)**~~two thousand five hundred dollars (\$2,500)~~ or more shall be by contract awarded to the lowest and best bidder after advertisement by publication pursuant to KRS Chapter 424. All bids or parts of bids, for any such work or supplies may be rejected by the board. The board, however, may itself do or cause to be done, any part of its work under such conditions as it may prescribe by day labor. The commissioner may act on the behalf of the board in such matters.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in Sections 2 to 4 of this Act:

- (1) **"Public entity" means any organization that represents a statewide association of local governments where the majority of its governing body is composed of mayors, county judges/executive, or other local elected officials, and whose membership includes any or a combination of the following:**

- (a) **Cities;**

- (b) *Counties;*
 - (c) *Charter counties;*
 - (d) *Urban-counties;*
 - (e) *Consolidated local governments; and*
 - (f) *Unified local governments; and*
- (2) *"Affiliated organization" means any incorporated or unincorporated organization staffed, managed, or administered by a public entity.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

The governing body of a public entity and the governing body of an affiliated organization shall:

- (1) *Be subject to the provisions of KRS 61.870 to 61.884 and all records of the public entity and its affiliated organizations shall be deemed open records and subject to public inspection, unless the record:*
 - (a) *Is excluded from inspection under KRS 61.878;*
 - (b) *Includes information that would provide an unfair competitive advantage to private sector competitors providing insurance coverage or financing services in the Commonwealth;*
 - (c) *Is generated by the public entity or an affiliated organization, is generally recognized as confidential or proprietary, and which, if openly disclosed, would permit an unfair commercial advantage to competitors of the public entity or an affiliated organization; or*
 - (d) *Relates to a fraudulent insurance claim investigation conducted by the public entity or an affiliated organization and does not become evidence in a criminal or civil action. This paragraph shall not be construed to affect the rights of parties in a civil or criminal action to obtain copies of the records pursuant to the rules of discovery applicable to that action;*
- (2) *Be subject to the provisions of KRS 61.800 to 61.850, with the following exceptions:*
 - (a) *Meetings may be closed in accordance with KRS 61.810; and*
 - (b) *Proceedings to discuss insurance rates, proposed rates, or anything that relates to rates if that discussion would jeopardize the competitiveness of the public entity or an affiliated organization may be closed, as well as proceedings which would provide an unfair competitive advantage to private sector competitors of the public entity or an affiliated organization providing insurance coverage or financing services in the Commonwealth;*
- (3) *By January 15 of each year, establish a schedule of regular meetings consistent with KRS 61.820, and conduct the regular meetings in accordance with the Open Meetings Act, KRS 61.805 to 61.850. A public entity and its affiliated organizations may conduct special or emergency meetings, as set out in KRS 61.823, over telephonic conference call, provided that the public entity or the affiliated organization otherwise adheres to the requirements of KRS 61.805 to 61.850 and provides a designated location or locations where members of the public may attend and hear the audio of each individual participating in the telephonic meeting;*
- (4) *By January 1, 2011, provide a Web site that will allow citizens Internet access to substantial and substantive financial data about expenditures of the public entity and its affiliated organizations. Information on the Web site shall be updated at least on a monthly basis and shall provide the following information not considered confidential by state or federal law:*
 - (a) *The name of the recipient of the funds of the public entity and its affiliated organizations;*
 - (b) *The expenditure type by vendor;*
 - (c) *The amount of the expenditure;*
 - (d) *A description of the purpose of the expenditure, if available;*
 - (e) *The payment date of the expenditure;*
 - (f) *An electronic link to a database displaying the information contained in paragraphs (a) to (e) of this subsection, which information shall remain in the database for at least three (3) years after the payment date of the expenditure;*

- (g) *The budget adopted by the governing body and its affiliated organizations; and*
- (h) *The complete annual audit results on a continuing basis;*
- (5) *Beginning August 1, 2010, undergo an annual audit performed by a certified public accountant or the Auditor of Public Accounts. The contract with the certified public accountant shall specify:*
 - (a) *That the certified public accountant shall forward a copy of the audit report and management letters to the Auditor of Public Accounts; and*
 - (b) *That the Auditor of Public Accounts shall have the right to review the certified public accountant's work papers before and after the release of the audit; and*
- (6) *Allow the Office of the Auditor of Public Accounts to conduct, at its discretion, an examination of the public entity and its affiliated organizations.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

By August 1, 2010, the governing body of a public entity and the governing body of any affiliated organization of the public entity shall each:

- (1) *Adopt a procurement policy consistent with KRS 45A.345 to 45A.460 that includes, notwithstanding KRS 45A.380(3) and (10), a transparent, competitive, selection process for licensed professional services, bond underwriting and bond counsel services, and financial and insurance products and services;*
- (2) *Approve a detailed, equitable personnel and compensation policy;*
- (3) *Approve contracts only in accordance with its bylaws and procurement policy;*
- (4) *Establish an independent process to receive, analyze, investigate and resolve concerns relating to the public entity and its affiliated organizations, including alleged violations of the code of ethics required by subsection (6) of this section;*
- (5) *Conduct training for its members relating to their legal and fiduciary responsibilities; and*
- (6) *Adopt a code of ethics that shall include:*
 - (a) *Standards of conduct for its members and its officers and employees;*
 - (b) *Requirements for creation and annual filing of financial disclosure statements for its members and its officers and management personnel; and*
 - (c) *A policy on the employment of:*
 - 1. *Individuals related to its members; and*
 - 2. *Individuals related to its officers and employees.*

Signed by Governor April 7, 2010.

CHAPTER 77

(SB 101)

AN ACT relating to students.

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

➔Section 1. KRS 164.370 is amended to read as follows:

Each board of regents may invest the faculty or a **representative** committee of ~~designated~~^{the} faculty, *staff*, and students with the power to suspend or expel any student for disobedience to its rules, or for any other contumacy, insubordination or immoral conduct. In every case of suspension or expulsion of a student the person suspended or expelled may appeal to the board of regents. The board of regents shall prescribe the manner and the mode of procedure on appeal. The decision of the board of regents shall be final.

Signed by Governor April 7, 2010.

CHAPTER 78**(SJR 177)**

A JOINT RESOLUTION directing the Department of Agriculture's State Apiarist to work with the Transportation Cabinet and with local beekeeping clubs throughout the state to identify state-owned rights-of-way that could be reseeded or replanted into pollinator habitat sites that are beneficial to the bee population of our state, and directing the State Apiarist to consult with the Department of Fish and Wildlife Resources to identify plant species that would be the most beneficial to bees.

WHEREAS, bees, particularly honeybees, play a critical role in cross-pollinating crops, trees, and flowers in Kentucky and throughout the nation; and

WHEREAS, providing adequate pollinators is crucial for the survival of bees; and

WHEREAS, Kentucky has a large number of beekeeping clubs that are willing to implement strategies that would benefit bees; and

WHEREAS, Kentucky has numerous state-owned rights-of-way that could be converted into pollinator habitat sites; and

WHEREAS, identifying and developing pollinator habitat sites on rights-of-way would aid in increasing the bee population in our state;

NOW, THEREFORE,

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

➔Section 1. The Department of Agriculture's State Apiarist is directed to work with the Transportation Cabinet and with local beekeeping clubs throughout the state to identify state-owned rights-of-way that could be reseeded or replanted into pollinator habitat sites that would benefit the bee population of our state.

➔Section 2. The State Apiarist is also directed to consult with the Department of Fish and Wildlife Resources to identify plant species that would be the most beneficial to bees.

➔Section 3. Local beekeeping clubs may contribute to the Kentucky beekeeping fund created by KRS 252.185, and the State Apiarist shall use those funds to purchase beneficial plant species and signage for the cabinet to use if pollinator habitat sites are developed.

➔Section 4. The State Apiarist shall present a report to the Interim Joint Committee on Agriculture regarding the development of pollinator habitat sites by November 1, 2011.

Signed by Governor April 7, 2010.

CHAPTER 79**(SB 180)**

AN ACT relating to alternative certification for Teach for America participants.

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

➔Section 1. KRS 161.048 is amended to read as follows:

(1) The General Assembly hereby finds that:

- (a) 1. There are persons who have distinguished themselves through a variety of work and educational experiences that could enrich teaching in Kentucky schools;
2. There are distinguished scholars who wish to become teachers in Kentucky's public schools, but who did not pursue a teacher preparation program;
3. There are persons who should be recruited to teach in Kentucky's public schools as they have academic majors, strong verbal skills as shown by a verbal ability test, and deep knowledge of content, characteristics that empirical research identifies as important attributes of quality teachers;

4. There are persons who need to be recruited to teach in Kentucky schools to meet the diverse cultural and educational needs of students; and
 5. There should be alternative procedures to the traditional teacher preparation programs that qualify persons as teachers.
- (b) There are hereby established alternative certification program options as described in subsections (2) *to* ~~(9)~~~~through (8)~~ of this section.
 - (c) It is the intent of the General Assembly that the Educational Professional Standards Board inform scholars, persons with exceptional work experience, and persons with diverse backgrounds who have potential as teachers of these options and assist local boards of education in implementing these options and recruitment of individuals who can enhance the education system in Kentucky.
 - (d) The Education Professional Standards Board shall promulgate administrative regulations establishing standards and procedures for the alternative certification options described in this section.
- (2) Option 1: Certification of a person with exceptional work experience. An individual who has exceptional work experience and has been offered employment in a local school district shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the individual and the employing school district under the following conditions:
- (a) The application contains documentation of all education and work experience;
 - (b) The candidate has documented ten (10) years of exceptional work experience in the area in which certification is being sought;
 - (c) The candidate possesses:
 1. a. A minimum of a bachelor's degree, with a cumulative grade point average of two and five-tenths (2.5) on a four (4) point scale or a grade point average of three (3.0) on a four (4) point scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution; or
 - b. A graduate degree with a cumulative grade point average of two and five-tenths (2.5) on a four (4) point scale or a grade point average of three (3.0) on a four (4) point scale on the last sixty (60) hours of credit completed, including undergraduate and graduate coursework from a nationally or regionally accredited postsecondary institution; and
 2. An academic major or a passing score on the academic content assessment designated by the Education Professional Standards Board; and
 - (d) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship, the candidate shall receive a regular professional certificate and shall be subject to certificate renewal requirements the same as any other teacher with a regular professional certificate.
- (3) Option 2: Certification through a local district training program. A local district or group of districts may seek approval for a training program. The state-approved local district training program is an alternative to the college teacher preparation program as a means of acquiring teacher certification for a teacher at any grade level. The training program may be offered for all teaching certificates approved by Education Professional Standards Board, including interdisciplinary early childhood education, except for specific certificates for teachers of exceptional children. To participate in a state-approved local district alternative training program, the candidate shall:
- (a) Possess a bachelor's degree with a grade point average of two and five tenths (2.5) on a four (4) point scale or, upon approval by the Education Professional Standards Board, at least a grade point average of two (2) on a four (4) point scale if the candidate has exceptional life experience related to teaching and has completed the bachelor's degree at least five (5) years prior to submitting an application to the program.
 - (b) Pass written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the Education

Professional Standards Board. To be eligible to take a subject field test, the applicant shall have completed a thirty (30) hour major in the academic content area or five (5) years of experience in the academic content area as approved by the Education Professional Standards Board.

- (c) Have been offered employment in a school district which has a training program approved by the Education Professional Standards Board.
 - (d) Upon meeting the participation requirements as established in this subsection, the candidate shall be issued a one (1) year provisional certificate by the Education Professional Standards Board. The regular provisional certificate shall be issued upon satisfactory completion of the program and the teacher testing internship program pursuant to KRS 161.030.
 - (e) The Education Professional Standards Board may reject the application of any candidate who is judged as not meeting academic requirements comparable to those for students enrolled in Kentucky teacher preparation programs.
- (4) Option 3: Certification of a professional from a postsecondary institution: A candidate who possesses the following qualifications may receive alternative certification for teaching at any level:
- (a) A master's degree or doctoral degree in the academic content area for which certification is sought;
 - (b) A minimum of five (5) years of full-time teaching experience, or its equivalent, in the academic content area for which certification is sought in a regionally or nationally accredited institution of higher education; and
 - (c) Successful completion of the teacher internship requirement imposed under KRS 161.030.
- (5) Option 4: Certification of an adjunct instructor. A person who has expertise in areas such as art, music, foreign language, drama, science, and other specialty areas may be employed as an adjunct instructor in a part-time position by a local board of education under KRS 161.046. An individual certified as an adjunct instructor shall not be deemed "highly qualified" under the provisions of the federal No Child Left Behind Act of 2001, 20 U.S.C. secs. 6301 et seq.
- (6) Option 5: Certification of a veteran of the Armed Forces. The Education Professional Standards Board shall issue a statement of eligibility, valid for five (5) years, to a veteran for teaching at the elementary, secondary, and secondary vocational education levels with the following qualifications:
- (a)
 - 1. Discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release; or
 - 2. Completed a total of at least ten (10) years of active duty service, ten (10) years of service officially credited toward armed services retirement, or ten (10) years' combination of such service;
 - (b) At least a bachelor's degree in the content area or closely related area for which certification is sought, issued by a regionally or nationally accredited institution of higher education;
 - (c) A grade point average of two and five-tenths (2.5) on a four (4) point scale for a bachelor's degree or an advanced degree; and
 - (d) A passing score on the written exit assessment examination designated by the Education Professional Standards Board for content knowledge.

Upon an offer of employment by a school district, the eligible veteran shall receive a one (1) year provisional teaching certificate with approval by the Education Professional Standards Board of a joint application by the veteran and the employing school district. During this year, the veteran shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. Upon successful completion of the internship program, the veteran shall receive a regular professional certificate.

- (7) Option 6: University alternative program. With approval of the Education Professional Standards Board, a university may provide an alternative program that enrolls students in a postbaccalaureate teacher preparation program concurrently with employment as a teacher in a local school district. A student in the alternative program shall be granted a temporary provisional certificate and shall be a candidate in the Kentucky teacher internship program, notwithstanding provisions of KRS 161.030. A student may not participate in the internship program until the student has successfully completed the assessments required by the board. The temporary provisional certificate shall be valid for a maximum of one (1) year, and may be renewed two (2)

additional years, and shall be contingent upon the candidate's continued enrollment in the preparation program and compliance with all requirements established by the board. A professional certificate shall be issued upon the teacher candidate's successful completion of the program, the internship requirements, and all assessments required by the board.

- (8) Option 7: Certification of a person in a field other than education to teach in elementary, middle, or secondary programs. This option shall not be limited to teaching in shortage areas.
- (a) An individual certified under provisions of this subsection shall be issued a one (1) year temporary provisional teaching certificate, renewable for a maximum of two (2) additional years with approval of the Education Professional Standards Board provided that the candidate:
 - 1. Possesses a bachelor's degree with a declared academic major in the area in which certification is sought and a cumulative grade point average of 3.0 on a 4.0 scale, or a professional or graduate degree in a field related to the area in which certification is sought;
 - 2. Has a minimum score of five hundred (500) on the verbal section and a minimum score of four (4) on the analytical writing section of the Graduate Record Examination (GRE). In addition, teachers of mathematics and physical and biological sciences shall have a minimum score of four hundred fifty (450) on the quantitative section of the GRE. A candidate who has a professional degree shall be exempt from the requirements of this subparagraph; and
 - 3. Passes written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the applicant with minimum scores in each test as set by the board.
 - (b) Prior to receiving the temporary provisional certificate or during the first year of the certificate, the teacher shall complete the following:
 - 1. For elementary teaching, the individual shall successfully complete the equivalent of a two hundred forty (240) hour institute, based on six (6) hour days for eight (8) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board. The content shall include research-based teaching strategies in reading and math, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.
 - 2. For middle and secondary teaching, the individual shall successfully complete the equivalent of a one hundred eighty (180) hour institute, based on six (6) hour days for six (6) weeks. The providers and the content of the institute shall be approved by the Education Professional Standards Board and shall include research-based teaching strategies, research on child and adolescent growth, knowledge of individual differences, including teaching exceptional children, and methods of classroom management.
 - (c) The candidate shall participate in the teacher internship program under subsections (5), (6), (7), and (8) of KRS 161.030. After successful completion of the internship program, the candidate shall receive a regular professional certificate.
- (9) ***Option 8. Certification of a Teach for America participant to teach in elementary, middle, or high schools. Nothing in this subsection shall conflict with the participation criteria of the Teach for America program.***
- (a) ***An individual certified under this subsection shall be issued a one (1) year temporary provisional teaching certificate if the candidate:***
 - 1. Has an offer of employment from a local school district;***
 - 2. Possesses a bachelor's degree;***
 - 3. Successfully completes the summer training institute and ongoing professional development required by Teach for America, including instruction in goal-oriented, standards-based instruction, diagnosing and assessing students, lesson planning and instructional delivery, classroom management, maximizing learning for diverse students, and teaching methodologies; and***

4. *Successfully passes written tests designated by the Education Professional Standards Board for content knowledge in the specific teaching field of the candidate with minimum scores in each test as set by the board.*
 - (b) *The temporary provisional certificate granted under paragraph (a) of this subsection may be renewed two (2) times with a recommendation of the superintendent and approval of the Education Professional Standards Board.*
 - (c) *A Teach for America participant who is approved for a second renewal of his or her temporary provisional certificate under paragraph (b) of this subsection may participate in the internship program under KRS 161.030.*
 - (d) *A Teach for America participant shall be issued a professional certificate upon the participant's successful completion of the internship program and assessments relating to teaching of subject matter required by the Education Professional Standards Board under KRS 161.030.*
 - (e) *Notwithstanding any statute or administrative regulation to the contrary, a teacher certified under this subsection shall have ten (10) years from the date that the teacher successfully completed the internship program to complete a master's degree or fifth year program, or the equivalent as specified by the Education Professional Standards Board in administrative regulation.*
 - (f) *Alternative certification under this subsection shall be considered a pilot program and shall be an option from the effective date of this Act until the federal Race to the Top funding program under Sections 14005 and 14006 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, is completed, except that the Education Professional Standards Board may promulgate administrative regulations in accordance with KRS Chapter 13A to make this a permanent option.*
- (10) A public school teacher certified under subsections (2) to (9)~~(8)~~ of this section shall be placed on the local district salary schedule for the rank corresponding to the degree held by the teacher.
- (11)~~(10)~~ Veterans who were discharged or released from active duty under honorable conditions after six (6) or more years of continuous active duty immediately before the discharge or release, and who have at least four (4) years of occupational experience in the area in which they seek certification as a vocational industrial education teacher, shall apply for certification under and meet the requirements of the administrative regulations promulgated by the Education Professional Standards Board.
- (12)~~(11)~~ Subsections (1) to (3) of this section notwithstanding, a candidate who possesses the following qualifications may receive certification for teaching programs for exceptional students:
- (a) An out-of-state license to teach exceptional students;
 - (b) A bachelor's or master's degree in the certification area or closely related area for which certification is sought; and
 - (c) Successful completion of the teacher internship requirement required under KRS 161.030.
- (13)~~(12)~~ A teacher who is fully certified in Kentucky and who is seeking an additional certification is not required to repeat the Kentucky teacher internship program.
- (14)~~(13)~~ Under KRS 161.030(5), a candidate for alternative certification may serve his or her internship in a nonpublic school.

Signed by Governor April 7, 2010.

CHAPTER 80

(SB 127)

AN ACT relating to advanced practice doctoral programs in nursing.

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

➔Section 1. KRS 164.295 is amended to read as follows:

The six (6) state universities~~shall provide~~:

- (1) *Shall provide*, upon approval of the Council on Postsecondary Education, associate and baccalaureate programs of instruction;
- (2) *Shall provide*, upon approval of the Council on Postsecondary Education, graduate programs of instruction at the master's-degree level in education, business, and the arts and sciences, specialist degrees, and programs beyond the master's-degree level to meet the requirements for teachers, school leaders, and other certified personnel;
- (3) *Shall provide* research and service programs directly related to the needs of their primary geographical areas;
- (4) ~~And, May~~ provide programs of a community college nature in their own community comparable to those listed for the Kentucky Community and Technical College System, as provided in KRS 164.580; *and*
- (5) *May provide, upon approval of the Council on Postsecondary Education, advanced practice doctoral programs in nursing in compliance with KRS 314.111 and 314.131.*

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

- (1) *The governing board of each eligible postsecondary education institution shall collaborate with the Kentucky Board of Nursing to ensure that each university offering an advanced practice doctoral degree in nursing complies with the accreditation standards of the National League for Nursing Accrediting Commission or the Commission on Collegiate Nursing Education and with minimal education and licensure standards for admission to and graduation from an advanced practice doctoral program in nursing.*
- (2) *Each university offering an advanced nursing practice doctoral program shall refer to the degree as the "doctor of nursing practice," with the degree being abbreviated as "DNP." Any advertisement about the advanced nursing practice doctoral program shall not refer to graduates using the term "doctor." Graduates of the program shall accurately portray their academic credentials as well as their registered nurse and advanced practice registered nurse credentials, if applicable, subject to sanction under subsection (4) of Section 3 of this Act.*

➔Section 3. KRS 311.375 is amended to read as follows:

- (1) No person shall, in connection with the practice of medicine, surgery, osteopathy, optometry, dentistry, podiatry, pharmacy, chiropractic, psychology or psychiatry, nursing, anesthesiology, physio or physical therapy, or any other profession or business having for its purpose the diagnosis, treatment, correction or cure of any human ailment, condition, disease, injury or infirmity, hold himself *or herself* out as a doctor or employ or use in any manner the title "Doctor" or "Dr.," unless he *or she* actually has graduated and holds a doctor degree from a school, college, university or institution authorized by its governing body to confer such degree.
- (2) No person who holds a doctor degree, as provided in subsection (1) of this section, shall use or employ the title "Doctor" or "Dr." in or upon any letter, statement, card, prescription, sign, listing or other writing *held out to the public* without affixing suitable words or letters designating the particular doctor degree held by such person.
- (3) *The written material or designation in connection with advertising, billboards, signs, or professional notices shall be in letters, type, or illumination, or give display and legibility, of at least three-fourths (3/4) that of the title "Doctor" or "Dr."*
- (4) *Any person who violates this section and is found by a trier of fact to have committed the violation with the intent to deceive the public shall have his or her health provider license revoked for not less than six (6) months or more than one (1) year.*

Signed by Governor April 7, 2010.

CHAPTER 81

(SB 158)

AN ACT relating to powers and duties of the Department of Revenue.

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

➔Section 1. KRS 131.130 is amended to read as follows:

Without limitation of other duties assigned to it by law, the following powers and duties are vested in the Department of Revenue:

- (1) The department may ***promulgate***~~[make]~~ administrative regulations, and direct proceedings and actions, for the administration and enforcement of all tax laws of this state. ***To assist taxpayers in understanding and interpreting the tax laws, the department may, through incorporation by reference, include examples as part of any administrative regulation. The examples may include demonstrative, non-exclusive lists of items if the department determines such lists would be helpful to taxpayers in understanding the application of the tax laws.***
- (2) The department, by representatives it appoints in writing, may take testimony or depositions, and may examine hard copy or electronic records, any person's documents, files, and equipment if those records, documents, or equipment will furnish knowledge concerning any taxpayer's tax liability, when it deems this reasonably necessary to the performance of its functions. The department may enforce this right by application to the Circuit Court in the county wherein the person is domiciled or has his or her principal office, or by application to the Franklin Circuit Court, which courts may compel compliance with the orders of the department.
- (3) The department shall prescribe the style, and determine and enforce the use or manner of keeping, of all assessment and tax forms and records employed by state and county officials, and may prescribe forms necessary for the administration of any revenue law by the promulgation of an administrative regulation pursuant to KRS Chapter 13A incorporating the forms by reference.
- (4) The department shall advise on all questions respecting the construction of state revenue laws and the application thereof to various classes of taxpayers and property.
- (5) Attorneys employed by the Finance and Administration Cabinet and approved by the Attorney General as provided in KRS 15.020 may prosecute all violations of the criminal and penal laws relating to revenue and taxation. If a Finance and Administration Cabinet attorney undertakes any of the actions prescribed in this subsection, that attorney shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including the authority to sign, file, and present any complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (6) In the event of the incapacity of attorneys employed by the Finance and Administration Cabinet or at the request of the secretary of the Finance and Administration Cabinet, the Attorney General or his or her designee shall prosecute all violations of the criminal and penal laws relating to revenue and taxation. If the Attorney General undertakes any of the actions prescribed in this subsection, he or she shall be authorized to exercise all powers and perform all duties in respect to the criminal actions or proceedings which the prosecuting attorney would otherwise perform or exercise, including but not limited to the authority to sign, file, and present any and all complaints, affidavits, information, presentments, accusations, indictments, subpoenas, and processes of any kind, and to appear before all grand juries, courts, or tribunals.
- (7) The department may require the Commonwealth's attorneys and county attorneys to prosecute actions and proceedings and perform other services incident to the enforcement of laws assigned to the department for administration.
- (8) The department may research the fields of taxation, finance, and local government administration, and publish its findings, as the commissioner may deem wise.
- (9) The department may make administrative regulations necessary to establish a system of taxpayer identifying numbers for the purpose of securing proper identification of taxpayers subject to any tax laws or other revenue measure of this state, and may require the taxpayer to place on any return, report, statement, or other document required to be filed, any number assigned pursuant to such administrative regulations.
- (10) The department may, when it is in the best interest of the Commonwealth and helpful to the efficient and effective enforcement, administration, or collection of sales and use tax, motor fuels tax, or the petroleum environmental assurance fee, enter into agreements with out-of-state retailers or other persons for the collection and remittance of sales and use tax, the motor fuels tax, or the petroleum environmental assurance fee.
- (11) The department may enter into annual memoranda of agreement with any state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization to assume the collection duties for any debts due the state entity and may renew that agreement for up to five (5) years. Under such an

agreement, the department shall have all the powers, rights, duties, and authority with respect to the collection, refund, and administration of those liquidated debts as provided under:

- (a) KRS Chapters 131, 134, and 135 for the collection, refund, and administration of delinquent taxes; and
 - (b) Any applicable statutory provisions governing the state agency, officer, board, commission, corporation, institution, cabinet, department, or other state organization for the collection, refund, and administration of any liquidated debts due the state entity.
- (12) The department may refuse to accept a personal check in payment of taxes due or collected from any person who has ever tendered a check to the state which, when presented for payment, was not honored. Any check so refused shall be considered as never having been tendered.

Signed by Governor April 7, 2010.

CHAPTER 82

(SB 130)

AN ACT relating to securities and making an appropriation therefor.

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

➔Section 1. KRS 292.310 is amended to read as follows:

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

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

~~[(b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or~~

~~(c) A person who has no place of business in this state:~~

- ~~1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or~~
- ~~2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;~~

- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Executive director" means the executive director of the Office of Financial Institutions or any individual employee of the Office of Financial Institutions expressly designated by *statute or* order of the executive director to act in the executive director's place;
- (5) "Covered ~~adviser~~~~[adviser]~~" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is *or upon completion of a transaction will be* a covered security under Section 18(b) of the Securities Act of 1933, *15 U.S.C. sec. 77r(b)*, or rules or regulations promulgated thereunder;
- (7) "Office" means the Office of Financial Institutions of the Commonwealth of Kentucky;
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) *"Insolvent" means either a person's liabilities exceed the person's assets, or the person cannot meet obligations as they mature;*
- (11) "Investment adviser" means any person who, for compensation, *directly or indirectly*, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:
 - (a) A bank, savings institution, or trust company;
 - (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
 - (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
 - (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
 - (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
- ~~(f) A person who has no place of business in this state if:~~
 - ~~1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or~~
 - ~~2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;~~

- ~~(e)~~ An investment adviser representative or a person excluded from the definition of investment adviser representative;
- ~~(g)~~~~(h)~~ A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment ~~Advisers~~~~Advisors~~ Act of 1940, *15 U.S.C. sec. 80b-2(a)(11)*;
- ~~(h)~~~~(i)~~ A covered adviser; or
- ~~(i)~~~~(j)~~ Such other persons not within the intent of this subsection as the executive director may by rule or order designate;
- ~~(12)~~~~(11)~~ "Investment adviser representative" means *an individual employed by or associated with an investment adviser or covered adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendations or advice regarding securities should be given, provides investment advice or holds himself or herself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:*
- (a) Performs only clerical or ministerial acts;*
 - (b) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;*
 - (c) Is employed by or associated with a covered adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a, and is either:*
 - 1. An "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3a; or*
 - 2. Not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-2(a)(25); or*
 - (d) Is excluded by the executive director pursuant to order or regulation;*~~;~~
- ~~(a)~~ With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
- ~~1. Makes any recommendations or otherwise renders advice regarding securities;~~
 - ~~2. Manages accounts or portfolios of clients;~~
 - ~~3. Determines which recommendation or advice regarding securities should be given;~~
 - ~~4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or~~
 - ~~5. Supervises employees who perform any of the functions described in this paragraph; and~~
- ~~(b)~~ With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisers Act of 1940.}]
- ~~(13)~~~~(12)~~ "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, ~~{or persons performing similar functions,}~~ or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right, ~~{whether whole or fractional,}~~ who creates fractional interests therein for the purpose of distribution;
- ~~(14)~~~~(13)~~ "Nonissuer" means not directly or indirectly for the benefit of the issuer;

- (15)~~(14)~~ "Person" means an individual, a limited liability company, a corporation, a partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (16)~~(15)~~ "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (17)~~(16)~~ "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (18)~~(17)~~ "Securities Act of 1933," *15 U.S.C. secs. 77a et seq.*, "Securities Exchange Act of 1934," *15 U.S.C. secs. 78a et seq.*, "Public Utility Holding Company Act of 1935," *15 U.S.C. secs. 79 et seq.*, and "Investment Company Act of 1940," *15 U.S.C. secs. 80a-1 et seq.* mean the federal statutes of those names as amended before or after January 1, 1961;
- (19)~~(18)~~ "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, life settlement investment, voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;
- (20) ***"Sign" means with present intent to authenticate or adopt a record to:***
- (a) ***Execute or adopt a tangible symbol; or***
 - (b) ***Attach or logically associate with the record an electronic symbol, sound, or process;***
- (21)~~(19)~~ "State" means any state, *commonwealth*, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;
- (22)~~(20)~~ "Life settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Life settlement investment" does not include:
- (a) Any transaction between an owner and a life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720;
 - (b) Any transfer of ownership or beneficial interest in a life insurance policy from a life settlement provider to another life settlement provider as defined by KRS 304.15-020 and 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;
 - (c) The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - (d) The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and
- (23)~~(21)~~ Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

➔Section 2. KRS 292.330 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *It is unlawful for any person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration under subsection (2) of this section.*
- (2) *The following persons are exempt from the registration requirement of subsection (1) of this section:*
 - (a) *A broker-dealer that affects transactions in this state exclusively in securities exempted by KRS 292.400(15);*
 - (b) *A broker-dealer that has no place of business in this state and that affects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, or investment companies as defined in the Investment Company Act of 1940, 15 U.S.C. secs. 80a-1 et seq., pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;*
 - (c) *A broker-dealer with no place of business in this state that during any period of twelve (12) consecutive months does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in paragraph (b) of this subsection; and*
 - (d) *Any other person exempted from registration by administrative regulation or order under this chapter.*
- (3) *It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration under subsection (4) of this section.*
- (4) *The following agents are exempt from the registration requirement of subsection (3) of this section:*
 - (a) *An agent who represents a broker-dealer that is exempt from registration under this chapter;*
 - (b) *An agent who represents a broker-dealer in affecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934, 15 U.S.C. sec. 78o(h)(2);*
 - (c) *An agent who represents an issuer in:*
 1. *Affecting a transaction in a security that is exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400;*
 2. *Affecting a transaction in a security that is exempted by subsection (5), (9), or (12) of KRS 292.400 if the agent does not receive a commission or other remuneration based, directly or indirectly, on the transaction;*
 3. *Affecting a transaction in a security that is exempted by KRS 292.400(15) provided that the agent offers or sells no other securities exempted by KRS 292.400(15);*
 4. *Affecting a transaction in a security that is exempted by Section 11 of this Act unless registration as an agent is required elsewhere in this chapter or by administrative regulation or order under this chapter;*
 5. *Affecting a transaction in a security that is a covered security, except that an agent who represents an issuer in affecting a transaction in a security that is a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Exchange Act of 1933, 15 U.S.C. sec. 77r(b)(3) or 77r(b)(f)(D), is not exempt if the agent receives a commission or other remuneration based, directly or indirectly, on the transaction;*
 6. *Affecting a transaction with existing employees, partners, or directors of the issuer if the agent does not receive a commission or other remuneration based, directly or indirectly, on the transaction;*
 7. *Affecting other transactions if the agent primarily performs, or is intended to primarily perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer otherwise than in connection with transactions in the issuer's own securities and the agent's compensation is not based, directly or indirectly, on the transactions; and*

8. *Any other person exempted from registration by administrative regulation or order under this chapter.*
- (5) *The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer offering, selling, or purchasing its securities in this state.*
- (6) *An individual may not act as an agent for more than one (1) broker-dealer or one (1) issuer at a time unless authorized by rule or order under this chapter.*
- (7) *It is unlawful for a broker-dealer or an issuer to employ or associate with an agent unless the agent is registered under this chapter or exempt from registration.*
- (8) *It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration under subsection (9) of this section.*
- (9) *The following investment advisers are exempt from the registration requirement of subsection (8) of this section:*
 - (a) *An investment adviser who has no place of business in this state if his only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;*
 - (b) *An investment adviser who has no place of business in this state if, during any period of twelve (12) consecutive months, he or she does not have more than five (5) clients other than those specified in paragraph (a) of this subsection;*
 - (c) *An investment adviser who is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256; and*
 - (d) *Any other investment adviser exempted from registration by administrative regulation or order under this chapter.*
- (10) *It is unlawful for an investment adviser to employ or associate with an investment adviser representative unless the representative is registered under this chapter or exempt from registration.*
- (11) *It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration under subsection (12) of this section.*
- (12) *The following investment adviser representatives are exempt from the registration requirement of subsection (11) of this section:*
 - (a) *An investment adviser representative who is employed by or associated with an investment adviser that is exempt from registration under this chapter or a federal covered adviser that is excluded from the notice filing requirements under this chapter; and*
 - (b) *Any other investment adviser representative exempted from registration by rule or order under this chapter.*
- (13) *The registration of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser registered under this chapter or with a covered adviser that has made a notice filing under this chapter.*
- (14) *An individual may not act as an investment adviser representative for more than one (1) investment adviser or covered adviser at a time unless authorized by administrative regulation or order under this chapter*~~or agent, unless the person is registered under this chapter. It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. It is unlawful for any investment adviser that is required to be registered under this chapter to employ an investment adviser representative unless the investment adviser representative is registered under this chapter. It is unlawful for any person to transact business in this state as an investment adviser unless:~~
 - (a) ~~The person is so registered under this chapter;~~
 - (b) ~~The person is registered as a broker-dealer under this chapter; or~~

- ~~(c) The person is approved, and remains approved, by the Kentucky Economic Development Finance Authority as an investment fund manager pursuant to KRS 154.20-256.~~
- ~~(2) It is unlawful for any covered adviser to transact business in this state unless:~~
 - ~~(a) The person has made a notice filing with the executive director consisting of a copy of those documents that have been filed by the covered adviser with the United States Securities and Exchange Commission and that the executive director by rule or order requires to be filed together with consent to service of process and the fee prescribed in subsection (11)(b) of this section;~~
 - ~~(b) The person is registered as a broker-dealer under this chapter;~~
 - ~~(c) The person's only clients are investment companies as defined in the Investment Company Act of 1940, or insurance companies; or~~
 - ~~(d) The person is excluded from the definition of investment adviser under KRS 292.310(10)(a) to (h) and (j);~~
- ~~It is unlawful for an investment adviser representative to be employed by a covered adviser who is required to make a notice filing with the executive director unless the investment adviser representative is registered under this chapter.~~
- ~~(3) A broker-dealer, agent, investment adviser, or investment adviser representative may apply for registration by filing with the executive director or the executive director's designee an application together with a consent to service of process pursuant to KRS 292.430 and payment of the fee prescribed in subsection (11).~~
 - ~~(a) Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions (except any partner, officer, or director or other such person whose registration as an agent is denied, suspended, or revoked under subsection (13)) without the filing of applications for registration as agents or the payment of fees for registration as agents.~~
 - ~~(b) Except for any partner, officer, director, or other person whose registration as an investment adviser representative is denied, suspended, or revoked under subsection (13) of this section, registration of an investment adviser automatically constitutes registration of any investment adviser representative who is a partner, officer, director, or a person occupying a similar status or performing similar functions, without the filing of applications for registration as investment adviser representatives or the payment of fees for registration, as investment adviser representatives.~~
 - ~~(c) The registration application shall contain whatever information the executive director requires concerning such matters as:~~
 - ~~1. The applicant's form and place of organization;~~
 - ~~2. The applicant's proposed method of doing business;~~
 - ~~3. The qualifications and business history of the applicant and in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and in the case of an investment adviser, the qualifications and business history of an employee;~~
 - ~~4. Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and~~
 - ~~5. The applicant's financial condition and history.~~
- ~~(4) If no denial order is in effect and no proceeding is pending under subsection (13), registration becomes effective at noon of the thirtieth day after an application is filed, except as otherwise noted in this subsection:~~
 - ~~(a) The executive director may specify an earlier effective date and may by order defer the effective date until noon of the thirtieth day after the filing of any amendment.~~
 - ~~(b) The executive director may by rule establish a procedure for transfer of an agent or an investment adviser representative whereby registration may become effective prior to the filing of an application;~~

but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.

- (c) ~~The thirtieth day effective day is tolled if, before 5 p.m. EST of the thirtieth day, the executive director notifies the applicant that the application is incomplete or that he intends to deny the application, pending the completion of the application or a hearing and final order on the intent to deny the application or the waiver of a hearing through the failure to request a hearing with fifteen (15) days of receiving notice of the intent to deny the application, as applicable.~~
- (5) ~~The executive director may require as a condition of registration that the applicant (and, in the case of a corporation or partnership, the officers, directors, or partners) pass a written examination as evidence of knowledge of the securities business.~~
- (6) ~~Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require the existence and maintenance of a minimum liquid net capital for registered broker dealers and investment advisers and a minimum ratio between net capital and aggregate indebtedness, or both.~~
- (7) ~~Subject to the limitations of Section 15 of the Securities Exchange Act of 1934 and Section 222 of the Investment Advisers Act of 1940, the executive director may by rule require registered broker dealers, agents, and investment advisers to post surety bonds in an amount up to \$25,000, and may determine their conditions, except under this subsection that no such bond may be required of any registrant whose net capital exceeds \$100,000. An appropriate deposit of cash or securities shall be accepted in lieu of any required surety bond. Every surety bond shall provide for suit thereon by any person who has a cause of action under KRS 292.480, and every such bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three (3) years after the later of the sale or other act upon which it is based or the discovery of the sale or act.~~
- (8) ~~Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, the executive director may by rule require registered broker dealers to carry fidelity bonds, covering its agents, general partners, and officers, in such form, covering such risks, and in such amounts (not exceeding \$250,000) as he deems necessary for the protection of the public; and he may by rule require registered broker dealers to furnish satisfactory evidence that they have such bonds.~~
- (9) ~~Every registration of a broker dealer, agent, investment adviser, and investment adviser representative and every notice filing shall be effective until December 31 of the year of registration or notice unless the executive director by rule extends or lessens the registration or notice period may be renewed as hereinafter provided. The executive director may by rule increase or reduce the registration fee or notice filing fee set forth in subsection (11) of this section should the registration period or notice period be extended or lessened.~~
 - (a) ~~The registration of an agent is not effective during any period when he is not associated with an issuer or a registered broker dealer specified in his application or a notice filed with the executive director or the executive director's designee. When an agent begins or terminates a connection with an issuer or registered broker dealer, the agent and the issuer or broker dealer shall promptly notify the executive director or the executive director's designee.~~
 - (b) ~~The registration of an investment adviser representative is not effective during any period when he is not associated with an investment adviser specified in his application or with a covered adviser specified in a notice filed with the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with an investment adviser, the investment adviser representative and the investment adviser shall promptly notify the executive director or the executive director's designee. When an investment adviser representative begins or terminates a connection with a covered adviser, the investment adviser representative shall notify the executive director or the executive director's designee.~~
- (10) ~~Registration of a broker dealer, agent, investment adviser, or investment adviser representative may be renewed by filing with the executive director or the executive director's designee prior to the expiration thereof an application containing the information the executive director may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker dealer, agent, investment adviser, or investment adviser representative filed with the executive director or the executive director's designee by the applicant, payment of the prescribed fee and, in the case of a broker dealer, a financial statement showing the financial condition of such broker dealer as of a date within ninety~~

~~(90) days. A notice filing by a covered adviser may be renewed by filing with the executive director or the executive director's designee a notice filing consisting of any documents filed with the United States Securities and Exchange Commission as the executive director may require by rule or order. A registered broker dealer or investment adviser may file an application for registration of a successor and a covered adviser may file a notice filing for a successor, whether or not the successor is then in existence, for the unexpired portion of the year without payment of any fee.~~

- ~~(11) (a) The fee for initial or renewal registration shall be one hundred twenty dollars (\$120) for a broker dealer, one hundred dollars (\$100) for an investment adviser, fifty dollars (\$50) for an agent, fifty dollars (\$50) for an investment adviser representative, and fifty dollars (\$50) for transfer of an agent or investment adviser representative, none of which fees shall be refundable.~~
- ~~(b) The fee for notice filings shall be one hundred dollars (\$100) for a covered adviser.~~
- ~~(12) (a) Every registered broker dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the executive director by rule prescribes. All records required shall be preserved for three (3) years unless the executive director by rule prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the executive director, be made available at any time for examination by him either in the principal office of the registrant or by production of exact copies thereof in this state. If a broker dealer is registered with the United States Securities and Exchange Commission, the books and records required by this section are limited to those that the Securities Act of 1934 requires the broker dealer to maintain. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to those books and records requirements of that state, provided the adviser is registered in that state and in compliance with its recordkeeping requirements.~~
- ~~(b) Every registered broker dealer and investment adviser shall file such reports as the executive director by rule prescribes. If a broker dealer is registered with the United States Securities and Exchange Commission, the reports required by this section are limited to those required under the Securities Act of 1934. If an investment adviser has his principal place of business in another state, the requirements of this section shall be limited to the reporting requirements of that state, provided the adviser is registered in that state and in compliance with its reporting requirements.~~
- ~~(c) If the information contained in any document filed with the executive director or the executive director's designee is or becomes inaccurate or incomplete in any material respect, the broker dealer or investment adviser, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.~~
- ~~(d) The executive director may make periodic examinations, within or without this state, of each broker dealer, firm employing issuer agents, and investment adviser at such times and in such scope as he determines. These examinations may be made without prior notice to the broker dealer, firm employing issuer agents, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker dealer, firm employing issuer agents, or investment adviser whose business is examined but the expense so payable shall not exceed an amount which the executive director by rule prescribes. For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.~~
- ~~(e) The executive director may by rule prohibit unreasonable charges, profits, commissions, or other compensation of broker dealers and investment advisers.~~
- ~~(f) The executive director may prescribe rules for the conduct of business by broker dealers and investment advisers which he finds appropriate in the public interest and for the protection of investors.~~
- ~~(g) The executive director may enter into an arrangement, agreement, or other working relationship with federal, other state, and self regulatory authorities whereby documents may be filed and maintained in a central depository system with the National Association of Securities Dealers or other agencies or authorities. It is the intent of this paragraph that the executive director be provided power to reduce~~

~~duplication of filings, reduce administrative costs, and establish uniform procedures, forms, and administration with the states and federal authorities. The executive director may permit initial and renewal registration filings required under this chapter to be filed with the Securities and Exchange Commission, the National Association of Securities Dealers, or other similar authorities. The executive director may accept uniform securities examinations or other procedures designed to implement a uniform national securities regulatory system or facilitate common practices and procedures among the states.~~

- (13) ~~(a)~~ The executive director may by order deny, suspend, or revoke registration of any broker-dealer, agent, investment adviser, or investment adviser representative, or bar or censure any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, from employment with a registered broker-dealer or investment adviser, or restrict or limit a registrant as to any function or activity of the business for which registration is required in the Commonwealth of Kentucky, if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:
1. ~~Has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;~~
 2. ~~Has willfully violated or willfully failed to comply with any provision of this chapter or a predecessor law or any rule or order under this chapter or a predecessor law;~~
 3. ~~Has been convicted, within the past ten (10) years, of any misdemeanor involving a security or any aspect of the securities business, or any felony, or has pending against him any such criminal charge;~~
 4. ~~Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;~~
 5. ~~Is the subject of an order of the executive director denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;~~
 6. ~~Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:~~
 - a. ~~An order by the securities agency or administrator of another state or Canadian province or territory, or by the Securities and Exchange Commission, entered after notice and opportunity for hearing, denying, suspending, limiting or revoking the person's license as a broker-dealer, sales representative, or investment adviser, or the substantial equivalent of those terms;~~
 - b. ~~An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;~~
 - c. ~~A United States Postal Service fraud order;~~
 - d. ~~A cease and desist or other administrative order entered after notice and opportunity for hearing by the executive director, the securities agency or administrator of another state, or a Canadian province or territory, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or~~
 - e. ~~An order by the Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act;~~
 7. ~~Has engaged in dishonest or unethical practices in the securities business;~~
 8. ~~Is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the executive director may not enter an order against a broker-dealer or investment adviser under this paragraph without a finding of insolvency as to the broker-dealer or investment adviser;~~

9. ~~Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business, except as provided in paragraph (b) below; or the executive director may by order, deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant:~~
- a. ~~Has failed reasonably to supervise his agents if he is a broker dealer or his employees or investment adviser representatives if he is an investment adviser; or~~
 - b. ~~Has failed to pay the proper filing fee; but the executive director may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected; or~~
10. ~~Has violated the law of a foreign jurisdiction governing or regulating any aspect of the business of securities or banking; or within the past five (5) years, has been the subject of an action of a securities regulator or a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self regulatory organization operating under the authority of the securities regulator of a state, federal, or foreign jurisdiction suspending or expelling the person from membership in the exchange or self-regulatory organization.~~
- ~~— The executive director may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty (30) days.~~
- (b) ~~The following provisions govern the application of subparagraph 9. of paragraph (a) of this subsection:~~
- 1. ~~The executive director may not enter an order against a broker dealer on the basis of the lack of qualification of any person other than the broker dealer himself if he is an individual or an agent of the broker dealer;~~
 - 2. ~~The executive director may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than the investment adviser himself if he is an individual or any other person who represents the investment adviser in doing any of the acts which make him an investment adviser;~~
 - 3. ~~The executive director may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both;~~
 - 4. ~~The executive director shall consider that an agent who will work under the supervision of a registered broker dealer need not have the same qualifications as a broker dealer;~~
 - 5. ~~The executive director shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker dealer or agent. When he finds that an applicant for initial or renewal registration as a broker dealer is not qualified as an investment adviser or an investment adviser representative, he may by order condition the applicant's registration as a broker dealer upon his not transacting business in this state as an investment adviser or an investment adviser representative;~~
 - 6. ~~The executive director may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as investment adviser representatives and persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.~~
- (c) ~~The executive director may by order summarily postpone an application for registration or suspend a registration pending final determination of any proceeding under this section. A summary suspension of an existing registration shall only be made based upon a finding by the executive director that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public. KRS 13B.125 shall apply to the entry of a summary suspension of a registration. An appeal of a summary suspension shall address only the necessity of a summary action and shall not constitute an appeal of the merits of the underlying violation of the law. Upon the entry of the order, the executive director shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the~~

reasons therefor and that within fifteen (15) days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the executive director, the order will remain in effect until it is modified or vacated by the executive director. If a hearing is requested or ordered, the executive director, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

- (d) ~~If the executive director finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, the executive director may by order cancel the registration or application.~~
- (e) ~~Withdrawal from registration as a broker dealer, agent, investment adviser, or investment adviser representative becomes effective thirty (30) days after receipt of an application to withdraw or within such shorter period of time as the executive director may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty (30) days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the executive director by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the executive director may nevertheless institute a revocation or suspension proceeding under subparagraph 2. of paragraph (a) of this subsection within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective. A notice filing may be withdrawn or terminated by providing notice of the withdrawal or termination, as the case may be, to the executive director; the withdrawal or termination is effective upon receipt by the executive director of the notice.~~
- (f) ~~No order may be entered under any part of this section except the first sentence of paragraph (c) of this subsection without appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent or representative), opportunity for hearing, and written findings of fact and conclusions of law.~~
- (14) ~~Notwithstanding subsection (1) of this section, any broker dealer, agent, investment adviser or investment adviser representative, or transaction or class of transactions by such persons, for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors shall be exempt from registration under this section. The executive director may require that persons exempted from registration under this provision file such forms and information for notice purposes and be bound by one (1) or several provisions of this section as the executive director deems necessary and appropriate in the public interest or for the protection of investors and the executive director may impose filing fees in connection therewith, provided however, that the amount of the fee shall not exceed the fee which would be due in the event the exempt person were required to obtain registration].~~

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall apply for registration as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application containing the information required in a form designated by administrative regulation or order under this chapter, by filing a consent to service of process pursuant to KRS 292.430, by filing any other information requested by the executive director necessary to complete the application, and by paying the fee prescribed by this chapter.*
- (2) *If no denial order is in effect and no administrative proceeding is pending under this chapter, then registration becomes effective at 12 noon of the thirtieth day after a completed application is filed unless the executive director specifies by order an earlier or later effective date. A registration shall be effective until December 31 of the year of registration, except that a registration as an agent of an issuer shall be effective for the shorter of the term of the offering or a period of twelve (12) months.*
- (3) *An administrative regulation or order under this chapter may require as a condition of registration that the applicant and, in the case of a corporation or other legal entity, the officers or directors or persons occupying similar status or performing similar functions, pass a written examination as evidence of knowledge of the securities business.*
- (4) *Subject to the limitations of Section 15 of the Securities Exchange Act of 1934, 15 U.S.C sec. 78o, and Section 222 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-18a, an administrative regulation or*

order under this chapter may establish minimum financial requirements for broker-dealers and investment advisers registered or required to be registered under this chapter.

- (5) *Registration of a broker-dealer, agent, investment adviser, or investment adviser representative may be renewed by filing an application containing any information required by administrative regulation or order under this chapter and paying the fee prescribed in this chapter and, in the case of a broker-dealer or investment adviser, filing any financial statement required by administrative regulation or order under this chapter.*
- (6) *An administrative regulation or order under this chapter may impose other conditions on registration or waive, in whole or part, specific requirements in connection with registration if appropriate in the public interest and consistent with the protection of investors.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *It is unlawful for a covered adviser to transact business in this state as a covered adviser unless the covered adviser has made a notice filing under subsection (2) of this section or is exempt from the requirement to make a notice filing under subsection (3) of this section.*
- (2) *A person transacting business as a covered adviser in this state, who is not exempt under subsection (3) of this section, shall make a notice filing consisting of a copy of those documents filed by the covered adviser with the United States Securities and Exchange Commission and pay the fee prescribed by this chapter. A notice filing under this chapter is effective until 12 midnight of December 31 of the year for which the notice is filed.*
- (3) *The following covered advisers are not required to comply with subsection (2) of this section:*
 - (a) *A covered adviser who has no place of business in this state if his or her only clients in this state are investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees;*
 - (b) *A covered adviser who has no place of business in this state if during any period of twelve (12) consecutive months he or she does not have more than five (5) clients other than those specified in paragraph (a) of this subsection; and*
 - (c) *Any other covered adviser exempted from making a notice filing by administrative regulation or order under this chapter.*
- (4) *A notice filing by a covered adviser may be renewed by filing a notice consisting of any documents filed with the United States Securities and Exchange Commission and paying the fee prescribed in this chapter.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *Pursuant to subsection (2) or (3) of this section, a broker-dealer or investment adviser may succeed to the unexpired portion of the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser by filing a new application for registration or notice filing or amending the registration or notice filing of its predecessor. The successor shall indicate on its application or amendment that it is filing as a successor.*
- (2) *A successor broker-dealer or investment adviser shall file a new application for registration if the succession is a result of a material change in the financial condition, management, or ownership of the predecessor. The predecessor shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five (45) days after the successor files its application for registration.*
- (3) *A successor broker-dealer or investment adviser may file an amendment to the registration of its predecessor if the succession is a result of a change in the form of organization or the state of incorporation or organization of the predecessor that does not involve a material change in the financial condition, management, or ownership of the predecessor. The amendment becomes effective when filed or on a date designated by the successor in its filing.*

- (4) *A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *If an agent registered under this section terminates employment by or association with a broker-dealer or issuer, then the broker-dealer or issuer shall promptly file a notice of termination. The agent may file the notice of termination if the issuer or broker dealer has not done so within thirty (30) days of the effective date of termination.*
- (2) *If an investment adviser representative registered under this section terminates employment by or association with an investment adviser or covered adviser, then the investment adviser or covered adviser shall promptly file a notice of termination. The investment adviser representative may file the notice of termination if the investment adviser or covered adviser has not done so within thirty (30) days of the effective date of termination.*
- (3) *If the executive director determines that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent, investment adviser, or investment adviser representative, or is subject to an adjudication of mental disability or to the control of a conservator or guardian, or cannot be located after reasonable search, then the executive director may by order terminate the registration or application.*
- (4) *An administrative regulation or order under this chapter may establish a procedure for temporary registration when an agent or an investment adviser representative registered under this chapter transfers employment or association to another broker-dealer or investment adviser, but any registration so transferred shall not be effective for more than thirty (30) days, unless within that thirty (30) days a properly completed application is filed.*
- (5) *A broker-dealer, agent, investment adviser, or investment adviser representative may withdraw a registration by filing an application to withdraw. The withdrawal becomes effective thirty (30) days after receipt of the application by the executive director or within such shorter period of time as the executive director may determine, unless a revocation or suspension proceeding is pending.*
- (a) *If a proceeding is pending to revoke or suspend the registration, then the withdrawal becomes effective at such time and upon such conditions as the executive director by order determines; or*
- (b) *If a proceeding is not pending, then the executive director may institute a revocation or suspension proceeding under this chapter within one (1) year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.*
- (6) *A covered adviser may withdraw a notice filing by filing a notice of withdrawal. The withdrawal is effective upon receipt by the executive director.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *The fee for initial or renewal registration shall be, for:*
- (a) *A broker-dealer, one hundred twenty dollars (\$120);*
- (b) *An investment adviser, one hundred dollars (\$100);*
- (c) *An agent, fifty dollars (\$50);*
- (d) *An investment adviser representative, fifty dollars (\$50); and*
- (e) *The transfer of an agent or investment adviser representative, fifty dollars (\$50).*
- (2) *The fee for initial or renewal notice filings shall be one hundred dollars (\$100) for a covered adviser.*
- (3) *The fees required by subsections (1) and (2) of this section shall not be refundable.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Every registered broker-dealer, firm employing issuer agents, and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books, and other records which the executive director by rule or order prescribes.*

- (b) *All records required shall be preserved for three (3) years unless the executive director by administrative regulation or order prescribes otherwise for particular types of records. All required records shall be kept within this state or shall, at the request of the executive director, be made available at any time for examination by him or her either in the principal office of the registrant or by production of exact copies thereof in this state.*
- (c) *If a broker-dealer is registered with the United States Securities and Exchange Commission, then the books and records required by this section are limited to those that the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq., requires the broker-dealer to maintain.*
- (d) *If an investment adviser has his or her principal place of business in another state, then the requirements of this section shall be limited to the books and records requirements of that state, if the adviser is registered in that state and is in compliance with its recordkeeping requirements.*
- (2) (a) *Every registered broker-dealer, investment adviser, and firm employing issuer agents shall file such reports as required by administrative regulation or order under this chapter.*
- (b) *If a broker-dealer is registered with the United States Securities and Exchange Commission, then the reports required by this section are limited to those required under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq.*
- (c) *If an investment adviser has his or her principal place of business in another state, then the requirements of this section shall be limited to the reporting requirements of that state, if the adviser is registered in that state and in compliance with its reporting requirements.*
- (3) *If the information contained in any document filed is or becomes inaccurate or incomplete in any material respect, then the broker-dealer, investment adviser, or firm employing issuer agents, as applicable, shall promptly file a correcting amendment. In the case of a covered adviser, the adviser shall file only copies of those documents required to be filed with the Securities and Exchange Commission.*
- (4) (a) *The executive director may conduct examinations, within or outside this state, of each broker-dealer, issuer agent, or investment adviser at such times and in such scope as he or she determines.*
- (b) *Examinations of each broker-dealer, issuer agent, or investment adviser, may be made without prior notice to the broker-dealer, issuer agent, or investment adviser. The expense reasonably attributable to any such examination shall be paid by the broker-dealer, issuer agent, or investment adviser whose business is examined, but the expense so payable shall not exceed an amount which the executive director by administrative regulation prescribes.*
- (c) *For the purpose of avoiding unnecessary duplication of examinations, the executive director, insofar as he or she deems it practicable in administering this subsection, may cooperate with securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 15 U.S.C. secs. 78a et seq.*
- (5) *The executive director may by administrative regulation prohibit unreasonable charges, profits, commissions, or other compensation of broker-dealers and investment advisers.*
- (6) *The executive director may promulgate administrative regulations to prescribe rules for the conduct of business by broker-dealers and investment advisers which he or she finds appropriate in the public interest and for the protection of investors.*
- (7) *The executive director may enter into an arrangement, agreement, or other working relationship with federal, other state, and self-regulatory authorities whereby documents may be filed and maintained in a central depository system with the Financial Industry Regulatory Authority (FINRA) or other agencies or authorities.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *The executive director may deny, refuse to renew, suspend, or revoke the registration of any broker-dealer, agent, investment adviser, or investment adviser representative. The executive director may bar, censure, or place on probation any registrant or any officer, director, partner, or person occupying a similar status or performing similar functions for a registrant, or restrict, condition, or limit a registrant as to any function*

or activity of the business for which registration is required in this state. The executive director may take any of the foregoing actions for any reason set forth in subsection (2) of this section.

- (2) *For actions taken in subsection (1) of this section, the executive director shall find that it is in the public interest and further find that the applicant or registrant or, in the case of a broker-dealer, or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:*
- (a) *Has filed an application for registration under this chapter which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;*
 - (b) *Has violated or failed to comply with this chapter or any administrative regulation promulgated or order issued under this chapter or a predecessor law;*
 - (c) *Has been convicted of, or has pending against him or her, a felony;*
 - (d) *Has been convicted within the past ten (10) years of, or has pending against him or her, any misdemeanor involving a security or any aspect of the securities business;*
 - (e) *Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;*
 - (f) *Is the subject of an order of the executive director denying, suspending, or revoking registration as a broker-dealer, agent, investment adviser, or investment adviser representative;*
 - (g) *Is the subject of any of the following orders that are currently effective and were issued within the last five (5) years:*
 - 1. *An order by any securities administrator, entered after notice and opportunity for hearing, denying, suspending, limiting, or revoking the person's license as a broker-dealer, agent, investment adviser, or investment adviser representative or the substantial equivalent of those terms;*
 - 2. *An order of a self-regulatory organization finding a violation of federal law or a rule of the self-regulatory organization;*
 - 3. *A United States Postal Service fraud order;*
 - 4. *A cease and desist or other administrative order entered after notice and opportunity for hearing by the executive director, or any other securities administrator or the United States Commodity Futures Trading Commission; or*
 - 5. *An order by the United States Commodity Futures Trading Commission denying, suspending, or revoking registration under the Commodity Exchange Act, 7 U.S.C. secs. 1 et seq.;*
 - (h) *Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten (10) years;*
 - (i) *Is insolvent;*
 - (j) *Is not qualified on the basis of such factors as training, experience, or knowledge of the securities business. However, an order against an individual shall not be based on this paragraph if the individual has passed all examinations required as a condition of registration;*
 - (k) *Has reasonably failed to supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and, within the previous ten (10) years, committed a violation of this chapter or administrative regulation promulgated or order issued under this chapter;*
 - (l) *Has failed to pay a fee required under this chapter within thirty (30) days after having received written notice from the executive director of the failure to pay the required fee. The executive director shall vacate an order issued under this subsection if the fee is paid within thirty (30) days of the date of the order;*
 - (m) *Has violated the law of any jurisdiction governing or regulating any aspect of the business of securities or banking, or, within the past five (5) years, has been the subject of an action of any*

securities regulator denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, or investment adviser representative or is the subject of an action of any securities exchange or self-regulatory organization operating under the authority of a securities regulator suspending or expelling the person from membership in the exchange or self-regulatory organization; or

- (n) *Refuses to allow or otherwise impedes an examination under this chapter or refuses access to a registrant's office to conduct an examination.*
- (3) *The executive director may not institute a proceeding under this section based solely on a fact or transaction known to him or her when a registration became effective, unless the proceeding is instituted within sixty (60) days after the effective date of the registration.*
- (4) *The executive director may by order summarily restrict, condition, limit, or suspend a registration, or censure or bar a registrant before final determination of an administrative proceeding under this section. A summary order issued under this subsection shall only be based upon a finding by the executive director that such action is in the public interest and that there is substantial evidence of a violation of law that constitutes an immediate danger to the public health, safety, or welfare. One (1) or more of the grounds listed in subsection (2) of this section shall be considered for a summary order. Any person aggrieved by an order of the executive director under this section may file with the office an application for an emergency hearing pursuant to KRS 13B.125 within thirty (30) days of the date of the order. The executive director shall comply with KRS 13B.125 when entering a summary order. The executive director may modify, stay, extend, or vacate the summary order issued under this subsection.*
- (5) *The executive director shall not issue an order under this section, except under subsection (4) of this section, without appropriate notice to the applicant or registrant, opportunity for a hearing, and written findings of fact and conclusions of law in accordance with KRS Chapter 13B.*

➔Section 10. KRS 292.380 is amended to read as follows:

- (1) Except as otherwise expressly provided in this chapter, a registration statement under this chapter becomes effective when the executive director so orders. The executive director may require as a condition of registration under this chapter that a prospectus containing any designated part of the appropriate information specified in this chapter be sent or given to each person to whom an offer is made before or concurrently with:
 - (a) The first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;
 - (b) The confirmation of any sale made by or for the account of any such person;
 - (c) Payment pursuant to any such sale; or
 - (d) Delivery of the security pursuant to any such sale, whichever first occurs; but the executive director shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the Securities Act of 1933, *15 U.S.C. secs. 77a et seq.*, or regulations thereunder.
- (2) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this chapter or a predecessor law within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The executive director may by rule or otherwise permit the omission of any item of information or document from any registration statement.
- (3) The executive director may require as a condition of registration by qualification or coordination that (a) the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount or (b) any security issued within the past three (3) years, or to be issued, to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be delivered in escrow. The executive director may by rule or order determine the conditions of any escrow or impounding required hereunder. The executive director shall not reject a depository solely because of location in another state. All securities delivered in escrow to the executive director or some other depository satisfactory to him ~~prior to January 1, 1968, which have not previously been released shall be released from~~

~~escrow and all securities delivered in escrow to the executive director or some other depository satisfactory to him subsequent to January 1, 1968]~~ which have not previously been released shall be released from escrow no later than ten (10) years after the date of delivery into escrow.

- (4) The executive director may also require as a condition of registration by qualification that the issuer undertake to keep the securities registered under this chapter for a period of up to five (5) years or until the securities become exempt securities under KRS 292.400 or become covered securities, and that the issuer forward to its security holders audited annual financial statements during the period for which the shares are registered. The executive director may by rule or order impose other undertakings.
- (5) For the registration of securities by notification, coordination, or qualification, there shall be paid to the executive director an examination fee of one hundred twenty-five dollars (\$125) and a registration fee of three-fiftieths of one percent (0.06%) of the aggregate offering price of the securities which are to be offered in this state, but the registration fee shall in no case be less than sixty dollars (\$60) nor more than one thousand two hundred dollars (\$1,200). The examination fee and the registration fee shall be payable in separate checks. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under KRS 292.390, the executive director shall retain the examination fee. For a registration by notification for market-making purposes only the examination fee need be paid.
- (6) When securities are registered by notification or by coordination or by qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration statement is effective for one (1) year from its effective date~~[-, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution,]~~ except during the time a stop order is in effect under KRS 292.390. ***A registration statement shall require annual renewal, with payment of the same fees prescribed by subsection (5) of this section, for any year or partial year exceeding the original one (1) year period of effectiveness.*** All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction~~[-~~
 - (a) ~~—]~~ so long as the registration statement is effective~~[-, and~~
 - (b) ~~— Between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under KRS 292.390 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one (1) year from its effective date if any securities of the same class are outstanding].~~

~~[— A registration statement may be withdrawn otherwise only in the discretion of the director.]~~

➔Section 11. KRS 292.410 is amended to read as follows:

- (1) Except as expressly provided, KRS 292.330 to 292.390 ***and Sections 3, 4, 5, 6, 7, 8, and 9 of this Act*** shall not apply to any of the following transactions:
 - (a) Any isolated nonissuer transaction, whether effected through a broker-dealer or not;
 - (b) Any nonissuer distribution of an outstanding security by a registered broker-dealer, if the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security;
 - (c) Any nonissuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the executive director may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period;
 - (d) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
 - (e) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel first mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

- (f) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (g) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;
- (h) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, *15 U.S.C. secs. 80a-1 et seq.*, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;
- (i) The offer or sale of a security by the issuer of the security if all of the following conditions are met:
 - 1. The issuer does not offer or sell the securities by means of a form of general advertisement or general solicitation. The following shall not constitute general solicitation within the meaning of this section:
 - a. Solicitation of indications of interest in accordance with the terms and conditions as the executive director may adopt by rule; or
 - b. Offers to sell securities and the dissemination of written offering materials in accordance with the terms of this section at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;
 - 2. The issuer reasonably believes that each purchaser of the securities is acquiring the securities for investment and is aware of any restrictions imposed on transferability and resale of the securities. The basis for reasonable belief may include:
 - a. Obtaining a written representation signed by the purchaser that the purchaser is acquiring the securities for the purchaser's own investment and is aware of any restrictions imposed on the transferability and resale of the securities; and
 - b. Placement of a legend on the certificate or other document that evidences the securities stating that the securities have not been registered under this chapter, and setting forth or referring to the restrictions on transferability and sale of the securities; and
 - 3. The transaction satisfies one (1) of the following conditions:
 - a. Each purchaser has access to all the material facts with respect to the securities by reason of the purchaser's active involvement in the organization or management of the issuer or the purchaser's family relationship with a person actively involved in the organization or management of the issuer;
 - b. There are not more than fifteen (15) purchasers in Kentucky described in subdivision a. of this subparagraph, plus an unlimited number of purchasers who are "accredited investors" as defined by Rule 501 of the Securities Act of 1933, *17 C.F.R. sec. 230.501*; or
 - c. The aggregate offering price of the securities, including securities sold outside of Kentucky, does not exceed one million dollars (\$1,000,000), the total number of purchasers who are not accredited investors, including purchasers outside of Kentucky, does not exceed thirty-five (35), and each purchaser either receives all of the material facts with respect to the decision to invest in the security ~~or is an accredited investor or a purchaser described in subdivision a. of this subparagraph~~;
 - 4. Persons receiving commissions, ~~finders~~ *finders* fees, or other remuneration in connection with sales of securities in reliance on this subsection **shall be registered as a broker-dealer or agent under this chapter unless exempt from registration** ~~are not relieved of compliance with KRS 292.330~~;
 - 5. The executive director may by rule deny the exemption provided in this subsection to a particular class of issuers or may make the exemption available to the issuers upon compliance with additional conditions and requirements, if appropriate in furtherance of the intent of this chapter;
 - 6. The executive director may, by order, increase the maximum number of purchasers or the maximum offering amount provided in paragraph 3.c. of this subsection upon request if the

executive director determines that any such increase is necessary or appropriate in the public interest or for the protection of investors. Any request to increase either or both of the conditions shall be made in writing to the executive director before any sale in reliance on the requested increase and shall be accompanied by the following:

- a. A statement of the amount of the increase in the maximum offering amount or in the number of purchasers being requested, and the issuer's reasons for requesting the increase;
 - b. A copy of any offering circular or other written materials being distributed to prospective purchasers;
 - c. A copy of the written representation and legend serving as the issuer's basis for reasonable belief of a purchaser's investment intent and awareness of restrictions on the transferability and resale of the security being acquired; and
 - d. A filing fee of two hundred fifty dollars (\$250);
- (j) Any offer or sale of a preorganization certificate or subscription, if:
1. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber;
 2. The number of subscribers does not exceed twenty-five (25); and
 3. No payment is made by any subscriber;
- (k) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if no commission or other remuneration ~~(other than a standby commission)~~ is paid or given directly or indirectly, ***except to a broker-dealer registered under this chapter***, for soliciting any security holder in this state;
- (l) Any offer ~~(but not a sale)~~ of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, ***15 U.S.C. secs. 77a et seq.***, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;
- (m) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock;
- (n) Any transaction incident to a right of conversion or a statutory or judicially-approved reclassification, recapitalization, reorganization, quasi reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;
- (o) Any transaction by a person who does not control, and is not controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934, ***15 U.S.C. sec. 78l***, and the issuer files reports pursuant to Section 13 of that act, ***15 U.S.C. sec. 78m***; and
 3. Copies of such federal registration statements, reports, forms or exhibits as the executive director may by rule or order require are filed with the executive director;
- (p) Any transaction by a person who may control, or may be controlled by or under common control with, the issuer if:
1. The transaction is at a price reasonably related to the current market price;
 2. The security is registered under Section 12 of the Securities Exchange Act of 1934, ***15 U.S.C. sec. 78l***, and the issuer files reports pursuant to Section 13 of that act, ***15 U.S.C. sec. 78m***;
 3. Copies of such federal registration statements, forms, reports, or exhibits as the executive director may by rule or order require are filed with the executive director; and
 4. Such sales by any such person comply with such rules as the executive director may prescribe; or

- (q) Any transaction for which the executive director by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors.
- (2) The executive director may by order deny or revoke the exemption specified in KRS 292.400(6), (9), or (12) or in this section with respect to a specific security or transaction. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law ***in accordance with KRS Chapter 13B.***
- (3) ~~The [except that the]~~ executive director may by order summarily deny or revoke any of the specified exemptions pending final determination of any proceeding under this ***section where the executive director determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of conduct constituting a violation of this chapter or administrative regulation promulgated, or order issued pursuant to this chapter, or that a person has materially aided, is materially aiding, or about to materially aid an act, practice, or course of conduct constituting a violation of this chapter, an administrative regulation promulgated pursuant to this chapter, or an order issued under this chapter. Any person aggrieved by an order of the executive director under this section may file an application for an emergency hearing pursuant to KRS 13B.125. The executive director shall comply with KRS 13B.125 when entering a summary order. The executive director may modify, stay, extend, or vacate any summary order issued under this section***~~subsection. Upon entry of a summary order, the executive director shall promptly notify all interested parties that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the executive director, the order will remain in effect until it is modified or vacated by the executive director. If a hearing is requested or ordered, the executive director, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order to extend it until final determination~~.
- (4) ~~An [No]~~ order ***issued*** under this ***section shall not***~~subsection may~~ operate retroactively. No person ~~shall~~***may*** be considered to have violated this chapter by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order. In any proceeding under this chapter, the burden of proving an exemption from a definition is upon the person claiming it.

➔Section 12. KRS 292.480 is amended to read as follows:

- (1) Any person, who offers or sells a security in violation of this chapter or of any rules or orders promulgated hereunder or offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading, ~~[(the buyer not knowing of the untruth or omission)]~~ and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment costs and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less:
- (a) The value of the security when the buyer is disposed of it; and
 - (b) Interest at the legal rate per annum from the date of disposition.
- (2) Any person who purchases a security in violation of this chapter or of any administrative regulations or orders promulgated under this chapter or who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made in light of the circumstances under which they are made not misleading, the seller not knowing of the untruth or omission, and who does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person selling the security to him, who may sue either at law or in equity for:
- (a) A return of the security, together with any income received by the purchaser on the security, costs, and reasonable attorney's fees, upon a tender of the full amount of the consideration received for the security; or
 - (b) If the purchaser no longer owns the security, the difference between the fair value of the security at the date of the transaction and the consideration received for the security, together with interest on the

difference at the legal rate compounded annually from the date of the transaction, and costs and reasonable attorney's fees.

- (3) For purposes of paragraph (b) of subsection (2) of this section, when the purchaser no longer owns the security, if a seller seeking relief under paragraph (b) of subsection (2) of this section offers and presents admissible evidence of the highest intermediate value of the subject security as of some specific date occurring within a reasonable period of time after the date of the sale of the security but no later than the date an action under paragraph (b) of subsection (2) of this section is filed, or of the total consideration received by the purchaser in a subsequent sale of that security, it shall be presumed until rebutted by a preponderance of evidence to the contrary that the value or sale price, as applicable, is the fair value of the security at the date of the transaction as those terms are used in paragraph (b) of subsection (2) of this section to measure damages. For purposes of subsections (1) and (2) of this section and all other provisions of this chapter, statements and omissions may be either oral or written.
- (4) Every person who directly or indirectly controls a seller or purchaser liable under subsection (1) or (2) of this section, every partner, officer, or director (or person occupying a similar status or performing similar functions) or employee of a seller or purchaser who materially aids in the sale or purchase, and every broker-dealer or agent who materially aids in the sale or purchase is also liable jointly and severally with and to the same extent as the seller or purchaser, unless the nonseller or nonpurchaser who is so liable sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.
- (5) Any tender specified in this section may be made at any time before entry of judgment. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant. No person may sue under this section more than three (3) years after the date the occurrence of the act, omission, or transaction constituting a violation of this chapter was discovered, or in the exercise of reasonable care should have been discovered. No person may sue under this section:
 - (a) If the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at the legal rate from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt;
 - (b) If the buyer received an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty (30) days of its receipt; or
 - (c) If paragraph (b) of subsection (2) of this section applies, and if the seller received a written offer before suit equal to the difference between the greater of the highest intermediate value of the security or the consideration received by the purchaser upon disposal of the security and the consideration received by the seller for the security, together with interest on the difference at the legal rate from the date of the transaction; or if paragraph (a) of subsection (2) of this section applies, and if the seller received a written offer to return the security together with any income received by the purchaser on the security; and in either case he failed to accept the offer within thirty (30) days of its receipt.
- (6) No person who has made or engaged in the performance of any contract in violation of any provision of this chapter or any rule or order hereunder, or who has acquired any purported right under any contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this chapter or any rule or order hereunder is void.
- (7) ***A person who receives directly or indirectly any consideration for providing investment advice to another person and who employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.***
- (8) The rights and remedies provided by this section are in addition to any other rights or remedies that may exist at law or in equity.

➔Section 13. KRS 292.500 is amended to read as follows:

- (1) The administration of the provisions of this chapter shall be under the Office of Financial Institutions.
- (2) It is unlawful for the executive director or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the executive director and which is not made public. Except as provided in subsection (19)~~[(18)]~~ of this section, no provision of this chapter authorizes the executive director or any of his officers or employees to disclose any confidential information except among themselves or when necessary or appropriate in an administrative hearing or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the executive director or any of his officers or employees.
- (3) The executive director may~~[from time to time]~~ promulgate, amend, and repeal administrative regulations, forms, and orders as are necessary to carry out the provisions of this chapter, including administrative regulations and forms governing registration statements, applications, notice filings, and reports and defining any terms, whether or not used in this chapter, insofar as the definitions are not inconsistent with the provisions of this chapter. For the purpose of administrative regulations and forms, the executive director may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.
- (4) No administrative regulation, form, or order may be promulgated, amended, or repealed unless the executive director finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provision of this chapter. In promulgating administrative regulations and forms, the executive director may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statement, applications, notice filings, and reports whenever practicable.
- (5) The executive director may by administrative regulation or order prescribe the form and content of financial statements required under this chapter and the circumstances under which consolidated financial statements shall be certified by certified public accountants. All financial statements shall be prepared in accordance with generally-accepted accounting standards.
- (6) All administrative regulations and forms of the executive director shall be published.
- (7) No provision of this chapter imposing any liability applies to any act done or omitted in good faith in conformity with any administrative regulation, form, or order of the executive director, notwithstanding that the administrative regulation, form, or order may later be amended or repealed or be determined by judicial or other authority to be invalid for any reason.
- (8) A document is filed when it is received by the executive director or when the executive director receives confirmation that a document has been filed~~[pursuant to KRS 292.327, 292.330, 292.360, and 292.370].~~ ***The executive director may accept electronic filings of any documents required to be filed under this chapter, either in conjunction with paper filings or in place of paper filings in whole or in part.***
- (9) Every administrative hearing shall be conducted in accordance with KRS Chapter 13B and the provisions of this chapter, and shall be public unless the executive director in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.
- (10) The executive director shall keep a ***record***~~[register]~~ of all applications for registration and registration statements and notice filings which are or have~~[ever]~~ been effective under this chapter and ***a record*** of all denial, suspension, or revocation final orders which have~~[ever]~~ been entered under this chapter.~~[The register shall be open for public inspection.]~~
- (11) The information contained in or filed with any registration statement, application, ***or notice filing is a public record subject to the provisions of the Kentucky Open Records Act***~~[filings, or report may be made available to the public under administrative regulations as the executive director may promulgate].~~
- (12) Upon request and at reasonable charges as he prescribes, the executive director shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any administrative hearing or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.
- (13) The executive director in his discretion may honor requests from interested persons for interpretative opinions.

- (14) The executive director may ~~impose~~~~assess~~ civil fines against any person who violates any provision of this chapter or any rule or order *or voluntary agreement entered into* under this chapter. *The fine shall not exceed twenty thousand dollars (\$20,000) per violation, except when the violation is directed at, or results in monetary damage to one (1) or more individuals who are sixty (60) years of age or older, the executive director may impose an additional fine not to exceed twenty thousand dollars (\$20,000) per violation. Each act or transaction which violates this chapter or administrative regulation, or orders or agreements entered into under this chapter, shall constitute a separate violation. Any employer or principal shall be jointly and severally liable for fines imposed in connection with the conduct of employees or agents.*
- (15) *The executive director is authorized to designate that the fines imposed for violations of this chapter or administrative regulation, or any order or voluntary agreement entered into pursuant to this chapter, be deposited into the securities fraud prosecution and prevention fund established in Section 16 of this Act.*
- (16)~~(15)~~ In addition to any fines ~~imposed~~~~levied~~ under subsection (14) of this section, the executive director may also assess the costs of any investigation, including attorney's fees incurred as a result of bringing enforcement actions under the provisions of this chapter and costs of holding any hearing as a result of an enforcement action. Costs and attorney's fees may only be ~~imposed~~~~assessed~~ if there has been a final determination that a violation has occurred, and in an amount reasonably related to the costs of investigation and enforcement for those violations only. *Costs and attorney's fees may be included as part of an agreement in settlement of an enforcement action.*
- (17)~~(16)~~ If fines, *fees*, or costs ~~imposed~~~~assessed~~ under this section are not paid, *then* the executive director may notify the *Revenue Cabinet which may*~~Attorney General who shall promptly~~ institute an action in the name of the Commonwealth of Kentucky, in the Franklin Circuit Court, *or any other court of competent jurisdiction*, for the recovery of the fines, *fees*, or costs.
- (18)~~(17)~~ The remedies provided by this section are not exclusive and may be sought and employed in any combination to enforce the provisions of this chapter. The remedies set forth in this section shall not prohibit or restrict the executive director from participating in any way whatsoever with respect to any joint examination, investigation, enforcement action, settlement, or other legal or regulatory action with securities administrators of other jurisdictions, the Securities and Exchange Commission, any self-regulatory organization, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, *15 U.S.C. secs. 78a et seq.* Accordingly, the executive director may, at any time and in his sole discretion, share or cause to be shared by any employee of the office any information gained pursuant to an examination, investigation, filing, or from any other source, with other governmental agencies, jurisdictions, or governmental or self-regulating organizations or entities, to the extent the executive director, in his sole discretion, deems that the sharing of information is or will be reasonably necessary or useful to the office or other agency in carrying out its regulatory responsibilities.
- (19)~~(18)~~ The following materials, documentation, and other information are deemed to have been confidentially disclosed to the office and to be confidential information under the Kentucky Open Records Act and, specifically, the provisions of KRS 61.878(1)(b), to the extent described in this subsection and except as provided further in administrative regulation:
- (a) Any materials, documentation, or other information provided to or otherwise obtained by the office during the course of a routine compliance examination of any broker-dealer, agent, investment adviser, or investment adviser representative;~~and~~
 - (b) *Any materials, documentation or other information that is part of an ongoing investigation; and*
 - (c) Any materials, documentation, or other information provided to or otherwise obtained by the office from any other regulatory or governmental body, including but not limited to any other state securities regulator, the Securities and Exchange Commission, any self-regulatory organization, any state or federal criminal agency, and any criminal prosecutorial body, and which the other body expressly deems to be confidential.
- (20) (a) *The confidential information specified in subsection (19)(a) and (b) of this section may be released when required in a proper legal proceeding in which a subpoena and protective order ensuring confidentiality has been issued by the tribunal.*
- (b) *The confidential information specified in subsection (19)(c) of this section must be obtained from the entity which provided the information.*

➔Section 14. KRS 292.530 is amended to read as follows:

- (1) The purpose of this chapter is to:
 - (a) Protect ~~Kentucky~~ investors by preventing investment fraud and related illegal conduct or, if this fraud or illegal conduct has already occurred, remedying, where possible, the harm done to ~~Kentucky~~ investors through active implementation and application of this chapter's enforcement powers;
 - (b) Educate the investing public as to the best methods for making informed investment choices; and
 - (c) Assist companies in their legitimate attempts to raise capital and transact in securities in Kentucky.
- (2) In addition, this chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation and administration of this chapter with the related federal regulation.

➔Section 15. KRS 292.313 is amended to read as follows:

- (1) KRS 292.320(1), 292.330~~(1)~~, 292.340, 292.450, and 292.480 apply to persons who sell or offer to sell when an offer to sell is made in this state, or an offer to buy is made and accepted in this state.
- (2) KRS 292.320(1), 292.330~~(1)~~, and 292.450 apply to persons who buy or offer to buy when an offer to buy is made in this state, or an offer to sell is made and accepted in this state.
- (3) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer originates from this state or is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).
- (4) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).
- (5) An offer to sell or to buy is not made in this state when the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds (2/3) of its circulation outside this state during the past twelve (12) months, or a radio or television program originating outside this state is received in this state.
- (6) Subsections (2), (3), and (4) of KRS 292.320, as well as KRS 292.330~~(1)~~ and 292.450 so far as investment advisers or investment adviser representatives are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 292 IS CREATED TO READ AS FOLLOWS:

- (1) *There is hereby created in the State Treasury a trust and revolving fund designated as the "securities fraud prosecution and prevention fund."*
- (2) *The executive director may designate that all or a portion of the civil fines imposed for violations of this chapter or administrative regulations, or orders issued pursuant to this chapter, be deposited into the fund established in subsection (1) of this section.*
- (3) *The fund established by subsection (1) of this section may also receive additional state appropriations, gifts, grants, and federal funds.*
- (4) *Expenditures from the fund established by subsection (1) of this section may be used to assist in criminal prosecution of fraudulent activities under this chapter, for training and equipment related to prevention, detection, and investigation of securities fraud, and for investor education.*
- (5) *The money deposited into the fund is hereby appropriated for the uses set forth in subsection (4) of this section. Notwithstanding KRS 45.229, any money remaining in the fund at the close of any calendar year shall not lapse but shall be carried forward to the next calendar year. All interest earned on money in the fund shall be credited to the fund.*

- (6) *The executive director is responsible for the distribution of moneys in the fund and shall, in consultation with the Attorney General and local prosecutors, develop and promulgate administrative regulations for the use of those moneys.*

➔Section 17. KRS 304.37-530 is amended to read as follows:

A membership interest in a domestic mutual insurance holding company shall not constitute a security as defined in *subsection (19) of Section 1 of this Act*~~[KRS 292.310(13)]~~.

Signed by Governor April 7, 2010.

CHAPTER 83

(HB 233)

AN ACT relating to insurance licensing.

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

➔Section 1. KRS 304.9-020 is amended to read as follows:

As used in this subtitle:

- (1) "Agent" means *a person who sells, solicits, or negotiates*~~[an individual or business entity appointed by an insurer to sell or to solicit applications for insurance or annuity contracts or to negotiate]~~ insurance or annuity contracts~~[on its behalf]~~;
- (2) "Appointment" means a notification filed with the insurance office that an insurer has established an agency relationship with a producer;
- (3) "Appointment renewal" means continuation of an insurer's existing appointment based on payment of the required fee without submission of an appointment form;
- (4) *"Apprentice adjuster" means an individual who meets the qualification requirements to hold a license as an independent, staff, or public adjuster, except for the experience, education, and training requirements;*
- (5) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, employer group, professional employer organization, or other legal entity;
- (6) *"Catastrophe" means an event that results in a declaration of emergency by the Governor pursuant to KRS 39A.100 and:*
 - (a) *A large number of deaths or injuries;*
 - (b) *Extensive damage or destruction of facilities that provide and sustain human needs;*
 - (c) *An overwhelming demand on state and local response resources and mechanisms;*
 - (d) *A severe long-term effect on general economic activity; or*
 - (e) *A severe effect on state, local, and private sector capabilities to begin and sustain response activities;*
- ~~(7)(5)~~ "Crop insurance" means insurance providing protection against damage to crops from unfavorable weather conditions, fire or lightning, flood, hail, insect infestation, disease, or other yield-reducing conditions or perils provided by the private insurance market or that is subsidized by the Federal Crop Insurance Corporation, including multi-peril crop insurance;
- ~~(8)(6)~~ "Home state" means the District of Columbia and any state or territory of the United States in which a licensee maintains his or her principal place of residence or principal place of business and is licensed by that state;
- (9) *"Independent adjuster" means a person who:*
 - (a) *Is an independent contractor, an employee of an independent contractor, or for tax purposes is treated as an independent contractor under Subtitle C of the Internal Revenue Code, 26 U.S.C. secs. 3101 et seq.;*
 - (b) *Is compensated by an insurer or self-insurer; and*

- (c) *Investigates, negotiates, or settles property, casualty, or workers' compensation claims for insurers or self-insurers;*

~~(10)(7)~~ "Insurance producer" means an individual or business entity required to be licensed under the laws of Kentucky to sell, solicit, or negotiate insurance or annuity contracts. Insurance producer includes agent, managing general agent, surplus lines broker, reinsurance intermediary broker and manager, rental vehicle agent and **rental vehicle agent** managing employee, ~~specialty credit producer and managing employee,~~ and consultant;

~~(11)(8)~~ "Limited line credit insurance" includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the executive director determines should be designated a form of limited line credit insurance;

~~(12)(9)~~ "Limited line credit insurance agent" means an individual or business entity who sells, solicits, or negotiates one (1) or more forms of limited line credit insurance coverage to individuals through a master, corporate, group, or individual policy;

~~(13)(10)~~ "Limited lines insurance" means the lines of insurance defined in subsections (7), (11), (17), (22), and ~~(24)(5), (8), (14), and (16)~~ of this section and any other line of insurance that the executive director identifies in accordance with KRS 304.9-230(1)(f) ~~(e)~~ or recognizes for the purpose of complying with KRS 304.9-140(5);

~~(14)(11)~~ "Negotiate" means the act of conferring directly with, or offering advice directly to, a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, *provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers. "Negotiate" does not include negotiating a claims settlement;*

(15) *"Public adjuster" means any person who, for compensation or anything of value:*

- (a) *Acts on behalf of an insured or aids an insured, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;*
- (b) *Advertises for employment as a public adjuster of insurance claims, solicits business or represents himself, herself, or itself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or*
- (c) *Directly or indirectly solicits business, investigates or adjusts losses, advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person, or engages in the business of adjusting losses or damages covered by an insurance policy for the insured;*

(16) *"Rental vehicle agent" means a business entity with a rental vehicle agent managing employee that is licensed to sell, solicit, or negotiate insurance offered, sold, or solicited in connection with, and incidental to, the rental of rental cars, whether at the rental office or by preselection of coverage in master, corporate, or group agreements that:*

- (a) *Are nontransferable;*
- (b) *Apply only to the rental car that is the subject of the rental agreement; and*
- (c) *Are limited to the following kinds of insurance:*
 - 1. *Personal accident insurance for renters and other rental car occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs with the rental car during the rental period;*
 - 2. *Liability insurance that provides protection to the renters and other authorized drivers of a rental car for liability arising from the operation or use of the rental car during the rental period;*
 - 3. *Personal effects insurance that provides coverage to renters and other vehicle occupants for loss of or damage to personal effects in the rental vehicle during the rental period;*

4. *Roadside assistance insurance;*
 5. *Emergency sickness protection insurance; or*
 6. *Any other coverage designated by the executive director;*
- (17) *"Rental vehicle insurance" means insurance underwritten by an insurer authorized to transact business in Kentucky that is sold in connection with, and incidental to, a rental vehicle agreement;*
- (18) *"Rental vehicle agent managing employee" means an individual who:*
- (a) *Is a salaried full-time employee of a licensed rental vehicle agent business entity that holds a license under Section 16 of this Act; and*
 - (b) *Is responsible for the supervision of the other employees engaged in the placement of insurance;*
- (19)~~((12))~~ "Sell" means to exchange a contract of insurance by any means, for money or other valuable consideration, on behalf of an insurer;
- (20)~~((13))~~ "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurer;
- (21) *"Staff adjuster" means an individual who is an employee of an insurer who investigates, negotiates, or settles property, casualty, or workers' compensation claims on behalf of his or her employer;*
- (22)~~((14))~~ "Surety" means insurance or bond that covers obligation to pay the debts of, or answer for the default of another, including faithlessness in a position of public or private trust. Surety also includes surety insurance as defined in KRS 304.5-060;
- (23)~~((15))~~ "Terminate" means the cancellation of the relationship between an insurance producer and the insurer or the termination of an insurance producer's authority to transact insurance;
- (24)~~((16))~~ "Travel insurance" means insurance coverage for trip cancellation, trip interruption, baggage, life, sickness and accident, disability, and personal effects if limited to a specific trip and sold in connection with transportation provided by a common carrier;
- (25)~~((17))~~ "Uniform business entity application" means the current version of the ~~[National Association of Insurance Commissioners]~~ uniform business entity application for resident and nonresident business entities; and
- (26)~~((18))~~ "Uniform individual application" means the current version of the ~~[National Association of Insurance Commissioners]~~ uniform individual application for resident and nonresident individuals.

➔Section 2. KRS 304.9-105 is amended to read as follows:

- (1) An individual applying for an agent license shall make application to the executive director on the uniform individual application or other application prescribed by the executive director. Before approving the application, the executive director shall find that the applicant:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has fulfilled the residence requirements as set forth in KRS 304.9-120 or is a nonresident who is not eligible to be issued a license in accordance with KRS 304.9-140;
 - (c) Has not committed any act that is a ground for denial, suspension, or revocation set forth in KRS 304.9-440;
 - (d) Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the executive director;
 - (e) Is competent to exercise the license and has:
 1. Except for variable life and variable annuities line of authority and limited lines of authority identified in KRS 304.9-230, completed a prelicensing course of study consisting of forty (40) hours for life and health, forty (40) hours for property and casualty, or twenty (20) hours for each line of authority, as applicable, for which the individual has applied. The executive director shall promulgate administrative regulations to carry out the purpose of this section;

2. Except for variable life and variable annuities line of authority and limited lines of authority identified in accordance with KRS 304.9-230, successfully passed the examinations required by the executive director for the lines of authority for which the individual has applied; and
 3. Paid the fees set forth in KRS 304.4-010; and
- (f) Is financially responsible to exercise the license and has:
1.
 - a. Filed with the executive director the certificate of an insurer authorized to write legal liability insurance in this state, that the insurer has and will keep in effect on behalf of the person a policy of insurance covering the legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent, and enuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year, and that the policy shall not be terminated unless at least thirty (30) days' prior written notice will have been given to the executive director; or
 - b. Deposited with the executive director cash, or a cash surety bond executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the licensee has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as an agent; or
 - c. Filed with the executive director on his or her behalf, by an authorized insurer or group of affiliated insurers for which he or she is or is to become an exclusive agent, an agreement whereby the insurer or group of affiliated insurers agrees to assume responsibility, to the benefit of any aggrieved party, for legal liability of the licensed person as the result of erroneous acts or failure to act in his or her capacity as an insurance agent on behalf of the insurer or group of affiliated insurers in the sum of twenty thousand dollars (\$20,000) for any single occurrence and that the agreement shall not be terminated until the license is surrendered to the executive director or at least thirty (30) days' prior written notice will have been given to the executive director, whichever shall first occur; and
 2. Agreed with the executive director that if at any time notice is given to the executive director that any policy filed in accordance with subparagraph 1.a. of this paragraph, or agreement filed in accordance with subparagraph 1.c. of this paragraph, is to be terminated and has not been replaced by another policy or agreement within the time established by regulations of the executive director, or if any deposit in accordance with subparagraph 1.b. of this paragraph be reduced through levy of execution and not replaced by any necessary additional deposit within the time established by administrative regulations of the executive director, any and all licenses held by the licensee are ~~terminated~~~~revoked~~ and shall be promptly surrendered to the executive director without demand.
- (2) The executive director may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- ➔Section 3. KRS 304.9-133 is amended to read as follows:
- (1) A business entity issued a license in accordance with this subtitle, or issued a life settlement broker or life settlement provider license, shall designate only individuals to act under the business entity license.
 - (2) Each designated individual shall:
 - (a) Hold the same kind of license as the business entity;
 - (b) If the business entity license has lines of authority, have one (1) or more of the same lines of authority; and
 - (c) If the individual is designated under an agent license, have at least one (1) appointment with an insurer.
 - (3) The licensed business entity shall file with the executive director:
 - (a) Notice of the designation of an individual within thirty (30) days of the designation; and

- (b) Notice of termination of designation of an individual within thirty (30) days of the termination of designation.
- (4) ~~(a) On or before January 31 of each odd numbered year, each licensed business entity shall file with the executive director an annual report of all designated individuals whose designations were not terminated on or prior to December 31 of the preceding calendar year.~~
 - ~~(b) The report shall include each individual licensee's name, identification number, and lines of authority the individual is designated to exercise on behalf of the business entity.~~
- ~~(5) The notice and report shall be on a form or in a format prescribed by the executive director.~~
- ~~(6)~~ A licensed business entity shall exercise ~~its~~~~[the]~~ license only through a designated individual licensee.
 - (a) The business entity shall have for each of its active lines of authority at least one (1) licensed individual with the same line of authority designated with the executive director. If the business entity fails to have at least one (1) licensed individual designated with the executive director for a line of authority, that line of authority shall become inactive; and
 - (b) The business entity shall have at least one (1) licensed individual designated with the executive director at all times. If the business entity fails to have at least one (1) individual designated with the executive director, the business entity license shall terminate and shall be promptly surrendered to the executive director without demand.
- ~~(5)~~~~(7)~~ An insurer that has appointed the business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license as if the insurer had appointed the individual licensee.

➔Section 4. KRS 304.9-150 is amended to read as follows:

- (1) Application for a license issued under this subtitle, surplus lines broker license, life settlement broker license, or life settlement provider license shall be made by the applicant. Applications under this subsection shall be certified by the applicant as true, correct, and complete to the best of the applicant's knowledge and belief under penalty of perjury and under penalty of refusal, suspension, or revocation of the license.
- (2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the executive director to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) The application shall state the kinds of insurance and any applicable lines of authority proposed to be transacted.
- (4) The application of a resident individual shall show whether the applicant is a citizen of the United States. If the applicant is not a citizen of the United States, the applicant shall attach to the application a copy of his or her legal work authorization document.
- (5) The application shall also show whether the applicant was ever convicted of or is currently charged with committing a crime; whether the applicant was ever involved in an administrative proceeding regarding any professional or occupational license; whether the applicant has a history of not being financially responsible; whether the applicant has any delinquent tax obligation that is not the subject of a repayment agreement; whether the applicant is currently charged with or has ever been found liable of fraud, misappropriation, conversion of funds, misrepresentation, or breach of fiduciary duty; whether the applicant has child support obligations in arrears or is subject to a child support-related subpoena or warrant; and whether the applicant has ever had a business relationship with an insurer terminated for any alleged misconduct, and the facts thereof.
- (6) The executive director may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (7) All applications shall be accompanied by:
 - (a) The applicable license fee and examination fee, in the respective amounts stated in KRS 304.4-010; ~~and~~~~[;]~~

- (b) Documentation supporting affirmative answers to the questions posed in the background section;
- ~~(c) If a business entity, certificates issued by the Kentucky Secretary of State demonstrating the business entity is qualified to conduct business in Kentucky; and~~
- ~~(d) If using an assumed name, copy of any certificate required under KRS 365.015].~~
- (8) An individual designating Kentucky as his or her home state shall submit to the executive director the applicant's criminal background report from the Kentucky Administrative Office of the Courts.
- (9) No applicant for any license shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.
- (10) If the licensee is a business entity, the licensee shall notify the executive director of all changes among its members, directors, officers and other individuals designated in or registered as to the license, within thirty (30) days of such change.
- (11) ***A business entity applicant or licensee shall not be authorized to transact insurance in Kentucky if that applicant or licensee has or uses a name which is the same as, or deceptively similar to, that of another business entity licensee already so authorized.***

➔Section 5. KRS 304.9-230 is amended to read as follows:

- (1) The executive director may issue, in accordance with KRS 304.9-080, an agent's license with the limited line of authority as follows:
 - (a) Surety;
 - (b) Travel;
 - (c) Limited line credit;
 - (d) Crop;~~{and}~~
 - (e) ***Rental vehicle; or***
 - (f) Other limited lines, as specified by the executive director through the promulgation of administrative regulations.
- (2) The executive director shall promulgate administrative regulations to establish the requirements, if any, for preclicensing courses of instruction and examination for each limited line of authority.
- (3) On and after July 15, 2002, the executive director shall not issue an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance. However, an agent license with a limited line of authority for motor vehicle physical damage or for mechanical breakdown insurance in effect on July 15, 2002, shall continue in effect until surrendered or otherwise terminated in accordance with this subtitle.

➔Section 6. KRS 304.9-260 is amended to read as follows:

- (1) Each license issued under this subtitle, surplus lines broker license, life settlement broker license, and life settlement provider license shall continue in force until expired, suspended, revoked, or otherwise terminated. License renewal fees shall be received on or before the applicable due date for the license as stated in KRS 304.4-010. Beginning January 1, 2003, request for renewal shall be on a form or in a format prescribed by the executive director and made as follows:
 - (a) At least thirty (30) days before the renewal request and fees are due from the licensee, the office shall make available to each respective licensee a list of his or her licenses to be renewed during that calendar year. With the licensee's written consent, an insurer or the licensee's employer may request that the office send the renewal list to the insurer or to the employer. The office may distribute the renewal list to the requesting insurer or employer instead of to the licensee;
 - (b) ~~{Beginning January 31, 2006, }~~In conjunction with license renewal, an individual holding a resident license for agent, ***independent or public adjuster***~~{rental vehicle managing employee}~~, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an even-numbered year shall submit the renewal

request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the executive director by the last day of the licensee's birth month in the next even-numbered year after the date the license is issued, and each subsequent even-numbered year thereafter;

- (c) ~~Beginning January 31, 2006,~~ In conjunction with license renewal, an individual holding a resident license for agent, *independent or public adjuster*~~[rental vehicle managing employee]~~, and life settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an odd-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the executive director by the last day of the licensee's birth month in the next odd-numbered year after the date the license is issued, and each subsequent odd-numbered year thereafter;
 - (d) A business entity that is issued a license in an even-numbered year shall submit the renewal request and fees to the executive director by March 31 of the next even-numbered year, and each subsequent even-numbered year thereafter; and
 - (e) A business entity that is issued a license in an odd-numbered year shall submit the renewal request and fees to the executive director by March 31 of the next odd-numbered year, and each subsequent odd-numbered year thereafter.
- (2) (a) Any license referred to in subsection (1) of this section for which the request for renewal, any required continuing education course completion documentation, if applicable, and fee are not received by the executive director shall be deemed to have expired at midnight on the last day of the birth month for individuals and on March 31 for business entities;
- ~~(b) Any renewal request and fees received by the executive director within thirty (30) days after the expiration date may be accepted with no penalty or interruption in license;~~
- ~~(c) Any renewal request and fees received by the executive director after thirty (30) days from the date of expiration, but~~ within sixty (60) days after the date of expiration, may be accepted with no interruption in license if accompanied by a penalty as provided in Subtitle 99 of this chapter; and
- ~~(c)(d)~~ Completion of the required continuing education course, if applicable, shall be on or before the expiration date, which is deemed as the last day of the birth month of the licensee during the applicable odd or even year on a biennial basis. Proof of compliance shall be received by the executive director within sixty (60) days after the expiration date.
- (3) A licensee who is unable to comply with license renewal procedures due to military service, long-term medical disability, or some other extenuating circumstance may make a written request for a waiver of those procedures. The licensee may also make a written request for a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with these renewal procedures.
- (4) As a condition to or in connection with the continuation of any insurance producer license, the executive director may require the licensee to file with him or her information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
- (5) As a condition to or in connection with the continuation of any license, the executive director shall require continuous demonstration of continuing education course completion to sustain the license, and any license shall terminate and be surrendered to the executive director if and when the demonstration becomes impaired.
- (6) This section does not apply to temporary licenses issued under KRS 304.9-300, and licensees not licensed for one (1) full year prior to the end of the applicable biennial renewal year.

➔Section 7. KRS 304.9-280 is amended to read as follows:

- (1) Subject to the agent contract rights of a rental vehicle agent, rental vehicle managing employee,~~[specialty credit producer, specialty credit managing employee]~~, managing general agent, or agent, if any, an insurer may terminate an appointment at any time. However, if any appointment is not terminated on or prior to December 31, then on January 1 the fees designated shall be due for submission as provided in KRS 304.9-270.
- (2) An insurer or authorized representative of the insurer that terminates the appointment, employment, contract, or other insurance business relationship with a licensee shall notify the executive director within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the executive director, if the reason for termination is one (1) of the reasons set forth in KRS 304.9-440 or if the insurer has

knowledge the licensee was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in KRS 304.9-440. Termination under this subsection shall be deemed termination for cause. Upon the written request of the executive director the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the licensee.

- (3) An insurer or authorized representative of the insurer that terminates the appointment of a licensee for any reason not set forth in subsection (2) of this section, shall notify the executive director within thirty (30) days following the effective date of the termination, using a form or a format prescribed by the executive director. Termination under this subsection shall be deemed termination **without**~~for~~ cause. Upon written request of the executive director, the insurer shall provide additional information, documents, records, or other data pertaining to the termination.
- (4) The insurer or the authorized representative of the insurer shall promptly notify the executive director in a form or a format acceptable to the executive director if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the executive director in accordance with subsection (2) of this section had the insurer known of its existence.
- (5)
 - (a) Within fifteen (15) days after making the notification required for termination without cause, the insurer shall mail a notice of the termination to the licensee at his or her last known address by first-class mail. The notice of termination shall include and indicate the reasons for termination provided to the executive director.
 - (b) Within fifteen (15) days after making the notification required for termination for cause, the insurer shall provide a copy of the form to the licensee at his or her last known address by certified mail, return receipt requested, postage prepaid, or by overnight delivery using a nationally recognized carrier.
 - (c) Within thirty (30) days after the licensee has received a copy of the form, the licensee may file written comments concerning the substance of the notification with the executive director. The licensee shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the executive director's file and accompany every copy of a report distributed or disclosed for any reason about the licensee as permitted under subsection (7)(c) of this section.
- (6)
 - (a)
 1. In the absence of actual malice, an insurer, the authorized representative of the insurer, a licensee, the executive director, or their respective representatives or employees, or an organization of which the executive director is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies, shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these individuals, entities, or their respective representatives or employees as a result of:
 - a. Any statement or information required by or provided in accordance with this section;
 - b. Any information relating to any statement that may be requested in writing from an insurer or licensee by the executive director; or
 - c. A statement by a terminating insurer or licensee to an insurer or licensee that is limited solely and exclusively to whether a termination for cause under subsection (2) of this section was reported to the executive director.
 2. The propriety of any termination for cause under subsection (2) of this section shall be certified in writing by an officer or authorized representative of the insurer or licensee terminating the relationship.
 - (b) In any action brought against an individual, business entity, or organization that may have immunity under paragraph (a) of this subsection for making any statement required by this section or providing any information relating to any statement that may be requested by the executive director, the party bringing the action shall plead specifically in any allegation that paragraph (a) of this subsection does not apply because the individual, business entity, or organization making the statement, or providing the information did so with actual malice.
 - (c) Paragraph (a) or (b) of this subsection shall not abrogate or modify any existing statutory or common law privileges or immunities.

- (7) (a) 1. Any document, material, or other information in the control or possession of the office that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the executive director in an investigation in accordance with this section:
- Shall be confidential by law and privileged;
 - Shall not be subject to subpoena; or
 - Shall not be subject to discovery or admissible in evidence in any private civil action.
- Notwithstanding subdivisions a., b., and c. of this subparagraph, any document, material, or other information that is furnished by an insurer, licensee, or an employee or representative acting on behalf of the insurer or licensee, or obtained by the executive director in an investigation in accordance with this section, that is used in a formal administrative proceeding or enforcement action in accordance with KRS Chapter 13B shall be subject to the Kentucky Open Records Act.
2. However, the executive director is authorized to use the documents, materials, or other information referred to in paragraph (a)1. of this subsection in the furtherance of any regulatory or legal action brought to carry out the executive director's duties.
- (b) Neither the executive director nor any individual who received documents, materials, or other information while acting under the authority of the executive director, shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to paragraph (a) of this subsection.
- (c) In order to assist in the performance of the executive director's duties, *as set forth in KRS 304.2-100*, the executive director:
- May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph (a) of this subsection, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates, or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or other information;
 - May receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and
 - May enter into agreements governing sharing and use of information consistent with this subsection.
- (d) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the executive director or of sharing as authorized in this subsection.
- (e) The executive director shall release only final, adjudicated actions including for-cause terminations that are open to public inspection in accordance with the Kentucky Open Records Act, KRS 61.870 to 61.884~~], to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries].~~
- (f) As part of the nonresident license certification process, the office shall release only final adjudicated actions on licensees identified in subsection (1) of this section.

➔Section 8. KRS 304.9-295 is amended to read as follows:

- This section shall apply to individuals who hold licenses or lines of authority requiring continuing education each biennium.
- ~~[Beginning January 31, 2006,]~~The continuing education biennial compliance date for an individual resident licensee shall be as follows:

- (a) A licensee whose birth date is in an even-numbered year shall satisfy continuing education requirements on or before the last day of the licensee's birth month in the even-numbered year. A licensee shall show proof of compliance to the executive director within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next even-numbered year and each subsequent even-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same;
 - (b) A licensee whose birth date is in an odd-numbered year shall satisfy continuing education requirements and show proof of compliance to the executive director on or before the last day of the licensee's birth month in the odd-numbered year. A licensee shall show proof of compliance to the executive director within sixty (60) days after the continuing education biennial compliance date. If the licensee has not held the license for one (1) year, the compliance date is adjusted to the next odd-numbered year and each subsequent odd-numbered year thereafter. If the license becomes inactive and reissued within a twelve (12) month period, the compliance date shall remain the same.
- (3) This section shall not apply to:
- (a) Limited lines of authority under agent licenses, as exempted by the executive director in accordance with KRS 304.9-230;
 - (b) Licensees not licensed for one (1) full year prior to the end of the applicable continuing education biennium;
 - (c) Licensees holding nonresident licenses who have met the continuing education requirements of their home state and whose home state gives credit to Kentucky resident licensees on the same basis; or
 - (d) Licensees maintaining their licenses for the sole purpose of receiving renewals or deferred commissions and providing the office with a supporting affidavit.
- (4) A licensee, who holds an agent license and who is not exempt under subsection (3) of this section, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which ~~twelve (12) shall be classroom hours and~~ three (3) hours shall have a course concentration in ethics, during each continuing education biennium.
- (5) ***Beginning July 31, 2012, an individual who holds an independent or public adjuster license and who is not exempt under subsection (9) or (10) of Section 11 of this Act, shall satisfactorily complete a minimum of twenty-four (24) hours of continuing education courses, of which three (3) hours shall have a course concentration in ethics in accordance with subsection (4) of this section. Continuing education hours shall be reported to the executive director on a biennial basis in conjunction with the licensee's renewal in accordance with subsection (10) of this section.***
- (6) Only continuing education courses approved by the executive director shall be used to satisfy the continuing education requirement of subsection (4) of this section and any other continuing education requirement of this chapter.
- (a) The continuing education courses which meet the executive director's standards for continuing education requirements are:
 - 1. Any part of the Life Underwriter Training Council life course curriculum;
 - 2. Any part of the ~~HealthLife~~ Underwriter Training Council health course curriculum;
 - 3. Any part of the American College Chartered Life Underwriter diploma curriculum;
 - 4. Any part of the American Institute for Property and Liability Underwriters' chartered property and casualty underwriter profession designation program;
 - 5. Any part of the Insurance Institute of America's programs;
 - 6. Any part of the certified insurance counselor program;
 - 7. Any insurance related course taught at an accredited college or university, if the course is approved by the executive director;

8. Any course of instruction or seminar developed or sponsored by any authorized insurer, recognized agent association, recognized insurance trade association, or any independent program of instruction, if approved by the executive director;
 9. Any correspondence course approved by the executive director; and
 10. Any course in accordance with provisions of reciprocal agreements the executive director enters with other states.
- (b) The executive director shall prescribe the number of hours of continuing education credit for each continuing education course approved in accordance with this subsection. Continuing education courses submitted in accordance with a reciprocal agreement shall be approved according to the provisions of the reciprocal agreement.
 - (c) If a continuing education course requires successful completion of a written examination, no continuing education credit shall be given to licensees who do not successfully complete the written examination.
 - (d) The fee for filing continuing education courses for approval by the executive director shall be as specified in Subtitle 4 of KRS Chapter 304.
 - (e) For continuing education courses of reciprocal states, continuing education providers shall be approved in accordance with the provisions of the reciprocal agreements.
- ~~(7)(6)~~ An individual teaching any approved continuing education course shall qualify for the same number of hours of continuing education credit as would be granted to a licensee taking and satisfactorily completing the course.
- ~~(8)(7)~~ Excess credit hours accumulated during any continuing education biennium may be carried forward. The executive director may, by regulation, limit the number of hours carried forward.
- ~~(9)(8)~~ For good cause shown, the executive director may grant an extension of time during which the continuing education requirement of subsection ~~(2)(3)~~ of this section may be completed, but the extension of time shall not exceed two (2) years. What constitutes good cause for the extension of time rests within the discretion of the executive director.
- ~~(10)(9)~~ Every licensee subject to this section shall furnish to the executive director written certification as to the continuing education courses satisfactorily completed by the licensee. The certification shall be signed by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form prescribed by the executive director.
- ~~(11)(10)~~ The provider shall furnish to the executive director certification as to the continuing education courses satisfactorily completed by each licensee. The certification shall be signed or authenticated by or on behalf of the provider sponsoring the continuing education course. The certification shall be on a form or in a format prescribed by the executive director.
- ~~(12)(11)~~ The license or line of authority requiring continuing education shall ~~expire~~**terminate** if the individual holding the license or line of authority fails to comply with the continuing education requirement and has not been granted an extension of time to comply in accordance with subsection ~~(9)(8)~~ of this section. If the license has ~~expired~~**terminated**, the license shall be promptly surrendered to the executive director without demand. If the line of authority has terminated but another line of authority not requiring continuing education is still in effect, the license shall be promptly delivered to the executive director for reissuance as to the line of authority still in effect.
- ~~(13)(12)~~ The license of any individual subject to the continuing education requirement shall be suspended or revoked, a civil penalty imposed, or both, in accordance with KRS 304.9-440, if the individual submits to the executive director a false or fraudulent certificate of compliance with the continuing education requirement.
- ~~(14)(13)~~ (a) The executive director may withdraw approval of a continuing education provider, course, or instructor for good and just cause.
- (b) In addition to or in lieu of withdrawal of approval, the executive director may impose a civil penalty of not more than one thousand dollars (\$1,000) per violation of this chapter by a provider or an instructor.

➔Section 9. KRS 304.9-421 is amended to read as follows:

No agent, consultant, adjuster, or surplus lines broker shall directly or indirectly share his or her commission or other compensation received or to be received on account of a transaction under his or her license with any individual or business entity not also licensed as agent, consultant, adjuster, or surplus lines broker under this subtitle as to the kinds of insurance involved in the transaction. This provision shall not affect personal use of the commissions or compensation, **override commission**, payment of the regular salaries due employees of the agent, consultant, adjuster, or surplus lines broker, or distribution in the regular course of business of compensation and profits among members, **employees**, or stockholders of licensee business entities.

➔Section 10. KRS 304.9-425 is amended to read as follows:

- (1) No insurer, financial institution, agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ life settlement broker or provider, or consultant shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any individual or business entity for services as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ life settlement broker or provider, or consultant within this state, unless the individual or business entity held at the time the services were performed a valid license for that line of insurance as required by the laws of this state for the services.
- (2) No individual or business entity, other than an individual or business entity duly licensed by this state as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ life settlement broker or provider, or consultant at the time the services were performed, shall accept any commission, brokerage, or other valuable consideration for those services.
- (3) This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any individual or business entity entitled under this section.
- (4) Services as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ or consultant within this state shall not include a referral by an unlicensed person of a consumer to a licensed agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ or consultant that does not include a discussion of specific insurance policy terms and conditions.
- (5) An insurer, financial institution, agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee,~~[- specialty credit producer or managing employee,]~~ or consultant may pay any compensation, fee, or other consideration to an individual not licensed to sell insurance for the referral of a consumer to a licensed individual, only if the consideration is paid regardless of whether the insurance coverage is sold to the consumer.

➔Section 11. KRS 304.9-430 is amended to read as follows:

- (1) No ~~person~~~~[- individual or business entity,]~~ shall in this state act as or hold himself,~~[- or]~~ herself, **or itself** out to be an **independent, staff, or public** adjuster unless then licensed by the Kentucky Office of Insurance as an **independent, staff, or public** adjuster.~~[- Application for license shall be made to the executive director according to forms as prescribed and furnished by him or her. The executive director shall issue the license as to applicants qualified upon payment of the license application fee stated in KRS 304.4-010.]~~
- (2) ***An individual applying for a resident independent, staff, or public adjuster license shall make application to the executive director on the appropriate uniform individual application and in a format prescribed by the executive director. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the executive director shall find that the individual to be licensed:***
 - (a) ***Is at least eighteen (18) years of age;***
 - (b) ***Is eligible to designate Kentucky as his or her home state;***
 - (c) ***Is trustworthy, reliable, and of good reputation, evidence of which shall be determined through an investigation by the executive director;***

- (d) *Has not committed any act that is a ground for probation, or suspension, revocation, or refusal of a license as set forth in KRS 304.9-440;*
 - (e) *Has successfully passed the examination for the adjuster license and the applicable line of authority for which the individual has applied;*
 - (f) *Has paid the fees established by the executive director pursuant to KRS 304.4-010; and*
 - (g) *Is financially responsible to exercise the license.*
- (3) (a) *To demonstrate financial responsibility, a person applying for a public adjuster license shall obtain a bond or irrevocable letter of credit prior to issuance of a license and shall maintain the bond or letter of credit for the duration of the license. The applicant shall provide evidence of financial responsibility in a format prescribed by the executive director with the following limits:*
- 1. *A surety bond executed and issued by an insurer authorized to issue surety bonds in Kentucky, which bond shall:*
 - a. *Be in the minimum amount of twenty thousand dollars (\$20,000);*
 - b. *Be in favor of the state of Kentucky and shall specifically authorize recovery by the executive director on behalf of any person in Kentucky who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair trade practices in his or her capacity as a public adjuster; and*
 - c. *Not be terminated unless written notice is filed with the executive director and given to the licensee at least thirty (30) days prior to the termination; or*
 - 2. *An irrevocable letter of credit issued by a qualified financial institution, which letter of credit shall:*
 - a. *Be in the minimum amount of twenty thousand dollars (\$20,000);*
 - b. *Be to an account of the executive director and subject to lawful levy of execution on behalf of any person to whom the public adjuster has been found to be legally liable as the result of erroneous acts, failure to act, conviction of fraud, or conviction for unfair practices in his or her capacity as a public adjuster; and*
 - c. *Not be terminated unless written notice is filed with the executive director and given to the licensee at least thirty (30) days prior to the termination.*
- (b) *The issuer of the evidence of financial responsibility shall notify the executive director upon termination of the bond or letter of credit, unless otherwise directed by the executive director.*
- (c) *The executive director may ask for evidence of financial responsibility at any time he or she deems relevant.*
- (d) *The public adjuster license shall automatically terminate if the evidence of financial responsibility terminates or becomes impaired and shall be promptly surrendered to the executive director without demand.*~~[To be licensed as an adjuster the applicant shall:~~
- ~~(a) Be an individual twenty one (21) years or more of age;~~
 - ~~(b) Be a resident of Kentucky, or resident of another state which will permit residents of Kentucky to act as adjusters in the other state;~~
 - ~~(c) Be an employee of an insurer, a full time salaried employee of a licensed adjuster or a graduate of a recognized law school, or have experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him or her reasonably competent to fulfill the responsibilities of an adjuster;~~
 - ~~(d) Be trustworthy and of good reputation;~~
 - ~~(e) Have and maintain an office accessible to the public, and keep therein the usual and customary records pertaining to transactions under the license. This provision shall not be deemed to prohibit maintenance of the office in the office of an insurer, of the employer, or in the home of the licensee;~~

~~(f) Have successfully passed a written examination prescribed by the executive director, except if the applicant has successfully passed a written examination in a state which permits residents of Kentucky to act as adjusters in the other state; and~~

~~(g) Be financially responsible to exercise the license.]~~

~~(4)(3)]~~ A business entity *applying for a resident independent or public adjuster license shall make application to the executive director on the appropriate uniform business entity application and in a format prescribed by the executive director. The applicant shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the executive director shall find that the business entity:*

(a) Is eligible to designate Kentucky as its home state;

(b) Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and regulations of Kentucky;

(c) Has not committed an act that is a ground for probation or suspension, revocation, or refusal of an independent or public adjuster's license as set forth in KRS 304.9-440; and

(d) Has paid the fees established by the executive director pursuant to KRS 304.4-010[; whether or not organized under the laws of this state, may be licensed as an adjuster if each individual who is to exercise the license powers is designated with the executive director as to the license in accordance with KRS 304.9-133].

~~(5)(4)]~~ The executive director may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.

(6) Unless denied licensure pursuant to KRS 304.9-440, a person or business entity who has met the requirements of subsections (2) to (5) of this section shall be issued an independent, staff, or public adjuster license.

(7) An independent or staff adjuster may qualify for a license in one (1) or more of the following lines of authority:

(a) Property and casualty;

(b) Workers' compensation; or

(c) Crop.

(8) A public adjuster may qualify for a license in one (1) or more of the following lines of authority:

(a) Property and casualty; or

(b) Crop.

(9) Notwithstanding any other provision of this subtitle, a license as an independent adjuster shall not be required of the following:

(a) An individual who is sent into Kentucky on behalf of an insurer for the sole purpose of investigating or making adjustment of a particular loss resulting from a catastrophe, or for the adjustment of a series of losses resulting from a catastrophe common to all losses;

(b) An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;

(c) A person employed solely to obtain facts surrounding a claim or to furnish technical assistance to a licensed independent adjuster;

(d) An individual who is employed to investigate suspected fraudulent insurance claims, but who does not adjust losses or determine claims payments;

- (e) *A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate, negotiate, or settle claims with policyholders, claimants, or their legal representatives;*
- (f) *A licensed health care provider or its employee who provides managed care services as long as the services do not include the determination of compensability;*
- (g) *A health maintenance organization or any of its employees or an employee of any organization providing managed care services as long as the services do not include the determination of compensability;*
- (h) *A person who settles only reinsurance or subrogation claims;*
- (i) *An officer, director, manager, or employee of an authorized insurer, surplus lines insurer, or risk retention group, or an attorney-in-fact of a reciprocal insurer;*
- (j) *A United States manager of the United States branch of an alien insurer;*
- (k) *A person who investigates, negotiates, or settles claims arising under a life, accident and health, or disability insurance policy or annuity contract;*
- (l) *An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;*
- (m) *A licensed agent, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer, to whom claim authority has been granted by the insurer; or*
- (n) *A person who:*

- 1. *Is an employee of a licensed independent adjuster or an employee of an affiliate that is a licensed independent adjuster or is supervised by a licensed independent adjuster, if there are no more than twenty-five (25) persons under the supervision of one (1) licensed individual independent adjuster or licensed agent who is exempt from licensure, pursuant to subsection (9)(m) of this section;*
- 2. *Collects claim information from insureds or claimants;*
- 3. *Enters data into an automated claims adjudication system; and*
- 4. *Furnishes claim information to insureds or claimants from the results of the automated claims adjudication system.*

For purposes of this paragraph, "automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and system-generated final resolution of consumer electronic products insurance claims that complies with claim settlement practices pursuant to Subtitle 12 of KRS Chapter 304.

- (10) *Notwithstanding any other provision of this subtitle, a license as a public adjuster shall not be required of the following:*
 - (a) *An attorney licensed to practice law in Kentucky, when acting in his or her professional capacity as an attorney;*
 - (b) *A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;*
 - (c) *A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster, including photographers, estimators, private investigators, engineers, and handwriting experts; or*
 - (d) *A licensed health care provider or its employee who prepares or files a health claim form on behalf of a patient.*
- (11) *For purposes of this section, "home state" means any state or territory of the United States or the District of Columbia in which an independent, staff, or public adjuster maintains his, her, or its principal place of residence or business and is licensed to act as a resident independent, staff, or public adjuster. If the state of the principal place of residence does not license an independent, staff, or public adjuster for the line of*

authority sought, the independent, staff, or public adjuster shall designate as his, her, or its home state, any state in which the independent or public adjuster is licensed and in good standing.

- (12) *Temporary registration for emergency independent or staff adjusters shall be issued by the executive director in the event of a catastrophe declared in Kentucky in the following manner:*
- (a) *An insurer shall notify the executive director by submitting an application for temporary emergency registration of each individual not already licensed in the state where the catastrophe has been declared, who will act as an emergency independent adjuster on behalf of the insurer;*
 - (b) *A person who is otherwise qualified to adjust claims, but who is not already licensed in the state, may act as an emergency independent or staff adjuster and adjust claims if, within five (5) days of deployment to adjust claims arising from the catastrophe, the insurer notifies the executive director by providing the following information, in a format prescribed by the executive director:*
 - 1. *The name of the individual;*
 - 2. *The Social Security number of the individual;*
 - 3. *The name of the insurer that the independent or staff adjuster will represent;*
 - 4. *The catastrophe or loss control number;*
 - 5. *The catastrophe event name and date; and*
 - 6. *Any other information the executive director deems necessary; and*
 - (c) *An emergency independent or staff adjuster's registration shall remain in force for a period not to exceed ninety (90) days, unless extended by the executive director.*
- (13) (a) *Unless refused licensure in accordance with KRS 304.9-440, a nonresident person shall receive a nonresident independent, staff, or public adjuster license if:*
- 1. *The person is currently licensed in good standing as an independent, staff, or public adjuster in his, her, or its home state;*
 - 2. *The person has submitted the proper request for licensure, and has paid the fees required by KRS 304.4-010;*
 - 3. *The person has submitted, in a form or format prescribed by the executive director, the uniform individual application; and*
 - 4. *The person's designated home state issues nonresident independent, staff, or public adjuster licenses to persons of Kentucky on the same basis.*
- (b) *The executive director may verify the independent, staff, or public adjuster's licensing status through any appropriate database or may request certification of good standing.*
 - (c) *As a condition to the continuation of a nonresident adjuster license, the licensee shall maintain a resident adjuster license in his, her, or its home state.*
 - (d) *The nonresident adjuster license issued under this section shall terminate and be surrendered immediately to the executive director if the resident adjuster license terminates for any reason, unless the termination is due to the adjuster being issued a new resident independent or public adjuster license in his, her, or its new home state. If the new resident state does not have reciprocity with Kentucky, the nonresident adjuster license shall terminate.*
- (14) *An individual applying for a nonresident independent, staff, or public adjuster license in Kentucky shall be allowed one hundred eighty (180) days from the effective date of this Act to establish a home state. This subsection shall expire two (2) years from the effective date of this Act.*

~~[(5) Notwithstanding the provisions of this section, no adjuster's license or qualifications shall be required as to any adjuster who is sent into this state on behalf of an insurer for the purpose of investigating or making adjustment of a particular loss under an insurance policy, or for the adjustment of a series of losses resulting from a catastrophe common to all losses.]~~

➔SECTION 12. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A public adjuster shall ensure that all contracts between the public adjuster and the insured for services are in writing and contain the following terms:*
 - (a) *The legible full name of the adjuster signing the contract, as specified in the Office of Insurance licensing records;*
 - (b) *The permanent home state business address and phone number;*
 - (c) *The Office of Insurance license number;*
 - (d) *A title of "Public Adjuster Contract";*
 - (e) *The insured's full name, street address, insurer name, and policy number, if known or upon notification;*
 - (f) *A description of the loss and its location, if applicable;*
 - (g) *A description of services to be provided to the insured;*
 - (h) *The signatures of the public adjuster and the insured;*
 - (i) *The date the contract was signed by the public adjuster and the date the contract was signed by the insured;*
 - (j) *Attestation language stating that the public adjuster has a letter of credit or a surety bond as required by subsection (3) of Section 11 of this Act; and*
 - (k) *The full salary, fee, commission, compensation, or other considerations the public adjuster is to receive for services; and*
- (2) *Any contract that specifies that the public adjuster shall be named as a co-payee on an insurer's payment of a claim is permitted provided that:*
 - (a) *If the compensation is based on a share of the insurance settlement, the exact percentage shall be specified;*
 - (b) *Initial expenses to be reimbursed to the public adjuster from the proceeds of the claim payment shall be specified by type, with dollar estimates set forth in the contract and with any additional expenses, if first approved by the insured; and*
 - (c) *Compensation provisions in a public adjuster contract shall not be redacted in any copy of the contract provided to the executive director. Such a redaction shall constitute an omission of material fact in violation of KRS 304.9-440 and 304.12-230.*
- (3) *If the insurer, not later than seventy-two (72) hours after the date on which the loss is reported to the insurer, either pays or commits in writing to pay to the insured the policy limit of the insurance policy, the public adjuster shall:*
 - (a) *Not receive a commission consisting of a percentage of the total amount paid by an insurer to resolve a claim;*
 - (b) *Inform the insured that the claim settlement amount may not be increased by the insurer; and*
 - (c) *Be entitled only to reasonable compensation from the insured for services provided by the public adjuster on behalf of the insured, based on the time spent on a claim and expenses incurred by the public adjuster, until the claim is paid or the insured receives a written commitment to pay from the insurer.*
- (4) *A public adjuster shall provide the insured with a written disclosure concerning any direct or indirect financial interest that the public adjuster has with any other party who is involved in any aspect of the claim, other than the salary, fee, commission, or other consideration established in the written contract with the insured, including but not limited to any ownership of, other than as a minority stockholder, or any compensation expected to be received from, any construction firm, salvage firm, building appraisal firm, motor vehicle repair shop, or any other firm that provides estimates for work, or that performs any work, in conjunction with damages caused by the insured loss on which the public adjuster is engaged. For purposes*

of this subsection, "firm" includes any corporation, partnership, association, joint-stock company, or person.

- (5) *A public adjuster contract may not contain any contract term that:*
- (a) *Allows the public adjuster's percentage fee to be collected when money is due from an insurer, but not paid; or allows a public adjuster to collect the entire fee from the first check issued by an insurer, rather than as a percentage of each check issued by an insurer;*
 - (b) *Requires the insured to authorize an insurer to issue a check only in the name of the public adjuster;*
 - (c) *Imposes collection costs or late fees; or*
 - (d) *Precludes a public adjuster from pursuing civil remedies.*
- (6) *Prior to the signing of the contract, a public adjuster shall provide the insured with a separate disclosure document regarding the claim process that shall state the following:*

"Property insurance policies obligate the insured to present a claim to his or her insurance company for consideration. Three (3) types of adjusters may be involved in the claim process as follows:

- 1. *"Staff adjuster" means an insurance adjuster who is an employee of an insurance company who represents the interest of the insurance company and who is paid by the insurance company. A staff adjuster shall not charge a fee to the insured;*
- 2. *"Independent adjuster" means an insurance adjuster who is hired on a contract basis by an insurance company to represent the insurance company's interest in the settlement of the claims and who is paid by the insurance company. An independent adjuster shall not charge a fee to the insured; and*
- 3. *"Public adjuster" means an insurance adjuster who does not work for any insurance company. A public adjuster works for the insured to assist in the preparation, presentation, and settlement of the claim, and the insured hires a public adjuster by signing a contract agreeing to pay him or her a fee or commission based on a percentage of the settlement or other method of payment.*

The insured is not required to hire a public adjuster to help the insured meet his or her obligations under the policy, but has the right to hire a public adjuster. The insured has the right to initiate direct communications with the insured's attorney, the insurer, the insurer's adjuster, the insurer's attorney, and any other person regarding the settlement of the insured's claim. The public adjuster shall not be a representative or employee of the insurer. The salary, fee, commission, or other consideration paid to the public adjuster is the obligation of the insured, not the insurer."

- (7) *The contract between the public adjuster and the insured shall be executed in duplicate to provide an original contract to the public adjuster and an original contract to the insured. The public adjuster's original contract shall be available at all times for inspection by the executive director without notice.*
- (8) *The public adjuster shall provide the insurer a notification letter, which has been signed by the insured, authorizing the public adjuster to represent the insured's interest.*
- (9) *The public adjuster shall give the insured written notice of the insured's rights as provided in this section.*
- (10) *The insured has the right to rescind the contract within three (3) business days after the date the contract was signed. The rescission shall be in writing and mailed or delivered to the public adjuster at the address in the contract and postmarked or received within the three (3) business day period.*
- (11) *If the insured exercises the right to rescind the contract, anything of value given by the insured under the contract shall be returned to the insured within fifteen (15) business days following receipt by the public adjuster of the rescission notice.*
- (12) *A public adjuster who receives, accepts, or holds any funds on behalf of an insured toward the settlement of a claim for loss or damage shall deposit the funds in a noninterest bearing escrow or trust account in a financial institution that is insured by an agency of the federal government in the public adjuster's home state or where the loss occurred.*

➔SECTION 13. A NEW SECTION OF SUBTITLE 9 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A public adjuster shall maintain a complete record of each transaction as a public adjuster. The records required by this section shall include the following:*
- (a) *The name of the insured;*
 - (b) *The date, location, and amount of the loss;*
 - (c) *A copy of the contract between the public adjuster and insured;*
 - (d) *The name of the insurer and the amount, expiration date, and number of each policy carried with respect to the loss;*
 - (e) *An itemized statement of the insured's recoveries;*
 - (f) *An itemized statement of all compensation received by the public adjuster, from any source whatsoever, in connection with the loss;*
 - (g) *A register of all money received, deposited, disbursed, or insured, including fees transfers and disbursements from a trust account and all transactions concerning all interest-bearing accounts;*
 - (h) *The name of the public adjuster who executed the contract;*
 - (i) *The name of the attorney representing the insured, if applicable, and the name of the claims representatives of the insurer; and*
 - (j) *Evidence of financial responsibility, in a format prescribed by the executive director.*
- (2) *An independent adjuster shall maintain a copy of each contract between the independent adjuster and the insurer or self-insurer and comply with the record retention policy as agreed to in the contract.*
- (3) *Records shall be maintained by a public adjuster for at least five (5) years after the termination of a transaction with an insured and shall be open to examination by the executive director at all times.*

➔Section 14. KRS 304.9-432 is amended to read as follows:

- (1) In the event that an applicant for an adjuster's license meets the qualification requirements of KRS 304.9-430 except that he or she has not had experience or special education or training as to the handling of loss claims under insurance contracts of sufficient duration and extent to make him or her reasonably confident to fulfill the responsibilities as an adjuster, he or she shall not be required to take and successfully complete the prescribed written examination and may be issued a temporary license as an apprentice adjuster for a period not to exceed twelve (12) months.
- (2) A temporary license as an apprentice adjuster shall be subject to the following terms and conditions:
- (a) An individual holding a temporary license as apprentice adjuster shall have all of the privileges and obligations of an adjuster licensed under the insurance code;
 - (b) An individual holding a temporary license as an apprentice adjuster shall at all times be a full-time salaried employee of an insurer or an adjuster and subject to training, direction, and control by a licensed adjuster acting in the same capacity as that for which the applicant applied;
 - (c) A temporary license as apprentice adjuster shall be subject to suspension, revocation, or conditions in accordance with KRS 304.9-440; and
 - (d) An individual may hold only one (1) temporary license as an apprentice adjuster.
- (3) *An individual applying for a resident apprentice adjuster license shall make application to the executive director on the appropriate uniform individual application, in a format prescribed by the executive director, and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the executive director shall determine whether the applicant:*
- (a) *Is at least eighteen (18) years of age;*
 - (b) *Is a resident of Kentucky and has designated Kentucky as his or her home state;*
 - (c) *Has a business or mailing address in the state for acceptance of service of process;*

- (d) *Has not committed any act that is a ground for probation, or suspension, revocation, or denial of licensure as set forth in KRS 304.9-440;*
 - (e) *Is trustworthy, reliable, and of good reputation, evidence of which may be determined by the executive director;*
 - (f) *Has paid the fees prescribed by administrative regulation promulgated pursuant to KRS 304.4-010; and*
 - (g) *Has provided an attestation from a licensed independent, staff, or public adjuster with the same line of authority for which the apprentice has applied, attesting that the apprentice adjuster shall be subject to training, direction, and control by the licensed adjuster, and further certifying that the licensed adjuster assumes responsibility for the actions of the apprentice in the apprentice's capacity as an adjuster.*
- (4) *The apprentice adjuster license shall be subject to the following terms and conditions:*
- (a) *The apprentice adjuster shall only be authorized to adjust claims in the state that has issued the apprentice adjuster license;*
 - (b) *The apprentice adjuster shall be restricted to participation in the investigation, settlement, and negotiation of claims subject to the review and final determination of the claim by the supervising licensed adjuster;*
 - (c) *Compensation of an apprentice adjuster shall be on a salaried or hourly basis only;*
 - (d) *The apprentice adjuster shall not be required to pass the independent or public adjuster examination, as required by subsection (2) of Section 11 of this Act, to adjust claims as an apprentice adjuster. At any time during the apprenticeship, the apprentice adjuster may choose to take the examination required by subsection (2) of Section 11 of this Act and, if he or she passes the examination, the apprentice adjuster license shall automatically terminate and an adjuster license shall be issued to that individual in place thereof; and*
 - (e) *The apprentice adjuster license shall be for a time period not to exceed twelve (12) months and is nonrenewable.*
- (5) *The licensed independent, staff, or public adjuster responsible for the apprentice adjuster shall only supervise the activities of the apprentice adjuster as set forth in this subtitle.*

➔Section 15. KRS 304.9-436 is amended to read as follows:

- (1) An authorized insurer shall not do business in Kentucky with an adjuster who is unlicensed in violation of ~~KRS 304.9-070 and~~ 304.9-080 *and Section 11 of this Act*. This section shall not apply to transactions between an authorized insurer and persons providing adjusting services pursuant to *subsections (9), (10), and (12) of Section 11 of this Act* ~~KRS 304.9-070(1), (2), (3), (4) or (5) or 304.9-430(5)}~~.
- (2) An authorized insurer shall not do business in Kentucky with an administrator who is not licensed in accordance with KRS 304.9-052. This subsection shall not apply to transactions between an authorized insurer and persons providing administrator services pursuant to KRS 304.9-051.

➔Section 16. KRS 304.9-505 is amended to read as follows:

- (1) A license issued under this section shall permit rental vehicle insurance sales by the license holder provided the sales are conducted in accordance with the provisions of KRS 304.9-507.
- (2) A business entity licensee shall register with the executive director each separate business location where its employees sell, solicit, or negotiate insurance and may pay a location registration fee for each separate location.
- (3) *A rental vehicle agent managing employee with an active license issued by the executive director shall oversee employees at each assigned location.*
- (4) The executive director may issue to *a business entity* ~~an applicant~~ qualified under this section a license to act as a rental vehicle agent.

(5)(4) For a license to be issued under this section, the **business entity**~~applicant~~ shall submit to the executive director all of the following:

- (a) A written application, signed by the **authorized representative of the business entity**~~applicant~~, on a form prescribed by the executive director, that contains the information prescribed by the executive director;
- (b) **Satisfaction of all general agent licensing requirements as prescribed in subsections (1)(c) and (2) of Section 2 of this Act**~~A certification by an insurer authorized to do business in this state, signed, and affirmed as true under penalty of perjury by an officer stating that:~~
 - 1. ~~The insurer has satisfied itself that the named applicant is trustworthy and competent to act as the insurer's agent; and~~
 - 2. ~~The insurer has appointed the applicant to act as agent for the type of insurance specified;~~
- (c) The application fee, appointment fee, and location registration fee as provided in KRS 304.4-010~~and KRS 304.9-501 to 304.9-513~~;
- (d) A business entity applicant shall submit a list of physical locations where activities authorized by the rental vehicle agent license will be conducted; **and**
- (e) A business entity applicant shall **ensure**~~certify~~ that each proposed licensed managing employee has successfully completed **a prelicensing course of study and**~~education and training programs,~~ successfully passed **a rental vehicle examination**~~course examinations, and will receive continuing education all~~ approved by the executive director~~in accordance with KRS 304.9-513; and~~
- (f) ~~A business entity applicant shall submit proof that the applicant will provide education, training, and continuing education approved by the executive director in accordance with KRS 304.9-513 for each rental vehicle employee or representative. However, a test shall not be required for each rental vehicle employee or representative who is not a licensed managing employee.~~

(6)(5) The executive director may require any documents reasonably necessary to verify the information contained in the application submitted in accordance with subsection (5)(4) of this section.

➔Section 17. KRS 304.9-507 is amended to read as follows:

- (1) A license issued to a business entity under KRS 304.9-505 shall authorize an employee or representative of the business entity licensee to sell, solicit, or negotiate rental vehicle insurance without being licensed, registered, or otherwise individually identified, if all of the following are true:
 - (a) The employee, representative, or managing employee operates with permission from the business entity licensee;
 - (b) The business entity licensee assumes responsibility for the insurance activities of its unlicensed employees,~~or~~ representatives, **or managing employees**;
 - (c) The employee or representative operates under the supervision of a managing employee who is licensed as a rental vehicle agent and who shall be available at all times for consultation for and adequate supervision of the business locations registered with the executive director during the sale, solicitation, or negotiation of rental vehicle insurance. However, a managing employee need not be present at each business location registered with the executive director;
 - (d) The business entity maintains an adequate number of managing employees available for consultation and supervision for the employees or representatives offering insurance products;
 - (e) The employee, representative, or managing employee has been instructed by the rental vehicle agent with respect to the consumer disclosures that are required under KRS 304.9-509 prior to the sale of the rental vehicle insurance;
 - (f) The employee or representative is not primarily compensated based on the amount of insurance sold by the employee or representative; and
 - (g) The business location is registered with the executive director.

- (2) A licensee shall not advertise, represent, or otherwise hold out the licensee or any employee or representative of the licensee as a licensed insurance agent under another section of this subtitle, unless the entity or individual actually holds the applicable license.

➔Section 18. KRS 304.9-509 is amended to read as follows:

Rental vehicle insurance shall not be transacted under ~~this subtitle [KRS 304.9-501 to 304.9-513]~~ at any location unless the following consumer protection disclosures are made in writing that meets the readability standards set forth in KRS 304.14-440 and the regulations promulgated thereunder prior to the sale of rental vehicle insurance and are included with the rental vehicle agreement:

- (1) A clear and concise description of the material terms and conditions of the coverage, including a description of exclusions;
- (2) A description of the process for filing a claim and a toll-free telephone number for reporting a claim;
- (3) A statement that the coverage offered by the rental vehicle agent may be a duplication of coverage already provided by the renter's personal automobile insurance policy or by another source of coverage;
- (4) A statement that the renter is not required to purchase any insurance from the rental vehicle company in order to rent a vehicle. However, the rental vehicle company may refuse to rent a vehicle to an uninsured driver;
- (5) The name and address of the underwriting insurer;
- (6) A separate itemization of all costs for the rental vehicle insurance;
- (7) Confirmation that the insurer underwriting coverage is authorized to transact insurance in Kentucky; and
- (8) A statement that the rental vehicle insurance is primary coverage ***over any other coverage which may be available to the renter or authorized driver covering the same loss*** ~~[as set forth in KRS 304.9-503(2)]~~.

➔Section 19. KRS 304.12-100 is amended to read as follows:

Nothing in KRS 304.12-080, 304.12-090, or 304.12-110 shall be construed as prohibiting:

- (1) Payment of lawfully earned commission or other lawful compensation to duly licensed insurance producers as defined in KRS 304.9-020(10) ~~[(7)]~~ or compensation disclosed in a written disclosure agreement as described in KRS 304.11-042;
- (2) Distribution by a participating insurer to its participating policyholders of dividends, savings, or the unused or unabsorbed portion of premiums and premium deposits;
- (3) Furnishing of information, advice, programs, or services that are intended to reduce the future cost of insurance of the policyholder or the probability or severity of loss and assist in the efficient administration and management of the policyholder's insurance program or to assist the client in complying with any state or federal law. Such services shall include but are not limited to providing software to administer an insured's employee benefits or risk management programs, employee wellness programs, risk management services, loss control services, workers' compensation analysis forecasting, or any other service designed to assist in the efficient administration of a policyholder's insurance program;
- (4) Life insurers from paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, if such bonus or abatement is fair and equitable to all policyholders and for the best interests of the insurer and its policyholders;
- (5) In the case of insurance policies issued on the debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the savings in collection expense or making allowance to policyholders who make premium payments at less frequent intervals than required;
- (6) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of any policy year of insurance thereunder, which may be made retroactive only for such policy year; or
- (7) An insurer from waiving, in whole or in part, a policyholder's deductible for food spoilage for an insured risk located in a county declared to be a federal disaster area.

➔Section 20. KRS 304.12-110 is amended to read as follows:

No insurer, insurance producer as defined in KRS 304.9-020(10)~~[(7)]~~, or other person shall, as an inducement to insurance, or in connection with any insurance transaction, provide in any policy for, or offer, sell, buy, or offer or promise to buy, sell, give, promise, or allow to the insured or prospective insured or to any other person on his behalf in any manner whatsoever:

- (1) Any employment;
- (2) Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto;
- (3) Any advisory board contract, or any similar contract, agreement or understanding, offering, providing for, or promising any profits or special returns or special dividends; or
- (4) Any prizes, goods, wares, merchandise, or property of an aggregate value in excess of twenty-five dollars (\$25).

➔Section 21. The following KRS sections are repealed:

304.9-070 "Adjuster" defined.

304.9-485 Licensing of specialty credit insurance producers -- Authorization of employees or representatives -- Rights and limitations.

304.9-501 Definitions for KRS 304.9-501 to 304.9-513.

304.9-503 Types of insurance that rental vehicle agent may handle at company office -- Coverage is primary over other coverage.

304.9-513 Penalties -- Educational materials to be provided to executive director -- Commissions and other compensation -- Renewal of licenses -- Administrative regulations.

Signed by Governor April 8, 2010.

CHAPTER 84

(HB 217)

AN ACT relating to location of car dealerships.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 190 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsections (2) and (3) of this section, if a dealer licensed under this chapter has its franchise revoked by the manufacturer on or after January 1, 2009, for grounds other than those provided in KRS Chapter 190, the commission shall not grant a new motor vehicle dealer license establishing a new motor vehicle dealership, or relocating an existing new motor vehicle dealership, within a ten (10) mile radius of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicles had its franchise revoked.*
- (2) *If the manufacturer can show proof that the franchise was offered to the original franchisee at substantially similar terms as offered to other potential buyers, and the original franchisee refused the offer, then the prohibition in subsection (1) of this section shall not apply and the commission may grant a new motor vehicle dealer license within the ten (10) mile radius described in subsection (1) of this section.*
- (3) *The prohibition against granting a new motor vehicle dealer license outlined in subsection (1) of this section shall remain in effect for ten (10) years from the date of revocation of the original franchise by the manufacturer.*

Signed by Governor April 8, 2010.

CHAPTER 85**(HB 179)**

AN ACT relating to health care practitioners.

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

➔SECTION 1. KRS 313.010 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

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

- (1) *"Board" means the Kentucky Board of Dentistry;*
- (2) *"Certified dental technician" means an individual recognized as such by the National Board for Certification in Dental Laboratory Technology;*
- (3) *"Dentist" means any person who has graduated from a Commission on Dental Accreditation (CODA) accredited dental school and has been conferred with the degree of "Doctor of Medical Dentistry" (D.M.D.) or "Doctor of Dental Surgery" (D.D.S.);*
- (4) *"Dental hygienist" means any person who has graduated from a CODA accredited dental hygiene program at an institute of higher learning and has been credentialed as a "Registered Dental Hygienist";*
- (5) *"Registered dental assistant" means any person who is registered with the board and works under the direct supervision of a dentist;*
- (6) *"Dental auxiliary personnel" means any staff member of a dental office not licensed by or registered with the board;*
- (7) *"Dental laboratory" includes any person, firm, or corporation other than a licensed dentist, who directly or through an agent or employee, by any means or method, in any way supplies or manufactures artificial substitutes for the natural teeth, other than those unfinished substitutes normally available through dental supply houses, or who furnishes supplies, constructs, or reproduces or repairs any prosthetic denture, bridge, or appliance to be worn in the human mouth or who performs or offers or undertakes to perform or accomplish dental laboratory technology;*
- (8) *"Dental laboratory technician" means any person who performs or offers or undertakes to perform or accomplish dental laboratory technology;*
- (9) *"Dentistry" means the evaluation, diagnosis, prevention, or surgical, nonsurgical, or related treatment of diseases, disorders, or conditions of the oral cavity, maxillofacial area, or the adjacent and associated structures and their impact on the human body provided by a dentist within the scope of his or her education, training, and experience and in accordance with the ethics of the profession and applicable law. Any person shall be regarded as "practicing dentistry" who, for a fee, salary, or other reward paid, or to be paid either to himself or herself, or to another person, performs or advertises to perform, dental operations of any kind, including the whitening of natural or manufactured teeth, or who diagnoses or treats diseases or lesions of human teeth or jaws, or attempts to correct malpositions thereof, or who diagnoses or treats disorders, or deficiencies of the oral cavity and adjacent associated structures, or who takes impressions of the human teeth or jaws to be used directly in the fabrication of any intraoral appliance, or shall construct, supply, reproduce or repair any prosthetic denture, bridge, artificial restoration, appliance or other structure to be used or worn as a substitute for natural teeth, except upon the written laboratory procedure work order of a licensed dentist and constructed upon or by the use of casts or models made from an impression taken by a licensed dentist, or who shall advertise, offer, sell, or deliver any such substitute or the services rendered in the construction, reproduction, supply, or repair thereof to any person other than a licensed dentist, or who places or adjusts such substitute in the oral cavity of another, or who uses the words "dentist," "dental surgeon," the letters "D.D.S.," "D.M.D.," or other letters or title in connection with his or her name, which in any way represents him or her as being engaged in the practice of dentistry;*
- (10) *"Dental hygiene" means the treatment of the oral cavity, including but not limited to dental hygiene assessment or screening, scaling and root planing, nonsurgical therapy, removing calcareous deposits, removing accumulated accretion from beneath the free gingival margin, cavity preventive procedures, periodontal procedures that require administering antimicrobial agents along with other general dentistry*

activities outlined in the treatment care plan and not prohibited by this chapter or by administrative regulation promulgated by the board;

- (11) *"Dental specialist" means a dentist who practices in fields of specialty recognized and approved by the American Dental Association;*
- (12) *"Delegated duties list" means the list of procedures authorized in administrative regulation which may be delegated by a dentist licensed under this chapter to a licensed dental hygienist or a registered dental assistant;*
- (13) *"Direct supervision" means that the dentist is physically present in the dental office or treatment facility, personally diagnoses the condition to be treated, authorizes the procedures to be performed, remains in the dental office or treatment facility while the procedures are being performed, and evaluates the performance of the individual supervised;*
- (14) *"General supervision" means a circumstance of treatment in which a dentist licensed under this chapter must diagnose and authorize the work to be performed on a patient by the dental hygienist authorized pursuant to administrative regulation to work under general supervision but the dentist is not required to be on the premises while the treatment is carried out;*
- (15) *"Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education; and*
- (16) *"Volunteer community health setting" means a setting in which services are rendered at no charge to the patient or to third-party payors.*

➔SECTION 2. KRS 313.020 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The Kentucky Board of Dentistry shall consist of ten (10) members, each appointed by the Governor to a four (4) year term. Seven (7) members of the board shall be licensed dentists appointed from a list of three (3) names recommended for each board position by the resident licensed dentists of Kentucky at an annual election at a time selected by the Kentucky Board of Dentistry. Two (2) members of the board shall be dental hygienists licensed to practice dental hygiene in the Commonwealth. Each appointment to the board of a licensed dental hygienist shall be made from a list of three (3) names recommended for this position by the resident licensed dental hygienists of Kentucky at an annual election at a time selected by the board. One (1) member shall be a citizen at large who is not associated with or financially interested in the practice or business regulated. One (1) nonvoting ex officio representative from each the University of Kentucky and the University of Louisville shall represent the dental schools' interests. One (1) nonvoting ex officio representative from a hygiene program not associated with the University of Kentucky or the University of Louisville shall represent the dental hygiene programs' interests. The hygiene school seats shall rotate on a yearly basis. One (1) nonvoting ex officio representative from the Department for Public Health shall represent the department's interests.*
- (2) *Individuals seeking board appointment, other than the citizen member, shall have been an actual resident and licensed practicing dentist or dental hygienist of the Commonwealth for not less than five (5) years immediately preceding his or her appointment to the board, be in good standing with the board, and shall not have been disciplined by the board in the past eight (8) years. A voting member shall not receive compensation from or have a financial interest in any dental college or dental department of any institution of learning, dental supply business, or any entity over which the board has regulatory authority or sets standards for. For this subsection alone, a private admonishment shall not count as discipline.*
- (3) *No board member shall serve more than two (2) consecutive terms. A member appointed to a partial term vacancy exceeding two (2) years shall be deemed to have served one (1) full term. A former member may be reappointed following an absence of one (1) term.*
- (4) *The board shall annually:*
 - (a) *Meet at least four (4) times a year;*
 - (b) *At the first meeting of the board after July 1, elect officers of the board by majority vote of the members present; and*
 - (c) *Set a schedule of at least four (4) regular meetings for the next twelve (12) month period.*
- (5) *A majority of the voting members of the board shall constitute a quorum for the transaction of business.*

- (6) (a) *A member of the board who misses three (3) regular meetings in one (1) year shall be deemed to have resigned from the board, and his or her position shall be deemed vacant.*
- (b) *The failure of a board member to attend a special or emergency meeting shall not result in any penalty.*
- (c) *The year specified in paragraph (a) of this subsection shall begin with the first meeting missed and end three hundred sixty-five (365) days later or with the third meeting missed, whichever occurs earlier.*
- (d) *The Governor shall appoint a person of the same class to fill the vacancy within ninety (90) days.*
- (e) *A person removed under this subsection shall not be reappointed to the board for four (4) years.*
- (7) *Each voting member of the board shall receive any necessary expenses incurred in attending its meetings. Each voting member shall receive as compensation two hundred dollars (\$200) for each day actually engaged in the duties of his or her office.*
- (8) *Annual reports and recommendations from the board shall be sent by February 1 each year to the Governor and the General Assembly.*

➔SECTION 3. KRS 313.021 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The board shall:*
 - (a) *Exercise all of the administrative functions of the Commonwealth in the regulation of the profession of dentistry, including but not limited to dentists, dental hygienists, dental assistants, and dental laboratories;*
 - (b) *Subject to the provisions of this chapter, create levels of licensure or registration as appropriate for individuals providing services under this chapter. These shall consist of:*
 - 1. *Dentist;*
 - 2. *Dental hygienist; and*
 - 3. *Dental assistant;*
 - (c) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A for any license or registration the board may create. The administrative regulations shall, at a minimum, address:*
 - 1. *Requirements for students, if appropriate;*
 - 2. *Requirements for education;*
 - 3. *Eligibility for licensure or registration; and*
 - 4. *Renewal requirements;*
 - (d) *Oversee the operations and establish the organizational structure of the Office of the Kentucky Board of Dentistry, which is created and shall be attached to the board for administrative purposes. The office shall be headed by the executive director appointed under paragraph (e) of this subsection and shall be responsible for:*
 - 1. *Personnel and budget matters affecting the board;*
 - 2. *Fiscal activities of the board, including grant writing and disbursement of funds;*
 - 3. *Information technology, including the design and maintenance of databases;*
 - 4. *Licensure of dentists and dental hygienists;*
 - 5. *Registration of dental assistants;*
 - 6. *Investigation of complaints; and*
 - 7. *Other responsibilities which may be assigned to the executive director by the board;*

- (e) *Employ an executive director and fix his or her compensation. The executive director shall serve at the pleasure of the board, administer the day-to-day operations of the Office of the Kentucky Board of Dentistry, and supervise all directives of the board. The executive director shall possess a baccalaureate degree and shall have no less than five (5) years of experience in public administration;*
 - (f) *Employ or contract with an attorney licensed to practice law in Kentucky and fix his or her compensation. The attorney shall serve at the pleasure of the board and have primary assignment to the board;*
 - (g) *Employ or contract with personnel sufficient to carry out the statutory responsibilities of the board;*
 - (h) *Establish committees and subcommittees and the membership thereof. Members of committees and subcommittees shall not need to be members of the board;*
 - (i) *Provide for affiliation with the American Association of Dental Boards;*
 - (j) *Select the subject matter and standards of proficiency for examinations related to issuance of licenses or registrations issued under this chapter or administrative regulations promulgated hereunder; and*
 - (k) *Have the authority to issue advisory opinions and declaratory rulings related to this chapter and the administrative regulations promulgated thereunder as established by administrative regulation.*
- (2) *The board may utilize materials, services, or facilities as may be made available to it by other state agencies or may contract for materials, services, or facilities.*
 - (3) *The board shall develop a proposed biennial budget for all administrative and operational functions and duties.*

➔SECTION 4. KRS 313.022 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The board shall, by administrative regulation promulgated in accordance with KRS Chapter 13A, prescribe a schedule of reasonable fees, charges, and fines not to exceed the national average of other state dental boards for:*
 - (a) *Examination;*
 - (b) *Issuance, renewal, and reinstatement of licenses;*
 - (c) *Issuance, renewal, and reinstatement of registrations;*
 - (d) *Inspections and reinspections;*
 - (e) *Applications;*
 - (f) *Other services and materials provided by the board;*
 - (g) *Investigations;*
 - (h) *Administrative legal costs; and*
 - (i) *Fines for infractions.*
- (2) *All fees, charges, or other moneys collected or received by the board shall be paid into the State Treasury and credited to a trust and agency fund which, notwithstanding KRS 45.229, shall not lapse, to be used by the board for the carrying out of the provisions of this chapter.*
- (3) *All disbursements by the board in the transactions of its business and in the enforcement of the provisions of this chapter shall be paid out of such trust and agency account as claims against the state in accordance with the provisions of KRS Chapters 45 and 45A.*
- (4) *The board may establish a petty cash fund not to exceed one thousand dollars (\$1,000) for the purpose of making disbursements requiring prompt cash outlay, and to carry out the provisions of KRS 45A.045 applying to the delegation of authority to purchase.*

➔SECTION 5. KRS 313.030 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The license or registration held by a dentist, dental hygienist, or dental assistant shall be valid for a period of two (2) years.*

- (2) *Each license or registration held by a dentist, dental hygienist, or dental assistant shall expire on December 31. A dentist's license shall expire in odd-numbered years, while all other licenses or registrations issued by the board shall expire in even-numbered years.*
- (3) *Each license or registration held by any person issued under the provisions of this chapter shall be renewed at least biennially. Upon receipt of the application and fee, the board shall verify the accuracy of the application to determine whether the licensee or person seeking licensure or registration has met all the requirements as set forth in this chapter and in the administrative regulations promulgated by the board, and, if so, shall issue to the applicant a license or registration to practice or engage in the activity for the ensuing licensure or registration period. Such license or registration shall render the holder a legal practitioner of the practice or activity specified in the license or registration for the period stated on it. The board shall prescribe by administrative regulation promulgated in accordance with KRS Chapter 13A the beginning and ending of the licensure or registration period.*
- (4) *Any person who is licensed or registered by the board who allows his or her license or registration to lapse by failing to renew the license or registration as provided in this section may be reinstated by the board on payment of the current fee for original licensure or registration in addition to any late fees and by meeting the requirements of administrative regulations promulgated by the board.*
- (5) *An application for renewal of a license or registration shall be completed online or, if a written request is made to the board prior to November 1 of the year of expiration, a paper application shall be sent to the last known address of each licensee or certified or registered person requesting a paper application.*
- (6) *Any person engaging in any practice or activity regulated by the board during the time his or her license or registration has lapsed shall be considered practicing with an expired license or registration and shall be subject to the penalties provided for violations of this chapter.*
- (7) *Failure to receive the application for renewal of a license or registration shall not relieve a dentist, dental hygienist, or dental assistant from the duty to renew his or her license or registration prior to December 31 of the year in which the license or registration expires.*
- (8) *The duration of any license or registration issued by the board may be limited by disciplinary action of the board.*
- (9) *Every license or registration issued by the board shall have the seal of the board affixed. A holder of a license or registration shall retain it in his or her possession and be prepared to exhibit it upon demand by an employer or anyone to whom the holder of the license or registration offers treatment or any board or staff member of the Kentucky Board of Dentistry. Each license or registration issued by the board shall be posted in a conspicuous place in each place of employment of the dentist, dental hygienist, or dental assistant.*
- (10) *Failure or refusal to produce a license or registration upon demand shall be prima facie evidence that no such license or registration exists.*
- (11) *In order to ensure a proper transition during the implementation of the provisions of this section, the board may, for a period of no longer than three (3) years, extend a license or registration of any person in order to utilize the expiration date provided for in this section. The board shall, in writing, notify each person whose license or registration is extended of the extension and the new date of expiration. The extension shall be without charge.*

➔SECTION 6. KRS 313.035 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dentists. The administrative regulations shall include the classification of and licensure of dentists, by examination or credentials, the licensure of specialists, student limited licenses, faculty limited licenses, reciprocity, retirement of a license, reinstatement of a license, charity licenses, and conscious sedation and anesthesia permits.*
- (2) *Renewal programs shall be organized to include continuing education approved by the board.*
- (3) *For the purposes of licensure of specialists the board shall only recognize fields of specialty duly recognized and approved by the American Dental Association. Individuals licensed as specialists shall not practice outside of that specialty except as provided for in charitable dentistry as defined by administrative*

regulation, during a declared disaster by order of the Governor, or when the special needs of the patient require they be followed past the age of eighteen (18) by a pediatric dentist.

- (4) No person licensed under this chapter, who in good faith renders emergency care at the scene of an emergency, shall be liable for any civil damages as a result of any acts or omissions by such person in rendering the emergency care.*
- (5) Any dentist who serves on any committee, board, commission, or other entity which is duly constituted by any licensed hospital, dental society or association affiliated with the American Dental Association, dental care foundation affiliated with such dental society or association or governmental or quasi-governmental agency for the purpose of reviewing and evaluating the dental acts of other dentists, or dental auxiliary personnel, shall not be required to respond in damages for any action taken by him or her in good faith as a member of such committee, board, commission, or other entity.*
- (6) Licensed dentists may prescribe any drug necessary within the scope of their practice.*
- (7) Dentists may sign death certificates the same as physicians, when necessary in the line of their profession.*
- (8) Nothing in this chapter shall apply to a legally licensed doctor of medicine unless he or she practices dentistry as a specialty.*
- (9) Nothing in this chapter shall apply to a practitioner of dentistry duly licensed by another state or the District of Columbia while making a clinical demonstration before a dental society, convention, association of dentists, or a dental school.*

➔SECTION 7. KRS 313.040 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental hygienists. The administrative regulations may include at a minimum the classification of and licensure of dental hygienists, by examination or credentials, general supervision privileges, anesthesia registration, retirement of a license, reinstatement of a license, and charity licenses.*
- (2) Renewal programs shall be organized to include continuing education approved by the board.*
- (3) A licensed dental hygienist shall practice under the supervision, order, control, and full responsibility of a dentist licensed under this chapter and may practice:*
 - (a) In a dental office, public or private school, health care facility, or government institution with a dentist on staff;*
 - (b) Without the physical presence of a supervising dentist as provided in administrative regulations promulgated pursuant to subsections (6), (7), and (8) of this section; or*
 - (c) Without a supervising dentist if providing screening services in accordance with subsection (9) of this section.*
- (4) It shall be unlawful for a person or corporation to practice dental hygiene in a manner that is separate or independent from the dental practice of a supervising dentist or to establish or maintain an office or practice that is primarily devoted to the provision of dental hygiene services.*
- (5) A dental hygienist may be employed by the supervising dentist or under contract with a dentist licensed under this chapter who is one (1) of the following:*
 - (a) The employer of the supervising dentist;*
 - (b) A shareholder in a professional association formed under KRS 274.015 of which the supervising dentist is a shareholder;*
 - (c) A member or manager of a limited liability company formed under KRS 275.005 of which the supervising dentist is a member or manager;*
 - (d) A shareholder in a corporation formed under KRS Chapter 271B of which the supervising dentist is a shareholder;*
 - (e) A partner or employee of a partnership of which the supervising dentist is a partner or employee; or*
 - (f) A government entity that employs the dental hygienist to provide dental hygiene services in a public school in connection with other programs the government entity administers.*

- (6) *A dental hygienist may provide the following procedures in a volunteer community health setting without the supervision of a dentist:*
- (a) *Dental health education;*
 - (b) *Nutritional counseling;*
 - (c) *Preparing a generalized oral screening with subsequent referral to a dentist;*
 - (d) *Applying fluoride on patients;*
 - (e) *Demonstration of oral hygiene technique; and*
 - (f) *Sealants.*
- (7) (a) *A dental hygienist may provide, for not more than fifteen (15) consecutive full business days, dental hygiene services to a patient when the supervising dentist is not physically present at the location at which the services are provided if all the following requirements are met:*
- 1. *The dental hygienist has at least two (2) years with a minimum of three thousand (3,000) hours of experience in the practice of dental hygiene;*
 - 2. *The dental hygienist has successfully completed a course approved by the board in the identification and prevention of potential medical emergencies with reregistration in this course every two (2) years;*
 - 3. *The dental hygienist complies with written protocols for emergencies the supervising dentist establishes;*
 - 4. *The dental hygienist does not examine or provide dental health services to a patient who has not been examined by the supervising dentist within the previous seven (7) months. The supervising dentist shall have completed and evaluated a medical and dental history of the patient and shall have placed a written order for treatment in the patient's file. The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to determine guidelines for the written order; and*
 - 5. *A patient is notified in advance of an appointment for dental hygiene services when the supervising dentist will be absent from the location. The patient shall be required to sign an informed consent form, prior to treatment by the hygienist, acknowledging the dentist's absence.*
- (b) *The board shall promulgate administrative regulations to determine procedures the dental hygienist shall not be allowed to perform while the supervising dentist is absent from the work site.*
- (8) *A dental hygienist licensed by the board may practice as a public health hygienist and may provide dental hygiene services if:*
- (a) *The services are provided as part of a dental health program;*
 - (b) *The program for which the hygienist works is operated through the Department for Public Health or a governing board of health; and*
 - (c) *The hygienist performs only accepted standardized protocols which are contained within the scope of practice of dental hygiene and which are reviewed and approved by the Board of Dentistry and either the Department for Public Health or the dentist member of the governing board of health, as set out in administrative regulation.*
- (9) *A dental hygienist may provide screening services in any setting without the supervision of a dentist if:*
- (a) *The screening is conducted to fulfill the requirements of KRS 156.160(1)(i); and*
 - (b) *Patients are informed that the service being provided is a screening and that only a dentist is licensed to make a definitive diagnosis of the need for dental care.*

➔SECTION 8. KRS 313.045 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to define registration requirements, duties, training, and standards of practice that may be performed by a dental assistant who has a minimum of one (1) year of dental office experience.*
- (2) *The board shall approve the instructor and the courses of study for approving duties, training, and standards of practice that may be performed by a registered dental assistant.*
- (3) *A registered dental assistant shall practice under the supervision, order, control, and full responsibility of a dentist licensed under this chapter.*
- (4) *The registration for each registered dental assistant shall be continuously displayed in a conspicuous place in the office of the licensee.*
- (5) *Supervising dentists shall only assign to registered dental assistants procedures that do not require the professional competence of a licensed dentist or a licensed dental hygienist.*
- (6) *Registered dental assistant services may include coronal polishing, a cosmetic procedure that is not essential to therapeutic oral prophylaxis, if the following criteria are observed:*
 - (a) *Polishing activities are limited to the use of a rubber cap attached to a slow-speed rotary dental handpiece;*
 - (b) *The assistant has received a certificate from the board's approved instructor that ensures the assistant has successfully completed a dental assisting course developed by the board and a committee of dental educators from the Kentucky institutions of dental education accredited by the Council on Dental Accreditation; and*
 - (c) *The dental assisting course includes basic dental assisting and coronal polishing instruction that includes didactic, preclinical, clinical training, and competency testing.*
- (7) *Registered dental assistant services shall not include the following:*
 - (a) *The practice of dental hygiene or the performance of the duties of a licensed dental hygienist that require the use of any instrumentation which may elicit the removal of calcareous deposits or accretions on the crowns and roots of teeth;*
 - (b) *Diagnosis;*
 - (c) *Treatment planning and prescription, including prescriptions for drugs or medicaments, or authorization for restorative, prosthodontic, or orthodontic appliances;*
 - (d) *Surgical procedures on hard or soft tissues of the oral cavity, or any other intraoral procedure that contributes to or results in an irreversible alteration of the oral anatomy; and*
 - (e) *The making of final impressions from which casts are made to construct any dental restoration.*
- (8) *A licensed dentist may delegate the taking of radiographs to registered dental assistants who have completed a board-approved course in radiography technique and safety. The course completion certificate shall be maintained by the supervising dentist and be made available to the board upon request.*

➔SECTION 9. KRS 313.050 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A licensed dentist may delegate to competent dental auxiliary personnel those procedures for which the dentist exercises direct supervision and full responsibility as long as the delegated powers do not include any of the following:*
 - (a) *Those procedures which require professional judgment and skill, such as diagnosis and treatment planning and the cutting of hard or soft tissues or any intraoral procedure which will be used directly in the fabrication of an appliance which, when worn by the patient, would come in direct contact with hard or soft tissue;*
 - (b) *Those procedures allocated by this chapter to licensed dental hygienists or registered dental assistants; and*
 - (c) *No injectable medication or anesthesia shall be administered by auxiliary personnel unless otherwise authorized by law.*

- (2) *A licensed dentist may delegate the taking of radiographs to dental auxiliary personnel who have completed a board-approved course in radiography technique and safety. The course completion certificate shall be maintained by the supervising dentist and be available to the board upon request.*

➔SECTION 10. KRS 313.060 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to dental practices which shall include minimal requirements for documentation, Centers for Disease Control compliance, conscious sedation of patients, compliance with federal controlled substances regulations, and any applicable federal statute or regulation.*
- (2) *Any person practicing or offering to practice dentistry or dental surgery shall practice under his or her own name or the name of a deceased or incapacitated dentist for whom the person practicing dentistry has contracted to perform continuing operations.*
- (3) *No person shall conduct a dental office in his or her name nor advertise his or her name in connection with any dental office unless he or she personally performs services as a dentist or dental surgeon in such office or personally supervises such services as are performed in such office during a portion of the time such office is operated by him or her only, and shall not use his or her name in connection with that of any other dentist, except as provided for deceased or incapacitated dentists in subsection (4) of this section.*
- (4) *The executor or administrator of a deceased dentist's estate, or the legal guardian or authorized representative of a dentist who has become incapacitated, may contract with another dentist or dentists to continue the operations of the deceased or incapacitated dentist's practice if the practice of the deceased or incapacitated dentist is a:*
- (a) *Sole proprietorship;*
 - (b) *Corporation in which the deceased or incapacitated dentist is the sole shareholder; or*
 - (c) *Limited liability company in which the deceased or incapacitated dentist is the sole member.*
- (5) *Contracts to continue the operations of a deceased or incapacitated dentist's practice may extend until the practice is sold.*
- (6) *Prior to contracting with another dentist or dentists to continue operations of a deceased or incapacitated dentist's practice, the executor, administrator, guardian, or authorized representative shall file a notification of intent to contract for continuation of practice with the board on a form prescribed by the board. The notification shall include the following information:*
- (a) *The name and license number of the deceased or incapacitated dentist;*
 - (b) *The name and address of the dental practice;*
 - (c) *The name, address, and tax identification number of the estate;*
 - (d) *The name and license number of each dentist who will provide services in the dental practice;*
 - (e) *An affirmation, under penalty of perjury, that the information provided is true and correct and that the executor, administrator, guardian, or authorized representative understands that any interference by the executor, administrator, guardian, or authorized representative, or any agent or assignee of the executor, administrator, guardian, or authorized representative, with the contracting dentist's or dentists' practice of dentistry or professional judgment or any other violation of this chapter is grounds for an immediate termination of the operations of the dental practice; and*
 - (f) *Any other information the board deems necessary for the administration of this chapter.*
- (7) *Within thirty (30) days after the death or incapacitation of a dentist, the executor, administrator, guardian, or authorized representative shall send notification of the death or incapacitation by mail to the last known address of each patient of record that has received treatment by the deceased or incapacitated dentist within the previous twelve (12) months, with an explanation of how copies of the practitioner's records may be obtained. This notice may also contain any other relevant information concerning the continuation of dental practice.*
- (8) *A treating dentist who provides or facilitates the use of telehealth shall ensure:*

- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health care treatment decision for the patient, is obtained before services are provided through telehealth; and*
- (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.*
- (9) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
 - (a) *Prevent abuse and fraud through the use of telehealth services;*
 - (b) *Prevent fee-splitting through the use of telehealth services; and*
 - (c) *Utilize telehealth in the provision of dental services and in the provision of continuing education.*
- (10) *A licensed dentist may delegate to a licensed dental hygienist the administration of block and infiltration anesthesia and nitrous oxide analgesia under the direct supervision of a dentist if the dental hygienist completes the following requirements and receives a certificate of verification from the board:*
 - (a) *Formal training from a dental or dental hygiene school accredited by the Commission on Dental Accreditation;*
 - (b) *A minimum of thirty-two (32) hours covering all of the following topics, including but not limited to anatomical considerations, basic injection technique, basic placement technique, nitrous oxide administration, recordkeeping, armamentarium exercise, local anesthesia and nitrous oxide, techniques of maxillary anesthesia, techniques of mandibular injections, partner injections and partner administration of nitrous oxide, neurophysiology, pharmacology of local anesthetics and nitrous oxide, pharmacology of vasoconstrictors, physical and psychological evaluation, local and systemic complications, and contraindications;*
 - (c) *A minimum of two (2) hours of clinical education for nitrous oxide administration with successful completion of administration, monitoring, and removal of nitrous oxide on at least two (2) patients;*
 - (d) *A minimum of twelve (12) hours demonstrating mastery of local anesthesia applications and successful completion of at least three (3) injections each of all maxillary and mandibular injection sites; and*
 - (e) *A score that exceeds seventy-four percent (74%) on a written examination administered after coursework and clinical training.*
- (11) *The board shall approve all continuing education courses and require them for individuals holding anesthesia registration for over one (1) year without practical application. The courses shall be developed and implemented by dental education institutions accredited by the Commission on Dental Accreditation.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 313 IS CREATED TO READ AS FOLLOWS:

- (1) *A dental laboratory shall employ at least one (1) of the following:*
 - (a) *A certified dental technician who shall supervise all work performed in accordance with a written laboratory procedure work order issued by a dentist licensed pursuant to this chapter; or*
 - (b) *A dentist licensed pursuant to this chapter.*
- (2) *No dentist shall use the services of any dental laboratory to construct, alter, repair, or duplicate any denture, plate, bridge, splint, orthodontic, or prosthetic appliance, without first furnishing the commercial dental laboratory a written procedure work order. Both the commercial dental laboratory and the dentist producing the work order shall keep a copy on file for two (2) years, and all laboratory procedure work orders required by this subsection shall be open to inspection by the board.*
- (3) *A dental laboratory that employs or contracts with a dentist licensed according to this chapter may construct, alter, repair, or duplicate any denture, plate, bridge, splint, orthodontic, or prosthetic appliance without a work order from a referring dentist if the patient is seen or evaluated, or whose care is supervised by the referring dentist.*

➔SECTION 12. KRS 313.070 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *A person who is not licensed or registered to do so, or whose license or registration to do so has been suspended, revoked, or denied, shall not practice as a dentist, dental hygienist, or dental assistant.*
- (2) *Any person who violates subsection (1) of this section is guilty of a Class B misdemeanor for the first offense and a Class A misdemeanor for each subsequent offense.*
- (3) *The provisions of this section shall not preclude the board from revoking or increasing the suspension period of a person practicing as a dentist, dental hygienist, or dental assistant who has illegally practiced while his or her license or registration is under suspension or has been revoked.*
- (4) *The filing of criminal charges or a criminal conviction for violation of the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated thereunder.*
- (5) *The institution or imposition of disciplinary action by the board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated thereunder.*
- (6)
 - (a) *Nothing in this chapter shall prohibit students from performing dental operations under the supervision of competent instructors approved by the dental school, college, or department of a university. The board may authorize the students of any dental college, school, or department of a university to practice dentistry in any state or municipal institution or public school, or under the board of health, or in a public clinic or a charitable institution. No fee shall be accepted by the student beyond the expenses provided by the stipend.*
 - (b) *Students shall be at all times under the direct supervision of a dentist licensed in this state, who is an instructor of the institution at which they are studying.*
- (7) *Nothing in this chapter shall prohibit volunteer health practitioners providing services under KRS 39A.350 to 39A.366.*
- (8) *Violations of this chapter shall be heard in the Circuit Court of the county in which the alleged offense occurred.*

➔SECTION 13. KRS 313.080 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *No person shall:*
 - (a) *Call or hold himself out as or use the title dentist, dental specialist, dental hygienist, or dental assistant unless licensed or registered under the provisions of this chapter;*
 - (b) *Operate, offer to operate, or represent or advertise the operation of a dental practice of any type unless licensed by or employing individuals licensed by the board;*
 - (c) *Employ a dentist, dental hygienist, or dental assistant unless that person is licensed or registered under the provisions of this chapter; or*
 - (d) *Maintain any license or certificate authorized by this chapter if convicted of, having entered a guilty plea to, having entered an Alford plea to, or having completed a diversion program for a Class A, B, or C felony offense on or after the date of initial licensure or registration.*
- (2) *Persons licensed or registered by the board or who are applicants for licensure or registration by the board shall be subject to disciplinary action by the board if they:*
 - (a) *If licensed or registered by the board, violate any provision of this chapter or any administrative regulation promulgated by the board;*
 - (b) *Use fraud or deceit in obtaining or attempting to obtain a license or registration from the board, or are granted a license upon mistake of a material fact;*
 - (c) *If licensed or registered by the board, negligently act in a manner inconsistent with the practice of the discipline for which the person is licensed or registered;*

- (d) *Are unable to practice a discipline regulated by the board with reasonable skill or safety or are unfit or incompetent to practice a discipline regulated by the board;*
 - (e) *Abuse, misuse, or misappropriate any drugs placed in the custody of the licensee or certified person for administration, or for use of others, or those drugs prescribed by the licensee;*
 - (f) *Falsify or fail to make essential entries on essential records;*
 - (g) *Are convicted of a misdemeanor which involved acts which bear directly on the qualifications or ability of the applicant, licensee, or certified person to practice the discipline for which the person is an applicant, licensee, or certified person;*
 - (h) *Are convicted of a misdemeanor which involved fraud, deceit, breach of trust, or physical harm or endangerment to self or others, acts which bear directly on the qualifications or ability of the applicant, licensee, or certificate holder to practice acts in the license or registration held or sought;*
 - (i) *Are convicted of a misdemeanor offense under KRS Chapter 510 involving a patient;*
 - (j) *Have had a license or certificate to practice as a dentist, dental hygienist, or dental assistant denied, limited, suspended, probated, revoked, or otherwise disciplined in Kentucky or in another jurisdiction on grounds sufficient to cause a license to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;*
 - (k) *Have a license or registration to practice any activity regulated by the board denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or registration to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth;*
 - (l) *Violate any lawful order or directive previously entered by the board;*
 - (m) *Have been listed on the National Practitioner Databank with a substantiated finding of abuse, neglect, or misappropriation of property;*
 - (n) *Fail to notify the board in writing of any change in the person's name, residential address, employment address, preferred mailing address, or telephone number within thirty (30) days of the change;*
 - (o) *Fail to comply with KRS 422.317 regarding patient records; or*
 - (p) *Fail to report to the board any negative outcome related to dental treatment involving intravenous or conscious sedation beyond anxiety control that requires hospital admission.*
- (3) *A person who violates subsection (1)(a), (b), (c), or (d) of this section shall be guilty of a Class B misdemeanor for a first offense and a Class A misdemeanor for each subsequent offense. The board shall consider each individual count of a violation as a separate and subsequent offense.*
- (4) *The provisions of this section shall not preclude prosecution for the unlawful practice of dentistry by an agency of the Commonwealth.*
- (5) *The filing of criminal charges or a criminal conviction for violation of the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the Office of the Board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated thereunder.*
- (6) *The institution or imposition of disciplinary action by the Office of the Board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated thereunder.*

➔SECTION 14. KRS 313.085 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *The Law Enforcement Committee shall consist of three (3) members of the board, including at least two (2) licensed dentists, appointed by the president of the board.*
- (2) *The Law Enforcement Committee may, by a majority vote, issue an emergency order for the immediate temporary suspension of a license or certificate against which disciplinary action or an investigation is pending if the order is necessary to protect the public.*

- (3) *The emergency order shall be made in accordance with KRS 13B.125 and shall be based upon a finding by the board that the emergency order is in the public interest and there is substantial evidence of immediate danger to the health, welfare, and safety of any patient or the general public.*
- (4) *A licensee may appeal the emergency order by a written request to the board for an emergency hearing in accordance with KRS 13B.125 within thirty (30) days after receipt of the order.*
- (5) *The appeal of an emergency order shall address only the necessity for the action and shall not constitute an appeal of the merits of the underlying complaint or charge.*
- (6) *The emergency order shall remain in effect until modified or vacated by the Law Enforcement Committee or hearing officer or superseded by final disciplinary action of the Law Enforcement Committee or hearing officer on the underlying complaint or charge.*
- (7) *The Law Enforcement Committee shall expedite disciplinary hearings in which a license has been suspended under subsection (2) of this section.*
- (8) *Any party aggrieved by a final order of the board may appeal the final order to the Circuit Court of the county in which the licensee or certificate holder resides after a written decision is rendered.*

➔SECTION 15. KRS 313.090 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *In accordance with the provisions of KRS Chapter 13B, all discipline for which the board is authorized to conduct investigations, hold hearings, and impose punishments is delegated to the executive director, board attorney, and hearing panel as provided in this section.*
- (2) *Any person may make a complaint to the executive director that a dentist, dental hygienist, dental assistant, or other person licensed or registered by the board has violated a provision of this chapter, an administrative regulation promulgated pursuant to this chapter, a practice standard, or an order of the board.*
- (3) *Each complaint shall:*
 - (a) *Be in writing;*
 - (b) *Identify specifically the person or organization against whom the complaint is made;*
 - (c) *Set forth the facts relating to the violation alleged and any other supporting information which may have a bearing on the matter;*
 - (d) *Contain the name, address, telephone number, facsimile number, and e-mail address, if available, of the complainant; and*
 - (e) *Be signed by the complainant as the truth of the statements contained in the complaint by the complainant.*
- (4) *A complaint which is unsigned shall not be acted upon by the executive director unless the complaint involves a violation of standards set forth by the Centers for Disease Control or alleged mental or physical impairment as provided for in Section 17 of this Act. A complaint which is not signed in the manner specified in subsection (3) of this section shall be returned to the complainant for completion.*
- (5) *The executive director of the board may, on behalf of the board, based on knowledge available to the Office of the Board, make a complaint against any person or organization regulated by the board in the same manner as provided in subsection (3) of this section.*
- (6) *Upon receipt of a properly completed complaint, the executive director shall assign the complaint to a staff investigator who shall investigate the complaint and shall make findings of fact and recommendations to the executive director who shall then convene a meeting of the Law Enforcement Committee.*
- (7) *The staff investigator shall notify the person or organization against whom the complaint has been filed and shall notify the employer of the dentist, dental hygienist, or dental assistant of the complaint.*
- (8) *The notification shall name the person or organization complained against, the complainant, the violations alleged, and the facts presented in the complaint and shall notify the person or organization complained against and the employer of:*

- (a) *The fact that the complaint shall be answered, the steps for answering the complaint, and the action to be taken if the complaint is not answered;*
 - (b) *The timeframe and steps in the proceedings of a complaint;*
 - (c) *The rights of the parties, including the right to counsel; and*
 - (d) *The right to testify at any hearing.*
- (9) *Upon the failure of a licensee or certificate holder to respond to a written accusation or to request a hearing within twenty (20) days after the sending of the accusation, the accused shall be considered to have admitted the truth of the facts and the circumstances in the allegation and appropriate discipline may be imposed.*
 - (10) *After reviewing the complaint and results of any investigation conducted on behalf of the board, the Law Enforcement Committee shall consider whether the accusation is sufficient to remand the matter for a hearing as provided in this section and KRS Chapter 13B. A majority vote of the members of the Law Enforcement Committee shall be necessary for action to either remand the matter for hearing or dismiss the complaint without a hearing.*
 - (11) *If the Law Enforcement Committee dismisses the complaint, all parties notified previously shall be notified of the action. If the Law Enforcement Committee remands the matter for a hearing, all parties notified previously shall be notified of the action.*
 - (12) *Each proceeding to consider the imposition of a penalty which the board is authorized to impose pursuant to this chapter shall be conducted in accordance with KRS Chapter 13B.*
 - (13) *A hearing panel for purposes of making a decision in any disciplinary matter shall consist of a quorum of the remaining seven (7) members of the board who are not on the Law Enforcement Committee and the hearing officer.*
 - (14) *The board may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by any Circuit Court for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.*
 - (15) *At all hearings the board attorney or, on request of the board, the Attorney General of this state or one (1) of the assistant attorneys general designated, shall appear and represent the board.*
 - (16) *The dentist, dental hygienist, or dental assistant who is the defendant in a hearing shall be a party to the action and may appear and testify in the matter at any deposition or hearing on the matter and may propose conclusions of law, findings of fact, and penalties to the hearing panel.*
 - (17) *To make a finding or impose discipline, a majority of the members of the hearing panel who are not the hearing officer shall agree on the finding or discipline.*
 - (18) *The final order in any disciplinary proceeding shall be prepared by the hearing officer and sent to all parties in the manner prescribed by law.*
 - (19) *Any person or entity aggrieved by a final order of the board may appeal the final order to the Circuit Court of the county in which the person or entity resides in accordance with KRS Chapter 13B.*
 - (20) *Upon final disposition of a complaint which results in disciplinary action, the final order shall be published on the Web site of the board, placed in the record of the licensed or registered individual, and reported to the National Practitioner Database.*

➔SECTION 16. KRS 313.100 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *If it is determined that an entity regulated by the board, a dentist, dental hygienist, dental specialist, or dental assistant has violated a statute, administrative regulation, or practice standard relating to serving as an entity regulated by the board, a dentist, dental hygienist, dental specialist, or dental assistant, the Office of the Board may impose any of the sanctions provided in subsection (2) of this section. Any party to the complaint shall have the right to propose findings of fact and conclusions of law, and to recommend sanctions.*

- (2) *The Office of the Board shall require an acceptable plan of correction and may use any one (1) or more of the following sanctions when disciplining a dentist, dental hygienist, dental specialist, or dental assistant or any entity regulated by the board:*
- (a) *Private admonishment;*
 - (b) *Public reprimand;*
 - (c) *Fines;*
 - (d) *Revocation of licensure or registration;*
 - (e) *Suspension of licensure or registration until a time certain;*
 - (f) *Suspension until a certain act or acts are performed;*
 - (g) *Limitation of practice permanently;*
 - (h) *Limitation of practice until a time certain;*
 - (i) *Limitation of practice until a certain act or acts are performed;*
 - (j) *Repassing a portion of the clinical examination;*
 - (k) *Probation for a specified time and conditions of probation; or*
 - (l) *Costs of the disciplinary action as defined by administrative regulation.*
- (3) *A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee, certificate holder, or applicant.*
- (4) *The filing of criminal charges or a criminal conviction for violation of the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the Office of the Board from instituting or imposing board disciplinary action authorized by this chapter against any person or organization violating this chapter or the administrative regulations promulgated thereunder.*
- (5) *The institution or imposition of disciplinary action by the Office of the Board against any person or organization violating the provisions of this chapter or the administrative regulations promulgated thereunder shall not preclude the filing of criminal charges against or a criminal conviction of any person or organization for violation of the provisions of this chapter or the administrative regulations promulgated thereunder.*
- (6) *The board may maintain an action to enjoin the practice of or the attempt to practice as a dentist, dental hygienist, or dental assistant without a license or registration to do so.*
- (7) *In case of a violation of any injunction granted under this section, the court may use its inherent powers for adequate relief.*
- (8) (a) *Any licensee or certificate holder who has received a private admonishment may request in writing for the board to expunge the private admonishment from the licensee or certificate holder's permanent record.*
- (b) *The request for expungement may be filed no sooner than three (3) years after the date on which the licensee or certificate holder has completed disciplinary sanctions imposed and if the licensee or certificate holder has not been disciplined for any subsequent violation of the same nature within this period of time.*
- (c) *No person may have his record expunged under this chapter more than once.*
- (9) *If it is found the person who is licensed or registered by the board has been convicted of, pled guilty to, or entered an Alford plea to a Class A, B, or C felony offense, or has completed a diversion program for a Class A, B, or C felony offense, the license or registration shall be revoked.*
- (10) *A licensee subject to any disciplinary proceeding under this chapter shall be afforded an administrative hearing conducted in accordance with KRS Chapter 13B and may appeal any final order of the board to the Franklin Circuit Court.*

➔SECTION 17. KRS 313.130 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

- (1) *If the Law Enforcement Committee has reasonable cause to believe any licensee or certificate holder or any applicant for licensure or registration by examination, reinstatement, credentials, or change of status is unable to practice with reasonable skill or safety or has abused alcohol or drugs, it may require such person to submit to a mental or physical examination by a physician or psychologist it designates. Upon the failure of the person to submit to a mental or physical examination, unless due to circumstances beyond the person's control, the Law Enforcement Committee may initiate an action for immediate temporary suspension pursuant to this chapter or deny the application until the person submits to the required examination. The Law Enforcement Committee may issue an immediate and temporary suspension from the time of the examination until the hearing.*
- (2) *Every licensee or certificate holder or applicant for licensure or registration by examination, reinstatement, credentials, or change of status shall be deemed to have given consent to submit to an examination when so directed in writing by the board. The direction to submit to an examination shall contain the basis of the Office of the Board's reasonable cause to believe that the person is unable to practice with reasonable skill or safety, or has abused alcohol or drugs. The person shall be deemed to have waived all objections to the admissibility of the examining physician's or psychologist's testimony or examination reports on the ground of privileged communication.*
- (3) *The licensee or certificate holder or applicant for licensure or registration by examination, reinstatement, credentials, or change of status shall bear the cost of any mental or physical examination ordered by the Office of the Board.*
- (4) *The board shall establish a committee for individuals licensed or registered by the board, to be designated as the Well-being Committee, to promote the early identification, intervention, treatment, and rehabilitation of individuals licensed or registered who may be impaired by reasons of illness, alcohol or drug abuse, or as a result of any physical or mental condition. The board may enter into a contractual agreement with a nonprofit corporation or a dental association for the purpose of creating, supporting, and maintaining the Well-being Committee. The board may promulgate administrative regulations in accordance with KRS Chapter 13A to effectuate and implement the committee and may expend any funds it deems necessary to adequately provide for operational expenses of the committee. Any member of the Well-being Committee, as well as any administrator, staff member, consultant, agent, or employee of the committee acting within the scope of their duties and without actual malice, and all other persons who furnish information to the committee in good faith and without actual malice, shall not be liable for any claim of damages as a result of any statement, decision, opinion, investigation, or action taken by the committee, or by any individual member of the committee.*
- (5) *All information, interviews, reports, statements, memoranda, or other documents furnished to or produced by the Well-being Committee, as well as communications to or from the committee, and any findings, conclusions, interventions, treatment, rehabilitation, or other proceedings of the committee which in any way pertain to an individual licensed or registered who may be, or who actually is, impaired shall be privileged and confidential.*
- (6) *All records and proceedings of the Well-being Committee which pertain or refer to an individual licensed or registered who may be, or who actually is, impaired shall be privileged and confidential and shall be used by the committee and its members only in the exercise of the proper function of the committee and shall not be considered public records and shall be subject to court subpoena and subject to discovery or introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (4) of this section.*
- (7) *The Well-being Committee may disclose information relative to an impaired licensee or certificate holder only when:*
 - (a) *It is essential to disclose the information to further the intervention, treatment, or rehabilitation needs of the impaired individual, and only to those persons or organizations with a need to know;*
 - (b) *Its release is authorized in writing by the impaired individual;*
 - (c) *The committee is required to make a report to the board; or*
 - (d) *The information is subject to court order.*

➔Section 18. KRS 48.315 is amended to read as follows:

- (1) The General Assembly may provide in a budget bill for the transfer to the general fund for the purpose of the general fund all or part of the agency funds, special funds, or other funds established under the provisions of KRS 15.430; 21.347; 21.540; 21.560; 42.500; 47.010; 48.010(15)(g); 56.100; 61.470; 64.345; 64.350; 64.355; 95A.220; 136.392; 138.510; 161.420; 161.430; 164A.020; 164A.110; 164A.800; 164A.810; 216A.110; 230.218; 230.400; 230.770; 248.540; 248.550; 278.130; 278.150; 286.1-485; 304.35-030; 311.450; 311.610; 312.019; **Section 4 of this Act**~~313.350~~; 314.161; 315.195; 316.210; 317.530; 317A.080; 319.131; 320.360; 321.320; 322.290; 322.330; 322.420; 323.080; 323.190; 323.210; 323A.060; 323A.190; 323A.210; 324.286; 324.410; 325.250; 326.120; 327.080; 330.050; 334.160; 334A.120; 335.140; 342.122; 342.480, etc.
- (2) The transfer of moneys from the agency funds, special funds, or other funds to the general fund provided for in subsection (1) of this section shall be for the period of time specified in the budget bill.
- (3) Any provisions of any statute in conflict with the provisions of subsections (1) and (2) of this section are hereby suspended or modified. Any suspension or modification shall not extend beyond the duration of the budget bill.

➔Section 19. KRS 214.615 is amended to read as follows:

- (1) The licensing board or certifying entity shall require as a condition of granting a license or certificate under KRS Chapter 311A and as specified in KRS 311.450, 311.601, 312.175, **Sections 5, 6, 7, and 8 of this Act**~~313.080, 313.305~~, 314.073, 315.065, 320.280, 327.050, 333.190, 335.080, 335.090, 335.100, and 335.150 that an applicant making initial application for licensure or certification complete an educational course approved by the cabinet or the licensing board or certifying entity on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome. An applicant who has not taken a course at the time of licensure or certification shall upon an affidavit showing good cause be allowed six (6) months to complete this requirement.
- (2) The licensing board or certifying entity may promulgate administrative regulations to carry out the provisions of this section.

➔Section 20. KRS 214.620 is amended to read as follows:

- (1) The boards of the professions in KRS Chapter 311A and KRS 311.450, 311.571, 311.601, 312.085, 312.175, **Sections 5, 6, 7, and 8 of this Act**~~313.040, 313.080, 313.290, 313.305~~, 314.041, 314.042, 314.051, 314.073, 315.050, 315.065, 320.250, 320.280, 327.050, 333.100, 333.190, 335.080, 335.090, 335.100, and 335.150, and the Cabinet for Health and Family Services shall begin planning for the implementation of those sections listed above which require, as a part of initial licensure or certification, applicants for certain specified professions to complete an educational course on the transmission, control, treatment, and prevention of human immunodeficiency virus and acquired immunodeficiency syndrome. The planning shall include collecting information from the facilities and programs which educate and train the licensed professionals affected by the licensure requirements of those sections listed above and shall also include developing administrative regulations for the implementation of the licensure requirements.
- (2) The Cabinet for Health and Family Services shall develop, if requested by a licensing board or certifying entity, instructional material on the human immunodeficiency virus, including information related to methods of transmission, education, and infection control. The materials developed under this section shall be provided to persons licensed under KRS Chapters 317 and 317A. Costs of production and distribution of the instructional materials shall be wholly assumed from the fees assessed by the licensing boards which regulate the professionals who are provided with educational materials under this section. To expeditiously and economically develop, produce, and distribute the instructional material required under this section, the Cabinet for Health and Family Services shall consult with the professional associations of professions to determine whether suitable instructional materials already exist that may be lawfully reproduced or reprinted.
- (3) The Cabinet for Human Resources shall require that, by July 1, 1992, all employees of health facilities defined in KRS 216B.015 shall have completed an educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change except for those employees who shall have completed such a course as required for their professional licensure or upon evidence that the employee received such a course from another health facility where the employee was previously employed.
- (4) Information on the human immunodeficiency virus infection shall be presented to any person who receives treatment at any hospital, however named, skilled-nursing facilities, primary-care centers, rural health clinics,

outpatient clinics, ambulatory-care facilities, ambulatory surgical centers, and emergency-care centers licensed pursuant to KRS Chapter 216B. The information shall include but not be limited to methods of transmission and prevention and appropriate behavior and attitude change.

- (5) Notwithstanding any provision of law to the contrary, the licensing board or certifying entity of any profession required to complete the course described in subsection (1) or (2) of this section shall have the discretion to develop and approve its own instructional course to be required for the profession under the jurisdiction of the respective licensing board or certifying entity.

➔Section 21. KRS 311.668 is amended to read as follows:

- (1) Any person or entity who, in good faith and without compensation, renders emergency care or treatment by the use of an AED shall be immune from civil liability for any personal injury as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment, where the person acts as an ordinary, reasonable prudent person would have acted under the same or similar circumstances.
- (2) The immunity from civil liability for any personal injury under subsection (1) of this section includes the licensed physician who is involved with AED site placement, the person or entity who provides the CPR and AED site placement, the person or entity who provides the CPR and AED training, and the person or entity responsible for the site where the AED is located.
- (3) The immunity from civil liability under subsection (1) of this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering the emergency care.
- (4) The requirements of KRS 311.667 shall not apply to any individual using an AED in an emergency setting if that individual is acting as a Good Samaritan under KRS 411.148 and ***Section 6 of this Act***~~[KRS 313.257]~~.

➔Section 22. KRS 313.254 is amended to read as follows:

- (1) The board may grant a temporary license to a dentist or dental hygienist who holds a currently valid license from another state, district, possession, or territory of the United States for the sole purpose of providing medical care to indigent populations who may not otherwise be able to obtain such services, without expectation of compensation or charge to the individual, and without payment or reimbursement by any governmental agency or insurer. The health care services shall be provided to charitable organizations only. ***A temporary***~~[The]~~ ***license issued under this section*** shall be valid for ***no more than a ten (10)***~~[seven (7)]~~ day period ***during any given charitable event***.
- (2) To obtain the temporary license issued under subsection (1) of this section, the dentist or dental hygienist shall:
 - (a) Apply ***online or in writing*** to the Board of Dentistry at least thirty (30) days prior to providing the health care services under subsection (1) of this section;
 - (b) ***Submit himself or herself for a National Practitioner Databank query to be conducted by the board***~~[Include in the application a letter from the jurisdiction in which the dentist or dental hygienist is licensed that indicates the applicant's license number and a statement that indicates that the dentist or the dental hygienist is in good standing in the licensing jurisdiction; and~~
 - ~~(c) Pay a twenty five dollar (\$25) registration fee].~~
- (3) Prior to beginning the services permitted under subsection (1) of this section, the dentist or dental hygienist shall notify the appropriate agent in the Cabinet for Health and Family Services.
- (4) A dentist or dental hygienist working under this section may perform all preventive procedures and treatments including but not limited to scaling, prophylaxis, radiographs, sealants, and fluoride application.
- (5) In addition to the procedures permitted under subsection (4) of this section, a dentist may perform those procedures or treatments considered to be routine in nature and that are typically performed and completed in one (1) appointment. The procedures include simple extractions and basic restorative procedures. All procedures performed other than those provided in this subsection and subsection (4) of this section shall be performed by a dentist holding a currently valid license in the Commonwealth.
- (6) A dentist or dental hygienist working under this section who registers as a charitable health care provider under KRS 216.941 shall be eligible for the provision of medical malpractice insurance procured under KRS 304.40-075.

- (7) The board may waive the requirements of subsections (1), (2), and (3) of this section and the requirements of KRS 313.045 for a dentist or dental hygienist who volunteers to provide dental services through a nonprofit, all-volunteer charitable organization.
- (8) The board shall promulgate administrative regulations that are reasonably necessary to administer this section.
- (9) ***Any person or organization that conducts a nonprofit charitable dentistry event shall be granted immunity from civil liability in accordance with KRS 411.200.***

➔Section 23. (1) The staff of the Legislative Research Commission is directed to study the advantages and disadvantages of locating a Commission on Dental Accreditation (CODA) educational program specializing in the practice of dentistry or in the practice of denture technology at one of the public universities or technical colleges located in the Commonwealth of Kentucky. This study shall update the findings of Research Report No. 292, a study on the practice of dentistry in Kentucky directed by the 1998 General Assembly. This updated report shall be presented to the Interim Joint Committee on Health and Welfare by December 1, 2010.

(2) Interested persons at the University of Kentucky, University of Louisville, and in the Kentucky Community and Technical College System are encouraged to study the feasibility of adding an accredited dentistry program, or similar program focusing on denture technology, to their available courses of study and report their findings to the Interim Joint Committee on Health and Welfare by December 1, 2010.

(3) Provisions of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

Persons and agencies that file a complaint, provide sworn or written statements, or otherwise participate in an investigation or administrative proceeding instituted pursuant to this chapter shall have immunity from civil or criminal prosecution that is based upon such information unless the person or agency committed perjury, acted in bad faith, or acted with gross negligence, recklessness, or malicious purpose.

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 314 IS CREATED TO READ AS FOLLOWS:

A licensee, credentialed holder, privilege holder, or applicant who is the subject of an investigation by or on behalf of the board shall cooperate fully with the investigation, including responding to a complaint or lawful request for information in a materially factual and timely manner.

➔Section 26. KRS 156.070 is amended to read as follows:

- (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
- (2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.
 - (a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.
 - (b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or

organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.

- (c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.
- (d) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced *practice* registered nurse~~[- practitioner]~~, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any high school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.
- (e) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:
 1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
 2. Was retained in the primary school program because of an ARC committee recommendation; and
 3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).
- (f) If the state board or any agency designated by the state board to manage interscholastic athletics promulgates administrative regulations that permit a school district to employ or assign nonteaching personnel to serve in a coaching position, those administrative regulations shall apply to all sports and sports activities, including basketball and football. The administrative regulations shall give preference to the hiring or assignment of certified personnel over nonteaching personnel in coaching positions.
- (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.
- (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the

Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.

- (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.
- (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.
- (5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

➔Section 27. KRS 156.160 is amended to read as follows:

- (1) With the advice of the Local Superintendents Advisory Council, the Kentucky Board of Education shall promulgate administrative regulations establishing standards which school districts shall meet in student, program, service, and operational performance. These regulations shall comply with the expected outcomes for students and schools set forth in KRS 158.6451. Administrative regulations shall be promulgated for the following:
 - (a) Courses of study for the different grades and kinds of common schools identifying the common curriculum content directly tied to the goals, outcomes, and assessment strategies developed under KRS 158.645, 158.6451, and 158.6453 and distributed to local school districts and schools. The administrative regulations shall provide that:
 - 1. If a school offers American sign language, the course shall be accepted as meeting the foreign language requirements in common schools notwithstanding other provisions of law; and
 - 2. If a school offers the Reserve Officers Training Corps program, the course shall be accepted as meeting the physical education requirement for high school graduation notwithstanding other provisions of law;
 - (b) Courses of study or educational experiences available to students in all middle and high schools to fulfill the prerequisites for courses in advanced science and mathematics as defined in KRS 158.845;
 - (c) The acquisition and use of educational equipment for the schools as recommended by the Council for Education Technology;

- (d) The minimum requirements for high school graduation in light of the expected outcomes for students and schools set forth in KRS 158.6451. Student scores from any assessment administered under KRS 158.6453 that are determined by the National Technical Advisory Panel to be valid and reliable at the individual level shall be included on the student transcript. The National Technical Advisory Panel shall submit its determination to the commissioner of education and the Legislative Research Commission;
 - (e) Taking and keeping a school census, and the forms, blanks, and software to be used in taking and keeping the census and in compiling the required reports. The board shall create a statewide student identification numbering system based on students' Social Security numbers. The system shall provide a student identification number similar to, but distinct from, the Social Security number, for each student who does not have a Social Security number or whose parents or guardians choose not to disclose the Social Security number for the student;
 - (f) Sanitary and protective construction of public school buildings, toilets, physical equipment of school grounds, school buildings, and classrooms. With respect to physical standards of sanitary and protective construction for school buildings, the Kentucky Board of Education shall adopt the Uniform State Building Code;
 - (g) Medical inspection, physical and health education and recreation, and other regulations necessary or advisable for the protection of the physical welfare and safety of the public school children. The administrative regulations shall set requirements for student health standards to be met by all students in grades four (4), eight (8), and twelve (12) pursuant to the outcomes described in KRS 158.6451. The administrative regulations shall permit a student who received a physical examination no more than six (6) months prior to his initial admission to Head Start to substitute that physical examination for the physical examination required by the Kentucky Board of Education of all students upon initial admission to the public schools, if the physical examination given in the Head Start program meets all the requirements of the physical examinations prescribed by the Kentucky Board of Education;
 - (h) A vision examination by an optometrist or ophthalmologist that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a vision examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a three (3), four (4), five (5), or six (6) year-old child is enrolled in a public school, public preschool, or Head Start program;
 - (i)
 - 1. Beginning with the 2010-2011 school year, a dental screening or examination by a dentist, dental hygienist, physician, registered nurse, advanced *practice* registered nurse~~[-practitioner]~~, or physician assistant that shall be required by the Kentucky Board of Education. The administrative regulations shall require evidence that a dental screening or examination that meets the criteria prescribed by the Kentucky Board of Education has been performed. This evidence shall be submitted to the school no later than January 1 of the first year that a five (5) or six (6) year-old child is enrolled in a public school.
 - 2. A child shall be referred to a licensed dentist if a dental screening or examination performed by anyone other than a licensed dentist identifies the possibility of dental disease;
 - (j) The transportation of children to and from school;
 - (k) The fixing of holidays on which schools may be closed and special days to be observed, and the pay of teachers during absence because of sickness or quarantine or when the schools are closed because of quarantine;
 - (l) The preparation of budgets and salary schedules for the several school districts under the management and control of the Kentucky Board of Education;
 - (m) A uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts; and
 - (n) The disposal of real and personal property owned by local boards of education.
- (2) (a) At the request of a local board of education or a school council, a local school district superintendent shall request that the Kentucky Board of Education waive any administrative regulation promulgated by that board. Beginning in the 1996-97 school year, a request for waiver of any administrative regulation shall be submitted to the Kentucky Board of Education in writing with appropriate justification for the

waiver. The Kentucky Board of Education may approve the request when the school district or school has demonstrated circumstances that may include but are not limited to the following:

1. An alternative approach will achieve the same result required by the administrative regulation;
 2. Implementation of the administrative regulation will cause a hardship on the school district or school or jeopardize the continuation or development of programs; or
 3. There is a finding of good cause for the waiver.
- (b) The following shall not be subject to waiver:
1. Administrative regulations relating to health and safety;
 2. Administrative regulations relating to civil rights;
 3. Administrative regulations required by federal law; and
 4. Administrative regulations promulgated in accordance with KRS 158.6451, 158.6453, 158.6455, 158.685, and this section, relating to measurement of performance outcomes and determination of successful districts or schools, except upon issues relating to the grade configuration of schools.
- (c) Any waiver granted under this subsection shall be subject to revocation upon a determination by the Kentucky Board of Education that the school district or school holding the waiver has subsequently failed to meet the intent of the waiver.
- (3) Any private, parochial, or church school may voluntarily comply with curriculum, certification, and textbook standards established by the Kentucky Board of Education and be certified upon application to the board by such schools.
- (4) Any public school that violates the provisions of KRS 158.854 shall be subject to a penalty to be assessed by the commissioner of education as follows:
- (a) The first violation shall result in a fine of no less than one (1) week's revenue from the sale of the competitive food;
 - (b) Subsequent violations shall result in a fine of no less than one (1) month's revenue from the sale of the competitive food;
 - (c) "Habitual violations," which means five (5) or more violations within a six (6) month period, shall result in a six (6) month ban on competitive food sales for the violating school; and
 - (d) Revenue collected as a result of the fines in this subsection shall be transferred to the food service fund of the local school district.

➔Section 28. KRS 156.4975 is amended to read as follows:

As used in KRS 156.496, 156.4975, and 156.4977:

- (1) "Core component" means one (1) of the activities or services for children and their families provided by a family resource or youth services center required by KRS 156.496;
- (2) "Health services" means preventive and health care services provided in a school setting and includes but is not limited to supplemental classroom instructional services related to health by an advanced *practice* registered nurse~~[-practitioner]~~, registered nurse, or licensed practical nurse;
- (3) "Optional component" means one (1) of the activities or services provided for children or their families as part of the implementation of a family resource or youth services center in addition to those required by KRS 156.496 and designed to satisfy unique community needs; and
- (4) "Secretary" means the secretary of the Cabinet for Health and Family Services.

➔Section 29. KRS 156.502 is amended to read as follows:

- (1) As used in this section:

- (a) "Health services" means the provision of direct health care, including the administration of medication; the operation, maintenance, or health care through the use of medical equipment; or the administration of clinical procedures. "Health services" does not include first aid or emergency procedures; and
 - (b) "School employee" means an employee of the public schools of this Commonwealth.
- (2) Health services shall be provided, within the health care professional's current scope of practice, in a school setting by:
- (a) A physician who is licensed under the provisions of KRS Chapter 311;
 - (b) An advanced *practice* registered nurse~~[-practitioner]~~, registered nurse, or licensed practical nurse who is licensed under the provisions of KRS Chapter 314; or
 - (c) A school employee who is delegated responsibility to perform the health service by a physician, advanced *practice* registered nurse~~[-practitioner]~~, or registered nurse; and
 - 1. Has been trained by the delegating physician or delegating nurse for the specific health service, if that health service is one that could be delegated by the physician or nurse within his or her scope of practice; and
 - 2. Has been approved in writing by the delegating physician or delegating nurse. The approval shall state that the school employee consents to perform the health service when the employee does not have the administration of health services in his or her contract or job description as a job responsibility, possesses sufficient training and skills, and has demonstrated competency to safely and effectively perform the health service. The school employee shall acknowledge receipt of training by signing the approval form. A copy of the approval form shall be maintained in the student's record and the personnel file of the school employee. A delegation to a school employee under this paragraph shall be valid only for the current school year.
- (3) If no school employee has been trained and delegated responsibility to perform a health service, the school district shall make any necessary arrangement for the provision of the health service to the student in order to prevent a loss of a health service from affecting the student's attendance or program participation. The school district shall continue with this arrangement until appropriate school personnel are delegated the responsibility for health care in subsection (2) of this section.
- (4) A school employee who has been properly delegated responsibility for performing a medical procedure under this section shall act as an agent of the school and be granted liability protection under the Federal Paul P. Coverdell Teacher Liability Protection Act of 2001, Pub. L. No. 107-110, unless the claimant establishes by clear and convincing evidence that harm was proximately caused by an act or omission of the school employee that constitutes negligence, willful or criminal misconduct, or a conscious, flagrant indifference to the rights and safety of the individual harmed.
- (5) Nothing in this section shall be construed to deny a student his or her right to attend public school and to receive public school services, or to deny, prohibit, or limit the administration of emergency first aid or emergency procedures.

➔Section 30. KRS 159.030 is amended to read as follows:

- (1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:
- (a) Who is a graduate from an accredited or an approved four (4) year high school; or
 - (b) Who is enrolled and in regular attendance in a private, parochial, or church regular day school. It shall be the duty of each private, parochial, or church regular day school to notify the local board of education of those students in attendance at the school. If a school declines, for any reason, to notify the local board of education of those students in attendance, it shall so notify each student's parent or legal guardian in writing, and it shall then be the duty of the parent or legal guardian to give proper notice to the local board of education; or
 - (c) Who is less than seven (7) years old and is enrolled and in regular attendance in a private kindergarten-nursery school; or
 - (d) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or

- (e) Who is enrolled and in regular attendance in private, parochial, or church school programs for exceptional children; or
 - (f) Who is enrolled and in regular attendance in a state-supported program for exceptional children;
 - (g) For purposes of this section, "church school" shall mean a school operated as a ministry of a local church, group of churches, denomination, or association of churches on a nonprofit basis.
- (2) Before granting an exemption under subsection (1)(d) of this section, the board of education of the district in which the child resides shall require satisfactory evidence, in the form of:
- (a) A signed statement of a licensed physician, advanced *practice* registered nurse~~[-practitioner]~~, psychologist, psychiatrist, chiropractor, or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence, the board may exempt the child from compulsory attendance. Any child who is excused from school attendance more than six (6) months shall have two (2) signed statements from a combination of the following professional persons: a licensed physician, advanced *practice* registered nurse~~[-practitioner]~~, psychologist, psychiatrist, chiropractor, and health officer, except that this requirement shall not apply to a child whose treating physician, advanced *practice* registered nurse~~[-practitioner]~~, chiropractor, or public health officer certifies that the student has a chronic physical condition that prevents or renders inadvisable attendance at school or application to study and is unlikely to substantially improve within one (1) year; or
 - (b) An individual education plan specifying that placement of the child with a disability at home or in a hospital is the least restrictive environment for providing services.

Exemptions of all children under the provisions of subsection (1)(d) of this section shall be reviewed annually with the evidence required being updated, except that for an exceptional child whose treating physician, advanced *practice* registered nurse~~[-practitioner]~~, chiropractor, or public health officer certifies that the student has a chronic physical condition unlikely to substantially improve within three (3) years, the child's admissions and release committee shall annually consider the child's condition and the existing documentation to determine whether updated evidence is required. Updated evidence shall be provided for a child upon determination of need by the admissions and release committee, or at least every three (3) years.

- (3) For any child who is excluded under the provisions of subsection (1)(d) of this section, home, hospital, institutional, or other regularly scheduled and suitable instruction meeting standards, rules, and regulations of the Kentucky Board of Education shall be provided.

➔Section 31. KRS 186.042 is amended to read as follows:

- (1) For the purposes of this section, "persons with disabilities which limit or impair the ability to walk" means persons who, as determined by a licensed physician:
- (a) Cannot walk two hundred (200) feet or sixty-one (61) meters without stopping to rest;
 - (b) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistant device;
 - (c) Are restricted by lung disease to the extent that the person's forced respiratory and expiratory volume for one (1) second, when measured by spirometry, is less than one (1) liter, or the arterial oxygen tension is less than sixty (60) mm/hg on room air at rest;
 - (d) Use portable oxygen;
 - (e) Have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
 - (f) Are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.
- (2) On the application of any person with disabilities which limit or impair the ability to walk, who has lost the use of an arm or both arms, or who is blind, the Transportation Cabinet shall issue the person with a disability an accessible parking registration plate or renewal decal designating the vehicle licensed as being owned by or leased by a person with a disability. The license plate or renewal decal may be issued for a passenger car as set forth in KRS 186.050(1), for a motorcycle as set forth in KRS 186.050(2), or for a commercial vehicle as set

forth in KRS 186.050(3)(a). The registration plates issued shall bear the international symbol of access adopted by Rehabilitation International in 1969, reading from left to right and shall be followed by numbers or letters the cabinet finds expedient. The cabinet shall not issue the registration plates so designated to any person other than a person with a disability as described above. The fee for a disabled license plate shall be as established in KRS 186.162.

- (3) The application for a license plate for a person with a disability shall be made on a form prepared by the Transportation Cabinet. For every person seeking this accessible parking license plate, proof of the disability shall be required by:
 - (a) The county clerk issuing the license plate ascertaining that the applicant is obviously disabled as described in this section; or
 - (b) A statement from a licensed physician or advanced *practice* registered nurse~~[-practitioner]~~ that the applicant is a person with disabilities which limit or impair the ability to walk, a person who has lost the use of an arm, or any person who is blind.
- (4) When a motor vehicle bearing plates issued to a person with a disability as prescribed in this section is being operated by or for the benefit of the person with a disability, who is in the motor vehicle when the motor vehicle is being operated, the motor vehicle may be parked for a period of two (2) hours in excess of the legal parking period permitted by local authorities, except if local ordinances or police regulations prohibit parking on a highway for the purpose of creating a fire lane; if the ordinances or police regulations provide for the accommodation of heavy traffic during morning, afternoon, or evening hours; or if the motor vehicle is parked in such a manner as to clearly be a traffic hazard.
- (5) Registration under this section shall expire July 31.

➔Section 32. KRS 194A.454 is amended to read as follows:

- (1) A legend drug or supplies used to administer a legend drug may be accepted and dispensed under the program established in KRS 194A.452 only if the following requirements are met:
 - (a) The legend drug or supplies needed to administer the legend drug is in its original, unopened, sealed, and tamper-evident unit dose packaging or, if packaged in single-unit doses, the single-unit dose packaging is unopened;
 - (b) The legend drug is not classified as a controlled substance;
 - (c) The legend drug or supplies needed to administer a legend drug is not adulterated or misbranded, as determined by a pharmacist employed by, or under contract with, the health facility or pharmacy, who shall inspect the drug or supplies needed to administer a legend drug before the drug or supplies are dispensed; and
 - (d) The legend drug or supplies needed to administer a legend drug are prescribed by a physician, advanced *practice* registered nurse~~[-practitioner]~~, or physician assistant and dispensed by a pharmacist.
- (2) No legend drug or supplies needed to administer a legend drug that are donated for use under this section may be resold.

➔Section 33. KRS 202A.161 is amended to read as follows:

Any person admitted to a hospital pursuant to the provisions of this chapter shall be initially examined by an authorized staff physician of the hospital or, with permission of the facility's governing body and in accordance with the applicable provisions of the facility's medical staff bylaws, policies, and procedures, a physician assistant as defined in KRS 311.550, or an advanced *practice* registered nurse~~[-practitioner]~~ licensed under KRS Chapter 314 as soon as practicable but not later than thirty-six (36) hours (excluding weekends and holidays) and a report entered into the medical record not later than forty-eight (48) hours (excluding weekends and holidays) after his admission.

➔Section 34. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the

condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including but not limited to the following categories, except where the aid is for the purpose of obtaining an abortion:

- (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
- (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
- (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include products for the treatment of inborn errors of metabolism or genetic conditions, consisting of therapeutic food, formulas, supplements, or low-protein modified food products that are medically indicated for therapeutic treatment and are administered under the direction of a physician, and include but are not limited to the following conditions:
 - 1. Phenylketonuria;
 - 2. Hyperphenylalaninemia;
 - 3. Tyrosinemia (types I, II, and III);
 - 4. Maple syrup urine disease;
 - 5. A-ketoacid dehydrogenase deficiency;
 - 6. Isovaleryl-CoA dehydrogenase deficiency;
 - 7. 3-methylcrotonyl-CoA carboxylase deficiency;
 - 8. 3-methylglutaconyl-CoA hydratase deficiency;
 - 9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);
 - 10. B-ketothiolase deficiency;
 - 11. Homocystinuria;
 - 12. Glutaric aciduria (types I and II);
 - 13. Lysinuric protein intolerance;
 - 14. Non-ketotic hyperglycinemia;
 - 15. Propionic acidemia;
 - 16. Gyrate atrophy;
 - 17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
 - 18. Carbamoyl phosphate synthetase deficiency;
 - 19. Ornithine carbamoyl transferase deficiency;
 - 20. Citrullinemia;
 - 21. Arginosuccinic aciduria;
 - 22. Methylmalonic acidemia; and
 - 23. Argininemia;
- (d) Physician, podiatric, and dental services;

- (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
 - (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
 - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
 - (h) Services provided by health-care delivery networks as defined in KRS 216.900;
 - (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900; and
 - (j) Smoking cessation treatment interventions or programs prescribed by a physician, advanced *practice* registered nurse~~-practitioner~~, physician assistant, or dentist, including but not limited to counseling, telephone counseling through a quitline, recommendations to the recipient that smoking should be discontinued, and prescription and over-the-counter medications and nicotine replacement therapy approved by the United States Food and Drug Administration for smoking cessation.
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health and Family Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health and Family Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:
- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
 - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health and Family Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
 - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
 - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health and Family Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
 - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services; and

- (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.
- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
- (4) The rules and regulations of the Cabinet for Health and Family Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
- (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
- (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
- (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced *practice* registered nurse~~—practitioner~~ licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the mentally retarded exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the mentally retarded through community mental health centers.
- (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health and Family Services shall make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.
- (12) The Medical Assistance Program shall use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program,

including those licensed and regulated under KRS Chapters 311, 312, 314, 315, and 320, any facility required to be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or facility as determined by the Department for Medicaid Services through an administrative regulation promulgated under KRS Chapter 13A.

- (13) Dentists licensed under KRS Chapter 313 shall be excluded from the requirements of subsection (12) of this section. The Department for Medicaid Services shall develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program.

➔Section 35. KRS 205.5636 is amended to read as follows:

- (1) A Drug Management Review Advisory Board is hereby established and attached to the Cabinet for Health and Family Services for administrative purposes. The board shall consist of sixteen (16) members to be appointed by the secretary of the Cabinet for Health and Family Services and shall be constituted as follows:
- (a) Five (5) members shall be physicians, one (1) each from the fields of family medicine, internal medicine, pediatrics, and geriatrics. The fifth physician appointed shall be from any other recognized field of medicine. Two (2) of the above indicated physicians shall be representatives of the two (2) current medical schools in the Commonwealth, the University of Kentucky and the University of Louisville Schools of Medicine;
 - (b) Five (5) members shall be pharmacists, at least one (1) of whom shall be designated as the representative of the University of Kentucky College of Pharmacy;
 - (c) Two (2) members shall be advanced *practice* registered *nurses*~~[nurse-practitioners]~~;
 - (d) One (1) member shall be an optometrist and one (1) member shall be a physician's assistant;
 - (e) One (1) member shall be a representative of the Cabinet for Health and Family Services designated to serve on an ex officio basis; and
 - (f) One (1) nonvoting member shall be a member of the pharmaceutical manufacturing industry.
- (2) (a) The physician members of the board shall be appointed from a list of three (3) qualified physicians for each vacancy submitted by the Kentucky Medical Association.
- (b) The pharmacist members of the board shall be appointed from a list of three (3) qualified pharmacists for each vacancy submitted by the Kentucky Pharmacy Association.
- (c) The advanced *practice* registered nurse~~[practitioner]~~ members of the board shall be appointed from a list of three (3) for each vacancy, submitted by the Kentucky Nurses Association.
- (d) The optometrist shall be appointed from a list of three (3) qualified optometrists submitted by the Kentucky Optometric Association.
- (e) The physician's assistant shall be appointed from a list of three (3) qualified physicians assistants submitted by the Kentucky Board of Medical Licensure.
- (3) The secretary may appoint one (1) nonvoting industry representative to be selected from a list of three (3) members nominated from the Pharmaceutical Research and Manufacturers of America. The secretary may request additional names for appointments and current members may be considered for reappointment. All members of the board shall be licensed and actively practicing in their respective professions in the Commonwealth and shall have knowledge or expertise in at least one (1) of the following areas:
- (a) The clinically appropriate prescribing, utilization, and evaluation of pharmaceuticals;
 - (b) The clinically appropriate dispensing and monitoring of pharmaceuticals;
 - (c) Drug utilization review, pharmacoeconomic and pharmacoepidemiological evaluation and intervention, pharmacotherapeutic intervention methods in disease management using treatment algorithms, critical paths, and other measures that have been well defined and validated; and
 - (d) Medical quality assurance.
- (4) Three (3) of the initially appointed physician members, three (3) of the initially appointed pharmacist members, and one (1) of the initially appointed advanced *practice* registered *nurses*~~[nurse-practitioners]~~ shall be appointed for a term of one (1) year. The remaining initial members shall be appointed for a term of two (2) years. Subsequent appointments shall be for a term of two (2) years. Members shall serve for no more than

three (3) consecutive terms. The board shall designate a chair and vice chair. A member shall serve no more than two (2) consecutive terms as chair.

- (5) The first meeting of the board shall take place within thirty (30) days of the appointment of all the members of the board.
- (6) The board shall meet at least quarterly, or upon the call of the chair or the commissioner. A majority of the voting members of the board shall constitute a quorum. All meetings shall be conducted in accordance with the provisions of the Open Meetings Act, KRS 61.805 to 61.850, and all balloting shall take place by roll call vote.
- (7) Actions of the board shall require a majority vote of the members present or participating through distance communication technology. No member may vote on a matter where a conflict of interest may exist. The chair may vote on any matter before the board unless a conflict of interest exists.

➔Section 36. KRS 211.395 is amended to read as follows:

- (1) The department shall inform the operator of any public or semipublic building regulated by KRS 211.180 that has a toilet facility for its employees that a person may use that facility during normal business hours if all of the following conditions are met:
 - (a) The person requesting the use of the employee toilet facility provides the public or semipublic building operator with evidence of the person's eligible medical condition including:
 - 1. A copy of a statement signed by a physician, defined in KRS 311.550, a physician assistant, defined in KRS 311.840, or an advanced **practice** registered nurse~~practitioner~~, defined in KRS 314.011, that indicates the person has an eligible medical condition or uses an ostomy device; or
 - 2. An identification card that is issued by a nationally recognized health organization and that indicates the person has an eligible medical condition or uses an ostomy device;
 - (b) Three (3) or more employees of the public or semipublic building are on the premises at the time the person requests use of the employee toilet facility;
 - (c) The public or semipublic building operator does not normally make a toilet facility available to the public;
 - (d) The employee toilet facility is not located in an area where providing access would create an obvious health or safety risk to the person requesting to use the facility or an obvious risk to the public or semipublic building; and
 - (e) A public toilet facility is not immediately accessible to the person.
- (2)
 - (a) The public or semipublic building operator is not civilly liable for any act or omission in allowing a person that has an eligible medical condition or uses an ostomy device to use an employee toilet facility that is not a public rest room if the act or omission meets the following requirements:
 - 1. It is not willful or grossly negligent; and
 - 2. It occurs in an area of the public or semipublic building that is not accessible to the public.
 - (b) The public or semipublic building operator is not civilly liable to any individual accompanying a person with an eligible medical condition or who uses an ostomy device upon the same conditions and requirements as those set forth in subsection (2)(a) of this section.
- (3) The public or semipublic building operator is not required to make any physical changes to an employee toilet facility under KRS 211.394 and this section.

➔Section 37. KRS 212.275 is amended to read as follows:

- (1) The governing board for each local, district, and independent health department shall have a written policy concerning the distribution of nonscheduled legend drugs at the health department by an advanced **practice** registered nurse~~practitioner~~ or a registered nurse. In a health department, an advanced **practice** registered nurse~~practitioner~~ or a registered nurse may distribute nonscheduled legend drugs from a list that has been prepared by the commissioner of the Department for Public Health. Nothing in this section shall be construed to limit advanced **practice** registered ~~nurses~~~~nurse-practitioners~~ from dispensing nonscheduled drug samples under KRS 314.011. Each prescription drug distributed or dispensed at the health department shall be recorded

in the patient record. The director of each health department shall be responsible for keeping track of the inventory of stock medications and accounting for the medications dispensed or distributed.

- (2) Only a health department board having within its membership a pharmacist holding a valid license issued pursuant to KRS 315.030 shall be authorized to permit advanced *practice* registered ~~nurses[nurse practitioners]~~ or registered nurses to dispense nonscheduled legend drugs according to the written policy of the board. If a health department is unable to recruit a licensed pharmacist to serve on the board, the board shall document consultation with a pharmacist licensed pursuant to KRS 315.030 in the public health practice of the health department.
- (3) No health department shall dispense any medication or device prescribed for the purpose of causing an abortion as defined in KRS 311.720(1).

➔Section 38. KRS 216.370 is amended to read as follows:

As used in KRS 216.375 and 216.380, "physician extender" means an advanced *practice* registered nurse~~[nurse practitioner]~~, or a physician assistant.

➔Section 39. KRS 216B.175 is amended to read as follows:

- (1) A physician assistant, credentialed under KRS Chapter 311, when those duties and responsibilities are within the scope of training received in an approved program and within the scope of the supervising physician's practice, or an advanced *practice* registered nurse~~[practitioner]~~ licensed under KRS Chapter 314, may:
 - (a) Perform a history and physical examination for a patient admitted to an acute care or psychiatric hospital licensed under this chapter; and
 - (b) Order and review continuation of restraints and seclusion as a health care practitioner in accordance with 42 C.F.R. 482.13.
- (2) A history and physical examination shall be performed no more than thirty (30) days before or twenty-four (24) hours after a patient is admitted to an acute care or psychiatric hospital licensed under this chapter.
- (3) The history and physical examination that has been performed in compliance with subsection (2) of this section is transferable to another licensed level of care within the same hospital.
- (4) The Cabinet for Health and Family Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish the content of the history and physical examination required by subsection (2) of this section performed in an acute or psychiatric hospital that shall be used by the licensing entity.

➔Section 40. KRS 216B.176 is amended to read as follows:

Notwithstanding any other provision of law, a not-for-profit primary care center licensed under KRS Chapter 216, which is a participant in the Kentucky Patient Access and Care System of the Department for Medicaid Services, may enter into a written agreement with a board of education to provide a school-based health care program. The agreement shall include the following provisions:

- (1) The services shall include basic primary care, episodic acute care, care for chronic conditions, and preventive health care for the pupils enrolled in the school;
- (2) The program shall be located in a public school;
- (3) The program shall operate as a satellite of a licensed primary care center under the supervision of the medical director of the primary care center;
- (4) When in operation as a satellite of a primary care center, the program staff shall include a physician, physician assistant, or advanced *practice* registered nurse~~[practitioner]~~ and may be staffed with additional health care professionals appropriate for the services being provided; and
- (5) The program may, under agreement with the school, participate in the school's health education program.

➔Section 41. KRS 217.015 is amended to read as follows:

For the purposes of KRS 217.005 to 217.215:

- (1) "Advertisement" means all representations, disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

- (2) "Bread" and "enriched bread" mean only the foods commonly known and described as white bread, white rolls, white buns, enriched white bread, enriched rolls, and enriched white buns, as defined under the federal act. For the purposes of KRS 217.136 and 217.137, "bread" or "enriched bread" also means breads that may include vegetables or fruit as an ingredient;
- (3) "Cabinet" means the Cabinet for Health and Family Services or its designee;
- (4) "Color" means but is not limited to black, white, and intermediate grays;
- (5) "Color additive" means a material that:
 - (a) Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source. Nothing in this paragraph shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest; or
 - (b) When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable, alone or through reaction with another substance, of imparting color. "Color additive" does not include any material that has been or may in the future be exempted under the federal act;
- (6) "Contaminated with filth" means any food, drug, device, or cosmetic that is not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminants;
- (7) "Cosmetic" means:
 - (a) Articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance; and
 - (b) Articles intended for use as a component of those articles, except that the term shall not include soap;
- (8) "Device," except when used in subsection (48) of this section, KRS 217.035(6), KRS 217.065(3), KRS 217.095(3), and KRS 217.175(10), means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:
 - (a) For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - (b) To affect the structure or any function of the body of man or other animals;
- (9) "Dispense" means to deliver a drug or device to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (10) "Dispenser" means a person who lawfully dispenses a drug or device to or for the use of an ultimate user;
- (11) "Drug" means:
 - (a) Articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;
 - (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
 - (c) Articles, other than food, intended to affect the structure or any function of the body of man or other animals; and
 - (d) Articles intended for use as a component of any article specified in this subsection but does not include devices or their components, parts, or accessories;
- (12) "Enriched," as applied to flour, means the addition to flour of vitamins and other nutritional ingredients necessary to make it conform to the definition and standard of enriched flour as defined under the federal act;
- (13) "Environmental Pesticide Control Act of 1972" means the Federal Environmental Pesticide Control Act of 1972, Pub. L. 92-516, and all amendments thereto;

- (14) "Fair Packaging and Labeling Act" means the Fair Packaging and Labeling Act as it relates to foods and cosmetics, 15 U.S.C. secs. 1451 et seq., and all amendments thereto;
- (15) "Federal act" means the Federal Food, Drug and Cosmetic Act, 21 U.S.C. secs. 301 et seq., 52 Stat. 1040 et seq., or amendments thereto;
- (16) "Filled milk" means any milk, cream, or skimmed milk, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, to which has been added, or which has been blended or compounded with, any fat or oil other than milk fat, except the fat or oil of contained eggs and nuts and the fat or oil of substances used for flavoring purposes only, so that the resulting product is an imitation or semblance of milk, cream, skimmed milk, ice cream mix, ice cream, or frozen desserts, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, whether in bulk or in containers, hermetically sealed or unsealed. This definition does not mean or include any milk or cream from which no part of the milk or butter fat has been extracted, whether or not condensed, evaporated, concentrated, powdered, dried, or desiccated, to which has been added any substance rich in vitamins, nor any distinctive proprietary food compound not readily mistaken for milk or cream or for condensed, evaporated, concentrated, powdered, dried, or desiccated milk or cream, if the compound is prepared and designed for the feeding of infants or young children, sick or infirm persons, and customarily used on the order of a physician, and is packed in individual containers bearing a label in bold type that the contents are to be used for those purposes; nor shall this definition prevent the use, blending, or compounding of chocolate as a flavor with milk, cream, or skimmed milk, desiccated, whether in bulk or in containers, hermetically sealed or unsealed, to or with which has been added, blended or compounded no other fat or oil other than milk or butter fat;
- (17) "Flour" means only the foods commonly known as flour, white flour, wheat flour, plain flour, bromated flour, self-rising flour, self-rising white flour, self-rising wheat flour, phosphated flour, phosphated white flour, and phosphated wheat flour, defined under the federal act;
- (18) "Food" means:
 - (a) Articles used for food or drink for man or other animals;
 - (b) Chewing gum; and
 - (c) Articles used for components of any such article;
- (19) "Food additive" means any substance the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any of these uses, if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food to be safe under the conditions of its intended use; except that the term does not include:
 - (a) A pesticide chemical in or on a raw agricultural commodity;
 - (b) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity;
 - (c) A color additive; or
 - (d) Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq.; or the Meat Inspection Act of 1907; and amendments thereto;
- (20) "Food processing establishment" means any commercial establishment in which food is manufactured, processed, or packaged for human consumption, but does not include retail food establishments, home-based processors, or home-based microprocessors;
- (21) "Food service establishment" means any fixed or mobile commercial establishment that engages in the preparation and serving of ready-to-eat foods in portions to the consumer, including but not limited to: restaurants; coffee shops; cafeterias; short order cafes; luncheonettes; grills; tea rooms; sandwich shops; soda fountains; taverns; bars; cocktail lounges; nightclubs; roadside stands; industrial feeding establishments; private, public or nonprofit organizations or institutions routinely serving food; catering kitchens; commissaries; charitable food kitchens; or similar places in which food is prepared for sale or service on the

premises or elsewhere with or without charge. It does not include food vending machines, establishments serving beverages only in single service or original containers, or retail food stores which only cut, slice, and prepare cold-cut sandwiches for individual consumption;

- (22) "Food storage warehouse" means any establishment in which food is stored for subsequent distribution;
- (23) "Immediate container" does not include package liners;
- (24) "Imminent health hazard" means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation to prevent illness or injury based on:
 - (a) The number of potential illnesses or injuries; or
 - (b) The nature, severity, and duration of the anticipated illness or injury;
- (25) "Interference" means threatening or otherwise preventing the performance of lawful inspections or duties by agents of the cabinet during all reasonable times of operation;
- (26) "Label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of KRS 217.005 to 217.215 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article, or is easily legible through the outside container or wrapper;
- (27) "Labeling" means all labels and other written, printed, or graphic matter:
 - (a) Upon an article or any of its containers or wrappers; or
 - (b) Accompanying the article;
- (28) "Legend drug" means a drug defined by the Federal Food, Drug and Cosmetic Act, as amended, and under which definition its label is required to bear the statement "Caution: Federal law prohibits dispensing without prescription.";
- (29) "Meat Inspection Act" means the Federal Meat Inspection Act, 21 U.S.C. secs. 71 et seq., 34 Stat. 1260 et seq., including any amendments thereto;
- (30) "New drug" means:
 - (a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or
 - (b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety for use under prescribed conditions, has become so recognized, but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions;
- (31) "Official compendium" means the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them;
- (32) "Person" means an individual, firm, partnership, company, corporation, trustee, association, or any public or private entity;
- (33) "Pesticide chemical" means any substance that alone in chemical combination, or in formulation with one or more other substances, is an "economic poison" within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act and amendments thereto, and that is used in the production, storage, or transportation of raw agricultural commodities;
- (34) "Poultry Products Inspection Act" means the Federal Poultry and Poultry Products Inspection Act, 21 U.S.C. secs. 451 et seq., Pub. L. 85-172, 71 Stat. 441, and any amendments thereto;
- (35) "Practitioner" means medical or osteopathic physicians, dentists, chiropractors, and veterinarians who are licensed under the professional licensing laws of Kentucky to prescribe and administer drugs and devices. "Practitioner" includes optometrists when administering or prescribing pharmaceutical agents authorized in KRS 320.240(12) to (14), advanced *practice* registered *nurses*~~nurse-practitioners~~ as authorized in KRS

314.011 and 314.042, physician assistants when administering or prescribing pharmaceutical agents as authorized in KRS 311.858, and health care professionals who are residents of and actively practicing in a state other than Kentucky and who are licensed and have prescriptive authority under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;

- (36) "Prescription" means a written or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, that is signed, given, or authorized by a medical, dental, chiropody, veterinarian, or optometric practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (37) "Prescription blank" means a document that conforms with KRS 217.216 and is intended for prescribing a drug to an ultimate user;
- (38) "Raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing;
- (39) "Retail food establishment" means any food service establishment, retail food store, or a combination of both within the same establishment;
- (40) "Retail food store" means any fixed or mobile establishment where food or food products, including prepackaged, labeled sandwiches or other foods to be heated in a microwave or infrared oven at the time of purchase, are offered for sale to the consumer, and intended for off-premises consumption, but does not include establishments which handle only prepackaged, snack-type, nonpotentially hazardous foods, markets that offer only fresh fruits and vegetables for sale, food service establishments, food and beverage vending machines, vending machine commissaries, or food processing establishments;
- (41) "Salvage distributor" means a person who engages in the business of distributing, peddling, or otherwise trafficking in any salvaged merchandise;
- (42) "Salvage processing plant" means an establishment operated by a person engaged in the business of reconditioning, labeling, relabeling, repackaging, recoopering, sorting, cleaning, culling or who by other means salvages, sells, offers for sale, or distributes for human or animal consumption or use any salvaged food, beverage, including beer, wine and distilled spirits, vitamins, food supplements, dentifrices, cosmetics, single-service food containers or utensils, containers and packaging materials used for foods and cosmetics, soda straws, paper napkins, or any other product of a similar nature that has been damaged or contaminated by fire, water, smoke, chemicals, transit, or by any other means;
- (43) "Second or subsequent offense" has the same meaning as it does in KRS 218A.010;
- (44) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (45) "Temporary food service establishment" means any food service establishment which operates at a fixed location for a period of time, not to exceed fourteen (14) consecutive days;
- (46) "Traffic" has the same meaning as it does in KRS 218A.010;
- (47) "Ultimate user" has the same meaning as it does in KRS 218A.010;
- (48) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts that are material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under the conditions of use as are customary or usual;
- (49) The representation of a drug in its labeling or advertisement as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use involving prolonged contact with the body;
- (50) The provisions of KRS 217.005 to 217.215 regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and

holding of those articles for sale, the sale, dispensing, and giving of those articles, and the supplying or applying of those articles in the conduct of any food, drug, or cosmetic establishment;

- (51) "Home" means a primary residence occupied by the processor, that contains only two (2) ranges, ovens, or double-ovens, and no more than three (3) refrigerators used for cold storage. This equipment shall have been designed for home use and not for commercial use, and shall be operated in the kitchen within the residence;
- (52) "Formulated acid food product" means an acid food in which the addition of a small amount of low-acid food results in a finished equilibrium pH of 4.6 or below that does not significantly differ from that of the predominant acid or acid food;
- (53) "Acidified food product" means a low-acid food to which acid or acidic food is added and which has a water activity value greater than 0.85, and a finished equilibrium pH of 4.6 or below;
- (54) "Low-acid food" means foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6, and a water activity value greater than 0.85;
- (55) "Acid food" means foods that have a natural pH of 4.6 or below;
- (56) "Home-based processor" means a farmer who, in the farmer's home, produces or processes whole fruit and vegetables, mixed-greens, jams, jellies, sweet sorghum syrup, preserves, fruit butter, bread, fruit pies, cakes, or cookies;
- (57) "Home-based microprocessor" means a farmer who, in the farmer's home or certified or permitted kitchen, produces or processes acid foods, formulated acid food products, acidified food products, or low-acid canned foods, and who has a net income of less than thirty-five thousand dollars (\$35,000) annually from the sale of the product;
- (58) "Certified" means any person or home-based microprocessor who:
 - (a) Has attended the Kentucky Cooperative Extension Service's microprocessing program or pilot microprocessing program and has been identified by the Kentucky Cooperative Extension Service as having satisfactorily completed the prescribed course of instruction; or
 - (b) Has attended some other school pursuant to 21 C.F.R. sec. 114.10;
- (59) "Farmer" means a person who is a resident of Kentucky and owns or rents agricultural land pursuant to subsection (9) of KRS 132.010 or horticultural land pursuant to subsection (10) of KRS 132.010. For the purposes of KRS 217.136 to 217.139, "farmer" also means any person who is a resident of Kentucky and has grown the primary horticultural and agronomic ingredients used in the home-based processed products which they have produced; and
- (60) "Farmers market temporary food service establishment" means any temporary food service establishment operated by a farmer who is a member of the market which operates within the confines of a farmers market registered with the Kentucky Department of Agriculture for the direct-to-consumer marketing of Kentucky-grown farm products from approved sources for a period of time not to exceed two (2) days per week for any consecutive six (6) months period in a calendar year.

➔Section 42. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;

- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (11) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.
- It does not include devices or their components, parts, or accessories;
- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:

- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;

- (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced ***practice*** registered nurse~~[-practitioner]~~ as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced ***practice*** registered nurse~~[-practitioner]~~ authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced ***practice*** registered nurse~~[-practitioner]~~, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- (36) "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (37) "Serious physical injury" has the same meaning it has in KRS 500.080;
- (38) "Telehealth" has the same meaning it has in KRS 311.550;

- (39) "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (40) "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (41) "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (42) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 43. KRS 218A.202 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish an electronic system for monitoring Schedules II, III, IV, and V controlled substances that are dispensed within the Commonwealth by a practitioner or pharmacist or dispensed to an address within the Commonwealth by a pharmacy that has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy.
- (2) A practitioner or a pharmacist shall not have to pay a fee or tax specifically dedicated to the operation of the system.
- (3) Every dispenser within the Commonwealth or any other dispenser who has obtained a license, permit, or other authorization to operate from the Kentucky Board of Pharmacy shall report to the Cabinet for Health and Family Services the data required by this section in a timely manner as prescribed by the cabinet except that reporting shall not be required for:
 - (a) A drug administered directly to a patient; or
 - (b) A drug dispensed by a practitioner at a facility licensed by the cabinet provided that the quantity dispensed is limited to an amount adequate to treat the patient for a maximum of forty-eight (48) hours.
- (4) Data for each controlled substance that is dispensed shall include but not be limited to the following:
 - (a) Patient identifier;
 - (b) Drug dispensed;
 - (c) Date of dispensing;
 - (d) Quantity dispensed;
 - (e) Prescriber; and
 - (f) Dispenser.
- (5) The data shall be provided in the electronic format specified by the Cabinet for Health and Family Services unless a waiver has been granted by the cabinet to an individual dispenser. The cabinet shall establish acceptable error tolerance rates for data. Dispensers shall ensure that reports fall within these tolerances. Incomplete or inaccurate data shall be corrected upon notification by the cabinet if the dispenser exceeds these error tolerance rates.
- (6) The Cabinet for Health and Family Services shall only disclose data to persons and entities authorized to receive that data under this section. Disclosure to any other person or entity, including disclosure in the context of a civil action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited unless specifically authorized by this section. The Cabinet for Health and Family Services shall be authorized to provide data to:
 - (a) A designated representative of a board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense

controlled substances and who is involved in a bona fide specific investigation involving a designated person;

- (b) A Kentucky peace officer certified pursuant to KRS 15.380 to 15.404, a certified or full-time peace officer of another state, or a federal peace officer whose duty is to enforce the laws of this Commonwealth, of another state, or of the United States relating to drugs and who is engaged in a bona fide specific investigation involving a designated person;
 - (c) A state-operated Medicaid program;
 - (d) A properly convened grand jury pursuant to a subpoena properly issued for the records;
 - (e) A practitioner or pharmacist who requests information and certifies that the requested information is for the purpose of providing medical or pharmaceutical treatment to a bona fide current patient;
 - (f) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Medical Licensure, for any physician who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Board of Medical Licensure for improper prescribing practices;
 - 2. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 3. In a designated geographic area for which a report on another physician in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area;
 - (g) In addition to the purposes authorized under paragraph (a) of this subsection, the Kentucky Board of Nursing, for any advanced *practice* registered nurse~~practitioner~~ who is:
 - 1. Associated in a partnership or other business entity with a physician who is already under investigation by the Kentucky Board of Medical Licensure for improper prescribing practices;
 - 2. Associated in a partnership or other business entity with an advanced *practice* registered nurse~~practitioner~~ who is already under investigation by the Board of Nursing for improper prescribing practices;
 - 3. In a designated geographic area for which a trend report indicates a substantial likelihood that inappropriate prescribing may be occurring; or
 - 4. In a designated geographic area for which a report on a physician or another advanced *practice* registered nurse~~practitioner~~ in that area indicates a substantial likelihood that inappropriate prescribing may be occurring in that area; or
 - (h) A judge or a probation or parole officer administering a diversion or probation program of a criminal defendant arising out of a violation of this chapter or of a criminal defendant who is documented by the court as a substance abuser who is eligible to participate in a court-ordered drug diversion or probation program.
- (7) The Department for Medicaid Services may use any data or reports from the system for the purpose of identifying Medicaid recipients whose usage of controlled substances may be appropriately managed by a single outpatient pharmacy or primary care physician.
- (8) A person who receives data or any report of the system from the cabinet shall not provide it to any other person or entity except by order of a court of competent jurisdiction and only to a person or entity authorized to receive the data or the report under this section, except that:
- (a) A peace officer specified in subsection (6)(b) of this section who is authorized to receive data or a report may share that information with other peace officers specified in subsection (6)(b) of this section authorized to receive data or a report if the peace officers specified in subsection (6)(b) of this section are working on a bona fide specific investigation involving a designated person. Both the person providing and the person receiving the data or report under this paragraph shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by each law enforcement agency engaged in the investigation; and

- (b) A representative of the Department for Medicaid Services may share data or reports regarding overutilization by Medicaid recipients with a board designated in subsection (6)(a) of this section, or with a law enforcement officer designated in subsection (6)(b) of this section; and
 - (c) The Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
- (9) The Cabinet for Health and Family Services, all peace officers specified in subsection (6)(b) of this section, all officers of the court, and all regulatory agencies and officers, in using the data for investigative or prosecution purposes, shall consider the nature of the prescriber's and dispenser's practice and the condition for which the patient is being treated.
 - (10) The data and any report obtained therefrom shall not be a public record, except that the Department for Medicaid Services may submit the data as evidence in an administrative hearing held in accordance with KRS Chapter 13B.
 - (11) Intentional failure by a dispenser to transmit data to the cabinet as required by subsection (3), (4), or (5) of this section shall be a Class A misdemeanor for the first offense and a Class D felony for each subsequent offense.
 - (12) Intentional disclosure of transmitted data to a person not authorized by subsection (6) to subsection (8) of this section or authorized by KRS 315.121, or obtaining information under this section not relating to a bona fide specific investigation, shall be a Class D felony for the first offense and a Class C felony for each subsequent offense.
 - (13) The Commonwealth Office of Technology, in consultation with the Cabinet for Health and Family Services, shall submit an application to the United States Department of Justice for a drug diversion grant to fund a pilot project to study a real-time electronic monitoring system for Schedules II, III, IV, and V controlled substances. The pilot project shall:
 - (a) Be conducted in two (2) rural counties that have an interactive real-time electronic information system in place for monitoring patient utilization of health and social services through a federally funded community access program; and
 - (b) Study the use of an interactive system that includes a relational data base with query capability.
 - (14) Provisions in this section that relate to data collection, disclosure, access, and penalties shall apply to the pilot project authorized under subsection (13) of this section.
 - (15) The Cabinet for Health and Family Services may limit the length of time that data remain in the electronic system. Any data removed from the system shall be archived and subject to retrieval within a reasonable time after a request from a person authorized to review data under this section.
 - (16)
 - (a) The Cabinet for Health and Family Services shall work with each board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances for the development of a continuing education program about the purposes and uses of the electronic system for monitoring established in this section.
 - (b) The cabinet shall work with the Kentucky Bar Association for the development of a continuing education program for attorneys about the purposes and uses of the electronic system for monitoring established in this section.
 - (c) The cabinet shall work with the Justice and Public Safety Cabinet for the development of a continuing education program for law enforcement officers about the purposes and users of the electronic system for monitoring established in this section.

➔Section 44. KRS 281.873 is amended to read as follows:

- (1) As used in this section and KRS 281.874, unless the context otherwise requires:
 - (a) "Certificate Type 01" means a private automobile;
 - (b) "Certificate Type 02" means a taxicab service;
 - (c) "Certificate Type 03" means a bus service;
 - (d) "Certificate Type 04" means a nonprofit transit system;

- (e) "Certificate Type 07" means a specialty carrier certified to transport nonemergency, ambulatory disoriented persons;
 - (f) "Certificate Type 08" means a specialty carrier, using lift-equipped vehicles in compliance with the Americans with Disabilities Act, certified to transport nonemergency, nonambulatory persons;
 - (g) "Level of eligibility" means the specialty transport classification a person is designated based upon the written recommendation of the person's personal physician, physician assistant, advanced **practice** registered nurse~~[-practitioner]~~, or qualified mental health professional that is used to establish the type of specialty transport needed for the person; and
 - (h) "Qualified mental health professional" shall have the same meaning as in KRS 202A.011.
- (2) Except for members of the general public, the level of eligibility shall dictate both the necessity and the type of special carrier transport for a person participating in the human service transportation delivery program and shall ensure the person shall be transported in the appropriate vehicle designed to accommodate the person's level of eligibility. The broker shall, upon request by a recipient, provide specialty carrier transportation for a period up to thirty (30) days without written recommendation of the recipient's personal physician, physician assistant, advanced **practice** registered nurse~~[-practitioner]~~, or qualified mental health professional. A broker shall be prohibited from changing or altering a person's level of eligibility and the accompanying certificate type. A broker shall report questionable specialty classifications to the cabinet.
- (3) A parent, guardian, or designee of the parent or guardian shall accompany any minor under the age of thirteen (13) who is receiving human service transportation delivery program services. A parent, guardian, or designee of the parent or guardian may accompany a minor between the ages of thirteen (13) and seventeen (17) who is receiving human service transportation delivery program services.
- (4) An escort shall not be required for any person aged thirteen (13) or older, unless the person's physician, physician assistant, advanced **practice** registered nurse~~[-practitioner]~~, or qualified mental health professional has recommended that the person be transported with an escort based upon one (1) of the following criteria:
- (a) A history of a behavior that has resulted in harm to the person or to others while receiving human service transportation delivery program services;
 - (b) A medical history of a behavior that indicates that the person may be a danger to himself or herself or others; or
 - (c) Information that the person may become violent in a transportation setting from the person's support coordinator, who is providing services under 907 KAR 1:145 or any other Medicaid program, and also from the person's parent or guardian.
- (5) A requirement for an escort under subsection (4) of this section shall be removed upon the recommendation of the physician, physician assistant, advanced **practice** registered nurse~~[-practitioner]~~, or qualified mental health professional.
- (6) If an escort is required under subsection (4) of this section, the transportation provider shall provide one (1) escort per vehicle to pick up each individual at his or her designated location, remain with the person during transport, and escort the person to the designated health care provider or other covered service.
- (7) If a person receiving transportation delivery services under a Certificate Type 07 or 08 is not required to have an escort under the provisions of subsection (4) of this section, but needs assistance to and from the transportation vehicle, the transportation provider shall provide that service if the following conditions exist:
- (a) It would take less than five (5) minutes to accompany the person to and from the transportation vehicle; and
 - (b) The transportation provider can maintain visual contact with his or her vehicle if there are other persons receiving transportation delivery services remaining in the vehicle.
- (8) Any transportation provider that leaves a vehicle to accompany a person to or from the transportation vehicle shall:
- (a) Turn off the vehicle engine and retain the key in his or her possession; or
 - (b) Enable a transmission locking device that prohibits unauthorized use of the vehicle and retain the key in his or her possession.

- (9) If a person receiving human service transportation services does not require an escort under the provisions of subsection (4) of this section, but needs assistance to and from the vehicle, the transportation provider shall provide one (1) escort per vehicle if the conditions of paragraphs (a) and (b) of subsection (7) of this section do not exist.
- (10) If a state agency has been appointed as the guardian of a person receiving human service transportation program services, the state shall ensure that the transportation provider provides an escort when the person meets the criteria under subsection (4) of this section.
- (11) A parent, guardian, or designee of the parent or guardian accompanying a minor shall not be charged a fare.

➔Section 45. KRS 304.17-312 is amended to read as follows:

As used in KRS 304.17-313, 304.18-037, 304.32-280, and 304.38-210:

- (1) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and is certified to participate as a home health agency under Title XVIII of the Social Security Act.
- (2) "Home health care" means the care and treatment provided by a home health agency which is prescribed and supervised by a physician. The care and treatment shall include but not be limited to one (1) or more of the following:
 - (a) Part-time or intermittent skilled nursing services provided by an advanced *practice* registered nurse ~~practitioner~~, registered nurse, or licensed practical nurse;
 - (b) Physical, respiratory, occupational, or speech therapy;
 - (c) Home health aide services;
 - (d) Medical appliances and equipment, drugs and medication, and laboratory services, to the extent that such items and services would have been covered under the policy if the covered person had been in a hospital.
- (3) "Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include but not be limited to the following:
 - (a) Helping the patient with bath, care of mouth, skin, and hair;
 - (b) Helping the patient to the bathroom or in using a bedpan;
 - (c) Helping the patient in and out of bed and assisting with ambulation;
 - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
 - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician;
 - (f) Performing incidental household services as are essential to the patient's health care at home provided that such services would have been performed if the patient was in a hospital or skilled nursing facility; and
 - (g) Reporting to the professional nurse supervisor changes in the patient's condition or family situation.

➔Section 46. KRS 304.17A-005 is amended to read as follows:

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

- (1) "Association" means an entity, other than an employer-organized association, that has been organized and is maintained in good faith for purposes other than that of obtaining insurance for its members and that has a constitution and bylaws;
- (2) "At the time of enrollment" means:
 - (a) At the time of application for an individual, an association that actively markets to individual members, and an employer-organized association that actively markets to individual members; and

- (b) During the time of open enrollment or during an insured's initial or special enrollment periods for group health insurance;
- (3) "Base premium rate" means, for each class of business as to a rating period, the lowest premium rate charged or that could have been charged under the rating system for that class of business by the insurer to the individual or small group, or employer as defined in KRS 304.17A-0954, with similar case characteristics for health benefit plans with the same or similar coverage;
- (4) "Basic health benefit plan" means any plan offered to an individual, a small group, or employer-organized association that limits coverage to physician, pharmacy, home health, preventive, emergency, and inpatient and outpatient hospital services in accordance with the requirements of this subtitle. If vision or eye services are offered, these services may be provided by an ophthalmologist or optometrist. Chiropractic benefits may be offered by providers licensed pursuant to KRS Chapter 312;
- (5) "Bona fide association" means an entity as defined in 42 U.S.C. sec. 300gg-91(d)(3);
- (6) "Church plan" means a church plan as defined in 29 U.S.C. sec. 1002(33);
- (7) "COBRA" means any of the following:
 - (a) 26 U.S.C. sec. 4980B other than subsection (f)(1) as it relates to pediatric vaccines;
 - (b) The Employee Retirement Income Security Act of 1974 (29 U.S.C. sec. 1161 et seq. other than sec. 1169); or
 - (c) 42 U.S.C. sec. 300bb;
- (8) (a) "Creditable coverage" means, with respect to an individual, coverage of the individual under any of the following:
 - 1. A group health plan;
 - 2. Health insurance coverage;
 - 3. Part A or Part B of Title XVIII of the Social Security Act;
 - 4. Title XIX of the Social Security Act, other than coverage consisting solely of benefits under section 1928;
 - 5. Chapter 55 of Title 10, United States Code, including medical and dental care for members and certain former members of the uniformed services, and for their dependents; for purposes of Chapter 55 of Title 10, United States Code, "uniformed services" means the Armed Forces and the Commissioned Corps of the National Oceanic and Atmospheric Administration and of the Public Health Service;
 - 6. A medical care program of the Indian Health Service or of a tribal organization;
 - 7. A state health benefits risk pool;
 - 8. A health plan offered under Chapter 89 of Title 5, United States Code, such as the Federal Employees Health Benefit Program;
 - 9. A public health plan as established or maintained by a state, the United States government, a foreign country, or any political subdivision of a state, the United States government, or a foreign country that provides health coverage to individuals who are enrolled in the plan;
 - 10. A health benefit plan under section 5(e) of the Peace Corps Act (22 U.S.C. sec. 2504(e)); or
 - 11. Title XXI of the Social Security Act, such as the State Children's Health Insurance Program.
- (b) This term does not include coverage consisting solely of coverage of excepted benefits as defined in subsection (14) of this section;
- (9) "Dependent" means any individual who is or may become eligible for coverage under the terms of an individual or group health benefit plan because of a relationship to a participant;
- (10) "Employee benefit plan" means an employee welfare benefit plan or an employee pension benefit plan or a plan which is both an employee welfare benefit plan and an employee pension benefit plan as defined by ERISA;

(11) "Eligible individual" means an individual:

- (a) For whom, as of the date on which the individual seeks coverage, the aggregate of the periods of creditable coverage is eighteen (18) or more months and whose most recent prior creditable coverage was under a group health plan, governmental plan, or church plan. A period of creditable coverage under this paragraph shall not be counted if, after that period, there was a sixty-three (63) day period of time, excluding any waiting or affiliation period, during all of which the individual was not covered under any creditable coverage;
- (b) Who is not eligible for coverage under a group health plan, Part A or Part B of Title XVIII of the Social Security Act (42 U.S.C. secs. 1395j et seq.), or a state plan under Title XIX of the Social Security Act (42 U.S.C. secs. 1396 et seq.) and does not have other health insurance coverage;
- (c) With respect to whom the most recent coverage within the coverage period described in paragraph (a) of this subsection was not terminated based on a factor described in KRS 304.17A-240(2)(a), (b), and (c);
- (d) If the individual had been offered the option of continuation coverage under a COBRA continuation provision or under KRS 304.18-110, who elected the coverage; and
- (e) Who, if the individual elected the continuation coverage, has exhausted the continuation coverage under the provision or program;

(12) "Employer-organized association" means any of the following:

- (a) Any entity that was qualified by the executive director as an eligible association prior to April 10, 1998, and that has actively marketed a health insurance program to its members since September 8, 1996, and which is not insurer-controlled;
- (b) Any entity organized under KRS 247.240 to 247.370 that has actively marketed health insurance to its members and that is not insurer-controlled; or
- (c) Any entity that is a bona fide association as defined in 42 U.S.C. sec. 300gg-91(d)(3), whose members consist principally of employers, and for which the entity's health insurance decisions are made by a board or committee, the majority of which are representatives of employer members of the entity who obtain group health insurance coverage through the entity or through a trust or other mechanism established by the entity, and whose health insurance decisions are reflected in written minutes or other written documentation.

Except as provided in KRS 304.17A-200, 304.17A.210, and 304.17A-220, no employer-organized association shall be treated as an association, small group, or large group under this subtitle;

(13) "Employer-organized association health insurance plan" means any health insurance plan, policy, or contract issued to an employer-organized association, or to a trust established by one (1) or more employer-organized associations, or providing coverage solely for the employees, retired employees, directors and their spouses and dependents of the members of one (1) or more employer-organized associations;

(14) "Excepted benefits" means benefits under one (1) or more, or any combination thereof, of the following:

- (a) Coverage only for accident, including accidental death and dismemberment, or disability income insurance, or any combination thereof;
- (b) Coverage issued as a supplement to liability insurance;
- (c) Liability insurance, including general liability insurance and automobile liability insurance;
- (d) Workers' compensation or similar insurance;
- (e) Automobile medical payment insurance;
- (f) Credit-only insurance;
- (g) Coverage for on-site medical clinics;
- (h) Other similar insurance coverage, specified in administrative regulations, under which benefits for medical care are secondary or incidental to other insurance benefits;
- (i) Limited scope dental or vision benefits;

- (j) Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof;
 - (k) Such other similar, limited benefits as are specified in administrative regulations;
 - (l) Coverage only for a specified disease or illness;
 - (m) Hospital indemnity or other fixed indemnity insurance;
 - (n) Benefits offered as Medicare supplemental health insurance, as defined under section 1882(g)(1) of the Social Security Act;
 - (o) Coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code;
 - (p) Coverage similar to that in paragraphs (n) and (o) of this subsection that is supplemental to coverage under a group health plan; and
 - (q) Health flexible spending arrangements;
- (15) "Governmental plan" means a governmental plan as defined in 29 U.S.C. sec. 1002(32);
- (16) "Group health plan" means a plan, including a self-insured plan, of or contributed to by an employer, including a self-employed person, or employee organization, to provide health care directly or otherwise to the employees, former employees, the employer, or others associated or formerly associated with the employer in a business relationship, or their families;
- (17) "Guaranteed acceptance program participating insurer" means an insurer that is required to or has agreed to offer health benefit plans in the individual market to guaranteed acceptance program qualified individuals under KRS 304.17A-400 to 304.17A-480;
- (18) "Guaranteed acceptance program plan" means a health benefit plan in the individual market issued by an insurer that provides health benefits to a guaranteed acceptance program qualified individual and is eligible for assessment and refunds under the guaranteed acceptance program under KRS 304.17A-400 to 304.17A-480;
- (19) "Guaranteed acceptance program" means the Kentucky Guaranteed Acceptance Program established and operated under KRS 304.17A-400 to 304.17A-480;
- (20) "Guaranteed acceptance program qualified individual" means an individual who, on or before December 31, 2000:
- (a) Is not an eligible individual;
 - (b) Is not eligible for or covered by other health benefit plan coverage or who is a spouse or a dependent of an individual who:
 - 1. Waived coverage under KRS 304.17A-210(2); or
 - 2. Did not elect family coverage that was available through the association or group market;
 - (c) Within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition, or is a high risk individual as defined by the underwriting criteria applied by an insurer under the alternative underwriting mechanism established in KRS 304.17A-430(3);
 - (d) Has been a resident of Kentucky for at least twelve (12) months immediately preceding the effective date of the policy; and
 - (e) Has not had his or her most recent coverage under any health benefit plan terminated or nonrenewed because of any of the following:
 - 1. The individual failed to pay premiums or contributions in accordance with the terms of the plan or the insurer had not received timely premium payments;
 - 2. The individual performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of the coverage; or
 - 3. The individual engaged in intentional and abusive noncompliance with health benefit plan provisions;

- (21) "Guaranteed acceptance plan supporting insurer" means either an insurer, on or before December 31, 2000, that is not a guaranteed acceptance plan participating insurer or is a stop loss carrier, on or before December 31, 2000, provided that a guaranteed acceptance plan supporting insurer shall not include an employer-sponsored self-insured health benefit plan exempted by ERISA;
- (22) "Health benefit plan" means any hospital or medical expense policy or certificate; nonprofit hospital, medical-surgical, and health service corporation contract or certificate; provider sponsored integrated health delivery network; a self-insured plan or a plan provided by a multiple employer welfare arrangement, to the extent permitted by ERISA; health maintenance organization contract; or any health benefit plan that affects the rights of a Kentucky insured and bears a reasonable relation to Kentucky, whether delivered or issued for delivery in Kentucky, and does not include policies covering only accident, credit, dental, disability income, fixed indemnity medical expense reimbursement policy, long-term care, Medicare supplement, specified disease, vision care, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance, insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance, short-term coverage, student health insurance offered by a Kentucky-licensed insurer under written contract with a university or college whose students it proposes to insure, medical expense reimbursement policies specifically designed to fill gaps in primary coverage, coinsurance, or deductibles and provided under a separate policy, certificate, or contract, or coverage supplemental to the coverage provided under Chapter 55 of Title 10, United States Code, or limited health service benefit plans;
- (23) "Health care provider" or "provider" means any facility or service required to be licensed pursuant to KRS Chapter 216B, pharmacist as defined pursuant to KRS Chapter 315, and any of the following independent practicing practitioners:
- (a) Physicians, osteopaths, and podiatrists licensed under KRS Chapter 311;
 - (b) Chiropractors licensed under KRS Chapter 312;
 - (c) Dentists licensed under KRS Chapter 313;
 - (d) Optometrists licensed under KRS Chapter 320;
 - (e) Physician assistants regulated under KRS Chapter 311;
 - (f) Advanced **practice** registered **nurses** ~~[nurse-practitioners]~~ licensed under KRS Chapter 314; and
 - (g) Other health care practitioners as determined by the office by administrative regulations promulgated under KRS Chapter 13A;
- (24) (a) "High-cost condition," pursuant to the Kentucky Guaranteed Acceptance Program, means a covered condition in an individual policy as listed in paragraph (c) of this subsection or as added by the executive director in accordance with KRS 304.17A-280, but only to the extent that the condition exceeds the numerical score or rating established pursuant to uniform underwriting standards prescribed by the executive director under paragraph (b) of this subsection that account for the severity of the condition and the cost associated with treating that condition.
- (b) The executive director by administrative regulation shall establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using:
- 1. Codes in the most recent version of the "International Classification of Diseases" that correspond to the medical conditions in paragraph (c) of this subsection and the costs for administering treatment for the conditions represented by those codes; and
 - 2. The most recent version of the questionnaire incorporated in a national underwriting guide generally accepted in the insurance industry as designated by the executive director, the scoring scale for which shall be established by the executive director.
- (c) The diagnosed medical conditions are: acquired immune deficiency syndrome (AIDS), angina pectoris, ascites, chemical dependency cirrhosis of the liver, coronary insufficiency, coronary occlusion, cystic fibrosis, Friedreich's ataxia, hemophilia, Hodgkin's disease, Huntington chorea, juvenile diabetes, leukemia, metastatic cancer, motor or sensory aphasia, multiple sclerosis, muscular dystrophy, myasthenia gravis, myotonia, open heart surgery, Parkinson's disease, polycystic kidney, psychotic disorders, quadriplegia, stroke, syringomyelia, and Wilson's disease;

- (25) "Index rate" means, for each class of business as to a rating period, the arithmetic average of the applicable base premium rate and the corresponding highest premium rate;
- (26) "Individual market" means the market for the health insurance coverage offered to individuals other than in connection with a group health plan. The individual market includes an association plan that is not employer related, issued to individuals on an individually underwritten basis, other than an employer-organized association or a bona fide association, that has been organized and is maintained in good faith for purposes other than obtaining insurance for its members and that has a constitution and bylaws;
- (27) "Insurer" means any insurance company; health maintenance organization; self-insurer or multiple employer welfare arrangement not exempt from state regulation by ERISA; provider-sponsored integrated health delivery network; self-insured employer-organized association, or nonprofit hospital, medical-surgical, dental, or health service corporation authorized to transact health insurance business in Kentucky;
- (28) "Insurer-controlled" means that the executive director has found, in an administrative hearing called specifically for that purpose, that an insurer has or had a substantial involvement in the organization or day-to-day operation of the entity for the principal purpose of creating a device, arrangement, or scheme by which the insurer segments employer groups according to their actual or anticipated health status or actual or projected health insurance premiums;
- (29) "Kentucky Access" has the meaning provided in KRS 304.17B-001(17);
- (30) "Large group" means:
 - (a) An employer with fifty-one (51) or more employees; or
 - (b) An affiliated group with fifty-one (51) or more eligible members;
- (31) "Managed care" means systems or techniques generally used by third-party payors or their agents to affect access to and control payment for health care services and that integrate the financing and delivery of appropriate health care services to covered persons by arrangements with participating providers who are selected to participate on the basis of explicit standards for furnishing a comprehensive set of health care services and financial incentives for covered persons using the participating providers and procedures provided for in the plan;
- (32) "Market segment" means the portion of the market covering one (1) of the following:
 - (a) Individual;
 - (b) Small group;
 - (c) Large group; or
 - (d) Association;
- (33) "Participant" means any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of the employer or members of the organization, or whose beneficiaries may be eligible to receive any benefit as established in Section 3(7) of ERISA;
- (34) "Preventive services" means medical services for the early detection of disease that are associated with substantial reduction in morbidity and mortality;
- (35) "Provider network" means an affiliated group of varied health care providers that is established to provide a continuum of health care services to individuals;
- (36) "Provider-sponsored integrated health delivery network" means any provider-sponsored integrated health delivery network created and qualified under KRS 304.17A-300 and KRS 304.17A-310;
- (37) "Purchaser" means an individual, organization, employer, association, or the Commonwealth that makes health benefit purchasing decisions on behalf of a group of individuals;
- (38) "Rating period" means the calendar period for which premium rates are in effect. A rating period shall not be required to be a calendar year;
- (39) "Restricted provider network" means a health benefit plan that conditions the payment of benefits, in whole or in part, on the use of the providers that have entered into a contractual arrangement with the insurer to provide health care services to covered individuals;

- (40) "Self-insured plan" means a group health insurance plan in which the sponsoring organization assumes the financial risk of paying for covered services provided to its enrollees;
- (41) "Small employer" means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least two (2) but not more than fifty (50) employees on business days during the preceding calendar year and who employs at least two (2) employees on the first day of the plan year;
- (42) "Small group" means:
 - (a) A small employer with two (2) to fifty (50) employees; or
 - (b) An affiliated group or association with two (2) to fifty (50) eligible members;
- (43) "Standard benefit plan" means the plan identified in KRS 304.17A-250; and
- (44) "Telehealth" has the meaning provided in KRS 311.550.

➔Section 47. KRS 304.17A-575 is amended to read as follows:

As used in KRS 304.17A-575 to 304.17A-578, unless the context requires otherwise:

- (1) "Applicant" means a physician licensed under KRS Chapter 311, an advanced *practice* registered nurse ~~practitioner~~ licensed under KRS Chapter 314, a psychologist licensed under KRS Chapter 319, or an optometrist licensed under KRS Chapter 320 applying for credentialing;
- (2) "Enrollee" means a person who is eligible to receive health care services under a managed care plan;
- (3) "Managed care plan" means a health benefit plan that integrates the financing and delivery of appropriate health care services to enrollees by arrangements with participating providers who are selected to participate on the basis of explicit standards to furnish a comprehensive set of health care services and financial incentives for enrollees to use the participating providers and procedures provided for in the plan; and
- (4) "Nonparticipating provider" means a physician licensed under KRS Chapter 311, an advanced *practice* registered nurse ~~practitioner~~ licensed under KRS Chapter 314, a psychologist licensed under KRS Chapter 319, or an optometrist licensed under KRS Chapter 320 that has not entered into an agreement with an insurer to provide health care services.

➔Section 48. KRS 304.17A-578 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Material change" means a change to a contract, the occurrence and timing of which is not otherwise clearly identified in the contract, that decreases the health care provider's payment or compensation or changes the administrative procedures in a way that may reasonably be expected to significantly increase the provider's administrative expense; and
 - (b) "Participating provider" means a physician licensed under KRS Chapter 311, an advanced *practice* registered nurse ~~practitioner~~ licensed under KRS Chapter 314, a psychologist licensed under KRS Chapter 319, or an optometrist licensed under KRS Chapter 320 that has entered into an agreement with an insurer to provide health care services.
- (2) If an insurer issuing a managed care plan makes a material change to an agreement it has entered into with a participating provider for the provision of health care services, the insurer shall provide the participating provider with at least ninety (90) days' written notice of the material change. The notice shall include a description of the material change and a statement that the participating provider has the option to withdraw from the agreement prior to the material change becoming effective pursuant to subsection (3) of this section.
- (3) A participating provider who opts to withdraw following notice of a material change pursuant to subsection (2) of this section shall send written notice of withdrawal to the insurer no later than forty-five (45) days prior to the effective date of the material change.
- (4) If an insurer issuing a managed care plan makes a change to an agreement that changes an existing prior authorization, precertification, notification, or referral program, or changes an edit program or specific edits, the insurer shall provide notice of the change to the participating provider at least fifteen (15) days prior to the change.

➔Section 49. KRS 311.669 is amended to read as follows:

- (1) The provisions of KRS 311.665 to 311.669 shall not apply to the use of an AED by:
 - (a) Physicians, podiatrists, or osteopaths licensed under KRS Chapter 311 or chiropractors licensed under KRS Chapter 312;
 - (b) Physician assistants as defined in KRS 311.550;
 - (c) Registered nurses, practical nurses, or advanced **practice** registered ~~nurses~~~~nurse-practitioners~~ licensed under KRS Chapter 314;
 - (d) Dentists licensed under KRS Chapter 313; or
 - (e) Paramedics licensed, or first responders or emergency medical technicians certified, under KRS Chapter 311A.
- (2) Nothing in this section shall preclude the licensing boards referred to in subsection (1) of this section from requiring continuing education or training on the use of an AED.

➔Section 50. KRS 311A.170 is amended to read as follows:

- (1) Subject to the provisions of this section, a paramedic may perform any procedure:
 - (a) Specified in the most recent curriculum of the United States Department of Transportation training course for paramedics; and
 - (b) Any additional procedure specified by the board by administrative regulation.
- (2) When there is a change in the United States Department of Transportation curriculum for paramedics, or the board approves an additional skill or procedure by administrative regulation, or approves a protocol differing from the curriculum or administrative regulations, no person who was not trained under that curriculum or administrative regulation shall perform any activity or procedure in the new curriculum, administrative regulation, or protocol unless the person has been trained according to the new curriculum, administrative regulation, or protocol and demonstrates competency in the new knowledge or skill. Competency in a new skill shall be demonstrated through a return demonstration to a competent evaluator. If the board adopts the new procedure or skill, the board shall promulgate an administrative regulation specifying the new procedure, training requirements, examination requirements, and a time period during which the paramedic shall successfully complete the material or lose his or her license as a paramedic.
- (3) A paramedic may draw blood samples from a criminal defendant upon the request of a peace officer and the consent of the defendant, or without the consent of the defendant upon receipt of a court order requiring the procedure, if the paramedic is authorized to do so by his or her employer. The authorization shall be in writing and may be by general written policy of the employer and the service's medical director. The paramedic who drew the blood sample shall deliver the sample to the peace officer or other person specified by the court in a court order and shall testify in court with regard thereto upon service of a proper subpoena.
- (4) A paramedic shall be permitted to render services only under the supervision of an emergency medical services medical director.
- (5) Any provision of this chapter other than this section relating to the requirement for additional training, requirement for skill examination, or approval of standing orders, protocols, or medical procedures to the contrary notwithstanding, a paramedic may be employed by a hospital to work as a licensed paramedic in the emergency department of the hospital subject to the following conditions:
 - (a) The hospital in collaboration with the medical staff shall provide operating procedures and policies under which the paramedic shall operate consistent with the paramedic's scope of practice;
 - (b) A paramedic shall provide patient care services under the orders of a physician, physician assistant, advanced **practice** registered nurse~~practitioner~~, or as delegated by a registered nurse;
 - (c) Subject to the provisions relating to the scope of practice of a paramedic, a hospital may require a paramedic to take additional training on any subject or skill which the paramedic may be required to perform in a hospital and demonstrate competency in the skill or subject to a competent evaluator; and
 - (d) The paramedic does not violate the provisions of KRS 311A.175 or any other statute or administrative regulation relating to a paramedic.

No provision of this section shall prevent a paramedic from being employed in any other section of the hospital where the paramedic's job duties do not require certification or licensure by the board and do not otherwise constitute the unlawful practice of medicine.

- (6) Except as provided in subsection (2) of this section, nothing in this section shall prevent an employer from exercising reasonable fiscal control over the costs of providing medical services to its citizens nor prevent the employer from exercising any reasonable control over paramedics providing care on behalf of the licensed entity.

➔Section 51. KRS 311A.175 is amended to read as follows:

- (1) No first responder shall perform any act or procedure which exceeds the scope of practice of a first responder as specified in this chapter and in administrative regulations promulgated by the board.
- (2) No emergency medical technician shall perform any act or procedure which exceeds the scope of practice of an emergency medical technician as specified in this chapter and in administrative regulations promulgated by the board.
- (3) No paramedic shall perform any act or procedure which exceeds the scope of practice of a paramedic as specified in this chapter, administrative regulations promulgated by the board, protocol, standing order, or other document approved by the board.
- (4) A first responder, emergency medical technician, or paramedic is presumed to know the standards of practice for his or her level of certification or licensure.
- (5) It is the legal duty of a first responder, emergency medical technician, or paramedic to refuse to perform any act or procedure which is beyond his or her scope of practice regardless of whether that act or procedure is ordered by a physician, physician assistant, medical director, advanced *practice* registered nurse~~[-practitioner]~~, registered nurse, or supervisor.
- (6) No employer or organization for which a first responder, emergency medical technician, or paramedic has volunteered shall reprimand, discipline, or dismiss a first responder, emergency medical technician, or paramedic who has refused to perform an act or procedure which the first responder, emergency medical technician, or paramedic knows is in violation of the provisions of this section. Violation of this section by an employer or by an organization for which a first responder has volunteered shall be grounds for a legal action for wrongful discipline or wrongful discharge, as appropriate.
- (7) The provisions of this section shall not apply to an order to perform an act or procedure:
 - (a) For which a license or certification by the board is not required and which otherwise do not constitute the unlawful practice of medicine; or
 - (b) For which no license or certification is required and does not involve medical care or treatment; or
 - (c) For which a license or certification issued by an agency other than the board is required and the first responder, emergency medical technician, or paramedic holds such a license or certification.

➔Section 52. KRS 314.011 is amended to read as follows:

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

- (1) "Board" means Kentucky Board of Nursing;
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;
- (3) "Nurse" means a person who is licensed or holds the privilege to practice under the provisions of this chapter as a registered nurse or as a licensed practical nurse;
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
 - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and

- (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;
- (5) "Registered nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in registered nursing practice;
- (6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
 - (a) The care, counsel, and health teaching of the ill, injured, or infirm;
 - (b) The maintenance of health or prevention of illness of others;
 - (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced *practice* registered nurse~~[-practitioner]~~ and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:
 - 1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 - 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 - 3. Intervening when emergency care is required as a result of drug therapy;
 - 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 - 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 - 6. Instructing an individual regarding medications;
 - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and
 - (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;
- (7) "Advanced *practice* registered nurse~~[-practitioner]~~" means ***a certified nurse practitioner, certified~~{one who is registered and designated to engage in advanced registered nursing practice including the}~~ nurse anesthetist, certified nurse midwife, or clinical nurse specialist, who is licensed to engage in advance practice registered nursing~~{and nurse practitioner}~~ pursuant to KRS 314.042 and certified in at least one (1) population focus;***
- (8) "Advanced *practice* registered nursing~~[-practice]~~" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an *approved* organized postbasic program of study and clinical experience,~~[-and]~~ who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced~~{ nursing}~~ practice ***registered nursing as a certified nurse practitioner, certified nurse anesthetist, certified nurse midwife, or clinical nurse specialist; and who certified in at least one (1) population focus.*** The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced *practice* registered ~~nurses~~[-nurse practitioners]~~~~ who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.
 - (a) Prescriptions issued by advanced *practice* registered ~~nurses~~[-nurse practitioners]~~~~ for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced *practice* registered nurse~~[-practitioner]~~ certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS

Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.

- (b) Prescriptions issued by advanced **practice** registered ~~nurses[nurse-practitioners]~~ for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced **practice** registered ~~nurses[nurse-practitioners]~~ for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.
- (c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced **practice** registered ~~nurses[nurse-practitioners]~~ appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.

Nothing in this chapter shall be construed as requiring an advanced **practice** registered nurse~~[-practitioner]~~ designated by the board as a **certified** nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;

- (9) "Licensed practical nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in licensed practical nursing practice;
- (10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
 - (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;
 - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;
 - (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced **practice** registered nurse~~[-practitioner]~~ and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
 - (d) Teaching, supervising, and delegating except as limited by the board; and
 - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;
- (12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;
- (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;
- (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the Office of the Kentucky State Medical Examiner pursuant to KRS 216B.400(4);

- (15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;
- (16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;
- (17) "Dispense" means:
- (a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or
 - (b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;
- (18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;
- (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician;~~and~~
- (20) "Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care;
- (21) *"Population focus" means the section of the population within which the advanced practice registered nurse has targeted to practice. The categories of population foci are;*
- (a) *Family or individual across the lifespan;*
 - (b) *Adult health and gerontology;*
 - (c) *Neonatology;*
 - (d) *Pediatrics;*
 - (e) *Women's health and gender-related health; and*
 - (f) *Psychiatric mental health; and*
- (22) *"Conviction" means but is not limited to:*
- (a) *An unvacated adjudication of guilt;*
 - (b) *Pleading no contest or nolo contendere or entering an Alford plea; or*
 - (c) *Entering a guilty plea pursuant to a pretrial diversion order;*

Regardless of whether the penalty is rebated, suspended, or probated.

➔Section 53. KRS 314.042 is amended to read as follows:

- (1) An applicant for ~~licensure~~~~[registration and designation]~~ to practice as an advanced **practice** registered nurse~~[practitioner]~~ shall file with the board a written application for ~~licensure~~~~[registration and designation]~~ and submit evidence, verified by oath, that the applicant has completed an **approved** organized postbasic program of study and clinical experience~~[acceptable to the board]~~; has fulfilled the requirements of KRS 214.615(1); is certified by a nationally established organization or agency recognized by the board to certify registered nurses for advanced~~[nursing]~~ practice **registered nursing**; and is able to understandably speak and write the English language and to read the English language with comprehension.
- (2) The board may issue a ~~license~~~~[registration]~~ to practice advanced **practice** registered nursing to an applicant who holds a current active registered nurse license issued by the board or holds the privilege to practice as a registered nurse in this state and meets the qualifications of subsection (1) of this section. An advanced **practice** registered nurse~~[practitioner]~~ shall be:
 - (a) Designated by the board as a **certified** nurse anesthetist, **certified** nurse midwife, **certified** nurse practitioner, or clinical nurse specialist; **and**
 - (b) **Certified in a least one (1) population focus.**

- (3) The applicant for ~~licensure~~~~[registration and designation]~~ or renewal thereof to practice as an advanced **practice** registered nurse~~[practitioner]~~ shall pay a fee to the board as set forth in regulation by the board.
- (4) An advanced **practice** registered nurse~~[practitioner]~~ shall maintain a current active registered nurse license issued by the board or hold the privilege to practice as a registered nurse in this state and maintain current certification by the appropriate national organization or agency recognized by the board.
- (5) Any person who holds a ~~license~~~~[registration and designation]~~ to practice as an advanced **practice** registered nurse~~[practitioner]~~ in this state shall have the right to use the title "advanced **practice** registered nurse~~[practitioner]~~" and the abbreviation "**APRN**~~[ARNP]~~." No other person shall assume the title or use the abbreviation or any other words, letters, signs, or figures to indicate that the person using the same is an advanced **practice** registered nurse~~[practitioner]~~. No person shall practice as an advanced **practice** registered nurse~~[practitioner]~~ unless ~~licensed~~~~[registered]~~ under this section.
- (6) Any person heretofore ~~licensed~~~~[registered]~~ as an advanced **practice** registered nurse~~[practitioner]~~ under the provisions of this chapter who has allowed the ~~licensed~~~~[registration]~~ to lapse may be reinstated on payment of current fee and by meeting the provisions of this chapter and regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A.
- (7) The board may authorize a person to practice as an advanced **practice** registered nurse~~[practitioner]~~ temporarily and pursuant to applicable regulations promulgated by the board pursuant to the provisions of KRS Chapter 13A if the person is awaiting the results of the national certifying examination for the first time or is awaiting licensure by endorsement. A person awaiting the results of the national certifying examination shall use the title "**APRN**~~[ARNP]~~ Applicant" or "**APRN**~~[ARNP]~~ App."
- (8) Before an advanced **practice** registered nurse~~[practitioner]~~ engages in the prescribing or dispensing of nonscheduled legend drugs as authorized by KRS 314.011(8), the advanced **practice** registered nurse~~[practitioner]~~ shall enter into a written "Collaborative Agreement for the Advanced **Practice** Registered Nurse's~~[Nurse-Practitioner's]~~ Prescriptive Authority for Nonscheduled Legend Drugs" (CAPA-NS) with a physician that defines the scope of the prescriptive authority for nonscheduled legend drugs.
- (9) Before an advanced **practice** registered nurse~~[practitioner]~~ engages in the prescribing of Schedules II through V controlled substances as authorized by KRS 314.011(8), the advanced **practice** registered nurse~~[practitioner]~~ shall enter into a written "Collaborative Agreement for the Advanced **Practice** Registered Nurse's~~[Nurse-Practitioner's]~~ Prescriptive Authority for Controlled Substances" (CAPA-CS) with a physician that defines the scope of the prescriptive authority for controlled substances.
- (a) The advanced **practice** registered nurse~~[practitioner]~~ shall notify the Kentucky Board of Nursing of the existence of the CAPA-CS and the name of the collaborating physician and shall, upon request, furnish to the board or its staff a copy of the completed CAPA-CS. The Kentucky Board of Nursing shall notify the Kentucky Board of Medical Licensure that a CAPA-CS exists and furnish the collaborating physician's name.
- (b) The CAPA-CS shall be in writing and signed by both the advanced **practice** registered nurse~~[practitioner]~~ and the collaborating physician. A copy of the completed collaborative agreement shall be available at each site where the advanced **practice** registered nurse~~[practitioner]~~ is providing patient care.
- (c) The CAPA-CS shall describe the arrangement for collaboration and communication between the advanced **practice** registered nurse~~[practitioner]~~ and the collaborating physician regarding the prescribing of controlled substances by the advanced **practice** registered nurse~~[practitioner]~~.
- (d) The advanced **practice** registered nurse~~[practitioner]~~ who is prescribing controlled substances and the collaborating physician shall be qualified in the same or a similar specialty.
- (e) The CAPA-CS is not intended to be a substitute for the exercise of professional judgment by the advanced **practice** registered nurse~~[practitioner]~~ or by the collaborating physician.
- (f) Before engaging in the prescribing of controlled substances, the advanced **practice** registered nurse~~[practitioner]~~ shall:
1. Have been ~~licensed~~~~[registered]~~ to practice as an advanced **practice** registered nurse~~[practitioner]~~ for one (1) year with the Kentucky Board of Nursing; or

2. Be nationally certified as an advanced **practice** registered nurse~~[-practitioner]~~ and be registered, certified, or licensed in good standing as an advanced **practice** registered nurse~~[-practitioner]~~ in another state for one (1) year prior to applying for licensure by endorsement in Kentucky.
- (g) Prior to prescribing controlled substances, the advanced **practice** registered nurse~~[-practitioner]~~ shall obtain a Controlled Substance Registration Certificate through the U.S. Drug Enforcement Agency.
- (h) The CAPA-CS shall be reviewed and signed by both the advanced **practice** registered nurse~~[-practitioner]~~ and the collaborating physician and may be rescinded by either party upon written notice via registered mail to the other party, the Kentucky Board of Nursing, and the Kentucky Board of Medical Licensure.
- (i) The CAPA-CS shall state the limits on controlled substances which may be prescribed by the advanced **practice** registered nurse~~[-practitioner]~~, as agreed to by the advanced **practice** registered nurse~~[-practitioner]~~ and the collaborating physician. The limits so imposed may be more stringent than either the schedule limits on controlled substances established in KRS 314.011(8) or the limits imposed in regulations promulgated by the Kentucky Board of Nursing thereunder.
- (10) Nothing in this chapter shall be construed as requiring an advanced **practice** registered nurse~~[-practitioner]~~ designated by the board as a **certified** nurse anesthetist to enter into a collaborative agreement with a physician, pursuant to this chapter or any other provision of law, in order to deliver anesthesia care.

➔Section 54. KRS 314.031 is amended to read as follows:

- (1) It shall be unlawful for any person to call or hold herself or himself out as or use the title of nurse or to practice or offer to practice as a nurse unless licensed or privileged under the provisions of this chapter.
- (2) It shall be unlawful for any person to operate or to offer to operate or to represent or advertise the operation of a school of nursing unless the school of nursing has been approved under the provisions of this chapter.
- (3) It shall be unlawful for any person knowingly to employ a nurse unless the nurse is licensed or privileged under the provisions of this chapter.
- (4) It shall be unlawful for any nurse, employer of nurses, or any person having knowledge of facts to refrain from reporting to the board a nurse who:
 - (a) Has been convicted of any felony or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty under the laws of any state or of the United States; or
 - (b) Is suspected of fraud or deceit in procuring or attempting to procure a license, credential, or privilege to practice nursing; or
 - (c) Is suspected of negligently or willfully acting in a manner inconsistent with the practice of nursing; or
 - (d) Is suspected of being unfit or incompetent to practice nursing by reason of negligence or other causes including, but not limited to, being unable to practice nursing with reasonable skill or safety; or
 - (e) Is suspected of violating any provisions of this chapter; or
 - (f) Has a license, privilege, or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license, privilege, or credential to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth; or
 - (g) Is practicing nursing without a current active license, privilege, or valid temporary work permit issued by the board; or
 - (h) Is suspected of misusing or misappropriating any drugs placed in the custody of the nurse for administration, or for use of others;
 - (i) Is suspected of falsifying or in a negligent manner making incorrect entries or failing to make essential entries on essential records;~~[-or]~~
 - (j) Is suspected of abusing controlled substances, prescription medications, illegal substances, or alcohol;

or

- (k) *Is suspected of violating the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.*

➔Section 55. KRS 314.043 is amended to read as follows:

- (1) Registered nurses holding current permits to practice nurse midwifery issued by the Cabinet for Human Resources on or before January 1, 1986, may continue to be issued permits to practice nurse midwifery by the Kentucky Board of Nursing for so long as they remain active registered nurses.
- (2) Permits to practice nurse midwifery shall not be issued to any person not holding a Cabinet for Human Resources permit on January 1, 1986.
- (3) Persons permitted to practice nurse midwifery under this section shall not use the title "advanced *practice* registered nurse~~[-practitioner]~~" or the abbreviation "*APRN*~~[ARNP]~~" or any other words, letters, signs or figures to indicate that the person using the same is an advanced *practice* registered nurse~~[-practitioner]~~, unless that person also holds *licensure*~~[registration and designation]~~ as an advanced *practice* registered nurse~~[-practitioner]~~ under KRS 314.042.

➔Section 56. KRS 314.071 is amended to read as follows:

- (1) The license of every person issued under the provisions of this chapter shall be renewed for a period of time as determined by the board by administrative regulation promulgated pursuant to KRS Chapter 13A, except as hereinafter provided. The applicant shall fill in the application form and return it to the board with the renewal fee prescribed by the board in a regulation before the expiration date of his current license.~~[Upon receipt of the application and fee the board shall verify the accuracy of the application to determine whether the licensee has met all the requirements as set forth in this chapter and in regulations promulgated by the board, and if so, shall issue to the applicant a license to practice for the ensuing licensure period. Such license shall render the holder a legal practitioner of nursing for the period stated on it.]~~ The board shall prescribe by regulation the beginning and ending of the licensure period.
- (2) Any licensee who allows his license to lapse by failing to renew the license as provided above may be reinstated by the board on payment of current fee for original licensure and by meeting the regulations of the board.
- (3) Notice that the license must be renewed shall be sent to the~~[-last known]~~ address of *record pursuant to KRS 314.107* of each licensee~~[-at least six (6) weeks]~~ before the expiration date of the license.
- (4) Any person practicing nursing during the time the license has lapsed shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of the provisions of this chapter.

➔Section 57. KRS 314.073 is amended to read as follows:

- (1) Except for the first licensure renewal following the issuance of an original license by the board, as a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document continuing competency during the immediate past licensure period as prescribed in regulations promulgated by the board.
- (2) The continuing competency requirement shall be documented and reported as set forth by the board in administrative regulations promulgated in accordance with KRS Chapter 13A.
- (3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.
- (4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.
- (5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing competency requirements.

- (6) The continuing competency requirements shall include the completion of the course described in KRS 214.610(1) at least one (1) time every ten (10) years, but the board may in its discretion require completion of the course more frequently.
- (7) In order to offset administrative costs incurred in the implementation of the mandatory continuing competency requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.
- (8) The continuing competency requirements shall include at least five (5) contact hours in pharmacology continuing education for any person registered as an advanced *practice* registered nurse~~[-practitioner]~~.

➔Section 58. KRS 314.091 is amended to read as follows:

- (1) The board shall have power to reprimand, deny, limit, revoke, probate, or suspend any license or credential to practice nursing issued by the board or applied for in accordance with this chapter or the privilege to practice as a nurse recognized by the board in accordance with this chapter, or to otherwise discipline a licensee, credential holder, privilege holder, or applicant, or to deny admission to the licensure examination, or to require evidence of evaluation and therapy upon proof that the person:
 - (a) Is guilty of fraud or deceit in procuring or attempting to procure a license, credential, or privilege to practice nursing;
 - (b) Has been convicted of any felony, or a misdemeanor involving drugs, alcohol, fraud, deceit, falsification of records, a breach of trust, physical harm or endangerment to others, or dishonesty, under the laws of any state or of the United States. The record of conviction or a copy thereof, certified by the clerk of the court or by the judge who presided over the conviction, shall be conclusive evidence~~[-. For the purposes of this section, "conviction" means but is not limited to pleading no contest, entering an Alford plea, entering a guilty plea pursuant to a pretrial diversion order, or entry of a court order suspending the imposition of a criminal penalty to a crime];~~
 - (c) Has been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, 530.064(1)(a), or 531.310, or has been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the nurse;
 - (d) Has negligently or willfully acted in a manner inconsistent with the practice of nursing;
 - (e) Is unfit or incompetent to practice nursing by reason of negligence or other causes, including but not limited to, being unable to practice nursing with reasonable skill or safety;
 - (f) Abuses use of controlled substances, prescription medications, illegal substances, or alcohol;
 - (g) Has misused or misappropriated any drugs placed in the custody of the nurse for administration, or for use of others;
 - (h) Has falsified or in a negligent manner made incorrect entries or failed to make essential entries on essential records;
 - (i) Has a license, privilege, or credential to practice as a nurse denied, limited, suspended, probated, revoked, or otherwise disciplined in another jurisdiction on grounds sufficient to cause a license or privilege to be denied, limited, suspended, probated, revoked, or otherwise disciplined in this Commonwealth, including action by another jurisdiction for failure to repay a student loan;
 - (j) Has violated any of the provisions of this chapter;
 - (k) Has violated any lawful order or directive previously entered by the board;
 - (l) Has violated any administrative regulation promulgated by the board;~~[-or]~~
 - (m) Has been listed on the nurse aide abuse registry with a substantiated finding of abuse, neglect, or misappropriation of property; *or*
 - (n) *Has violated the confidentiality of information or knowledge concerning any patient, except as authorized or required by law.*

- (2) All hearings shall be conducted in accordance with KRS Chapter 13B. A suspended or revoked license, privilege, or credential may be reinstated at the discretion of the board, and in accordance with regulations promulgated by the board.
- (3) The executive director may issue subpoenas to compel the attendance of witnesses and the production of documents in the conduct of an investigation. The subpoenas may be enforced by the Circuit Court as for contempt. Any order or subpoena of the court requiring the attendance and testimony of witnesses and the production of documentary evidence may be enforced and shall be valid anywhere in this state.
- (4) At all hearings on request of the board the Attorney General of this state or one (1) of the assistant attorneys general designated by the Attorney General shall appear and represent the board.
- (5) A final order of the board shall be by majority vote thereof.
- (6) Any person adversely affected by any final order of the board may obtain a review thereof by filing a written petition for review with the Circuit Court of the county in which the board's offices are located in accordance with KRS Chapter 13B.
- (7) If the board substantiates that sexual contact occurred between a nurse and a patient while the patient was under the care of or in a professional relationship with the nurse, the nurse's license, privilege, or credential may be revoked or suspended with mandatory treatment of the nurse as prescribed by the board. The board may require the nurse to pay a specified amount for mental health services for the patient which are needed as a result of the sexual contact.

➔Section 59. KRS 314.103 is amended to read as follows:

The board may require a criminal background investigation of an applicant, **nurse, or dialysis technician**~~for endorsement~~ by means of a fingerprint check by the Department of Kentucky State Police and the Federal Bureau of Investigation.

➔Section 60. KRS 314.108 is amended to read as follows:

- (1) Any person licensed by the board shall, within thirty (30) days of the entry of a final order, notify the board in writing if any professional or business license that is issued to the person by any agency of the Commonwealth or any other jurisdiction is **subject to**~~is surrendered or terminated under threat of~~ disciplinary action~~or is refused, suspended, or revoked, or if renewal of continuance is denied~~. The person shall submit a certified copy of the order and a letter of explanation.
- (2) ***An applicant for licensure shall notify the board in writing if any professional or business license that was issued to the person by any agency of the Commonwealth or any other jurisdiction is surrendered or terminated under threat of disciplinary action, or is refused, suspended, or revoked, or if renewal of continuance is denied. The person shall submit a certified copy of the order and a letter of explanation with his or her application.***

➔Section 61. KRS 314.109 is amended to read as follows:

Any person under the jurisdiction of the board shall, within ninety (90) days of entry of **an order or**~~the final~~ judgment, notify the board in writing of any misdemeanor or felony criminal conviction, except traffic-related misdemeanors other than operating a motor vehicle under the influence of drugs or alcohol, in this or any other jurisdiction. The person shall submit a certified copy of the order and a letter of explanation.

➔Section 62. KRS 314.111 is amended to read as follows:

- (1) An institution desiring to conduct a school of nursing shall apply to the board and submit evidence that it is prepared to carry out the minimum approved basic curriculum in nursing and that it is prepared to fulfill other requirements of standards which are established by KRS 314.011 to 314.161 and KRS 314.991 and the administrative regulations promulgated by the board. No person shall operate a nursing education program or school of nursing without complying with the provisions of this section.
- (2) A survey of the institution and its proposed education program shall be made by the executive director or an authorized employee of the board who shall submit a written report of the survey to the board. If in the opinion of the board the requirements for an approved nursing education program or school of nursing are met it shall approve the school.

- (3) *The board shall, by administrative regulations promulgated pursuant to KRS Chapter 13A, set standards for the establishment and outcomes of nursing education programs that prepare advanced practice registered nurses, including clinical learning experiences, and shall approve such programs that meet the standards.*

~~(4)(3)~~ If the board determines that any approved school of nursing is not maintaining the standards required by the statutes and the administrative regulations of the board, notice thereof in writing specifying their deficiencies shall be immediately given to the school. A school which fails to correct these conditions to the satisfaction of the board ~~within a reasonable time~~ shall be *subject to* ~~discontinued after~~ an administrative hearing *to determine whether the school shall be closed*. The hearing shall be conducted in accordance with KRS Chapter 13B.

➔Section 63. KRS 314.121 is amended to read as follows:

- (1) The Governor shall appoint a Board of Nursing consisting of sixteen (16) members;
 - (a) Nine (9) members shall be registered nurses licensed to practice in the Commonwealth;
 - (b) Three (3) members shall be practical nurses licensed to practice in the Commonwealth;
 - (c) One (1) member shall be a nurse service administrator who is a registered nurse licensed to practice in the Commonwealth;
 - (d) One (1) member shall be engaged in practical nurse education who is a registered nurse licensed to practice in the Commonwealth; and
 - (e) Two (2) members shall be citizens at large, who are not associated with or financially interested in the practice or business regulated.
- (2) Each appointment shall be for a term of four (4) years expiring on June 30 of the fourth year. The cycle for appointments and expiration of terms shall be as follows:
 - (a) The first year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) licensed practical nurse shall expire;
 - (b) The second year of the four (4) year cycle, the terms for three (3) registered nurses and one (1) citizen at large shall expire;
 - (c) The third year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and the one (1) member engaged in practical nurse education who is a registered nurse shall expire; and
 - (d) The fourth year of the four (4) year cycle, the terms for two (2) registered nurses, one (1) licensed practical nurse, and one (1) citizen at large shall expire.
- (3)
 - (a) By March 1, the Kentucky Nurses Association shall submit to the Governor a list of members qualified for appointment as R.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments necessary by July 1.
 - (b) By March 1, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor a list of names qualified for appointment as L.P.N. members, in number not less than twice the number of appointments to be made, from which list the Governor shall make each appointment or appointments as necessary by July 1.
 - (c) By March 1 of the year in which the nurse service administrator's term shall expire, the Kentucky Organization of Nurse Executives, an affiliate of the Kentucky Hospital Association, shall submit to the Governor two (2) names of qualified individuals for appointment as the nurse service administrator from which list the Governor shall make an appointment as necessary by July 1.
 - (d) By March 1, the Kentucky Association of Nonprofit Homes and Services for the Aging, Inc., shall submit to the Governor two (2) names of qualified individuals for appointments as its R.N. representative to the board, from which the Governor shall make an appointment by July 1.
 - (e) By March 1 of the year in which the Kentucky Association of Health Care Facilities representative's term shall expire, the Kentucky Association of Health Care Facilities shall submit to the Governor two (2) names of qualified individuals for appointment as its R.N. representative to the board, from which list the Governor shall make an appointment as necessary by July 1.

- (f) Initially, the Governor shall appoint one (1) member to serve as the registered nurse who is engaged in practical nurse education to serve the term remaining according to the cycle specified in subsection (2) of this section. By August 1, 1996, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by September 1, 1996. Thereafter, by March 1 of the year in which the practical nurse educator's term expires, the Kentucky State Association of Licensed Practical Nurses shall submit to the Governor two (2) names of qualified individuals for the appointment, from which list the Governor shall make the appointment by July 1.
- (g) The Governor shall appoint two (2) members who shall be citizens at large, who are not associated with or financially interested in the practice or business regulated. The Governor shall make the appointments by July 1 of the year in which the citizen members' terms expire.
- (4) A vacancy on the board shall be filled by the Governor as provided for under subsection (1) of this section.
- (5) The Governor may remove any member from the board for neglect of duty, incompetence, or unprofessional or dishonorable conduct.
- (6) Each R.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of nursing, and a registered nurse in this state. All shall have had at least five (5) years of experience in nursing, three (3) of which shall immediately precede such appointment. Five (5) members shall be engaged in nursing practice; three (3) shall be engaged in nursing education; one (1) shall be engaged in advanced *practice* registered nursing ~~practice~~; and one (1) shall be in nursing administration.
- (7) Each L.P.N. member of the board shall be a citizen of the United States, a resident of Kentucky, a graduate of an approved school of practical nursing or its equivalent, licensed as a licensed practical nurse in this state, have at least five (5) years of experience in nursing, three (3) of which shall immediately precede this appointment, and be currently engaged in nursing practice.

➔Section 64. KRS 314.171 is amended to read as follows:

- (1) The board may establish an alternative to discipline program to promote the early identification, intervention, treatment, and rehabilitation of nurses who may be impaired by reason of alcohol or drug abuse. In addition, the board may include in this program nurses or applicants who have practice competency deficits.
- (2) The board may enter into a contractual agreement with a nonprofit corporation, nursing professional organization, or similar organization for the purpose of creating, supporting, and maintaining an alternative to discipline program.
- (3) The board may promulgate administrative regulations pursuant to KRS Chapter 13A to effectuate and implement an alternative to discipline program formed pursuant to this section.
- (4) Beginning January 1, 1997, the board shall collect an assessment of five dollars (\$5) to be added to each nurse licensure renewal application fee payable to the board, proceeds from which shall be expended on the operation of an alternative to discipline program formed pursuant to this section.
- (5) Any administrator, staff member, consultant, agent, volunteer, or employee of the alternative to discipline program acting within the scope of their duties and without actual malice, and all other persons who furnish information to the alternative to discipline program in good faith and without actual malice, shall not be liable for any claim or damages as a result of any statement, decision, opinion, investigation, or action taken by the alternative to discipline program or staff.
- (6) ~~All information,~~ interviews, reports, statements, memoranda, or other documents furnished to or produced by the alternative to discipline program, all communications to or from the alternative to discipline program, and all proceedings, findings, and conclusions of the alternative to discipline program including those relating to intervention, treatment, or rehabilitation, which in any way pertain or refer to a nurse who is or may be impaired, shall be privileged and confidential.
- (7) All records and proceedings of the alternative to discipline program which pertain or refer to a nurse who is or may be impaired shall be privileged and confidential, shall be used by the alternative to discipline program, board members, or board staff only in the exercise of the proper function of the alternative to discipline program, shall not be considered public records, and shall not be subject to court subpoena, discovery, or

introduction as evidence in any civil, criminal, or administrative proceedings except as described in subsection (8) of this section.

- (8) The alternative to discipline program may only disclose information relative to an impaired nurse if:
 - (a) It is essential to disclose the information to persons or organizations needing the information in order to address the intervention, treatment, or rehabilitation needs of the impaired nurse;
 - (b) The release is authorized in writing by the impaired nurse; or
 - (c) The alternative to discipline program is required to make a report to the board pursuant to KRS 314.031(4).
- (9) The alternative to discipline program may order an examination or evaluation under KRS 314.085 at any time following initial contact by a potential applicant to the program.
- (10) ***Notwithstanding any other provision of law to the contrary, the board shall disclose the fact of a nurse's participation in the alternative to discipline program to the public. No information other than the nurse's participation in the alternative to discipline program shall be disclosed.***

➔Section 65. KRS 314.193 is amended to read as follows:

- (1) There is hereby created an Advanced ***Practice*** Registered Nurse~~[-Practitioner]~~ Council to be made up of nine (9) members, including one (1) member who shall be from the Board of Nursing, one (1) member from the Board of Medical Licensure, one (1) member from the Board of Pharmacy, and six (6) advanced ***practice*** registered nurses~~[-nurse practitioners]~~ who shall be determined as follows:
 - (a) Three (3) advanced ***practice*** registered nurse~~[-practitioner]~~ members shall include one (1) ***certified*** nurse anesthetist, one (1) ***certified*** nurse midwife, and one (1) ***certified*** nurse practitioner who shall be nominated from members chosen by their respective nursing specialty groups or organizations and recommended to the Board of Nursing for appointment; and
 - (b) Three (3) advanced ***practice*** registered nurse~~[-practitioner]~~ members, at least one (1) of whom shall be a designated clinical nurse specialist, shall be nominated by the Kentucky Nurses Association, and recommended to the Board of Nursing for appointment.
- (2) The council shall meet annually or as the members designate and shall seek all available information from concerned nursing groups. The council shall have the duty of recommending standards in the performance of any acts requiring additional education which is recognized~~[-jointly]~~ by the nursing ***profession***~~[-and medical professions]~~. The Board of Nursing may authorize the performance of additional acts by its regulations, after seeking all available information from the groups to be regulated. The regulations shall not be inconsistent with statutory law and shall be promulgated pursuant to the provisions of KRS Chapter 13A.
- (3) The terms for the council shall be for four (4) years.~~[-No member shall serve for more than two (2) consecutive terms.]~~

➔Section 66. KRS 314.195 is amended to read as follows:

An advanced ***practice*** registered nurse~~[-practitioner]~~ shall be considered a practitioner for purposes of KRS Chapters 217 and 218A and shall have the authority granted to a practitioner pursuant to those chapters subject to the conditions set forth in KRS 314.042.

➔Section 67. KRS 315.040 is amended to read as follows:

- (1) Nothing in this chapter shall be construed to prevent, restrict, or otherwise interfere with the sale of nonprescription drugs in their original packages by any retailer. No rule or regulation shall be adopted by the Board of Pharmacy under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist.
- (2) Nothing in this chapter shall interfere with the professional activities of any licensed practicing physician, or prevent the physician from keeping any drug or medicine that he or she may need in his or her practice, from compounding the physician's own medications, or from dispensing or supplying to patients any article that seems proper to the physician.
- (3) Nothing in this chapter shall be construed to interfere with the activities of a midlevel health care practitioner as provided in KRS 216.925.

- (4) Nothing in this chapter pertaining to the use of collaborative care agreements shall apply in any hospital or other health facility operated by a hospital without the express written permission of the hospital's governing body. Collaborative care agreements may be restricted by the policies and procedures of the facility.
- (5) Nothing in this chapter shall interfere with the activities of a physician assistant as authorized in KRS Chapter 311.
- (6) Nothing in this chapter shall interfere with the activities of an advanced *practice* registered nurse~~[-practitioner]~~ as authorized in KRS Chapter 314.

➔Section 68. KRS 18A.197 is amended to read as follows:

- (1) The Commonwealth of Kentucky sick leave sharing program is created. An employee who has accrued a sick leave balance of more than seventy-five (75) hours may request that the appointing authority of the agency for which the employee works makes available for transfer a specified amount of his or her sick leave balance to another named employee authorized to receive leave under subsection (2) of this section. The employee may not request a transfer of an amount of leave that would result in reducing his or her sick leave balance to less than seventy-five (75) hours.
- (2) An appointing authority, with the approval of the secretary of personnel, may permit an employee of the agency to receive leave under this section if:
 - (a) The employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition which has caused, or is likely to cause, the employee to go on leave for at least ten (10) consecutive working days;
 - (b) The employee's need for absence and use of leave are certified by a licensed practicing physician *or advanced practice registered nurse*;
 - (c) The employee has exhausted his or her accumulated sick leave, annual leave, and compensatory leave balances; and
 - (d) The employee has complied with administrative regulations governing the use of sick leave.
- (3) The appointing authority, with the approval of the secretary of personnel, shall determine the amount of leave, if any, which an employee within his or her agency may receive under subsection (2) of this section. Transfers of leave shall not exceed the amount requested by the recipient.
- (4) Leave may be transferred from an employee of one (1) agency to an employee within the same agency. With the approval of the secretary of personnel and of the appointing authorities of both agencies, leave may be transferred from an employee of one (1) agency to an employee of another state agency. The Personnel Cabinet shall maintain records of leave transferred between employees and the utilization of transferred leave.
- (5) While an employee is on leave transferred under this section, he or she shall be deemed a state employee and shall receive the same treatment with respect to salary, wages and employee benefits.
- (6) All salary and wage payments made to an employee while on leave transferred under this section shall be made by the agency employing the person receiving the leave.
- (7) Any leave transferred under this section which remains unused shall be returned to the employees who transferred the leave when the appointing authority finds that the leave is no longer needed and will not be needed at a future time in connection with the illness or injury for which the leave was transferred to an employee in his agency.
- (8) No employee shall directly or indirectly intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" shall include, without being limited to, the promise to confer or the conferring of any benefit or effecting or threatening to effect any reprisal.
- (9) The secretary of the Personnel Cabinet shall promulgate procedural administrative regulations to implement the provisions of this section.

➔Section 69. KRS 158.035 is amended to read as follows:

Except as provided in KRS 214.036, no child shall be eligible to enroll as a student in any public or private elementary or secondary school without first presenting a certificate from a medical *physician*,~~or~~ osteopathic physician, *or advanced practice registered nurse* licensed in any state. The certificate shall state that the child has been immunized against diphtheria, tetanus, poliomyelitis, rubeola, and rubella in accordance with the provisions of this section and KRS 214.010, 214.020, 214.032 to 214.036, and 214.990 and the *administrative* regulations of the secretary for health and family services. The governing body of private and public schools shall enforce the provisions of this section.

➔Section 70. KRS 163.525 is amended to read as follows:

(1) As used in this section and KRS 163.527:

- (a) "Specialized telecommunications equipment" means devices such as, but not limited to, telecommunications devices for the deaf, amplified phones, loud ringers, visual alert signalers, tactile signalers, captioned telephones, and appropriate wireless devices; and
- (b) "Telecommunications Access Program" means the program to furnish specialized telecommunications equipment to deaf, hard-of-hearing, and speech-impaired persons in order that they may have equal access to telecommunications services through the telecommunications relay service established pursuant to KRS 278.548. The program shall include maintenance and repair of the equipment.

(2) (a) On or before July 1, 1995, the Commission on the Deaf and Hard of Hearing shall establish a program to distribute specialized telecommunications equipment to any deaf, hard-of-hearing, or speech-impaired person qualified to receive the equipment pursuant to subsection (3) of this section.

(b) Prior to the establishment of the Telecommunications Access Program, the Commission on the Deaf and Hard of Hearing shall initiate an investigation, conduct public hearings, and solicit the advice and counsel of deaf, hard-of-hearing, and speech-impaired persons and the organizations serving them.

(c) The Commission on the Deaf and Hard of Hearing may contract with any person, public, or private organization to provide part or all components of the Telecommunications Access Program, if applicable statutory procurement provisions are followed. The Commission on the Deaf and Hard of Hearing may use assistance from public agencies of the state or federal government or from private organizations to accomplish the purposes of this section. The Kentucky Commission on the Deaf and Hard of Hearing shall enter into memoranda of agreement with the Public Service Commission for coordination and oversight of funding and operations to meet the objectives of this section and KRS 278.5499. The Commission on the Deaf and Hard of Hearing may also enter into memoranda of agreement with other state agencies to accomplish the purposes of this section.

(3) Factors to determine a person's eligibility to receive specialized telecommunications equipment shall include, but not be limited to:

- (a) Kentucky residency;
- (b) Attainment of at least five (5) years of age; and
- (c) Certification as deaf, hard of hearing, or severely speech-impaired by a licensed physician, audiologist, speech pathologist, *advanced practice registered nurse*, or by any other method recognized by the Commission on the Deaf and Hard of Hearing. Certification implies that the individual cannot use the telephone for communication without adaptive equipment.

(4) No more than one (1) piece of specialized telecommunications equipment shall be provided to a person qualified to receive the equipment pursuant to subsection (3) of this section. However, a malfunctioning piece of specialized telecommunications equipment originally distributed by the program may be returned for repair or replacement. The Commission on the Deaf and Hard of Hearing may prioritize distribution of the specialized telecommunications equipment on the basis of need.

(5) The Commission on the Deaf and Hard of Hearing shall establish procedures for application and distribution of specialized telecommunications equipment by the promulgation of administrative regulations in accordance with provisions of KRS Chapter 13A.

➔Section 71. KRS 199.8982 is amended to read as follows:

(1) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the

provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;
 2. Provide a written statement from a physician *or advanced practice registered nurse* that the applicant is in good health;
 3. Submit to a criminal record check in accordance with KRS 17.165. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in KRS 17.165;
 4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
 5. Provide a copy of the results of a tuberculosis risk assessment and the results of any appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention within thirty (30) days of the date of application for certification; and
 6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
 - a. Basic health, safety, and sanitation;
 - b. Recognizing and reporting child abuse; and
 - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.
- (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
- (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall

develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:

1. Certification requirements and procedures;
 2. Information about available child-care training; and
 3. Child-care food sponsoring organizations.
- (2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development.
- (3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

➔Section 72. KRS 214.010 is amended to read as follows:

Every physician *and advanced practice registered nurse* shall report all diseases designated by *administrative* regulation of the Cabinet for Health and Family Services as reportable which are under his *or her* special treatment to the local board of health of his *or her* county, and every head of a family shall report any of *the designated* ~~said~~ diseases, when known by him *or her* to exist in his *or her* family, to the local board or to some member thereof in accordance with the *administrative* regulations of the Cabinet for Health and Family Services.

➔Section 73. KRS 214.181 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that knowledge of HIV status is increasingly important for all persons since treatment using antiretroviral medications can slow disease progression, prolong and improve the lives of HIV-positive individuals, and reduce the likelihood of perinatal mother-to-child transmission. Many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor *or advanced practice registered nurse* orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(d) of this section, the results of a test or procedure to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.
- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician *or advanced practice registered nurse* who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician *or advanced practice registered nurse* shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
 - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.

- (5) (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
- (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
- (c) 1. Nothing in this subsection shall be construed as prohibiting the disclosure to the patient of preliminary positive results from HIV rapid tests if results are delivered with an explanation of the following:
- a. The meaning of a reactive rapid test;
 - b. The importance of confirmatory testing; and
 - c. The importance of taking precautions to reduce the risk of infecting others while awaiting the results of confirmatory testing.
2. In special cases where immediate actions may be necessary to protect a patient, such as potential perinatal transmission or incidents warranting post-exposure prophylaxis, a preliminary positive result from a HIV rapid test may be disclosed to the patient and used as a basis to recommend options for prophylaxis or treatment.
- (d) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to the effective date of this section for the purpose of artificial insemination;
 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
 9. A person allowed access by a court order that is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future

human-immunodeficiency-virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he or she is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice;
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing that includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health and Family Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 212. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.
- (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test.
- (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the name and other information specified under KRS 214.645 shall be reported to the cabinet. The cabinet shall continue to provide for anonymous testing and counseling.
- (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other private or public facility shall be established for the primary purpose of conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:
 - (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;

- (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
 - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
 - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet; and
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he or she does not advertise or hold himself *or herself* out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
 - (9) Except as provided in subsection (6)(d) of this section, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
 - (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

➔Section 74. KRS 214.625 is amended to read as follows:

- (1) The General Assembly finds that the use of tests designed to reveal a condition indicative of human immunodeficiency virus (HIV) infection can be a valuable tool in protecting the public health. The General Assembly finds that despite current scientific knowledge that zidovudine (AZT) prolongs the lives of acquired immunodeficiency syndrome victims, and may also be effective when introduced in the early stages of human immunodeficiency virus infection, many members of the public are deterred from seeking testing because they misunderstand the nature of the test or fear that test results will be disclosed without their consent. The General Assembly finds that the public health will be served by facilitating informed, voluntary, and confidential use of tests designed to detect human immunodeficiency virus infection.
- (2) A person who has signed a general consent form for the performance of medical procedures and tests is not required to also sign or be presented with a specific consent form relating to medical procedures or tests to determine human immunodeficiency virus infection, antibodies to human immunodeficiency virus, or infection with any other causative agent of acquired immunodeficiency syndrome that will be performed on the person during the time in which the general consent form is in effect. However, a general consent form shall instruct the patient that, as part of the medical procedures or tests, the patient may be tested for human immunodeficiency virus infection, hepatitis, or any other blood-borne infectious disease if a doctor *or advanced practice registered nurse* orders the test for diagnostic purposes. Except as otherwise provided in subsection (5)(c) of this section, the results of a test or procedure to determine human immunodeficiency virus

infection, antibodies to human immunodeficiency virus, or infection with any probable causative agent of acquired immunodeficiency syndrome performed under the authorization of a general consent form shall be used only for diagnostic or other purposes directly related to medical treatment.

- (3) In any emergency situation where informed consent of the patient cannot reasonably be obtained before providing health-care services, there is no requirement that a health-care provider obtain a previous informed consent.
- (4) The physician *or advanced practice registered nurse* who orders the test pursuant to subsections (1) and (2) of this section, or the attending physician, shall be responsible for informing the patient of the results of the test if the test results are positive for human immunodeficiency virus infection. If the tests are positive, the physician *or advanced practice registered nurse* shall also be responsible for either:
 - (a) Providing information and counseling to the patient concerning his infection or diagnosis and the known medical implications of such status or condition; or
 - (b) Referring the patient to another appropriate professional or health-care facility for the information and counseling.
- (5)
 - (a) No person in this state shall perform a test designed to identify the human immunodeficiency virus, or its antigen or antibody, without first obtaining the informed consent of the person upon whom the test is being performed, except as specified in subsections (2) and (3) of this section.
 - (b) No test result shall be determined as positive, and no positive test result shall be revealed to any person, without corroborating or confirmatory tests being conducted.
 - (c) No person who has obtained or has knowledge of a test result pursuant to this section shall disclose or be compelled to disclose the identity of any person upon whom a test is performed, or the results of the test in a manner which permits identification of the subject of the test, except to the following persons:
 1. The subject of the test or the subject's legally authorized representative;
 2. Any person designated in a legally effective release of the test results executed prior to or after the test by the subject of the test or the subject's legally authorized representative;
 3. A physician, nurse, or other health-care personnel who has a legitimate need to know the test result in order to provide for his protection and to provide for the patient's health and welfare;
 4. Health-care providers consulting between themselves or with health-care facilities to determine diagnosis and treatment;
 5. The cabinet, in accordance with rules for reporting and controlling the spread of disease, as otherwise provided by state law;
 6. A health facility or health-care provider which procures, processes, distributes, or uses:
 - a. A human body part from a deceased person, with respect to medical information regarding that person; or
 - b. Semen provided prior to July 13, 1990, for the purpose of artificial insemination;
 7. Health facility staff committees, for the purposes of conducting program monitoring, program evaluation, or service reviews;
 8. Authorized medical or epidemiological researchers who shall not further disclose any identifying characteristics or information;
 9. A parent, foster parent, or legal guardian of a minor; a crime victim; or a person specified in KRS 438.250;
 10. A person allowed access by a court order which is issued in compliance with the following provisions:
 - a. No court of this state shall issue an order to permit access to a test for human immunodeficiency virus performed in a medical or public health setting to any person not authorized by this section or by KRS 214.420. A court may order an individual to be tested for human immunodeficiency virus only if the person seeking the test results has demonstrated a compelling need for the test results which cannot be accommodated by

other means. In assessing compelling need, the court shall weigh the need for testing and disclosure against the privacy interest of the test subject and the public interest which may be disserved by disclosure which deters blood, organ, and semen donation and future human immunodeficiency virus-related testing or which may lead to discrimination. This paragraph shall not apply to blood bank donor records;

- b. Pleadings pertaining to disclosure of test results shall substitute a pseudonym for the true name of the subject of the test. The disclosure to the parties of the subject's true name shall be communicated confidentially, in documents not filed with the court;
- c. Before granting any order, the court shall provide the individual whose test result is in question with notice and a reasonable opportunity to participate in the proceedings if he is not already a party;
- d. Court proceedings as to disclosure of test results shall be conducted in camera, unless the subject of the test agrees to a hearing in open court or unless the court determines that a public hearing is necessary to the public interest and the proper administration of justice; and
- e. Upon the issuance of an order to disclose test results, the court shall impose appropriate safeguards against unauthorized disclosure, which shall specify the persons who may have access to the information, the purposes for which the information shall be used, and appropriate prohibitions on future disclosure.

No person to whom the results of a test have been disclosed shall disclose the test results to another person except as authorized by this subsection. When disclosure is made pursuant to this subsection, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of such information without the specific written consent of the person to whom such information pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied by oral notice and followed by a written notice within ten (10) days.

- (6) (a) The Cabinet for Health and Family Services shall establish a network of voluntary human immunodeficiency virus testing programs in every county in the state. These programs shall be conducted in each public health department established under the provisions of KRS Chapter 211. Additional programs may be contracted to other private providers to the extent that finances permit and local circumstances dictate.
 - (b) Each public health department shall have the ability to provide counseling and testing for the human immunodeficiency virus to each patient who receives services and shall offer the testing on a voluntary basis to each patient who requests the test.
 - (c) Each public health department shall provide a program of counseling and testing for human immunodeficiency virus infection, on an anonymous or confidential basis, dependent on the patient's desire. If the testing is performed on an anonymous basis, only the statistical information relating to a positive test for human immunodeficiency virus infection shall be reported to the cabinet. If the testing is performed on a confidential basis, the name and other information specified in KRS 214.645 shall be reported to the cabinet. The cabinet shall continue to provide for anonymous testing and counseling.
 - (d) The result of a serologic test conducted under the auspices of the cabinet shall not be used to determine if a person may be insured for disability, health, or life insurance or to screen or determine suitability for, or to discharge a person from, employment. Any person who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.
- (7) No public health department and no other person in this state shall conduct or hold themselves out to the public as conducting a testing program for acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus status without first registering with the cabinet, complying with all other applicable provisions of state law, and meeting the following requirements:

- (a) The program shall be directed by a person who has completed an educational course approved by the cabinet in the counseling of persons with acquired immunodeficiency syndrome, acquired immunodeficiency syndrome related complex, or human immunodeficiency virus infection;
 - (b) The program shall have all medical care supervised by a physician licensed under the provisions of KRS Chapter 311;
 - (c) The program shall have all laboratory procedures performed in a laboratory licensed under the provisions of KRS Chapter 333;
 - (d) Informed consent shall be required prior to testing. Informed consent shall be preceded by an explanation of the test, including its purpose, potential uses, and limitations and the meaning of its results;
 - (e) The program, unless it is a blood donor center, shall provide pretest counseling on the meaning of a test for human immunodeficiency virus, including medical indications for the test; the possibility of false positive or false negative results; the potential need for confirmatory testing; the potential social, medical, and economic consequences of a positive test result; and the need to eliminate high-risk behavior;
 - (f) The program shall provide supplemental corroborative testing on all positive test results before the results of any positive test is provided to the patient;
 - (g) The program shall provide post-test counseling, in person, on the meaning of the test results; the possible need for additional testing; the social, medical, and economic consequences of a positive test result; and the need to eliminate behavior which might spread the disease to others;
 - (h) Each person providing post-test counseling to a patient with a positive test result shall receive specialized training, to be specified by regulation of the cabinet, about the special needs of persons with positive results, including recognition of possible suicidal behavior, and shall refer the patient for further health and social services as appropriate;
 - (i) When services are provided for a charge during pretest counseling, testing, supplemental testing, and post-test counseling, the program shall provide a complete list of all charges to the patient and the cabinet; and
 - (j) Nothing in this subsection shall be construed to require a facility licensed under KRS Chapter 333 or a person licensed under the provisions of KRS Chapters 311, 312, or 313 to register with the cabinet if he or she does not advertise or hold himself or herself out to the public as conducting testing programs for human immunodeficiency virus infection or specializing in such testing.
- (8) Any violation of this section by a licensed health-care provider shall be a ground for disciplinary action contained in the professional's respective licensing chapter.
 - (9) Except as provided in subsection (6)(d) of this section and KRS 304.12-013, insurers and others participating in activities related to the insurance application and underwriting process shall be exempt from this section.
 - (10) The cabinet shall develop program standards consistent with the provisions of this section for counseling and testing persons for the human immunodeficiency virus.

➔Section 75. KRS 214.645 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall establish a system for reporting, by the use of the person's name, of all persons who test positive for the human immunodeficiency virus (HIV) infection. The reporting shall include the data including, but not limited to, CD4 count and viral load, and other information that are necessary to comply with the confidentiality and reporting requirements of the most recent edition of the Centers for Disease Control and Prevention's (CDC) Guidelines for National Human Immunodeficiency Virus Case Surveillance. As recommended by the CDC, anonymous testing shall remain as an alternative. If less restrictive data identifying requirements are identified by the CDC, the cabinet shall evaluate the new requirements for implementation.
- (2) The reporting system established under subsection (1) of this section shall:
 - (a) Use the same confidential name-based approach for HIV surveillance that is used for AIDS surveillance by the cabinet;

- (b) Attempt to identify all modes of HIV transmission, unusual clinical or virologic manifestations, and other cases of public health importance;
 - (c) Require collection of the names and data from all private and public sources of HIV-related testing and care services; and
 - (d) Use reporting methods that match the CDC's standards for completeness, timeliness, and accuracy, and follow up, as necessary, with the health care provider making the report to verify completeness, timeliness, and accuracy.
- (3) Authorized surveillance staff designated by the cabinet shall:
- (a) Match the information from the reporting system to other public health databases, wherever possible, to limit duplication and to better quantify the extent of HIV infection in the Commonwealth;
 - (b) Conduct a biennial assessment of the HIV and AIDS reporting systems, insure that the assessment is available for review by the public and any state or federal agency, and forward a copy of the assessment to the Legislative Research Commission and the Interim Joint Committee on Health and Welfare;
 - (c) Document the security policies and procedures and insure their availability for review by the public or any state or federal agency;
 - (d) Minimize storage and retention of unnecessary paper or electronic reports and insure that related policies are consistent with CDC technical guidelines;
 - (e) Assure that electronic transfer of data is protected by encryption during transfer;
 - (f) Provide that records be stored in a physically secluded area and protected by coded passwords and computer encryption;
 - (g) Restrict access to data a minimum number of authorized surveillance staff who are designated by a responsible authorizing official, who have been trained in confidentiality procedures, and who are aware of penalties for unauthorized disclosure of surveillance information;
 - (h) Require that any other public health program that receives data has appropriate security and confidentiality protections and penalties;
 - (i) Restrict use of data, from which identifying information has been removed, to cabinet-approved research, and require all persons with this use to sign confidentiality statements;
 - (j) Prohibit release of any names or any other identifying information that may have been received in a report to any person or organization, whether public or private, except in compliance with federal law or consultations with other state surveillance programs and reporting sources. Under no circumstances shall a name or any identifying information be reported to the CDC; and
 - (k) Immediately investigate any report of breach of reporting, surveillance, or confidentiality policy, report the breach to the CDC, develop recommendations for improvements in security measure, and take appropriate disciplinary action for any documented breach.
- (4) The cabinet shall require any physician, *advanced practice registered nurse*, or medical laboratory that receives a report of a positive test for the human immunodeficiency virus to report that information by reference to the name in accordance with the procedure for establishing name reporting required by the cabinet in an administrative regulation.

➔Section 76. KRS 216.935 is amended to read as follows:

As used in KRS 216.935 to 216.939, unless the context requires otherwise:

- (1) "Home health aide" means an individual who is hired to perform home health aide services.
- (2) "Home health agency" means a public agency or private organization, or a subdivision of such an agency or organization which is licensed as a home health agency by the Kentucky Health Facilities and Health Services Certificate of Need and Licensure Board and is certified to participate as a home health agency under Title XVIII of the Social Security Act.

- (3) "Home health aide services" means those services provided by a home health aide and supervised by a registered nurse which are directed towards the personal care of the patient. Such services shall include, but not be limited to, the following:
- (a) Helping the patient with bath and care of mouth, skin, and hair;
 - (b) Helping the patient to the bathroom or in using a bedpan;
 - (c) Helping the patient in and out of bed and assisting with ambulation;
 - (d) Helping the patient with prescribed exercises which the patient and home health aide have been taught by appropriate professional personnel;
 - (e) Assisting with medication ordinarily self-administered that has been specifically ordered by a physician *or advanced practice registered nurse*;
 - (f) Performing incidental household services as are essential to the patient's health care at home, if these services would have been performed if the patient was in a hospital or skilled nursing facility; and
 - (g) Reporting changes in the patient's condition or family situation to the professional nurse supervisor.
- (4) "Nurse aide" means an individual, including a nursing student, medication aide, and a person employed through a nursing pool, who provides nursing or nursing related services to a resident in a nursing facility or home health agency, excluding:
- (a) An individual who is a licensed health professional;
 - (b) A volunteer who provides the nursing or nursing-related services without monetary compensation; and
 - (c) A person who is hired by the resident or family to sit with the resident and who does not perform nursing or nursing-related services.

➔Section 77. The following KRS sections are repealed:

- 313.140 Unprofessional conduct.
- 313.150 Proceedings to reprimand, place on probation, revoke, suspend, refuse to renew, or refuse to issue license -- Administrative hearing -- Appeal.
- 313.170 Record of revocation or suspension.
- 313.190 Practice prohibited when license suspended or revoked.
- 313.195 Emergency order for immediate temporary suspension of license -- Appeal to board -- Hearing -- Appeal of final order.
- 313.197 Contracts to continue the operations of a deceased or incapacitated dentist's practice.
- 313.200 Board of Dentistry -- Members -- Qualifications -- Terms -- Vacancies -- Compensation.
- 313.210 Officers of board -- Meetings -- Quorum -- Record books.
- 313.220 Powers and duties of board -- Annual report.
- 313.225 Investigators, appointment.
- 313.230 Dentist to display license and certificate.
- 313.240 Professional service corporations, professional limited liability companies, and partnerships -- Use of names -- Places of practice -- Limitation on number of practices per person.
- 313.243 Duties to report names and capacity of assistants on demand.
- 313.247 Laboratory procedure work order required for dental laboratory work, exception.
- 313.250 Dentists' prescriptions to be filled -- Death certificates, signing -- Persons exempt from law.
- 313.255 Duty of treating dentist utilizing telehealth to ensure patient's informed consent and maintain confidentiality -- Board to promulgate administrative regulations -- Definition of "telehealth".
- 313.257 Nonliability of licensees for emergency care.
- 313.258 Dentist serving as member of medical review board -- Nonliability.

- 313.259 Injunctive relief against unauthorized practice.
- 313.260 Board to administer dental hygiene law.
- 313.270 Powers and duties of board as to dental hygiene law.
- 313.280 Compensation of board members.
- 313.290 Eligibility for examination for license to practice dental hygiene.
- 313.300 Application for examination -- Fee -- Issuance of license -- Annual fee.
- 313.303 Reciprocal licensing of dental hygienists -- Fee.
- 313.305 Biennial renewal of license -- Completion of continuing education courses a prerequisite to license renewal -- Notification of change of address.
- 313.310 License required -- Practice regulated -- Practice when supervising dentist not present -- Display of license -- Duties of supervising dentist -- Employment -- Permitted screening services.
- 313.320 Form of licenses.
- 313.330 Disciplinary actions against dental hygienists -- Private admonishment.
- 313.340 Appeal from order revoking, suspending or refusing to renew license.
- 313.343 Delegation of block and infiltration anesthesia and nitrous oxide analgesia to dental hygienist -- Certificate of verification -- Fee -- Continuing education for anesthesia certification.
- 313.345 Administrative regulations on practices that may be performed by dental assistant -- Courses of study -- Supervision by dentist -- Certificate -- Dental assistant services.
- 313.350 Revolving fund of board -- Petty cash fund.
- 313.400 Specialties listed.
- 313.410 License to practice as specialist required.
- 313.420 Licensure of practicing specialist -- Examinations -- Exemption from examination requirement.
- 313.430 Qualifications for specialist's examination -- Fee -- Method of examination.
- 313.440 Fees for license certificates -- Contents of certificates.
- 313.445 Specialist's practice limited -- Authority of general practitioner -- Exception from specialty license requirement for charitable health care provider.
- 313.460 Suspension or revocation of specialty licenses.
- 313.470 Disposition of fees.
- 313.510 Dental Laboratory Advisory Commission -- Membership -- Duties.
- 313.520 Annual registration of laboratories and technicians -- Fees -- Certificates of authority.
- 313.530 Operation without registration prohibited.
- 313.540 Injunction.
- 313.600 Request to expunge minor violations from permanent record -- Administrative regulations.
- 313.990 Penalties.

Signed by Governor April 8, 2010.

CHAPTER 86

(HB 166)

AN ACT relating to debt adjusting.

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

➔Section 1. KRS 380.010 is amended to read as follows:

As used in this chapter, the following terms mean:

- (1) "Person" includes, but is not limited to, individuals, partnerships, associations, corporations, limited liability companies, trusts, and other legal entities;
- (2) **"Debt adjuster" means a person engaged in the business of debt adjusting;**
- (3) "Debt adjusting" means doing business *in this state* in debt adjusting, budget counseling, debt management, **debt modification or settlement, foreclosure assistance,** or debt pooling service, or holding oneself out *as acting or offering or attempting to act as an intermediary between a debtor and his or her creditors for a fee, contribution, or other consideration, or* ~~or~~ by words of similar import, as providing services to debtors in the management, **settlement, modification, or adjustment** of their debts, to do any of the following:
 - (a) Effect the adjustment, compromise, **settlement, modification,** or discharge of any account, note or other indebtedness of the debtor;
 - (b) Receive from the debtor and disburse to the debtor's creditors any money or other thing of value; or
 - (c) Solicit business and advertise as a debt adjuster;~~and~~
- ~~(4)~~~~(3)~~ "Reside" means to live in a particular place on a temporary or permanent basis;
- (5) **"Debtor" means an individual who resides in Kentucky and is indebted to a creditor or creditors, including two (2) or more individuals who are jointly and severally, or jointly or severally, indebted to a creditor or creditors;**
- (6) (a) **"Personal information" means any information:**
 1. **That a debtor provides to a debt adjuster to obtain a debt-adjusting product or service from the debt adjuster;**
 2. **About a debtor resulting from any transaction involving debt adjusting between a debtor and the debt adjuster; or**
 3. **That a debt adjuster otherwise obtains about a debtor in connection with providing a debt-adjusting product or service to that debtor.**
 (b) **"Personal information" does not include information that a debt adjuster has a reasonable basis to believe is lawfully made available to the general public from:**
 1. **Federal, state, or local government records;**
 2. **Widely distributed media; or**
 3. **Disclosures to the general public that are required to be made by federal, state, or local law.**

For purposes of this paragraph, "reasonable basis" to believe that information is lawfully made available to the general public means the debt adjuster has taken steps to determine that the information is the type that is available to the general public and whether an individual may direct that the information not be made available to the general public and, if so, that the debt adjuster's consumer has not done so; and
- (7) **"Additional interested party" means a party, including but not limited to the Attorney General, to whom written notice shall be sent at the same time that a notice is required to be sent to an insured regarding any cancellation, nonrenewal, modification, or change in the insurance coverage required by subsection (7) of Section 3 of this Act.**

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *A person engaged in debt adjusting shall contract in writing with the debtor and obtain the debtor's signature on the contract which shall designate the date on which the debtor actually signs the contract as the date of the transaction and fully disclose the exact nature of the debt-adjusting services and the total amount and terms of compensation.*
- (2) *Any debtor entering into a contract to provide debt-adjusting services shall have a right to cancel the contract until midnight of the fourteenth day after the day on which the debtor signs a contract offer to enter into a contract for debt-adjusting services, except as provided in subsection (7) of this section.*
- (3) *The following notice, printed in at least twelve (12) point boldface type and completed with the name and address of the debt adjuster, shall appear on the contract under the conspicuous caption "DEBTOR'S RIGHT TO CANCEL" and shall read as follows:*

NOTICE OF CANCELLATION

.....

(enter date of transaction)

You may cancel this contract or offer without penalty or monetary obligation, within fourteen (14) days from the above date. To cancel this transaction, you may use any of the following methods: mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation which you sign and date to (enter physical address of debt adjuster) or e-mail a notice of cancellation to (enter name of debt adjuster) at (enter e-mail address of debt adjuster) not later than midnight of (enter date fourteen (14) days after transaction date).

I hereby cancel this transaction.

.....

(Date)

.....

(Debtor's Signature)

- (4) *Cancellation occurs when the debtor gives written notice of cancellation to the debt adjuster at the physical or e-mail address stated in the contract or offer to perform services.*
- (5) *Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid and, if given by e-mail, when the debtor sends the e-mail.*
- (6) *Notice of cancellation given by the debtor is sufficient if it indicates in writing the intention of the debtor not to be bound by the contract or offer of services.*
- (7) *Until the debt adjuster has complied with the disclosure notice required by subsection (3) of this section, the debtor may cancel the contract or offer of services by notifying the debt adjuster of his or her intention to cancel.*

➔Section 3. KRS 380.040 is amended to read as follows:

- (1) Subject to subsection (3) of this section, a person, whether or not located in this state, **who is** engaged in debt adjusting **and actually or constructively receives any money or other thing of value, other than the fees permitted by this chapter, for the purpose of disbursing the money or thing of value to the debtor's creditors,** shall do both of the following:
 - (a) Unless specifically instructed otherwise by a debtor, disburse to the appropriate creditors all funds received from the debtor, less any contributions or fees not prohibited by subsection (2) of this section, within thirty (30) days of receipt of the funds from the debtor; and
 - (b) Maintain a separate trust account for the receipt of any funds from debtors and the disbursement of the funds to creditors on behalf of the debtors.
- (2) If **a fee, contribution, or other consideration**~~contributions or fees~~ for engaging in debt adjusting ~~is~~**are** accepted, directly or indirectly, a person engaged in debt adjusting shall not do any of the following:

- (a) Accept a *fee*, contribution, *or other consideration*~~[or fee]~~ exceeding seventy-five dollars (\$75) from a debtor residing in this state for an initial set up;
 - (b) Accept a *fee*,~~[consultation]~~ contribution, *or other consideration*~~[or fee]~~ exceeding fifty dollars (\$50) per calendar year from a debtor residing in this state *for consultation*~~;~~~~[or]~~
 - (c) *If money or anything else of value is received and held by the person engaged in debt adjusting for the purpose of disbursing the money or thing of value to the debtor's unsecured creditors*, accept a periodic *fee*, contribution, *or other consideration*~~[or fee]~~ from a debtor who resides in this state that exceeds the greater of eight and one-half percent (8.5%) of the amount paid by the debtor each month for distribution to the debtor's creditors or thirty dollars (\$30); *or*
 - (d) *Accept any other fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt. Acceptance of a fee, contribution, or other consideration in advance of the complete performance of all promised services in relation to secured debt, including the placement of the fee, contribution, or other consideration into an escrow account to be paid upon completion of the services, is specifically prohibited. For purposes of this paragraph, "secured debt" means any debt primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.*
- (3) Subsections (1) and (2) of this section shall not prohibit a person engaged in debt adjusting for a debtor who resides in this state from charging the debtor a bad check charge of twenty dollars (\$20) or the amount passed on from the debt adjuster's bank, whichever is greater, in addition to~~[contributions or]~~ fees, *contributions, or other consideration* not prohibited by subsection (2) of this section.
 - (4) Fees,~~[or]~~ contributions, *or other consideration* permitted in subsections (1), (2), and (3) of this section may be adjusted on an annual basis by the amount equivalent to any increase in the consumer price index, published by the United States Department of Labor, Bureau of Labor Statistics.
 - (5) Any person that engages in debt adjusting shall file an initial registration form, accompanied by an initial registration fee of two hundred fifty dollars (\$250), and the registration shall be renewed each year thereafter for a fee of two hundred fifty dollars (\$250) to cover the actual cost of filing the registration, in accordance with administrative regulations promulgated by the Attorney General.
 - (6) Any person that engages in debt adjusting shall arrange for and undergo an annual audit of the person's business, including any trust funds deposited and distributed to creditors on behalf of debtors, which shall be conducted by an independent, third-party certified public accountant. Both of the following shall apply to an audit performed under this subsection:
 - (a) The person shall file the results of the audit and the auditor's opinion with the Consumer Protection Division of the Office of the Attorney General within thirty (30) days of the anniversary date of filing the initial registration; and
 - (b) The Attorney General shall make available a summary of the results of the audit and the auditor's opinion upon written request of any person and payment of a fee not to exceed the cost of copying the summary and opinion.
 - (7) (a) A person engaged in debt adjusting shall obtain and at all times maintain insurance coverage for errors and omissions, employee dishonesty, depositor's forgery,~~[and]~~ computer fraud, *and violations of this chapter* in the amount of ten percent (10%) of the monthly average for the immediately preceding six (6) months of the aggregate amount of all deposits made with the person by all debtors. The insurance coverage shall comply with all of the following:
 - 1.~~[(a)]~~ The minimum limit of the insurance coverage shall not be less than one hundred thousand dollars (\$100,000), and the maximum limit of the insurance coverage shall not be more than two hundred fifty thousand dollars (\$250,000);
 - 2.~~[(b)]~~ The insurance coverage shall not include a deductible in excess of ten percent (10%) of the face amount of the policy coverage;
 - 3.~~[(c)]~~ The insurance coverage shall be issued by an insurer and rated at least A-, or its equivalent, by a nationally recognized rating organization; and

~~4.(d)~~ The insurance coverage shall provide that the Consumer Protection Division of the Office of the Attorney General shall be named as an additional interested party.

- (b) *If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of insurance coverage required in paragraph (a) of this subsection shall be increased by two hundred fifty thousand dollars (\$250,000).*
- (8) (a) *A debt adjuster shall maintain a bond issued by a surety company admitted to do business in this Commonwealth. The bond shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth for any violation of this chapter or any person suffering injury or loss by reason of any violation of this chapter. A copy of the bond shall be filed with the Attorney General.*
- (b) *The bond required by paragraph (a) of this subsection shall be in effect during the period of the debt adjuster's registration as well as for two (2) years after the debt adjuster ceases to provide debt-adjusting services to debtors.*
- (c) *A change in ownership of a debt adjuster shall not release, cancel, or terminate liability under any bond previously filed unless the Attorney General agrees in writing to the release, cancellation, or termination because the debt adjuster has filed a new bond meeting the requirements of paragraph (a) of this subsection.*
- (d) *The proceeds of the bond required by paragraph (a) of this subsection shall be paid to any person suffering injury or loss by reason of any violation of this chapter or to the Attorney General for any violation of this chapter or shall be paid pursuant to the terms of any order of a court of competent jurisdiction. Any person who is damaged by any violation of this chapter may bring an action against the bond to recover damages pursuant to this paragraph, provided the aggregate liability of the surety shall not exceed the amount of the bond.*
- (e) *In lieu of the bond required by paragraph (a) of this subsection, a debt adjuster may, with the written approval of the Attorney General, deliver to the Attorney General an irrevocable letter of credit issued or confirmed by a financial institution authorized by law to transact business in the Commonwealth. The irrevocable letter of credit shall be in the amount of twenty-five thousand dollars (\$25,000) in favor of the Attorney General for the benefit of the Commonwealth or any person suffering injury or loss by reason of any violation of this chapter.*
- (f) *If the debt adjuster engages in debt adjusting in relation to any debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property, the amount of the bond required in paragraph (a) of this subsection or the irrevocable letter of credit approved pursuant to paragraph (e) of this subsection shall be increased by fifty thousand dollars (\$50,000).*
- (9) *A debt adjuster may not, directly or indirectly:*
 - (a) *Misappropriate or misapply money held in trust;*
 - (b) *Settle a debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement unless, after the creditor has assented, the debtor assents to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement;*
 - (c) *Take a power of attorney that authorizes the debt adjuster to settle a debt, unless the power of attorney is expressly limited to the debtor's debts and grants authority to settle debts only if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property;*

- (d) *Exercise or attempt to exercise a power of attorney after a debtor has terminated an agreement;*
- (e) *Initiate a transfer from a debtor's account at a bank or with another person unless the transfer is:*
 - 1. *A return of money to the debtor; or*
 - 2. *Before termination of an agreement, properly authorized by the agreement and this chapter, and for payment to one (1) or more creditors pursuant to a plan or payment of a fee;*
- (f) *Structure a plan in a manner that would result in a negative amortization of any of a debtor's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;*
- (g) *Settle a debt or lead a debtor to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the debtor receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion will lead to full settlement of the debt;*
- (h) *Make a representation that:*
 - 1. *The debt adjuster will furnish money to pay bills or prevent attachments;*
 - 2. *Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness;*
 - 3. *Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and will or may stop efforts to collect a debt from the debtor;*
 - 4. *Failure to make required minimum payments to creditors will not or may not break the terms of agreements with creditors, will not or may not lead creditors to increase finance charges and pursue litigation, will not or may not be reported to consumer reporting agencies, or will not or may not have an adverse effect on the debtor's credit report and credit score; or*
 - 5. *Fees paid to a debt adjuster will be used to pay creditors;*
- (i) *Misrepresent that it is authorized or competent to furnish legal advice or perform legal services;*
- (j) *Take a confession of judgment or power of attorney to confess judgment against a debtor;*
- (k) *Purchase a debt or obligation of the debtor;*
- (l) *Receive from or on behalf of the debtor:*
 - 1. *A promissory note or other negotiable instrument other than a check or a demand draft; or*
 - 2. *A postdated check or demand draft;*
- (m) *Lend money or provide credit to the debtor, except as a deferral of a settlement fee at no additional expense to the debtor;*
- (n) *Obtain a mortgage or other security interest from any person in connection with the services provided to the debtor;*
- (o) *Provide the debtor less than the full benefit of a compromise of a debt arranged by the debt adjuster; or*
- (p) *Charge the debtor for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt adjusting services or educational services concerning personal finance*~~*[Any person engaged in debt adjusting shall comply with the provisions of this section].*~~
- (10) *Any unfair, false, misleading, or deceptive act or practice in the conduct of debt adjusting is prohibited. For purposes of this subsection, "unfair" shall be construed to mean unconscionable.*

➔Section 4. KRS 380.990 is amended to read as follows:

- (1) *In any action brought alleging a violation of this chapter, if the court finds that a person is willfully using or has willfully used a method, act, or practice declared unlawful by this chapter, the Attorney General,*

upon petition to the court, may recover, on behalf of the Commonwealth, a civil penalty of not more than five thousand dollars (\$5,000) per violation.

- (2) Any person who violates the provisions of KRS 380.040 in the state is guilty of a misdemeanor and, upon conviction, shall be punished by a fine of five hundred dollars (\$500) or imprisonment not to exceed sixty (60) days, or both such fine and imprisonment.
- (3) *A violation of this chapter shall be deemed an unfair, false, misleading, or deceptive practice in the conduct of trade or commerce in violation of KRS 367.170. All of the remedies, powers, and duties provided by KRS 367.190 to 367.300 and the penalties pertaining to acts and practices declared unlawful under KRS 367.170 shall apply with equal force and effect to acts and practices in violation of this chapter, except as provided in subsection (1) of this section.*
- (4) *In addition to subsection (1) of this section:*
 - (a) *A court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been paid out as a result of any practice in violation of this chapter;*
 - (b) *A court shall have jurisdiction in an action brought in the name of the Commonwealth by the Attorney General or the county attorney, to enjoin, as an unfair or deceptive trade practice pursuant to KRS 367.170, the continuation of any debt-adjusting business or the offering of any debt-adjusting services as defined in Section 1 of this Act;*
 - (c) *A court may appoint a receiver who shall have all the powers and authority pursuant to KRS 367.210 for the property and money employed in the transaction of business by a debt adjuster to ensure the return to debtors of their money and property received by the debt adjuster which has not been paid to the creditors of the debtors; and*
 - (d) *In any action brought by the Attorney General or a Commonwealth or county attorney under this chapter, in which the Commonwealth has substantially prevailed, the court shall award, in addition to the relief provide elsewhere in this chapter, reasonable attorney's fees, investigative costs, and litigation costs including expert witness fees and expenses.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

Any waiver by the debtor of rights or protections provided in this chapter is contrary to public policy, is void and unenforceable, and will not relieve the debt adjuster of any obligation placed upon the debt adjuster by this chapter.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Any person who enters into a debt-adjusting transaction and thereby suffers any ascertainable loss of money or property, real or personal, as a result of a violation of this chapter, may bring an action under the Rules of Civil Procedure in the Circuit Court in which the person resides or where the transaction in question occurred, to recover actual damages. The court may, in its discretion, award actual damages and may provide such equitable relief as it deems necessary or proper. Nothing in this section shall be construed to limit a person's right to seek punitive damages where appropriate.*
- (2) *Upon commencement of any action brought under subsection (1) of this section, the clerk of the court shall mail a copy of the complaint or other initial pleading to the Attorney General and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment to the Attorney General.*
- (3) *In any action brought by a person under this section, the court may award to the prevailing party, in addition to the relief provided in this section, reasonable attorney's fees and costs.*
- (4) *Any person bringing an action under this section shall bring such action within one (1) year after any action of the Attorney General has been terminated or within two (2) years after the violation of this chapter, whichever is later.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *A debt adjuster shall take reasonable measures to:*
 - (a) *Ensure the security and confidentiality of a debtor's personal information;*

- (b) *Protect against any anticipated threats or hazards to the security or integrity of a debtor's personal information; and*
- (c) *Protect against unauthorized access to or use of a debtor's personal information.*
- (2) *The reasonable measures required by this section shall include, at a minimum:*
 - (a) *Design and implementation of a comprehensive information security program that:*
 - 1. *Is written in one (1) or more readily accessible parts;*
 - 2. *Contains administrative, technical, and physical safeguards that are appropriate to the size and complexity of the debt adjuster, the nature and scope of the debt adjuster's activities, and the sensitivity of any personal information at issue;*
 - 3. *Designates one (1) or more employees to coordinate compliance with the information security program; and*
 - 4. *Identifies reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of the personal information of a debtor that could result in the unauthorized access to or use of the information, and assesses the sufficiency of any safeguards in place to control these risks. At a minimum, the risk assessment required by this subparagraph shall include consideration of risks in each relevant area of the debt adjuster's operation, including employee training and management, information systems, information processing, information storage, information transmission, information disposal, and detecting, preventing, and responding to failures to comply with the information security program.*
 - (b) *Design and implementation of information safeguards to control the risks identified by the risk assessment required by this subsection, as well as regular testing or other monitoring of the effectiveness of the safeguards of key controls, systems, and procedures;*
 - (c) *Requirements for regular training of employees who will or may have access to records containing personal information of debtors regarding compliance with the information security program required by this subsection;*
 - (d) *Oversight of service providers to whom personal information of a debtor will be disclosed, by taking reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the personal information at issue, as well as requiring service providers, by contract, to implement and maintain those safeguards;*
 - (e) *Evaluation and adjustment of the information security program in light of the results of testing and monitoring, any material changes to the operation or business arrangements of the debt adjuster, or any other circumstances that the debt adjuster knows or has reason to know may have a material impact on compliance with the information security program; and*
 - (f) *A requirement that when records containing personal information of a debtor are disposed of the records shall be shredded, erased, or otherwise modified so the personal information is made unreadable or indecipherable through any means.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Notwithstanding any other provision of law, a debt adjuster shall not sell or transfer a debtor's personal information unless the debtor provides a valid authorization that includes a specification that the debtor's personal information may be sold or transferred by the debt adjuster who received the debtor's personal information.*
- (2) *An authorization shall:*
 - (a) *Be in writing; and*
 - (b) *Provide that prior to any sale or transfer of the debtor's personal information, the debt adjuster shall obtain a written confidentiality agreement from the person to whom the personal information is sold or transferred stating that the person will not sell or transfer the debtor's personal information.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to obtaining a debtor's personal information, a debt adjuster shall provide a clear and conspicuous disclosure to the debtor of the debt adjuster's policies and practices with respect to:*

- (a) *Disclosing the debtor's personal information to others, including the categories of personal information that may be disclosed;*
 - (b) *Disclosing the personal information of persons for whom the debt adjuster is no longer providing a debt-adjusting service or product; and*
 - (c) *Protecting the debtor's personal information.*
- (2) *The disclosure required by this section shall also be provided to the debtor at least annually while the debt adjuster is providing debt-adjusting services or products to the debtor.*

➔Section 10. KRS 380.030 is amended to read as follows:

The following persons shall not be considered debt adjusters for the purposes of this chapter:

- (1) Any attorney-at-law *admitted to the practice of law in*~~off~~ *this state by the Supreme Court of this Commonwealth, who is not principally engaged in the business of debt adjusting, when the person renders services in the course of his or her practice as an attorney-at-law;*
- (2) Any person who is a regular, full-time employee of a debtor, and who acts as an adjuster of his employer's debts;
- (3) Any person acting pursuant to any order or judgment of court, or pursuant to authority conferred by any law of this state or of the United States;
- (4) Any person who is a creditor of the debtor, or an agent of one (1) or more creditors of the debtor, and whose services in adjusting the debtor's debts are rendered without cost to the debtor;
- (5) Any person who~~at the request of a debtor,~~ arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan, without compensation *from the debtor* for the services rendered in adjusting the debts;~~and~~
- (6) Any charitable, religious or educational organization, determined to be exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that is not in the business of debt adjusting, as defined in KRS 380.010; *and*
- (7) *Any person who is a creditor of the debtor, when adjusting a debt or debts owed by the debtor to the person.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

- (1) *An agreement for debt adjusting shall:*

- (a) *Be in writing;*
- (b) *Be dated and signed by the debt adjuster and the debtor;*
- (c) *Include the name of the debtor and the address where the debtor resides;*
- (d) *Include the name, business address, and telephone number of the debt adjuster;*
- (e) *Be delivered to the debtor immediately upon formation of the agreement. Delivery of an electronic record occurs when the agreement is made available in a format in which the debtor may retrieve, save, and print the agreement and the debtor is notified that the electronic record is available;*
- (f) *Disclose:*
 - 1. *The services to be provided;*
 - 2. *The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the debtor;*
 - 3. *The schedule of payments to be made by or on behalf of the debtor, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;*
 - 4. *Whether a plan provides for regular periodic payments to creditors and, if a plan provides for regular periodic payments to creditors:*

- a. *Each creditor of the debtor to which payment will be made, the amount owed to each creditor, and any concessions the debt adjuster reasonably believes each creditor will offer; and*
 - b. *The schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;*
 - 5. *Each creditor that the debt adjuster believes will not participate in the plan and to which the debt adjuster will not direct payment;*
 - 6. *That the debt adjuster may terminate the agreement for good cause, upon return of unexpended money of the debtor;*
 - 7. *That the debtor may cancel the agreement as provided in Section 2 of this Act;*
 - 8. *That the debtor may contact the Attorney General with any questions or complaints regarding the debt adjuster;*
 - 9. *The address, telephone number, and Internet address or Web site of the Attorney General;*
 - 10. *That participation in a plan may not prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment, and may not stop efforts to collect a debt from the debtor;*
 - 11. *That failure to make required minimum payments to creditors may be breaking the terms of agreements with creditors, may lead creditors to increase finance charges and pursue litigation, may be reported to consumer reporting agencies, and may have an adverse effect on the debtor's credit report and credit score;*
 - 12. *The earliest date by which the debt adjuster will contact each creditor to attempt to adjust the debtor's debts or, for settlement of unsecured debts, the estimated amount of money that shall be accumulated in savings before negotiations may begin; and*
 - 13. *That fees paid to a debt adjuster will not be used to pay creditors;*
 - (g) *Provide that the debtor has a right to terminate the agreement at any time, without penalty or obligation, by giving the debt adjuster written or electronic notice, in which event:*
 - 1. *The debt adjuster will refund all unexpended money that the debt adjuster or its agent has received from or on behalf of the debtor for the reduction or satisfaction of the individual's debt; and*
 - 2. *All powers of attorney granted by the debtor to the debt adjuster are revoked and ineffective;*
 - (h) *Provide that the debtor authorizes any financial institution in which the debt adjuster or its agent has established a trust account to disclose to the Attorney General any financial records relating to the trust account; and*
 - (i) *Provide that the debt adjuster will notify the debtor within five (5) days after learning of a creditor's decision to reject or withdraw from a plan. This notice shall include:*
 - 1. *The identity of the creditor; and*
 - 2. *The right of the debtor to modify or terminate the agreement.*
- (2) *An agreement may confer on a debt adjuster a power of attorney to negotiate with creditors of the debtor on behalf of the debtor and to settle the debtor's debt if the amount the debtor will owe after settlement is less than fifty percent (50%) of the amount of the debt prior to settlement. An agreement shall not confer a power of attorney to settle the debtor's debt if the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement. An agreement shall provide that the debt adjuster shall obtain the assent of the debtor prior to settling a debt if the creditor has assented to a settlement for which the amount the debtor will owe after settlement is equal to or more than fifty percent (50%) of the amount of the debt prior to settlement. However, in no event shall an agreement confer on a debt adjuster a power of attorney to negotiate or settle any of the debtor's debt that is primarily for personal, family, or household use that is secured by a mortgage, deed of trust, other equivalent consensual security interest on residential real property, or collateral that has a mortgage lien interest in residential real property.*

- (3) *An agreement shall not:*
- (a) *Provide for application of the law of any jurisdiction other than the United States and this state;*
 - (b) *Contain a provision that restricts the debtor's remedies under this chapter or under any other law; or*
 - (c) *Contain a provision that:*
 - 1. *Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or*
 - 2. *Indemnifies any person for liability arising under the agreement or this chapter.*
- (4) *All rights and obligations specified in paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, subsection (3) of this section, and Section 2 of this Act, exist even if not provided in the agreement.*
- (5) *A provision in an agreement which violates paragraphs (g), (h), and (i) of subsection (1) of this section, subsection (2) of this section, or subsection (3) of this section is void.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 380 IS CREATED TO READ AS FOLLOWS:

Nothing in Sections 1 to 12 of this Act shall be construed to limit the ability of a financial institution licensed by KRS Chapter 286 from collecting on debts it is owed by a debtor.

Signed by Governor April 8, 2010.

CHAPTER 87

(HB 114)

AN ACT relating to the name of the Pine Mountain Trail State Park.

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

➔Section 1. KRS 148.870 is amended to read as follows:

- (1) The General Assembly recognizes that the ridge top of Pine Mountain is a unique area desirable for the creation of a trail. Therefore, it is hereby declared that in order to afford the citizens of the Commonwealth an opportunity to enjoy this natural area, to attract out-of-state visitors, to ensure the well-being of our tourism industry, to preserve for future generations the beauty of certain areas untrammelled by man, to provide for the ever-increasing outdoor recreation needs of an expanding population, and to promote the preservation of, public access to, travel within, and enjoyment and appreciation of the outdoor areas and historic resources of the Commonwealth, there is hereby established a certain defined area in the southeastern part of the Commonwealth for ultimate designation as the Pine Mountain *State Scenic* Trail~~[-State Park]~~, with land in the defined area owned or leased by the Commonwealth or on which the Commonwealth has obtained an easement comprising the initial state park.
- (2) It is the intent of KRS 148.870 to 148.892 to assure preservation of the scenic, ecological, and other values within the boundaries of the trail and to provide proper management of the recreational, wildlife, water, and other resources within those boundaries. It is further the intent of KRS 148.870 to 148.892 to impose reasonable policies governing the use of land within the authorized boundaries of the trail, except for the restrictions set forth in KRS 148.870 to 148.892, for the general welfare of the people of the Commonwealth and, where necessary, to enable the Commonwealth or any of its agencies to acquire fee title or lesser interests in land within the boundaries of the trail, in order to maintain the public trust in this unique area.
- (3) The General Assembly recognizes the valuable contributions that volunteers and private, nonprofit groups have made to the development and maintenance of trails throughout the Commonwealth. In recognition of these contributions, it is further the purpose of KRS 148.870 to 148.892 to encourage and assist volunteer citizen and nonprofit group involvement in the planning, development, maintenance, and management, where appropriate, of the trail.
- (4) The General Assembly recognizes that the establishment of Pine Mountain *State Scenic* Trail~~[-State Park]~~ is not intended to create a one hundred twenty (120) mile linear barrier around southeastern Kentucky. The General Assembly further recognizes that to ensure the continued economic development of the area,

provisions shall be made for means of ingress and egress for owners of property and those with property rights affected by the creation of the trail, and for new road construction, utility facilities, and pipelines that may cross the trail.

➔Section 2. KRS 148.872 is amended to read as follows:

As used in KRS 148.870 to 148.892, unless the context otherwise requires:

- (1) "Department" means the Kentucky Department of Parks within the Tourism, Arts and Heritage Cabinet;
- (2) "Person" means an individual, trust, firm, estate, joint stock company, corporation, nonprofit corporation, government corporation, limited liability company, partnership, association, organization, government unit or agency whether federal, state, city, commission, or other political subdivision of the Commonwealth, any interstate body, group of persons acting in concert, or other legal entity;
- (3) "Secretary" means the secretary of the Tourism, Arts and Heritage Cabinet of the Commonwealth of Kentucky; and
- (4) "Trail" means the Pine Mountain *State Scenic* Trail~~—State Park~~, as established in KRS 148.870.

➔Section 3. KRS 148.874 is amended to read as follows:

- (1) There is hereby designated a linear state park, the boundaries of which shall be determined by the department in accordance with this section known as the Pine Mountain *State Scenic* Trail~~—State Park~~, a trail of approximately one hundred twenty (120) miles in length, located exclusively within the boundaries of Kentucky beginning along the border of Kentucky and Virginia at or near Breaks Interstate Park, and extending generally south-southwest along the crest of Pine Mountain to the vicinity of Pine Mountain State Resort Park and continuing south to the Cumberland Gap National Park on the vicinity thereof. Insofar as practicable, the boundaries of the trail from the Breaks Interstate Park to Bad Branch State Nature Preserve shall be a one thousand (1,000) foot corridor, the center of which shall be the crest of Pine Mountain, to the extent that the corridor does not encroach upon the territory of the Commonwealth of Virginia. Insofar as practicable, the boundaries of the trail from the Bad Branch State Nature Preserve to the Pine Mountain State Resort Park shall be a corridor one hundred (100) to two hundred fifty (250) feet along the level top of Pine Mountain. The route of the trail from Pine Mountain State Resort Park to Cumberland Gap National Park shall be a corridor no wider than two hundred fifty (250) feet to be determined by the department. Notwithstanding these boundary limitations, the department may through negotiations with the land owner acquire additional land outside the boundary limitations. The trail shall be depicted on the "Pine Mountain *State Scenic* Trail Map," which shall be on file and available for public inspection in the office of the commissioner of the department. The trail map shall delineate those portions of the trail that are owned or leased by the Commonwealth or on which the Commonwealth has obtained an easement and shall be updated periodically solely for the purpose of reflecting additions to those specific areas.
- (2) The department may designate connecting or side paths which shall provide additional points of public access to the trail or access to points of interest, and which shall be of the same scenic nature as the trail, except that connecting or side paths shall not be acquired through eminent domain.
- (3) Because of its extended length, the department may supplement the trail by support facilities located on certain designated parts of the trail or outside the trail. These support facilities may include, as the department deems necessary and feasible, primitive shelters, fireplaces, safe water supplies, and other related public-use facilities that shall meet department standards. No open wood fires shall be permitted on the trail except in areas with support facilities specifically designated for that purpose.
- (4) The trail shall be a state scenic trail, so chosen because of its unique location. It shall be limited to foot use and other nonmotorized uses as permitted on segments where deemed appropriate by the department, and as set forth in KRS 148.878.
- (5) The department shall, no later than June 30, 2003, determine the boundaries of the trail. In determining the boundaries of the trail the department shall not encroach upon any privately owned dwelling, or areas designated for residential structures and their surrounding properties, but shall route the trail around a privately owned dwelling or areas designated for a residential structure.
- (6) The department shall not acquire through eminent domain any cemetery or its surrounding property which is designated as a cemetery or burial ground on July 15, 2002.

➔Section 4. KRS 148.880 is amended to read as follows:

A fund for the purpose of carrying out the provisions of KRS 148.870 to 148.892 is hereby created, to be designated as the Pine Mountain *State Scenic* Trail fund, and shall consist of all revenues derived from privileges, concessions, contracts, or otherwise, and all moneys received by gifts, contributions, donations, and grants from public or private sources. This shall be a trust and agency fund account maintained and disbursed by the Tourism, Arts and Heritage Cabinet to carry out the purposes of KRS 148.870 to 148.892, after appropriations are made for administration and other expenses and purposes provided in KRS 148.870 to 148.892. It shall not lapse, and interest earnings shall accrue to the fund.

➔Section 5. KRS 148.892 is amended to read as follows:

KRS 148.870 to 148.892 may be cited as the Pine Mountain *State Scenic* Trail Act.

Signed by Governor April 8, 2010.

CHAPTER 88

(HB 88)

AN ACT relating to campaign finance reports.

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

➔Section 1. KRS 121.180 is amended to read as follows:

- (1) (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars (\$3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars (\$1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15)

days after the filing deadline. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.

- (d)
 - 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.
 - 2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.
- (e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.
- (f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.
- (g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of

paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.

- (j) A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.
- (k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.
- (l)
 - 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars (\$500) plus the amount by which the spending limit was exceeded.
 - 2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.
- (2) (a) State and county executive committees, and caucus campaign committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:
 - 1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 - 2. For other contributions in excess of one hundred dollars (\$100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 - 3. The total amount of cash contributions received during the reporting period; and
 - 4. A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) This report shall be in the hands of the registry or postmarked within five (5) days after the thirtieth day following the primary and regular elections. If an individual gives a reportable contribution to a caucus campaign committee or to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section

within the report required, by this subsection, to be in the hands of the registry or postmarked within five (5) days after the thirtieth day following each regular election.

- (3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars (\$3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars (\$3,000) in any one (1) election, shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:
 1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
 3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2. or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 4. The total amount of cash contributions received during the reporting period; and
 5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) Reports of all candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:
 1. Candidates as defined in KRS 121.015(8), slates of candidates, campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate, a slate of candidates, or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after persons become candidates or slates of candidates, or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, slates of candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;
 2. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;
 3. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and
 4. All reports to the registry shall be received by the registry or postmarked within five (5) days after each filing deadline.
- (4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political

issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.

- (5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.
- (6) Each permanent committee, except a federally registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:
 - (a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 - (b) For other contributions in excess of one hundred dollars (\$100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 - (c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and
 - (d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures on a form provided or using a format approved by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.
- (7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be received by the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate or a slate of candidates seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate or a slate of candidates shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate or slate of candidates files nomination papers for the next year's primary or regular election. All contributions shall be subject to KRS 121.150.

- (8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate paper copy of each report filed either on paper or electronically with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.
- (9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:
- (a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;
 - (b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and
 - (c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.
- (10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars (\$100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of candidates, or public issue is on the ballot. Any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to a caucus campaign committee, or to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.
- (11) (a) Any publisher of newspapers or magazines, owner or lessor of billboards, or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material, shall file with the registry a copy of the material or communication purchased which supports or opposes any slate of candidates or committee; a copy of the receipt for the funds paid; the name and address of each purchaser; and the source of the funds for the purchase if different than the purchaser.
- (b) A radio or television station or network that receives funds for the purchase of advertising services or material that supports or opposes a slate of candidates or committee shall file with the registry a copy of the documentation of paid political campaign advertisements that is required to be maintained by the Federal Communications Commission, along with a cover letter from the manager of the station or network or the manager's designee.

- (c) All information required to be reported by paragraphs (a) and (b) of this subsection shall be in the hands of the registry or postmarked not later than the thirtieth day following the primary and regular elections that are held subsequent to the date that the broadcasting or printing of the advertisement occurs.
 - (d) The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.
 - (e) Notwithstanding KRS 121.990, penalties for violation of this subsection shall be assessed in accordance with the provisions of KRS 121.140(2).
- (12) (a) For the purposes of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a candidate for a particular office, means the period of time beginning January 1 following a regular election for the office and ending December 31 following the next regular election for that office.
- (b) For the purpose of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a constitutional amendment or public question which appears on the ballot, means the period of time beginning January 1 following a regular election for any state legislative office and ending December 31 following the next regular election for any state legislative office.
- (c) If adequate and appropriate agency funds are available to implement this subsection, beginning on January 1, 2002, the option of electronic reporting shall be made available by the registry for all of the following:
- 1. Candidates for statewide office and slates of candidates that during the election cycle receive contributions or loans in the aggregate of twenty-five thousand dollars (\$25,000) or more, or at any time have a balance in a campaign account or accounts in the aggregate of twenty-five thousand dollars (\$25,000) or more;
 - 2. Candidates for the General Assembly that during the election cycle receive contributions or loans in the aggregate of twelve thousand five hundred dollars (\$12,500), or at any time have a balance in an aggregate of twelve thousand five hundred dollars (\$12,500) or more; and
 - 3. Campaign committees, political issues committees, permanent committees, registered fundraisers, contributing organizations, and individuals and entities making independent expenditures that during the election cycle receive contributions or loans in an aggregate of twenty-five thousand dollars (\$25,000) or more, make expenditures in an aggregate of twenty-five thousand dollars (\$25,000) or more, or at any time have a balance in an aggregate of twenty-five thousand dollars (\$25,000) or more.
- (13) Filers specified in subsection (12) of this section shall also continue to file required campaign finance reports in paper format until the registry deems it is no longer necessary. The paper copy shall continue to be the official version for audit and other legal purposes.
- (14) Filers not required to file reports electronically, as set forth in this section, are strongly encouraged to do so voluntarily.
- (15) The date that an electronic or on-line report shall be deemed to have been filed with the registry shall be the date on which it is received by the registry.
- (16) All electronic or on-line filers shall affirm, under penalty of perjury, that the report filed with the registry is complete and accurate.
- (17) Filers who submit computer disks which are not readable, cannot be copied, or are not accompanied by any requisite paper copy shall be deemed to not be in compliance with the requirements set forth in this section.
- (18) No candidate is obligated to file any reports electronically.
- (19) (a) ***On each paper and electronic form that it supplies for the reports required under subsections (2), (3), and (6) of this section, the registry shall include an entry reading, "No change since last report."***
- (b) ***If a person or entity that is required to report under subsection (2), (3), or (6) of this section has received no money, loans, or other things of value from any source since the date of its last report and has not authorized, incurred, or made any expenditures since that date, the person or entity may check or otherwise designate the entry that reads, "No change since last report." A person or entity***

designating this entry in a report shall state the balance carried forward from the last report but need not specify receipts or expenditures in further detail.

➔Section 2. The effective date of this Act shall be delayed until November 3, 2010.

Signed by Governor April 8, 2010.

CHAPTER 89

(HB 44)

AN ACT relating to mold remediation standards.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

The General Assembly hereby finds that it is necessary to the health and welfare of the citizens of Kentucky that there be maintained, now and in the future, reasonable standards for the remediation of mold in private and public settings. It is therefore in the best interests of the citizens of the Commonwealth of Kentucky to establish standards for providers of mold remediation services in Kentucky.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 4 of this Act:

- (1) *"Customer" means any person who contracts for services with a mold remediation company for the purposes of mold remediation;*
- (2) *"Department" means the Department of Law;*
- (3) *"Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins;*
- (4) *"Mold remediation" means the removal, cleaning, sanitizing, demolition, or other treatment, including preventative activities, of mold or mold-contaminated matter, live or dead, that was not intended to be grown, or purposely grown, at that location; and*
- (5) *"Mold remediation company" means an entity that performs mold remediation for compensation.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall, after consultation with the Environmental and Public Protection Cabinet and the Department for Public Health, establish minimum standards for mold remediation companies that operate in the Commonwealth. The minimum standards shall be based on the five (5) general principles of mold remediation created by the Institute of Inspection, Cleaning and Restoration Certification (IICRC) in its publication, IICRC S520, Second Edition, Standard and Reference Guide for Professional Mold Remediation, or its successor publication. The five (5) general principles of mold remediation are as follows:*

- (a) *Safety and health;*
- (b) *Project documentation;*
- (c) *Contaminant control;*
- (d) *Contaminant removal; and*
- (e) *Contamination prevention.*

All mold remediation companies operating in the Commonwealth shall adhere to the minimum standards established by the department.

- (2) *Any customer complaints regarding adherence by mold remediation companies to the administrative regulations promulgated under this section shall be directed to the Attorney General.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

- (1) *The Attorney General shall have jurisdiction to enforce Sections 1 to 4 of this Act, and may recover the reasonable costs of investigation and litigation.*
- (2) *If an act by a mold remediation company violates any provision of this chapter, the Attorney General may take civil action and seek any remedy provided in this chapter, including the recovery of the reasonable costs of investigation and litigation.*

Signed by Governor April 8, 2010.

CHAPTER 90

(HB 38)

AN ACT relating to the American Medical Association's "Guides to the Evaluation of Permanent Impairment."

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

➔Section 1. KRS 342.0011 is amended to read as follows:

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

- (1) "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;
- (2) "Occupational disease" means a disease arising out of and in the course of the employment;
- (3) An occupational disease as defined in this chapter shall be deemed to arise out of the employment if there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident to the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause. The occupational disease shall be incidental to the character of the business and not independent of the relationship of employer and employee. An occupational disease need not have been foreseen or expected but, after its contraction, it must appear to be related to a risk connected with the employment and to have flowed from that source as a rational consequence;
- (4) "Injurious exposure" shall mean that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made;
- (5) "Death" means death resulting from an injury or occupational disease;
- (6) "Carrier" means any insurer, or legal representative thereof, authorized to insure the liability of employers under this chapter and includes a self-insurer;
- (7) "Self-insurer" is an employer who has been authorized under the provisions of this chapter to carry his own liability on his employees covered by this chapter;
- (8) "Office" means the Office of Workers' Claims in the Department of Labor;
- (9) "Executive director" means the executive director of the Office of Workers' Claims;
- (10) "Board" means the Workers' Compensation Board;
- (11) (a) "Temporary total disability" means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment;
- (b) "Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work; and

- (c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury, except that total disability shall be irrebuttably presumed to exist for an injury that results in:
1. Total and permanent loss of sight in both eyes;
 2. Loss of both feet at or above the ankle;
 3. Loss of both hands at or above the wrist;
 4. Loss of one (1) foot at or above the ankle and the loss of one (1) hand at or above the wrist;
 5. Permanent and complete paralysis of both arms, both legs, or one (1) arm and one (1) leg;
 6. Incurable insanity or imbecility; or
 7. Total loss of hearing;
- (12) "Income benefits" means payments made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits;
- (13) "Medical and related benefits" means payments made for medical, hospital, burial, and other services as provided in this chapter, other than income benefits;
- (14) "Compensation" means all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits;
- (15) "Medical services" means medical, surgical, dental, hospital, nursing, and medical rehabilitation services, medicines, and fittings for artificial or prosthetic devices;
- (16) "Person" means any individual, partnership, limited partnership, limited liability company, firm, association, trust, joint venture, corporation, or legal representative thereof;
- (17) "Wages" means, in addition to money payments for services rendered, the reasonable value of board, rent, housing, lodging, fuel, or similar advantages received from the employer, and gratuities received in the course of employment from persons other than the employer as evidenced by the employee's federal and state tax returns;
- (18) "Agriculture" means the operation of farm premises, including the planting, cultivation, producing, growing, harvesting, and preparation for market of agricultural or horticultural commodities thereon, the raising of livestock for food products and for racing purposes, and poultry thereon, and any work performed as an incident to or in conjunction with the farm operations, including the sale of produce at on-site markets and the processing of produce for sale at on-site markets. It shall not include the commercial processing, packing, drying, storing, or canning of such commodities for market, or making cheese or butter or other dairy products for market;
- (19) "Beneficiary" means any person who is entitled to income benefits or medical and related benefits under this chapter;
- (20) "United States," when used in a geographic sense, means the several states, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, and the territories of the United States;
- (21) "Alien" means a person who is not a citizen, a national, or a resident of the United States or Canada. Any person not a citizen or national of the United States who relinquishes or is about to relinquish his residence in the United States shall be regarded as an alien;
- (22) "Insurance carrier" means every insurance carrier or insurance company authorized to do business in the Commonwealth writing workers' compensation insurance coverage and includes the Kentucky Employers Mutual Insurance Authority and every self-insured group operating under the provisions of this chapter;
- (23) (a) "Severance or processing of coal" means all activities performed in the Commonwealth at underground, auger, and surface mining sites; all activities performed at tipple or processing plants that clean, break, size, or treat coal; and all activities performed at coal loading facilities for trucks, railroads, and barges. Severance or processing of coal shall not include acts performed by a final consumer if the acts are performed at the site of final consumption;
- (b) "Engaged in severance or processing of coal" shall include all individuals, partnerships, limited partnerships, limited liability companies, corporations, joint ventures, associations, or any other business

entity in the Commonwealth which has employees on its payroll who perform any of the acts stated in paragraph (a) of this subsection, regardless of whether the acts are performed as owner of the coal or on a contract or fee basis for the actual owner of the coal. A business entity engaged in the severance or processing of coal, including but not limited to administrative or selling functions, shall be considered wholly engaged in the severance or processing of coal for the purpose of this chapter. However, a business entity which is engaged in a separate business activity not related to coal, for which a separate premium charge is not made, shall be deemed to be engaged in the severance or processing of coal only to the extent that the number of employees engaged in the severance or processing of coal bears to the total number of employees. Any employee who is involved in the business of severing or processing of coal and business activities not related to coal shall be prorated based on the time involved in severance or processing of coal bears to his total time;

- (24) "Premium" for every self-insured group means any and all assessments levied on its members by such group or contributed to it by the members thereof. For special fund assessment purposes, "premium" also includes any and all membership dues, fees, or other payments by members of the group to associations or other entities used for underwriting, claims handling, loss control, premium audit, actuarial, or other services associated with the maintenance or operation of the self-insurance group;
- (25) (a) "Premiums received" for policies effective on or after January 1, 1994, for insurance companies means direct written premiums as reported in the annual statement to the Office of Insurance by insurance companies, except that "premiums received" includes premiums charged off or deferred, and, on insurance policies or other evidence of coverage with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modification, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premiums received" includes the initial premium plus any reimbursements invoiced for losses, expenses, and fees charged under the deductibles. The special fund assessment rates in effect for reimbursements invoiced for losses, expenses, or fees charged under the deductibles shall be those percentages in effect on the effective date of the insurance policy. For policies covering leased employees as defined in KRS 342.615, "premiums received" means premiums calculated using the experience modification factor of each lessee as defined in KRS 342.615 for each leased employee for that portion of the payroll pertaining to the leased employee.
- (b) "Direct written premium" for insurance companies means the gross premium written less return premiums and premiums on policies not taken but including policy and membership fees.
- (c) "Premium," for policies effective on or after January 1, 1994, for insurance companies means all consideration, whether designated as premium or otherwise, for workers' compensation insurance paid to an insurance company or its representative, including, on insurance policies with provisions for deductibles, the calculated cost for coverage, including experience modification and premium surcharge or discount, prior to any reduction for deductibles. The rates, factors, and methods used to calculate the cost for coverage under this paragraph for insurance policies or other evidence of coverage with provisions for deductibles shall be the same rates, factors, and methods normally used by the insurance company in Kentucky to calculate the cost for coverage for insurance policies or other evidence of coverage without provisions for deductibles, except that, for insurance policies or other evidence of coverage with provisions for deductibles effective on or after January 1, 1995, the calculated cost for coverage shall not include any schedule rating modifications, debits, or credits. The cost for coverage calculated under this paragraph by insurance companies that issue only deductible insurance policies in

Kentucky shall be actuarially adequate to cover the entire liability of the employer for compensation under this chapter, including all expenses and allowances normally used to calculate the cost for coverage. For policies with provisions for deductibles with effective dates of May 6, 1993, through December 31, 1993, for which the insurance company did not report premiums and remit special fund assessments based on the calculated cost for coverage prior to the reduction for deductibles, "premium" includes the initial consideration plus any reimbursements invoiced for losses, expenses, or fees charged under the deductibles.

- (d) "Return premiums" for insurance companies means amounts returned to insureds due to endorsements, retrospective adjustments, cancellations, dividends, or errors;
- (26) "Insurance policy" for an insurance company or self-insured group means the term of insurance coverage commencing from the date coverage is extended, whether a new policy or a renewal, through its expiration, not to exceed the anniversary date of the renewal for the following year;
- (27) "Self-insurance year" for a self-insured group means the annual period of certification of the group created pursuant to KRS 342.350(4) and 304.50-010;
- (28) "Premium" for each employer carrying his own risk pursuant to KRS 342.340(1) shall be the projected value of the employer's workers' compensation claims for the next calendar year as calculated by the executive director using generally-accepted actuarial methods as follows:
 - (a) The base period shall be the earliest three (3) calendar years of the five (5) calendar years immediately preceding the calendar year for which the calculation is made. The executive director shall identify each claim of the employer which has an injury date or date of last injurious exposure to the cause of an occupational disease during each one (1) of the three (3) calendar years to be used as the base, and shall assign a value to each claim. The value shall be the total of the indemnity benefits paid to date and projected to be paid, adjusted to current benefit levels, plus the medical benefits paid to date and projected to be paid for the life of the claim, plus the cost of medical and vocational rehabilitation paid to date and projected to be paid. Adjustment to current benefit levels shall be done by multiplying the weekly indemnity benefit for each claim by the number obtained by dividing the statewide average weekly wage which will be in effect for the year for which the premium is being calculated by the statewide average weekly wage in effect during the year in which the injury or date of the last exposure occurred. The total value of the claims using the adjusted weekly benefit shall then be calculated by the executive director. Values for claims in which awards have been made or settlements reached because of findings of permanent partial or permanent total disability shall be calculated using the mortality and interest discount assumptions used in the latest available statistical plan of the advisory rating organization defined in Subtitle 13 of KRS Chapter 304. The sum of all calculated values shall be computed for all claims in the base period;
 - (b) The executive director shall obtain the annual payroll for each of the three (3) years in the base period for each employer carrying his own risk from records of the office and from the records of the Office of Employment and Training, Education and Workforce Development Cabinet. The executive director shall multiply each of the three (3) years of payroll by the number obtained by dividing the statewide average weekly wage which will be in effect for the year in which the premium is being calculated by the statewide average weekly wage in effect in each of the years of the base period;
 - (c) The executive director shall divide the total of the adjusted claim values for the three (3) year base period by the total adjusted payroll for the same three (3) year period. The value so calculated shall be multiplied by 1.25 and shall then be multiplied by the employer's most recent annualized payroll, calculated using records of the office and the Office of Employment and Training data which shall be made available for this purpose on a quarterly basis as reported, to obtain the premium for the next calendar year for assessment purposes under KRS 342.122;
 - (d) For November 1, 1987, through December 31, 1988, premium for each employer carrying his own risk shall be an amount calculated by the board pursuant to the provisions contained in this subsection and such premium shall be provided to each employer carrying his own risk and to the funding commission on or before January 1, 1988. Thereafter, the calculations set forth in this subsection shall be performed annually, at the time each employer applies or renews his application for certification to carry his own risk for the next twelve (12) month period and submits payroll and other data in support of the application. The employer and the funding commission shall be notified at the time of the certification or recertification of the premium calculated by the executive director, which shall form the employer's

basis for assessments pursuant to KRS 342.122 for the calendar year beginning on January 1 following the date of certification or recertification;

- (e) If an employer having fewer than five (5) years of doing business in this state applies to carry his own risk and is so certified, his premium for the purposes of KRS 342.122 shall be based on the lesser number of years of experience as may be available including the two (2) most recent years if necessary to create a three (3) year base period. If the employer has less than two (2) years of operation in this state available for the premium calculation, then his premium shall be the greater of the value obtained by the calculation called for in this subsection or the amount of security required by the executive director pursuant to KRS 342.340(1);
 - (f) If an employer is certified to carry his own risk after having previously insured the risk, his premium shall be calculated using values obtained from claims incurred while insured for as many of the years of the base period as may be necessary to create a full three (3) year base. After the employer is certified to carry his own risk and has paid all amounts due for assessments upon premiums paid while insured, he shall be assessed only upon the premium calculated under this subsection;
 - (g) "Premium" for each employer defined in KRS 342.630(2) shall be calculated as set forth in this subsection; and
 - (h) Notwithstanding any other provision of this subsection, the premium of any employer authorized to carry its own risk for purposes of assessments due under this chapter shall be no less than thirty cents (\$0.30) per one hundred dollars (\$100) of the employer's most recent annualized payroll for employees covered by this chapter;
- (29) "SIC code" as used in this chapter means the Standard Industrial Classification Code contained in the latest edition of the Standard Industrial Classification Manual published by the Federal Office of Management and Budget;
 - (30) "Investment interest" means any pecuniary or beneficial interest in a provider of medical services or treatment under this chapter, other than a provider in which that pecuniary or investment interest is obtained on terms equally available to the public through trading on a registered national securities exchange, such as the New York Stock Exchange or the American Stock Exchange, or on the National Association of Securities Dealers Automated Quotation System;
 - (31) "Managed health care system" means a health care system that employs gatekeeper providers, performs utilization review, and does medical bill audits;
 - (32) "Physician" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, and osteopathic and chiropractic practitioners acting within the scope of their license issued by the Commonwealth;
 - (33) "Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods;
 - (34) "Work" means providing services to another in return for remuneration on a regular and sustained basis in a competitive economy;
 - (35) "Permanent impairment rating" means percentage of whole body impairment caused by the injury or occupational disease as determined by *the* "Guides to the Evaluation of Permanent Impairment~~[-]~~"~~[-]~~~~American Medical Association, latest available edition~~~~[-]~~~~and~~
 - (36) "Permanent disability rating" means the permanent impairment rating selected by an administrative law judge times the factor set forth in the table that appears at KRS 342.730(1)(b); *and*
 - (37) *"Guides to the Evaluation of Permanent Impairment" means, except as provided in Section 2 of this Act:*
 - (a) *The fifth edition published by the American Medical Association; and*
 - (b) *For psychological impairments, chapter 12 of the second edition published by the American Medical Association.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 342 IS CREATED TO READ AS FOLLOWS:

- (1) *The General Assembly hereby declares it to be the policy of the Commonwealth of Kentucky that the most recent and valid scientific and technological advancements in medicine be considered in evaluating the nature and extent of an injured worker's impairment.*
- (2) (a) *Therefore, within one hundred eighty (180) days of publication by the American Medical Association of a new edition of the "Guides to the Evaluation of Permanent Impairment," the executive director shall recommend to the General Assembly whether all or a portion of the new edition should be enacted by the General Assembly in order to produce more equitable and accurate ratings of permanent impairment resulting from work-related injuries.*
- (b) *Prior to making the recommendation required in paragraph (a) of this subsection, the executive director shall:*
 1. *Consult with medical providers, representatives of injured workers, employers and representatives of employers, insurance carriers, and legal representatives or employers and injured workers; and*
 2. *Consider studies and analyses conducted by workers' compensation rating organizations, including the National Council on Compensation Insurance (NCCI).*
- (3) *The recommendation of the executive director shall not become effective unless the General Assembly approves and adopts the recommendation.*

➔Section 3. KRS 342.315 is amended to read as follows:

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

he finds it feasible and appropriate, require the use of telemedicine and telehealth practices, as authorized under KRS 194A.125, in the independent medical evaluation process required by this chapter.

➔Section 4. KRS 342.316 is amended to read as follows:

- (1) (a) The employer liable for compensation for occupational disease shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease. During any period in which this section is applicable to a coal mine, an operator who acquired it or substantially all of its assets from a person who was its operator on and after January 1, 1973, shall be liable for, and secure the payment of, the benefits which would have been payable by the prior operator under this section with respect to miners previously employed in the mine if it had not been acquired by such later operator. At the same time, however, this subsection does not relieve the prior operator of any liability under this section. Also, it does not affect whatever rights the later operator might have against the prior operator.
- (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.
- (2) The procedure with respect to the giving of notice and determination of claims in occupational disease cases and the compensation and medical benefits payable for disability or death due to the disease shall be the same as in cases of accidental injury or death under the general provisions of this chapter, except that notice of claim shall be given to the employer as soon as practicable after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, or a diagnosis of the disease is first communicated to him, whichever shall first occur.
- (3) The procedure for filing occupational disease claims shall be as follows:
 - (a) The application for resolution of claim shall set forth the complete work history of the employee with a concise description of injurious exposure to a specific occupational disease, together with the name and addresses of the employer or employers with the approximate dates of employment. The application shall also include at least one (1) written medical report supporting his claim. This medical report shall be made on the basis of clinical or X-ray examination performed in accordance with accepted medical standards and shall contain full and complete statements of all examinations performed and the results thereof. The report shall be made by a duly-licensed physician. The executive director shall promulgate administrative regulations which prescribe the format of the medical report required by this section and the manner in which the report shall be completed.
 1. For coal-related occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray interpretation by a National Institute of Occupational Safety and Health (NIOSH) certified "B" reader. The chest X-ray upon which the report is made shall be filed with the application as well as spirometric tests when pulmonary dysfunction is alleged.
 2. For other compensable occupational pneumoconiosis claims, each clinical examination shall include a chest X-ray examination and appropriate pulmonary function tests.
 - (b) To be admissible, medical evidence offered in any proceeding under this chapter for determining a claim for occupational pneumoconiosis resulting from exposure to coal dust shall comply with accepted medical standards as follows:
 1. Chest X-rays shall be of acceptable quality with respect to exposure and development and shall be indelibly labeled with the date of the X-ray and the name and Social Security number of the claimant. Physicians' reports of X-ray interpretations shall: identify the claimant by name and Social Security number; include the date of the X-ray and the date of the report; classify the X-ray interpretation using the latest ILO Classification and be accompanied by a completed copy of the latest ILO Classification report. Only interpretations by National Institute of Occupational Safety and Health (NIOSH) certified "B" readers shall be admissible.
 2. Spirometric testing shall be conducted in accordance with the standards recommended in the ~~latest edition available of the~~ "Guides to the Evaluation of Permanent Impairment" ~~published by the American Medical Association~~ and the 1978 ATS epidemiology standardization project with the exception that the predicted normal values for lung function shall not be adjusted based upon

the race of the subject. The FVC or the FEV1 values shall represent the largest of such values obtained from three (3) acceptable forced expiratory volume maneuvers as corrected to BTPS (body temperature, ambient pressure and saturated with water vapor at these conditions) and the variance between the two (2) largest acceptable FVC values shall be either less than five percent (5%) of the largest FVC value or less than one hundred (100) milliliters, whichever is greater. The variance between the two (2) largest acceptable FEV1 values shall be either less than five percent (5%) of the largest FEV1 value or less than one hundred (100) milliliters, whichever is greater. Reports of spirometric testing shall include a description by the physician of the procedures utilized in conducting such spirometric testing and a copy of the spirometric chart and tracings from which spirometric values submitted as evidence were taken.

3. The executive director shall promulgate administrative regulations pursuant to KRS Chapter 13A as necessary to effectuate the purposes of this section. The executive director shall periodically review the applicability of the spirometric test values contained in the ~~the latest edition available of the~~ "Guides to the Evaluation of Permanent Impairment" ~~published by the American Medical Association~~ and may by administrative regulation substitute other spirometric test values which are found to be more closely representative of the normal pulmonary function of the coal mining population.
4. The procedure for determination of occupational disease claims shall be as follows:
 - a. Immediately upon receipt of an application for resolution of claim, the executive director shall notify the responsible employer and all other interested parties and shall furnish them with a full and complete copy of the application.
 - b. The executive director shall assign the claim to an administrative law judge and, except for coal workers' pneumoconiosis claims, shall promptly refer the employee to such physician or medical facility as the executive director may select for examination. The report from this examination shall be provided to all parties of record. The employee shall not be referred by the executive director for examination within two (2) years following any prior referral for examination for the same disease.
 - c. Except for coal workers' pneumoconiosis claims, within forty-five (45) days following the notice of filing an application for resolution of claim, the employer or carrier shall notify the executive director and all parties of record of its acceptance or denial of the claim. A denial shall be in writing and shall state the specific basis for the denial. In coal workers' pneumoconiosis claims, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the issuance by the executive director of the notice of the consensus reading unless the consensus is that the miner has not developed coal workers' pneumoconiosis category 1/0 or greater. In the event the consensus procedure is exhausted without consensus being established, the employer's notice of claim denial or acceptance shall be filed within thirty (30) days of the executive director notification to the administrative law judge that consensus has not been reached.
 - d. Within forty-five (45) days of assignment of a coal workers' pneumoconiosis claim to an administrative law judge, the employer shall cause the employee to be examined by a physician of the employer's choice and shall provide to all other parties and file with the executive director the X-ray interpretation by a "B" reader. The examination of the employee shall include spirometric testing if pulmonary dysfunction is alleged by the employee in the application for resolution of a claim. The executive director shall determine whether the X-ray interpretations filed by the parties are in consensus.
 - e. If the readings are not in consensus, the executive director shall forward both films, masking information identifying the facility where the X-ray was obtained and the referring physician, consecutively to three (3) "B" readers selected randomly from a list maintained by the executive director for interpretation. Each "B" reader shall select the highest quality film and report only the interpretation of that film. The executive director shall determine if two (2) of the X-ray interpretations filed by the three (3) "B" readers selected randomly are in consensus. If consensus is reached, the executive director shall forward copies of the report to all parties as well as notice of the consensus reading which

shall be considered as evidence. If consensus is not reached, the administrative law judge shall decide the claim on the evidence submitted.

- f. "Consensus" is reached between two (2) chest X-ray interpreters when their classifications meet one (1) of the following criteria: each finds either category A, B, or C progressive massive fibrosis; or findings with regard to simple pneumoconiosis are both in the same major category and within one (1) minor category (ILO category twelve (12) point scale) of each other.
 - g. The administrative law judge shall conduct such proceedings as are necessary to resolve the claim and shall have authority to grant or deny any relief, including interlocutory relief, to order additional proof, to conduct a benefit review conference, or to take such other action as may be appropriate to resolve the claim.
 - h. Unless a voluntary settlement is reached by the parties, or the parties agree otherwise, the administrative law judge shall issue a written determination within sixty (60) days following a hearing. The written determination shall address all contested issues and shall be enforceable under KRS 342.305.
- 5. The procedure for appeal from a determination of an administrative law judge shall be as set forth in KRS 342.285.
- (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the executive director within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the executive director within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the executive director within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.
- (b) Income benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.
- (5) The amount of compensation payable for disability due to occupational disease or for death from the disease, and the time and manner of its payment, shall be as provided for under the general provisions of the Workers' Compensation Act, but:
 - (a) In no event shall the payment exceed the amounts that were in effect at the time of the last injurious exposure;
 - (b) The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later; and
 - (c) In case of death where the employee has been awarded compensation or made timely claim within the period provided for in this section, and an employee has suffered continuous disability to the date of his death occurring at any time within twenty (20) years from the date of disability, his dependents, if any, shall be awarded compensation for his death as provided for under the general provisions of the Workers' Compensation Act and in this section, except as provided in KRS 342.750(6).
- (6) If an autopsy has been performed, no testimony relative thereto shall be admitted unless the employer or his representative has available findings and reports of the pathologist or doctor who performed the autopsy examination.

- (7) No compensation shall be payable for occupational disease if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable, falsely represented himself, in writing, as not having been previously disabled, laid off, or compensated in damages or otherwise, because of the occupational disease, or failed or omitted truthfully to state to the best of his knowledge, in answer to written inquiry made by the employer, the place, duration, and nature of previous employment, or, to the best of his knowledge, the previous state of his health.
- (8) No compensation for death from occupational disease shall be payable to any person whose relationship to the deceased, which under the provisions of this chapter would give right to compensation, arose subsequent to the beginning of the first compensable disability, except only for after-born children of a marriage existing at the beginning of such disability.
- (9) Whenever any claimant misconceives his remedy and files an application for adjustment of claim under the general provisions of this chapter and it is subsequently discovered, at any time before the final disposition of the cause, that the claim for injury, disability, or death which was the basis for his application should properly have been made under the provisions of this section, then the application so filed may be amended in form or substance, or both, to assert a claim for injury, disability, or death under the provisions of this section, and it shall be deemed to have been so filed as amended on the date of the original filing thereof, and compensation may be awarded that is warranted by the whole evidence pursuant to the provisions of this chapter. When amendment of this type is submitted, further or additional evidence may be heard when deemed necessary. Nothing this section contains shall be construed to be or permit a waiver of any of the provisions of this chapter with reference to notice of time for filing of a claim, but notice of filing a claim, if given or done, shall be deemed to be a notice of filing of a claim under provisions of this chapter, if given or done within the time required by this subsection.
- (10) When an employee has an occupational disease that is covered by this chapter, the employer in whose employment he was last injuriously exposed to the hazard of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, except as otherwise provided in this chapter.
- (11)
 - (a) Income benefits for coal-related occupational pneumoconiosis shall be paid fifty percent (50%) by the Kentucky coal workers' pneumoconiosis fund as established in KRS 342.1242 and fifty percent (50%) by the employer in whose employment the employee was last exposed to the hazard of that occupational disease.
 - (b) Compensation for all other occupational disease shall be paid by the employer in whose employment the employee was last exposed to the hazards of the occupational disease.
- (12) A concluded claim for benefits by reason of contraction of coal workers' pneumoconiosis in the severance or processing of coal shall bar any subsequent claim for benefits by reason of contraction of coal workers' pneumoconiosis, unless there has occurred in the interim between the conclusion of the first claim and the filing of the second claim at least two (2) years of employment wherein the employee was continuously exposed to the hazards of the disease in the Commonwealth.
- (13) For coal-related occupational pneumoconiosis claims, the consensus procedure shall apply to all claims which have not been assigned to an administrative law judge prior to July 15, 2002. The consensus classification shall be presumed to be the correct classification of the employee's condition unless overcome by clear and convincing evidence. If an administrative law judge finds that the presumption of correctness of the consensus reading has been overcome, the reasons shall be specially stated in the administrative law judge's order.

➔Section 5. KRS 342.730 is amended to read as follows:

- (1) Except as provided in KRS 342.732, income benefits for disability shall be paid to the employee as follows:
 - (a) For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.
 - (b) For permanent partial disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than seventy-five percent (75%) of the state average weekly wage as

determined by KRS 342.740, multiplied by the permanent impairment rating caused by the injury or occupational disease as determined by *the* "Guides to the Evaluation of Permanent Impairment," [~~American Medical Association, latest edition available,~~] times the factor set forth in the table that follows:

AMA Impairment	Factor
0 to 5%	0.65
6 to 10%	0.85
11 to 15%	1.00
16 to 20%	1.00
21 to 25%	1.15
26 to 30%	1.35
31 to 35%	1.50
36% and above	1.70

Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section. Notwithstanding any section of this chapter to the contrary, there shall be no minimum weekly income benefit for permanent partial disability and medical benefits shall be paid for the duration of the disability.

- (c) 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
 2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.
 3. Recognizing that limited education and advancing age impact an employee's post-injury earning capacity, an education and age factor, when applicable, shall be added to the income benefit multiplier set forth in paragraph (c)1. of this subsection. If at the time of injury, the employee had less than eight (8) years of formal education, the multiplier shall be increased by four-tenths (0.4); if the employee had less than twelve (12) years of education or a high school General Educational Development diploma, the multiplier shall be increased by two-tenths (0.2); if the employee was age sixty (60) or older, the multiplier shall be increased by six-tenths (0.6); if the employee was age fifty-five (55) or older, the multiplier shall be increased by four-tenths (0.4); or if the employee was age fifty (50) or older, the multiplier shall be increased by two-tenths (0.2).
 4. Notwithstanding the provisions of KRS 342.125, a claim may be reopened at any time during the period of permanent partial disability in order to conform the award payments with the requirements of subparagraph 2. of this paragraph.
- (d) For permanent partial disability, if an employee has a permanent disability rating of fifty percent (50%) or less as a result of a work-related injury, the compensable permanent partial disability period shall be four hundred twenty-five (425) weeks, and if the permanent disability rating is greater than fifty percent (50%), the compensable permanent partial disability period shall be five hundred twenty (520) weeks from the date the impairment or disability exceeding fifty percent (50%) arises. Benefits payable for permanent partial disability shall not exceed ninety-nine percent (99%) of sixty-six and two-thirds

percent (66-2/3%) of the employee's average weekly wage as determined under KRS 342.740 and shall not exceed seventy-five percent (75%) of the state average weekly wage, except for benefits payable pursuant to paragraph (c)1. of this subsection, which shall not exceed one hundred percent (100%) of the state average weekly wage, nor shall benefits for permanent partial disability be payable for a period exceeding five hundred twenty (520) weeks, notwithstanding that multiplication of impairment times the factor set forth in paragraph (b) of this subsection would yield a greater percentage of disability.

- (e) For permanent partial disability, impairment for nonwork-related disabilities, conditions previously compensated under this chapter, conditions covered by KRS 342.732, and hearing loss covered in KRS 342.7305 shall not be considered in determining the extent of disability or duration of benefits under this chapter.
- (2) The period of any income benefits payable under this section on account of any injury shall be reduced by the period of income benefits paid or payable under this chapter on account of a prior injury if income benefits in both cases are for disability of the same member or function, or different parts of the same member or function, and the income benefits payable on account of the subsequent disability in whole or in part would duplicate the income benefits payable on account of the pre-existing disability.
- (3) Subject to the limitations contained in subsection (4) of this section, when an employee, who has sustained disability compensable under this chapter, and who has filed, or could have timely filed, a valid claim in his lifetime, dies from causes other than the injury before the expiration of the compensable period specified, portions of the income benefits specified and unpaid at the individual's death, whether or not accrued or due at his death, shall be paid, under an award made before or after the death, for the period specified in this section, to and for the benefit of the persons within the classes at the time of death and in the proportions and upon the conditions specified in this section and in the order named:
 - (a) To the widow or widower, if there is no child under the age of eighteen (18) or incapable of self-support, benefits at fifty percent (50%) of the rate specified in the award; or
 - (b) If there are both a widow or widower and such a child or children, to the widow or widower, forty-five percent (45%) of the benefits specified in the award, or forty percent (40%) of those benefits if such a child or children are not living with the widow or widower; and, in addition thereto, fifteen percent (15%) of the benefits specified in the award to each child. Where there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided among all the children, share and share alike; or
 - (c) If there is no widow or widower but such a child or children, then to the child or children, fifty percent (50%) of the benefits specified in the award to one (1) child, and fifteen percent (15%) of those benefits to a second child, to be shared equally. If there are more than two (2) such children, the indemnity benefits payable on account of two (2) children shall be divided equally among all the children; or
 - (d) If there is no survivor in the above classes, then the parent or parents wholly or partly actually dependent for support upon the decedent, or to other wholly or partly actually dependent relatives listed in paragraph (g) of subsection (1) of KRS 342.750, or to both, in proportions that the executive director provides by administrative regulation.
 - (e) To the widow or widower upon remarriage, up to two (2) years, benefits as specified in the award and proportioned under paragraphs (a) or (b) of this subsection, if the proportioned benefits remain unpaid, to be paid in a lump sum.
- (4) All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits.
- (5) All income benefits pursuant to this chapter otherwise payable for temporary total and permanent total disability shall be offset by unemployment insurance benefits paid for unemployment during the period of temporary total or permanent total disability.

- (6) All income benefits otherwise payable pursuant to this chapter shall be offset by payments made under an exclusively employer-funded disability or sickness and accident plan which extends income benefits for the same disability covered by this chapter, except where the employer-funded plan contains an internal offset provision for workers' compensation benefits which is inconsistent with this provision.
- (7) If an employee receiving a permanent total disability award returns to work, that employee shall notify the employer, payment obligor, insurance carrier, or special fund as applicable.

➔Section 6. KRS 342.7305 is amended to read as follows:

- (1) In all claims for occupational hearing loss caused by either a single incident of trauma or by repetitive exposure to hazardous noise over an extended period of employment, the extent of binaural hearing impairment shall be determined under the ~~latest available edition of the American Medical Association's~~ "Guides to the Evaluation of Permanent Impairment."
- (2) Income benefits payable for occupational hearing loss shall be as provided in KRS 342.730, except income benefits shall not be payable where the binaural hearing impairment converted to impairment of the whole person results in impairment of less than eight percent (8%). No impairment percentage for tinnitus shall be considered in determining impairment to the whole person.
- (3) The executive director shall provide by administrative regulation for prompt referral of hearing loss claims for evaluation, for all medical reimbursement, and for prompt authorization of hearing enhancement devices.
- (4) When audiograms and other testing reveal a pattern of hearing loss compatible with that caused by hazardous noise exposure and the employee demonstrates repetitive exposure to hazardous noise in the workplace, there shall be a rebuttable presumption that the hearing impairment is an injury covered by this chapter, and the employer with whom the employee was last injuriously exposed to hazardous noise shall be exclusively liable for benefits.

➔Section 7. KRS 67A.460 is amended to read as follows:

- (1) If a total and permanent occupational disability occurs, the member shall receive an annuity calculated pursuant to subsection (2) of this section. This benefit shall begin at the time the member's salary ceases, and shall be paid during his or her entire lifetime. At the member's death, his or her eligible surviving spouse, if any, shall receive the benefits as provided under KRS 67A.492, and his or her minor children, if any, shall receive benefits as provided under KRS 67A.440.
- (2) The minimum annuity rate for a total and permanent occupational disability shall be sixty percent (60%) of the member's last rate of salary. The minimum rate shall be increased by one half (1/2) of the amount by which the member's percentage of disability exceeds twenty percent (20%), but this increase shall be not more than fifteen percent (15%) of the member's last rate of salary and the member's total annuity shall not be greater than seventy-five percent (75%) of his or her last rate of salary.
- (3) The member's percentage of disability shall be the average of the impairment rating determined by two (2) physicians selected by the board under KRS 67A.480, using the ~~latest edition of the American Medical Association's~~ "Guides to the Evaluation of Permanent Impairment".
- (4) If a member is eligible for a service retirement annuity under KRS 67A.410 and the amount of the member's service retirement annuity would exceed the amount of his or her total and permanent occupational disability annuity, as determined by the board under this section, then the member may elect to receive an additional service retirement annuity payment equal to the amount by which the member's service retirement annuity would have exceeded the amount of his or her total and permanent occupational disability annuity, in addition to the member's disability annuity, by filing with the board the application required by KRS 67A.410.

➔Section 8. 2009 Ky. Acts ch. 89 is repealed.

Signed by Governor April 8, 2010.

CHAPTER 91

(HB 241)

AN ACT relating to captive insurers.

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

➔Section 1. KRS 304.49-010 is amended to read as follows:

As used in KRS 304.49-010 to 304.49-230, unless the context requires otherwise:

- (1) "Affiliated company" means any company in the same corporate system as a parent, an industrial insured, or a member organization by virtue of common ownership, control, operation, or management.
- (2) "Agency captive insurer" means a captive insurer that is owned by one (1) or more business entities that are licensed insurance producers and that only insure risks on policies placed through their owners.
- (3) "Captive insurer" means any pure captive insurer, consortium captive insurer, sponsored captive insurer, ***special purpose captive insurer, agency captive insurer***, or industrial insured captive insurer formed or issued a certificate of authority under the provisions of KRS 304.49-010 to 304.49-230. For purposes of KRS 304.49-010 to 304.49-230, a branch captive insurer shall be a pure captive insurer with respect to operations in Kentucky, unless otherwise permitted by the executive director.
- (4) "Consortium" means any ***bona fide*** legal association of individuals, corporations, ***limited liability companies***, partnerships,~~[-or]~~ associations, ***or other entities***~~[that has been in continuous existence for at least one (1) year]~~, the member organizations of which collectively, or which does itself:
 - (a) Own, control, or hold with power to vote all of the outstanding voting securities ***or member interests*** of a consortium captive insurer incorporated as a stock insurer; or
 - (b) Have complete voting control over a consortium captive insurer ***organized***~~[incorporated]~~ as a mutual insurer; or
 - (c) The member organizations of which collectively constitute all of the subscribers of a consortium captive insurer formed as a reciprocal insurer.
- (5) "Consortium captive insurer" means any company that insures risks of the member organizations of the consortium and ***that also may insure the risks of affiliated companies of the member organizations and the risks associated with the consortium itself***~~[their affiliated companies]~~.
- (6) "Excess workers' compensation insurance" means, in the case of an employer that has insured or self-insured its workers' compensation risks in accordance with applicable state or federal law, insurance in excess of a specified per incident or aggregate limit established by the executive director.
- (7) "Industrial insured" means an insured as defined in KRS ***304.11-020(2)***~~[304.11-020(1)]~~.
- (8) "Industrial insured captive insurer" means any company that insures risks of the industrial insureds that comprise the industrial insured group, and their affiliated companies.
- (9) "Industrial insured group" means any group that meets either of the following criteria:
 - (a) Any group of industrial insureds that collectively:
 1. Own, control, or hold with power to vote all of the outstanding voting securities of an industrial insured captive insurer incorporated as a stock insurer;
 2. Have complete voting control over an industrial insured captive insurer incorporated as a mutual insurer; or
 3. Constitute all of the subscribers of an industrial insured captive insurer formed as a reciprocal insurer; or
 - (b) Any group which is created under the Product Liability Risk Retention Act of 1981, 15 U.S.C. secs. 3901 et seq., as amended, as a corporation or other limited liability association.
- (10) "Member organization" means any individual, corporation, partnership,~~[-or]~~ association, ***or other entity*** that belongs to a consortium.

- (11) "Parent" means a corporation, partnership,~~[-or]~~ individual, **or other entity** that directly or indirectly owns, controls, or holds with power to vote more than fifty percent (50%) of the outstanding voting securities of a pure captive insurer.
- (12) "Pure captive insurer" means any company that insures risks of its parent and affiliated companies or controlled unaffiliated business.
- (13) "Controlled unaffiliated business" means any ~~person~~~~[company]~~:
 - (a) That is not in the corporate system of a parent and ~~its~~ affiliated companies ***in the case of a pure captive, or that is not in the corporate system or an industrial insured and its affiliated companies in the case of an industrial insured captive insurance company;***
 - (b) That has an existing contractual relationship with a parent or affiliated ***companies in the case of a pure captive, or with an industrial insured or one (1) of its affiliated companies in the case of an industrial insured captive insurance*** company; and
 - (c) Whose ***risk management function related to the covered risk of loss is controlled by an affiliate of***~~[risks are managed by]~~ a pure captive insurer ***or an industrial insured captive insurance company, as applicable, providing coverage or reinsurance***~~[in accordance with KRS 304.49-170]~~.
- (14) "Foreign captive insurer" means any insurer formed to write insurance business for its parents and affiliates and licensed pursuant to the laws of any state other than Kentucky which imposes statutory or regulatory standards in a form acceptable to the executive director on companies transacting the business of insurance in that jurisdiction. Under KRS 304.49-010 to 304.49-230, captive insurers formed under the laws of any jurisdiction other than a state of the United States shall be treated as a foreign captive insurer unless the context requires otherwise.
- (15) "Branch business" means any insurance business transacted by a branch captive insurer in Kentucky.
- (16) "Branch captive insurer" means any foreign captive insurer issued a certificate of authority by the executive director to transact the business of insurance in Kentucky through a business unit with a principal place of business in Kentucky.
- (17) "Branch operations" means any business operations of a branch captive insurer in Kentucky.
- (18) "Participant" means an entity as defined in KRS 304.49-210, and any affiliates thereof, that are insured by a sponsored captive insurer, where the losses of the participant are limited through a participant contract to the assets of a protected cell.
- (19) "Participant contract" means a contract by which a sponsored captive insurer insures the risks of a participant and limits the losses of the participant to the assets of a protected cell.
- (20) "Protected cell" means a separate account established and maintained by a sponsored captive insurer for one (1) participant.
- (21) "Reciprocal insurer" means an insurer engaging in reciprocal insurance as defined by KRS 304.27-010.
- (22) "Special purpose captive insurer" means any person that is licensed under this chapter and designated as a special purpose captive insurer by the executive director. A person may be designated as a special purpose captive insurer if it is established for one (1) specific purpose or transaction, and where it is desirable to isolate the purpose or transaction from the other activities of a party or parties involved in the transaction, or where the transaction dictates that the vehicle should not be treated as controlled or owned by any other party to that transaction.
- (23) "Sponsor" means any entity that meets the requirements of KRS 304.49-200 and is approved by the executive director to provide all or part of the capital and surplus required by applicable law and to organize and operate a sponsored captive insurer.
- (24) "Sponsored captive insurer" means any captive insurer:
 - (a) In which the minimum capital and surplus required by applicable law is provided by one (1) or more sponsors;
 - (b) That is formed or issued a certificate of authority under the provisions of this subtitle;

- (c) That insures the risks of separate participants through contract; and
- (d) That segregates each participant's liability through one (1) or more protected cells.

➔Section 2. KRS 304.49-040 is amended to read as follows:

- (1) No captive insurer shall be issued a certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital and surplus of:
 - (a) In the case of a pure captive insurer, not less than two hundred fifty thousand dollars (\$250,000);
 - (b) ~~In the case of an consortium captive insurer, not less than seven hundred fifty thousand dollars (\$750,000);~~
 - ~~(c)~~ In the case of **a consortium, sponsored, agency or** an industrial insured captive insurer, not less than five hundred thousand dollars (\$500,000);
 - ~~((d))~~ In the case of a sponsored captive insurer, not less than one million dollars (\$1,000,000);
 - ~~(e)~~ In the case of an agency captive insurer, not less than five hundred thousand dollars (\$500,000); and
 - ~~(c)((f))~~ In the case of a special purpose captive insurer, not less than two hundred fifty thousand dollars (\$250,000), or another amount determined by the executive director.
- (2) Notwithstanding the requirements of subsection (1) of this section, no captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230 shall be issued a certificate of authority unless it shall possess and thereafter maintain free surplus of **not less than five hundred thousand dollars (\$500,000)**~~one million dollars (\$1,000,000))~~.
- (3) The executive director may prescribe additional capital and surplus based upon the type, volume, and nature of insurance business transacted.
- (4) Capital and surplus ~~shall~~~~may~~ be in the form of cash,~~or~~ an irrevocable letter of credit issued by a bank approved by the executive director and chartered by the Commonwealth of Kentucky or a member bank of the Federal Reserve System, **a surplus note approved by the executive director**, or other assets as may be approved by the executive director. **A surplus note shall not be used for the initial minimum capital and surplus of a non-mutual captive insurer.**
- (5) In the case of a branch captive insurer, as security for the payment of liabilities attributable to the branch operations, the executive director shall require that a separate trust fund, funded by an irrevocable letter of credit or other acceptable asset, be established and maintained in the United States for the benefit of United States policyholders and United States ceding insurers under insurance policies issued or reinsurance contracts issued or assumed, by the branch captive insurer through its branch operations. The amount of this security may be no less than the capital and surplus required in this section and the reserves on the insurance policies or the reinsurance contracts, including reserves for losses, allocated loss adjustment expenses, incurred but not reported losses, and unearned premiums with regard to business written through the branch operations; provided, however, the executive director may permit a branch captive insurer that is required to post security for loss reserves on branch business by its reinsurer to reduce the funds in the trust account required by this section by the same amount so long as the security remains posted with the reinsurer. If the form of security selected is a letter of credit, the letter of credit must be established by, or issued or confirmed by, a bank chartered in Kentucky or a member bank of the Federal Reserve System.

➔Section 3. KRS 304.49-050 is amended to read as follows:

No captive insurer may pay a dividend out of, or other distribution with respect to, capital or surplus, in excess of the limitations set forth in KRS 304.24-320 and 304.24-330 without the prior approval of the executive director. Approval of an ongoing plan for the payment of dividends or other distributions shall be conditioned upon the retention, at the time of each payment, of capital or surplus in excess of amounts specified by, or determined in accordance with formulas approved by, the executive director. **The executive director may rescind approval of all or part of the dividend and may require repayment of all or part of the dividend amount if a dividend is paid without approval, made in excess of the approved amount, made in excess of the approved amount, or made in violation of the terms of the approval.**

➔Section 4. KRS 304.49-060 is amended to read as follows:

- (1) A ~~pure~~ captive insurer~~or a sponsored captive insurer~~ shall be **formed**~~incorporated~~ as a:

- (a) Stock insurer with its capital divided into shares and held by the stockholders;~~[-~~
- ~~(2) A consortium captive insurer or an industrial insured captive insurer may be:~~
- ~~(a) Incorporated as a stock insurer with its capital divided into shares and held by the stockholders; or~~
- (b) ~~Incorporated as a~~ Mutual insurer without capital stock *in accordance with Subtitle 24 of this chapter*~~[-, the governing body of which is elected by the member organizations of its consortium];[- or]~~
- (c) ~~Organized as a~~ Reciprocal insurer in accordance with Subtitle 27 of this chapter;~~[-]~~
- ~~(3) A special purpose captive insurer may be:~~
- ~~(a) Incorporated as a stock corporation;~~
- ~~(b) Incorporated as a nonstock corporation;]~~
- (d)~~(e)~~ Formed as a Limited liability company *pursuant to KRS Chapter 275;*
- (e) *Business corporation pursuant to KRS Chapter 271B;*
- (f) *Non-stock, non-profit corporation pursuant to KRS Chapter 273; or*
- (g) *Partnership, limited partnership, statutory business trust, or other legal person or entity other than a natural person in his or her individual capacity, with the approval of the executive director upon a showing of demonstrated need.*
- ~~[(d) Formed as a partnership;~~
- ~~(e) Formed as a limited partnership;~~
- ~~(f) Formed as a statutory trust; or~~
- ~~(g) Such other person approved by the executive director, other than a natural person in his or her individual capacity.~~
- ~~(4) A sponsored captive insurer may be:~~
- ~~(a) Incorporated as a stock corporation;~~
- ~~(b) Incorporated as a nonstock corporation;~~
- ~~(c) Formed as a limited liability company;~~
- ~~(d) Formed as a partnership;~~
- ~~(e) Formed as a limited partnership; or~~
- ~~(f) Formed as a statutory trust.]~~
- (2) *A captive insurer formed as a corporation, limited liability company or nonstock, nonprofit corporation shall have the privileges and be subject to the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle. If there is a conflict between the provisions of KRS Chapter 271B, 273, or 275 and the provisions of this subtitle, the provisions of this subtitle shall control.*
- (3) *A captive insurer organized as a corporation may issue classes of shares and series of shares within a class pursuant to KRS Chapter 271B.*
- (4) *Captive insurance companies formed as corporations under the provisions of this subtitle shall have the privileges and be subject to the provisions of KRS Chapter 271B and the applicable provisions contained in this subtitle. The provisions of this chapter shall control if there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described in Subtitles 24 and 37 of this chapter, except that:*
- (a) *The executive director may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and*

- (b) *The executive director may waive or modify the requirements for public notice and hearing in accordance with administrative regulations which may be promulgated by the executive director addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, the executive director may cancel the hearing.*
- (5) A risk retention group may take any form permitted under the Liability Risk Retention Act of 1986, 15 U.S.C. sec. 3901 et seq., as amended.
- (6) A captive insurer incorporated or organized in Kentucky shall have **at least one (1) incorporator or organizer**~~[not less than three (3) incorporators or two (2) organizers]~~.
- (7) In the case of a captive insurer, the executive director shall find, in order to issue a certificate of authority, that the establishment and maintenance of the proposed captive insurer will promote the general good of the state. In arriving at such a finding, the executive director shall consider:
- (a) The character, reputation, financial standing, and purposes of the incorporators or organizers;
 - (b) The character, reputation, financial responsibility, insurance experience, and business qualifications of the persons responsible for the conduct of the captive insurer's affairs; and
 - (c) Any other aspects the executive director deems advisable.
- (8) The capital stock of a captive insurer incorporated as a stock insurer may be authorized with no par value.
- ~~(9) [Captive insurance companies formed as corporations under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of KRS Chapter 271B as well as the applicable provisions contained in KRS 304.49-010 to 304.49-230. If there is a conflict between the provisions of KRS Chapter 271B and the provisions of this chapter, the latter shall control. The provisions of this chapter, pertaining to mergers, consolidations, conversions, mutualizations, and redomestications, shall apply in determining the procedures to be followed by captive insurance companies in carrying out any of the transactions described therein, except that:~~
- ~~(a) The executive director may, upon request of an insurer party to a merger authorized under this subsection, waive the requirement of KRS 304.24-390(4); and~~
 - ~~(b) The executive director may waive or modify the requirements for public notice and hearing in accordance with rules which the executive director may adopt addressing categories of transactions. If a notice of public hearing is required, but no one requests a hearing, then the executive director may cancel the hearing.~~
- ~~(10) [(11)]~~ Captive insurance companies formed as reciprocal insurers under the provisions of KRS 304.49-010 to 304.49-230 shall have the privileges and be subject to the provisions of Subtitle 27 of this chapter in addition to the applicable provisions of this subtitle. In the event of a conflict between the provisions of Subtitle 27 of this chapter and the provisions of this subtitle, the latter shall control. To the extent a reciprocal insurer is made subject to other provisions of this subtitle pursuant to Subtitle 27 of this chapter, those provisions shall not be applicable to a reciprocal insurer formed under KRS 304.49-010 to 304.49-230 unless the provisions are expressly made applicable to captive insurance companies under KRS 304.49-010 to 304.49-230.
- ~~(10) [(11)]~~ In addition to the provisions of subsection ~~9[(10)]~~ of this section, captive insurance companies organized as reciprocal insurers that are industrial insured groups as defined in this subtitle shall have the privileges and be subject to the provisions of Subtitle 45 of this chapter, in addition to the applicable provisions of this subtitle.
- ~~(11) [(12)]~~ The articles of incorporation or bylaws of a captive insurer formed as a corporation may authorize a quorum of a board of directors to consist of no fewer than one-third (1/3) of the fixed or prescribed number of directors.
- ~~(12) [(13)]~~ The subscribers' agreement or other organizing document of a captive insurer formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of no fewer than one-third (1/3) of the number of its members.
- ~~(13) [(14)]~~ Each owner of an agency captive insurer shall be licensed as an insurance producer.
- (14) *The parent of a pure captive insurer may include an employee benefit plan, employee stock ownership plan, or any legal or business trust approved by the executive director.*

➔Section 5. KRS 304.49-070 is amended to read as follows:

- (1) Captive insurance companies shall not be required to make any annual report except as provided in KRS 304.49-010 to 304.49-230.
- (2) On or before March 1 of each year, each captive insurer shall submit to the executive director a report of its financial condition, verified by oath of two (2) of its executive officers. Each captive insurer shall report using generally accepted accounting principles, unless the executive director approves the use of statutory accounting principles or international accounting standards. ***The approved accounting method may contain***~~[-with]~~ any appropriate or necessary modifications or adaptations thereof required or approved or accepted by the executive director for the type of insurance and kinds of insurers to be reported upon, and as supplemented by additional information required by the executive director. Any captive insurer whose use of statutory accounting principles is approved by the executive director may make modifications and adaptations as are necessary to record as admitted the full value of all investments by the captive insurer permitted under this subtitle and, subject to the executive director's approval, to make its reports under this section consistent with the purposes of this subtitle. Except as otherwise provided, all captive insurers, with the exception of those formed as a risk retention group, shall file reports on a form prescribed by the executive director~~[-through administrative regulation]~~. ***The provisions of KRS 304.3-242(4)(a) and (d) shall not apply to a captive insurer.*** A captive insurer formed as a risk retention group shall file reports pursuant to KRS 304.2-205, with additional information or modification as the executive director may prescribe. The executive director shall by administrative regulation propose the forms in which captive insurers shall report.
- (3) Any~~[-pure]~~ captive insurer~~[-or an industrial insured captive insurer insuring the risks of industrial insured groups as defined in KRS 304.49-010(9)(a)]~~ may make written application for filing the required report on a fiscal year end. If an alternative reporting date is granted, the annual report is due sixty (60) days after the fiscal year end.
- (4) Sixty (60) days after the fiscal year end, a branch captive insurer shall file with the executive director a copy of all reports and statements required to be filed under the laws of the jurisdiction in which the foreign captive insurer is formed, verified by oath of two (2) of its executive officers. If the executive director is satisfied that the annual report filed by the foreign captive insurer in its domiciliary jurisdiction provides adequate information concerning the financial condition of the foreign captive insurer, the executive director may waive the requirement for completion of the captive annual statement for business written in the foreign jurisdiction.

➔Section 6. KRS 304.49-100 is amended to read as follows:

- (1) ***A captive insurer shall establish, monitor, and control its investment strategy prudently, setting clear guidelines with regard to the exposure to different investment types, levels of investment grade, and exposure to individual investments. This investment plan and any material amendments shall be filed with the executive director.***
- (2) ***A captive insurer shall not be subject to any restrictions on allowable investments in this chapter, including those limitations contained in Subtitle 7 of this chapter.***
- (3) ***The executive director may prohibit or limit any investment that threatens the solvency or liquidity of any company.***
- (4) ~~[A consortium captive insurer, sponsored captive insurer, and]~~An industrial insured captive insurer insuring the risks of an industrial insured group defined in KRS 304.49-010(9)(b) shall comply with the investment requirements contained in Subtitle 7 of this chapter. Notwithstanding any other provision of this chapter, the executive director may approve the use of alternative reliable methods of valuation and rating.
- ~~{(2) No pure captive insurer or industrial insured captive insurer insuring the risks of an industrial insured group as defined in KRS 304.49-010(8)(a) shall be subject to any restrictions on allowable investments whatever, including those limitations contained in Subtitle 7 of this chapter; provided, however, that the executive director may prohibit or limit any investment that threatens the solvency or liquidity of any such company.~~
- ~~(3) Only a pure captive insurer may make loans to its parent company or affiliates. No loans to a parent company or any affiliate shall be permitted without prior written approval of the executive director and shall be evidenced by a note in a form approved by the executive director.~~
- ~~(4) All captive insurers are subject to KRS 304.37-030 regarding material transactions.]~~

➔Section 7. KRS 304.49-110 is amended to read as follows:

- (1) Any captive insurer may provide reinsurance, as provided in KRS 304.5-130, 304.5-140, and 304.5-150, on risks ceded by any other insurer.
- (2) *A captive insurer may provide reinsurance on risks ceded by any other insurer or captive insurer.*
- (3) (a) Any captive insurer may take credit for reserves on risks or portions of risks ceded to reinsurers complying with the provisions of KRS 304.5-140.
- (b) A captive insurer shall not take credit for reserves on risks or portions of risks ceded to a reinsurer if the reinsurer is not in compliance with KRS 304.5-140.
- (c) *Prior approval of the executive director shall be required for ceding or taking credit for the reinsurance of risks or portions of risks ceded to reinsurers not complying with KRS 304.5-130, 304.5-140, and 304.5-150.*
- (4)~~(3)~~ For all purposes of KRS 304.49-010 to 304.49-230, insurance by a captive insurer of any workers' compensation qualified self-insured plan of its parent and affiliates shall be deemed to be reinsurance.
- (5) *A captive insurer may take credit for the reinsurance of risks or portions of risks ceded to a pool, exchange, or association acting as an insurer or a reinsurer which has been authorized by the executive director. The executive director may require any other documents, financial information, or other evidence that the pool, exchange, or association will be able to provide adequate security for its financial obligations. The executive director may deny authorization or impose any limitations on the activities of a reinsurance pool, exchange, or association that in the executive director's judgment are necessary and proper to provide adequate security for the ceding captive insurer or segregated account and for the protection and consequent benefit of the public at large.*
- (6) *The executive director may impose any other requirements that he or she deems necessary before permitting credit for reinsurance under this section, including but not limited to requiring an approved funds-held agreement, letter of credit, trust or other acceptable collateral based on unearned premium, loss and loss adjustment expense reserves, and incurred but not reported reserves.*

➔Section 8. KRS 304.49-130 is amended to read as follows:

- (1) No captive insurer, including a captive insurer organized as a reciprocal insurer under KRS 304.49-010 to 304.49-230, shall be permitted to join or contribute financially to any plan, pool, association, or guaranty or insolvency fund in Kentucky, nor shall any such captive insurer, or its insured, or its parent or any affiliated company, or any member organization of its consortium, or in the case of a captive insurer organized as a reciprocal insurer, any subscriber thereof, receive any benefit from any such plan, pool, association, or guaranty or insolvency fund for claims arising out of the operations of such captive insurer.
- (2) *Subsection (1) of this section shall not prohibit captive insurers from entering into reinsurance or pooling transactions in the normal course of business, in accordance with Section 8 of this Act.*

➔Section 9. KRS 304.49-170 is amended to read as follows:

The executive director ~~may~~~~shall~~ promulgate administrative regulations establishing standards to ensure that a parent or affiliated company is able to exercise control of the risk management function of any controlled unaffiliated business to be insured by the pure captive insurer. *The executive director may approve the coverage of such risks by a pure captive insurance company.*

➔Section 10. KRS 304.49-180 is amended to read as follows:

- (1) A consortium captive insurer or industrial insured group formed as a stock or mutual corporation *or other legal or statutory entity* may be converted to or merged with and into a reciprocal insurer in accordance with a plan therefor and the provisions of this section.
- (2) Any plan for such conversion or merger shall be fair and equitable to the shareholders, in the case of a stock insurer, or the policyholders, in the case of a mutual insurer.
- (3) In the case of a conversion authorized under subsection (1) of this section:
 - (a) The conversion shall be accomplished under any reasonable plan and procedure approved by the executive director, but the executive director shall not approve any plan of conversion unless the plan:

1. Satisfies the provisions of subsection (2) of this section;
 2. Provides for a hearing, of which notice has been given to the insurer, its directors, officers, and stockholders, in the case of a stock insurer, or policyholders, in the case of a mutual insurer, all of whom shall have the right to appear at the hearing, except that the executive director may waive or modify the requirements for the hearing, provided that if a notice of hearing is required, but no hearing is requested, the executive director may cancel the hearing;
 3. Provides for the conversion of existing stockholder or policyholder interests into subscriber interests in the resulting reciprocal insurer, proportionate to stockholder or policyholder interests in the stock or mutual insurer; and
 4. Is approved:
 - a. In the case of a stock insurer, by a majority of the shares entitled to vote represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
 - b. In the case of a mutual insurer, by a majority of the voting interests of policyholders represented in person or by proxy at a duly called regular or special meeting at which a quorum is present;
- (b) The executive director shall approve the plan of conversion if the executive director finds that the conversion will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7);
- (c) If the executive director approves the plan, the executive director shall amend the converting insurer's certificate of authority to reflect conversion to a reciprocal insurer and issue an amended certificate of authority to the company's attorney-in-fact;
- (d) Upon the issuance of an amended certificate of authority of a reciprocal insurer by the executive director, the conversion shall be effective; and
- (e) Upon the effectiveness of the conversion, the corporate existence of the converting insurer shall cease and the resulting reciprocal insurer shall notify the Secretary of State of the conversion.
- (4) A merger authorized under subsection (1) of this section shall be accomplished substantially in accordance with the procedures set forth in KRS 304.24-390, except that, solely for purposes of the merger:
- (a) The plan of merger shall satisfy the provisions of subsection (2) of this section;
 - (b) The subscribers' advisory committee of a reciprocal insurer shall be equivalent to the board of directors of a stock or mutual insurer;
 - (c) The subscribers of a reciprocal insurer shall be the equivalent of the policyholders of a mutual insurer;
 - (d) If a subscribers' advisory committee does not have a president or secretary, the officers of the committee having substantially equivalent duties shall be deemed the president or secretary of the committee;
 - (e) The executive director may, upon request of an insurer party to a merger authorized under subsection (1) of this section, waive the requirement of KRS 304.24-390(4);
 - (f) The executive director shall approve the articles of merger if the executive director finds that the merger will promote the general good of the state in conformity with those standards set forth in KRS 304.49-060(7). If the executive director approves the articles of merger, the executive director shall indorse his or her approval thereon and the surviving insurer shall present and file them with the Secretary of State;
 - (g) Notwithstanding KRS 304.49-040, the executive director may permit the formation, without surplus, of a captive insurer organized as a reciprocal insurer, into which an existing captive insurer may be merged for the purpose of facilitating a transaction under this section; however, there shall be no more than one (1) authorized insurer surviving the merger; and
 - (h) An alien insurer may be a party to a merger authorized under subsection (1) of this section, provided that the requirements for a merger between a domestic and a foreign insurer under KRS 304.24-390 shall apply to a merger between a domestic and an alien insurer under this subsection. The alien insurer

shall be treated as a foreign insurer under KRS 304.24-390 and the other jurisdictions shall be the equivalent of a state for purposes of KRS 304.24-390.

➔Section 11. KRS 304.49-220 is amended to read as follows:

- (1) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all premium receipts on business written by the captive insurer during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of four-tenths of one percent (0.4%) on the first twenty million dollars (\$20,000,000), and three-tenths of one percent (0.3%) on the next twenty million dollars (\$20,000,000), and two-tenths of one percent (0.2%) on the next twenty million dollars (\$20,000,000), and seventy-five thousandths of one percent (0.075%) on each dollar thereafter on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurer during the year ending December 31 next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.
- (2) Every captive insurer holding a certificate of authority under KRS 304.49-010 to 304.49-230 shall return to the Department of Revenue a statement under oath of all assumed reinsurance premium receipts during the preceding year and shall pay, on or before March 1 in each year, a tax at the rate of two hundred twenty-five thousandths of one percent (0.225%) on the first twenty million dollars (\$20,000,000) of assumed reinsurance premiums, and one hundred fifty thousandths of one percent (0.150%) on the next twenty million dollars (\$20,000,000), and fifty thousandths of one percent (0.050%) on the next twenty million dollars (\$20,000,000), and twenty-five thousandths of one percent (0.025%) of each dollar thereafter. However, no reinsurance tax applies to premiums for risks or portions of risks which are subject to taxation on a direct basis pursuant to subsection (1) of this section. No reinsurance premium tax shall be payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer *or self-insurer* under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer *or self-insurer*, and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurer.
- (3) If the aggregate taxes to be paid by a captive insurer calculated under subsections (1) and (2) of this section amount to less than five thousand dollars (\$5,000) in any year, the captive insurer shall pay a tax of five thousand dollars (\$5,000) for such year.
- (4) Two (2) or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurer.
- (5) For the purposes of this section, common ownership and control shall mean:
 - (a) In the case of stock corporations, the direct or indirect ownership of eighty percent (80%) or more of the outstanding voting stock of two (2) or more corporations by the same shareholder or shareholders; and
 - (b) In the case of mutual corporations, the direct or indirect ownership of eighty percent (80%) or more of the surplus and the voting power of two (2) or more corporations by the same member or members.
- (6) In the case of a branch captive insurer, the tax provided for in this section shall apply only to the branch business of the company.
- (7) The tax provided for in this section shall constitute all taxes collectible under the laws of Kentucky from any captive insurer, and the taxes imposed under this section shall be in lieu of all excise, license, occupational, or other taxes imposed by the state, county, city, or other taxing district~~—except as provided in KRS 136.320(6) and (7).~~
- (8) The Kentucky Department of Revenue shall annually, *on or before June 30 of each year*, distribute ten percent (10%) of the premium tax revenues collected pursuant to this section to the Office of Insurance for the regulation of captive insurance companies under KRS 304.49-010 to 304.49-230.

➔Section 12. KRS 304.49-222 is amended to read as follows:

- (1) A captive insurer shall engage a manager who is *approved by the executive director*~~—a resident of this state.~~
- (2) The captive manager shall maintain the books and records of the captive insurer's business, transactions, and affairs at a location that is in this state or shall make them available to the executive director at a location that is in this state.

- (3) The captive manager shall promptly notify the executive director of any failure of the captive insurer to comply with this section.
- (4) The executive director may require a captive insurer to discharge a captive manager for failure to substantively fulfill the captive manager's duties under this subtitle.

➔Section 13. KRS 304.49-226 is amended to read as follows:

- (1) If there is any ~~material~~ change in the ***current operations or condition of a captive insurer that materially impacts the*** financial condition or management of ~~the~~ captive insurer, the captive insurer ***or captive manager*** shall notify the executive director, in writing, within ten (10) business days of the change ***or event***.
- (2) No captive insurer shall voluntarily take any of the following material actions without providing the executive director at least thirty (30) days' prior written notice and receiving the executive director's approval of the action within the thirty (30) day period:
 - (a) The dissolution of the captive insurer;
 - (b) Any sale, exchange, lease, mortgage, assignment, pledge, or other transfer of, or granting of a security interest in, all or substantially all of the assets of the captive insurer;
 - (c) Any incurrence of material indebtedness by the captive insurer;
 - (d) Any making of a material loan or other material extension of credit by the captive insurer;
 - (e) Any payment or distribution that materially reduces capital and surplus;
 - (f) Any merger or consolidation to which the captive insurer is a constituent party;
 - (g) Any conversion of the captive insurer to another business form;
 - (h) Any transfer to or domestication in any jurisdiction by the captive insurer; or
 - (i) Any material amendment of the organizational documents of the captive insurer, ***including changes in the officers, directors, owners, captive manager, actuary, or auditor***.
- (3) ***A captive insurer may make loans to its parent company or affiliates; however, no loans to a parent company or any affiliate shall be permitted without prior written approval of the executive director and shall be evidenced by a note in a form approved by the executive director. The loans shall be evaluated with regard to creditworthiness and collateral.***

Signed by Governor April 8, 2010.

CHAPTER 92

(HB 251)

AN ACT relating to stray animals.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 259 IS CREATED TO READ AS FOLLOWS:

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

- (1) ***"Local government" means any city, county, urban-county, charter county, consolidated local government, or unified local government;***
- (2) ***"Stray cattle" means any animal of the bovine, ovine, porcine, or caprine species for which the owner is no longer claiming ownership or for which the owner cannot be determined, but not including any member of the equine species; and***
- (3) ***"Stray equine" means any animal of the equine species for which the owner is no longer claiming ownership or for which the owner cannot be determined.***

➔Section 2. KRS 259.110 is amended to read as follows:

A~~{(4)}~~ stray *equine*~~{cattle}~~ may be taken up and posted by any *person or entity if it is found running at large outside of its enclosure or if it can be determined from the circumstances that its owner has abandoned it. Stray cattle may be taken up and posted by any* freeholder by legal or equitable title or by a tenant of an unexpired lease for not less than three (3) years when found on his place of residence.

~~{(2) Stray horses, mules, jacks or jennets may be posted at any time of the year. Other stray cattle shall not be taken up or posted between April 1 and November 1 unless they are taken within the inclosure of the taker-up, after they have broken into it.}~~

➔ Section 3. KRS 259.120 is amended to read as follows:

Stray equines and stray cattle~~{strays}~~ shall be taken up and posted in the following manner:

- (1) ~~{If a }Stray equines{over two (2) years old is taken up, it} shall be taken before a justice of the peace of the district, who shall administer to the taker-up an oath, in substance, that the equine{animal} was taken up by him as a stray{on his premises within the preceding ten (10) days} and that he has not defaced or altered the marks or brands of the equine{animal}. Stray cattle shall be taken before a justice of the peace of the district, who shall administer to the taker-up an oath, in substance that the cattle were taken by him as strays on his premises within the preceding ten (10) days and that he has not defaced or altered the marks or brands of the cattle. The justice shall then value the stray equine or cattle himself and take a correct description of the flesh-marks, age and brands of the same, all of which, together with the name and residence of the taker-up, he shall record in a book to be kept by him for that purpose. He shall give to the taker-up a copy of the record and deliver to the county clerk a certified copy of the same record within thirty (30) days{, for the whole of which service he shall be paid by the taker-up fifty cents (\$0.50)}.~~
- (2) The clerk shall immediately record the stray certificate of the justice in a book to be kept by him for that purpose~~{, and he shall cause a true copy of the certificate to be posted at the door of the courthouse at the next two (2) succeeding court days of his county}~~. His fee for this service shall be seventy-five cents (\$0.75) to be paid by the taker-up.
- (3) The taker-up shall *cause to be posted a copy of the justice's certificate in the sheriff's office with jurisdiction over the area where the stray cattle or stray equine was taken up*~~{,} within one (1) month after he has posted the stray{, cause to be published pursuant to KRS Chapter 424, a copy of the justice's certificate}~~.
- (4) ~~{If the stray is under two (2) years old the justice shall, in addition to the oath required by subsection (1), take, on the oath of the taker-up, a description of the stray and also the oath of some honest housekeeper of the value of the stray, and proceed as directed by subsection (1) when the stray is over two (2) years old.}~~
- ~~{(5) }The taker-up shall be paid by the owner of the stray, if and when he claims the stray or its value, the fee{fees} paid the{justice and} clerk{, the cost of advertising} and the actual costs incurred by the taker-up for keeping the stray equine or cattle. The taker-up may have the stray equine gelded, in which case the owner shall also pay the taker-up for the actual cost incurred for the gelding{also a reasonable sum for keeping the stray, where the animal has not been used. The owner shall also pay the taker-up a fee of one dollar (\$1) for each horse, mule, jack or jennet, and twenty five cents (\$0.25) for any other stray posted}.~~

➔ Section 4. KRS 259.130 is amended to read as follows:

The absolute ownership of a stray *equine*~~{horse, mule, jack or jennet}~~ shall vest in the taker-up at the expiration of *ninety (90) days*~~{two (2) years}~~ after the justice has received the evidence of the valuation and administered the oath to the taker-up. The absolute ownership of ~~{other}~~ stray cattle shall vest in the taker-up after the expiration of twelve (12) months from the day on which the cattle have been posted.

➔ Section 5. KRS 259.140 is amended to read as follows:

- (1) *If stray equines or cattle taken up under Section 3 of this Act are sold for a profit before absolute ownership of the stray equines or stray cattle has vested in the taker-up as provided by Section 4 of this Act, then* the taker-up~~{of any stray cattle}~~ shall pay to the owner *upon demand and proof of ownership the amount received for the stray equine or stray cattle less the amount owed by the owner to the taker-up under Section 3 of this Act. The owner shall not be entitled to any payment from the taker-up under this section if demand for payment is made more than ninety (90) days after the posting of the stray equine or more than twelve (12) months after the posting of the stray cattle under Section 3 of this Act*~~{the valuation of the stray, if it is a horse, jack, jennet or mule, upon proof of his right to payment, at any time within three (3) years from the day the right of property in the stray vests in the taker-up. The valuation of all other stray cattle shall be paid in the same manner, upon proof of ownership, at any time within one (1) year after the right of property is vested in~~

~~the taker up. If the stray dies or escapes from the possession of the taker up before the owner claims the same, he need not pay the valuation or account for the stray. The proof of death or escape shall rest upon the taker up.~~

- (2) ***Justices of the peace, county clerks, and all other local government employees acting in good faith in the discharge of the duties imposed by Sections 1 to 5 of this Act shall be immune from criminal and civil liability for any act related to the taking up and posting of stray equines or stray cattle.***

➔Section 6. KRS 259.990 is amended to read as follows:

- (1) ~~{Any person who violates any of the provisions of KRS 259.110 to 259.140 shall be fined ten dollars (\$10).}~~
- (2) ~~Any person who violates KRS 259.150 shall be fined fifty dollars (\$50).~~
- (3) ~~Any person who violates KRS 259.200 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100), and each head of cattle trespassing shall constitute a separate offense.~~
- (2){(4)} Any person who violates KRS 259.210 shall be fined not less than five dollars (\$5) nor more than twenty-five dollars (\$25).

➔Section 7. The following KRS sections are repealed:

- 259.150 Altering marks, removal and destruction of strays prohibited.
- 259.160 Horse, jack or bull running at large may be taken up -- Notice when owner known.
- 259.170 Animal taken up to be gelded.
- 259.180 Owner of animal unknown -- Notice -- Gelding.
- 259.190 Fees of taker-up -- Property vests in taker-up, when -- Recovery by owner.

Signed by Governor April 8, 2010.

CHAPTER 93

(HB 262)

AN ACT relating to inspections of commercial motor vehicles.

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

➔Section 1. KRS 189.227 is amended to read as follows:

- (1) The Department of Highways may take such actions, and ~~may{prescribe and}~~ promulgate ***administrative***~~{such rules and}~~ regulations ***in accordance with KRS Chapter 13A***, as are necessary and proper to carry out the purposes of KRS 189.221 to 189.228, including, but not limited to, the erection, establishment, and maintenance of permanent or portable scales.
- (2) ***The Department of Kentucky State Police***~~{Said department}~~ is~~{also}~~ authorized to employ ***commercial motor vehicle inspectors***~~{weighmasters}~~ and such other employees as may be necessary to operate any scales erected or established, and ***commercial motor vehicle inspectors employed under this section***~~{said weighmasters}~~ shall have the authority of peace officers for the purpose of enforcing KRS 189.221 to 189.228, and other statutes relating to motor vehicles, and for no other purpose. ~~A{No}~~ previous period of residence within the county ***of service***~~{where he is to serve}~~ shall ***not*** be required of any peace officer appointed under this section.

➔Section 2. KRS 281.755 is amended to read as follows:

- (1) The Department of Kentucky State Police ***or any other peace officer designated by the department*** may at any time or place make an inspection of any motor vehicle operating under the provisions of this chapter. They may enter into and upon any such motor vehicle for the purpose of ascertaining whether or not any provision of this chapter or any order or rule or regulation of the department relating to such motor vehicles has been violated. Willful refusal to stop any such motor vehicle, when ordered to do so by any representative of the Department of Kentucky State Police, or to permit the representative to enter into or upon the motor vehicle for the purpose of inspection, shall be sufficient ground for the revocation or suspension of the certificate or permit of the motor carrier.

- (2) In the event that a peace officer orders a commercial motor vehicle to be taken to a storage or impoundment facility as a result of a violation which requires the vehicle to be moved, the driver of the commercial motor vehicle shall be granted the ability to drive the commercial motor vehicle to the storage or impoundment facility. If the driver elects to drive to the storage or impoundment facility, a peace officer shall escort the vehicle to the facility. This subsection shall not apply if the commercial motor vehicle is required to be impounded as a result of a violation of KRS 281A.210, an out-of-service order as defined in KRS 281A.010(26), or a serious traffic violation as defined in KRS 281A.010(29).

➔Section 3. Section 2 of this Act shall apply retroactively, but shall not be construed to permit the prosecution of a person whose vehicle was inspected by a peace officer who did not, prior to the effective date of this Act, have the authority to perform inspections under KRS Chapter 281.

Signed by Governor April 8, 2010.

CHAPTER 94

(HB 268)

AN ACT relating to coal mines.

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

➔Section 1. KRS 304.44-030 is amended to read as follows:

- (1) After July 15, 1984, every insurance policy issued or renewed insuring on a direct basis a structure located in a county or portion of a county in this state except for counties exempted pursuant to KRS 304.44-060 shall include, at a separately stated premium, insurance for loss occurring after July 15, 1984, caused by mine subsidence unless waived in writing by the insured. The premium charged for coverage shall be the same as the premium level set by the administrator. The loss coverage shall be the loss in excess of two percent (2%) of the policy's total insured value, but at no time shall the deductible be less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500). The total insured value reinsured by the administrator shall not exceed **three hundred thousand dollars (\$300,000)** ~~one hundred thousand dollars (\$100,000)~~ per structure. The insurer shall not be required to write a policy for mine subsidence coverage in excess of the amount reimbursable from the fund as authorized by this subtitle.
- (2) ***The coverage provided pursuant to subsection (1) of this section shall also include coverage up to twenty-five thousand dollars (\$25,000) for the additional living expenses reasonably and necessarily incurred by the owner of a residence who has been temporarily displaced as the direct result of damage to the residence caused by mine subsidence.***

➔Section 2. KRS 304.44-050 is amended to read as follows:

All insurers writing property insurance covering structures in this state shall enter into a reinsurance agreement with the administrator in which each insurer agrees to cede to the administrator one hundred percent (100%), up to **three hundred thousand dollars (\$300,000)** ~~one hundred thousand dollars (\$100,000)~~, of any subsidence insurance coverage issued and, in consideration of the ceding commission retained by the insurer, agrees to undertake adjustment of losses, and payment of taxes, and to absorb all other expenses of the insurer necessary for sale of policies and administration of the mine subsidence insurance program. The administrator shall agree to reimburse the insurer from the fund for all amounts paid policyholders for claims resulting from subsidence and shall pay from the fund all costs of administration incurred by the administrator, but an insurer is not required to pay any claim for any loss insured under this subtitle except to the extent that the amount available in the mine subsidence insurance fund is sufficient to reimburse the insurer for such claim. Claims made under the provisions of the subtitle shall not be deemed to constitute a debt, liability, or obligation of the Commonwealth or any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or any political subdivision except to the extent the fund has accumulated reserves from premiums, state or federal grants, investment income, or state appropriations.

➔Section 3. KRS 351.315 is amended to read as follows:

- (1) No person shall detonate explosives in any blasting operation in which more than five (5) pounds of explosives or the equivalent are used in a single charge or in which less than five (5) pounds of explosives are used by a regular user, excluding blasting for agriculture and underground coal, unless he is licensed by the department. The department shall issue a license to use explosives to any person who:

- (a) Has worked in blasting operations for at least twenty-four (24) months under the immediate supervision of an experienced blaster or has worked in blasting operations for twelve (12) months and has completed a formal training program approved by the department; and
 - (b) Has passed an examination prescribed by the department which shall test the examinee's practice of blasting operations and the storage, moving, handling, and detonation of explosives.
- (2) Application for license shall be in writing upon a form furnished by the department and shall be accompanied by a photograph of the applicant. If the applicant is successful in passing the examination, a license indicating his competency to detonate explosives shall be issued upon the payment of a fee of twenty-five dollars (\$25).
- (3) Any person who is a licensed blaster in another state where the qualifications prescribed at the time of licensing were, in the opinion of the commissioner, equal to those prescribed in the Commonwealth at the date of application, and where reciprocal licensing privileges satisfactory to the department are granted to licensees of the Commonwealth, may be granted a license without an examination, upon the payment of a fee.
- (4) Each blaster shall be required to renew his license every three (3) years by application to the department, which application shall be accompanied by a fee ***and subject to the following training requirements:***~~;~~
- (a) Each applicant for renewal of a Kentucky blaster's license shall furnish proof that during the preceding three (3) years, ***the blaster***~~he~~ ***annually*** has attended a minimum of ***eight (8)***~~sixteen (16)~~ hours of ***department-approved*** blaster's training~~approved by the department~~. ***No more than four (4) hours of the annual blaster training may be attributed to attending a conference unless otherwise approved by the department; and***
 - (b) Each applicant for renewal of a limited Kentucky blaster's license shall furnish proof that during the preceding three (3) years, ***the blaster***~~he~~ has attended a minimum of four (4) hours of blaster's training approved by the department.
- (5) The department shall not issue a blaster's license to any person not entitled to transport or receive explosives under existing federal law, including persons who:
- (a) Are less than twenty-one (21) years of age; or
 - (b) Have been convicted in any court of a crime punishable by imprisonment for a term exceeding one (1) year, unless the conviction has been specifically exempted by the United States Bureau of Alcohol, Tobacco and Firearms or its successor.
- (6) All fees provided in this section shall be set by the department by administrative regulation; however, the fee for an application shall not exceed forty dollars (\$40), the fee for license renewal shall not exceed sixty dollars (\$60), and the fee for reciprocal licensing shall not exceed sixty dollars (\$60).
- (7) The commissioner may suspend any license for due cause, but no license may be revoked until the licensee has been granted adequate opportunity for a hearing conducted in accordance with KRS Chapter 13B.

Signed by Governor April 8, 2010.

CHAPTER 95

(HB 323)

AN ACT relating to charter county governments.

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

➔Section 1. KRS 132.010 is amended to read as follows:

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

- (1) "Department" means the Department of Revenue.
- (2) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (3) "Real property" includes all lands within this state and improvements thereon.

- (4) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (5) "Resident" means any person who has taken up a place of abode within this state with the intention of continuing to abide in this state; any person who has had his actual or habitual place of abode in this state for the larger portion of the twelve (12) months next preceding the date as of which an assessment is due to be made shall be deemed to have intended to become a resident of this state.
- (6) "Compensating tax rate" means that rate which, rounded to the next higher one-tenth of one cent (\$0.001) per one hundred dollars (\$100) of assessed value and applied to the current year's assessment of the property subject to taxation by a taxing district, excluding new property and personal property, produces an amount of revenue approximately equal to that produced in the preceding year from real property. However, in no event shall the compensating tax rate be a rate which, when applied to the total current year assessment of all classes of taxable property, produces an amount of revenue less than was produced in the preceding year from all classes of taxable property. For purposes of this subsection, "property subject to taxation" means the total fair cash value of all property subject to full local rates, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution and the difference between the fair cash value and agricultural or horticultural value of agricultural or horticultural land.
- (7) "Net assessment growth" means the difference between:
 - (a) The total valuation of property subject to taxation by the county, city, school district, or special district in the preceding year, less the total valuation exempted from taxation by the homestead exemption provision of the Constitution in the current year over that exempted in the preceding year, and
 - (b) The total valuation of property subject to taxation by the county, city, school district, or special district for the current year.
- (8) "New property" means the net difference in taxable value between real property additions and deletions to the property tax roll for the current year. "Real property additions" shall mean:
 - (a) Property annexed or incorporated by a municipal corporation, or any other taxing jurisdiction; however, this definition shall not apply to property acquired through the merger or consolidation of school districts, or the transfer of property from one (1) school district to another;
 - (b) Property, the ownership of which has been transferred from a tax-exempt entity to a nontax-exempt entity;
 - (c) The value of improvements to existing nonresidential property;
 - (d) The value of new residential improvements to property;
 - (e) The value of improvements to existing residential property when the improvement increases the assessed value of the property by fifty percent (50%) or more;
 - (f) Property created by the subdivision of unimproved property, provided, that when such property is reclassified from farm to subdivision by the property valuation administrator, the value of such property as a farm shall be a deletion from that category;
 - (g) Property exempt from taxation, as an inducement for industrial or business use, at the expiration of its tax exempt status;
 - (h) Property, the tax rate of which will change, according to the provisions of KRS 82.085, to reflect additional urban services to be provided by the taxing jurisdiction, provided, however, that such property shall be considered "real property additions" only in proportion to the additional urban services to be provided to the property over the urban services previously provided; and
 - (i) The value of improvements to real property previously under assessment moratorium."Real property deletions" shall be limited to the value of real property removed from, or reduced over the preceding year on, the property tax roll for the current year.
- (9) "Agricultural land" means:
 - (a) Any tract of land, including all income-producing improvements, of at least ten (10) contiguous acres in area used for the production of livestock, livestock products, poultry, poultry products and/or the growing of tobacco and/or other crops including timber;

- (b) Any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for aquaculture; or
 - (c) Any tract of land devoted to and meeting the requirements and qualifications for payments pursuant to agriculture programs under an agreement with the state or federal government.
- (10) "Horticultural land" means any tract of land, including all income-producing improvements, of at least five (5) contiguous acres in area commercially used for the cultivation of a garden, orchard, or the raising of fruits or nuts, vegetables, flowers, or ornamental plants.
- (11) "Agricultural or horticultural value" means the use value of "agricultural or horticultural land" based upon income-producing capability and comparable sales of farmland purchased for farm purposes where the price is indicative of farm use value, excluding sales representing purchases for farm expansion, better accessibility, and other factors which inflate the purchase price beyond farm use value, if any, considering the following factors as they affect a taxable unit:
- (a) Relative percentages of tillable land, pasture land, and woodland;
 - (b) Degree of productivity of the soil;
 - (c) Risk of flooding;
 - (d) Improvements to and on the land that relate to the production of income;
 - (e) Row crop capability including allotted crops other than tobacco;
 - (f) Accessibility to all-weather roads and markets; and
 - (g) Factors which affect the general agricultural or horticultural economy, such as: interest, price of farm products, cost of farm materials and supplies, labor, or any economic factor which would affect net farm income.
- (12) "Deferred tax" means the difference in the tax based on agricultural or horticultural value and the tax based on fair cash value.
- (13) "Homestead" means real property maintained as the permanent residence of the owner with all land and improvements adjoining and contiguous thereto including, but not limited to, lawns, drives, flower or vegetable gardens, outbuildings, and all other land connected thereto.
- (14) "Residential unit" means all or that part of real property occupied as the permanent residence of the owner.
- (15) "Special benefits" are those which are provided by public works not financed through the general tax levy but through special assessments against the benefited property.
- (16) "Mobile home" means a structure, transportable in one (1) or more sections, which when erected on site measures eight (8) body feet or more in width and thirty-two (32) body feet or more in length, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. It may be used as a place of residence, business, profession, or trade by the owner, lessee, or their assigns and may consist of one (1) or more units that can be attached or joined together to comprise an integral unit or condominium structure.
- (17) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motive power or is mounted on or drawn by another vehicle. The basic entities are: travel trailer, camping trailer, truck camper, and motor home.
- (a) Travel trailer: A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, and with a living area of less than two hundred twenty (220) square feet, excluding built-in equipment (such as wardrobes, closets, cabinets, kitchen units or fixtures) and bath and toilet rooms.
 - (b) Camping trailer: A vehicular portable unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use.

- (c) Truck camper: A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of a roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck.
 - (d) Motor home: A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van which is an integral part of the completed vehicle.
- (18) "Hazardous substances" shall have the meaning provided in KRS 224.01-400.
- (19) "Pollutant or contaminant" shall have the meaning provided in KRS 224.01-400.
- (20) "Release" shall have the meaning as provided in either or both KRS 224.01-400 and KRS 224.60-115.
- (21) "Qualifying voluntary environmental remediation property" means real property subject to the provisions of KRS 224.01-400 and 224.01-405, or 224.60-135 where the Environmental and Public Protection Cabinet has made a determination that:
- (a) All releases of hazardous substances, pollutants, contaminants, petroleum, or petroleum products at the property occurred prior to the property owner's acquisition of the property;
 - (b) The property owner made all appropriate inquiry into previous ownership and uses of the property in accordance with generally accepted practices prior to the acquisition of the property;
 - (c) The property owner or a responsible party has provided all legally required notices with respect to hazardous substances, pollutants, contaminants, petroleum, or petroleum products found at the property;
 - (d) The property owner is in compliance with all land use restrictions and does not impede the effectiveness or integrity of any institutional control;
 - (e) The property owner complied with any information request or administrative subpoena under KRS Chapter 224; and
 - (f) The property owner is not affiliated with any person who is potentially liable for the release of hazardous substances, pollutants, contaminants, petroleum, or petroleum products on the property pursuant to KRS 224.01-400, 224.01-405, or 224.60-135, through:
 - 1. Direct or indirect familial relationship;
 - 2. Any contractual, corporate, or financial relationship, excluding relationships created by instruments conveying or financing title or by contracts for sale of goods or services; or
 - 3. Reorganization of a business entity that was potentially liable.
- (22) "Intangible personal property" means stocks, mutual funds, money market funds, bonds, loans, notes, mortgages, accounts receivable, land contracts, cash, credits, patents, trademarks, copyrights, tobacco base, allotments, annuities, deferred compensation, retirement plans, and any other type of personal property that is not tangible personal property.
- (23) (a) *"County" shall also mean "charter county government";*
- (b) *"Fiscal court" shall also mean "legislative body of a charter county government"; and*
- (c) *"County judge/executive" shall also mean "chief executive officer of a charter county government."*

➔SECTION 2. A NEW SECTION OF KRS 67.825 TO 67.875 IS CREATED TO READ AS FOLLOWS:

The provisions of KRS 68.245, Section 1 of this Act, and 132.017 shall apply to ad valorem tax rates levied by charter county governments.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 68 IS CREATED TO READ AS FOLLOWS:

As used in this chapter unless the context requires otherwise:

- (1) *"County" shall also mean "charter county government";*
- (2) *"Fiscal court" shall also mean "legislative body of a charter county government"; and*
- (3) *"County judge/executive" shall also mean "chief executive officer of a charter county government."*

➔Section 4. KRS 133.010 is amended to read as follows:

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

- (1) "Board" means the county board of assessment appeals.
- (2) "Department" means the Department of Revenue.
- (3) "Taxpayer" means any person made liable by law to file a return or pay a tax.
- (4) "Real property" includes all lands within this state and improvements thereon.
- (5) "Personal property" includes every species and character of property, tangible and intangible, other than real property.
- (6)
 - (a) *"County" shall also mean "charter county government";*
 - (b) *"Fiscal court" shall also mean "legislative body of a charter county government"; and*
 - (c) *"County judge/executive" shall also mean "chief executive officer of a charter county government."*

Signed by Governor April 8, 2010.

CHAPTER 96

(HB 420)

AN ACT relating to mining disasters, recognizing lives lost in the Hurricane Creek coal mine disaster.

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

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

- (1) *The Hurricane Creek coal mine site in Leslie County, at which thirty-eight (38) miners lost their lives on December 30, 1970, is designated as a state historic site.*
- (2) *As funds are available, Leslie County shall construct a memorial to those who perished, which shall include but not be limited to:*
 - (a) *A monument to the miners, to be built at the mine site with the names of the thirty-eight (38) miners who lost their lives and the one (1) survivor;*
 - (b) *Informational materials about the mining disaster;*
 - (c) *Signage, off-street parking, and other features to encourage visitors; and*
 - (d) *A plan for construction and periodic maintenance of the monument site.*
- (3) *Leslie County's fiscal court is authorized to establish a restricted account for the site, and to raise funds from federal, state and local entities and from private sources for this account. Funds in the account shall be expended only for the mining disaster memorial. Moneys received and expended shall be reported separately in the county's budget.*
- (4) *The Governor shall, prior to December 30, 2010, issue a proclamation recognizing the fortieth anniversary of the Hurricane Creek mine disaster, memorializing the deceased miners and their families, and honoring the courage of all Kentucky's miners. The Governor shall call upon all citizens to observe the occasion, honoring miners in communities across the Commonwealth. The Governor is authorized to recognize the mine disaster anniversary in future years, on or before December 30, through a proclamation.*
- (5) *Working with Leslie County officials, state agencies shall provide assistance in informing the public about the site. The Tourism, Arts and Heritage Cabinet, with assistance from the Kentucky Heritage Council, the Kentucky Historical Society, the Office of Mine Safety, and the Mining Board, and within the limits of funds available, shall prepare and distribute information about the Hurricane Creek mining disaster, the risks which miners faced, historically, and the advances in mining safety since the 1970 disaster.*

Signed by Governor April 8, 2010.

CHAPTER 97**(HB 391)**

AN ACT relating to condominiums.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 54 of this Act shall be known and may be cited as the Kentucky Condominium Act.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsections (2), (3), (4), and (5) of this section, Sections 1 to 54 of this Act applies to all condominiums created within the Commonwealth after the effective date of this Act.*
- (2) *Sections 5, 6, 7, 15, 16, 34, 35, 42, 47, and 49 of this Act, and Section 3 of this Act to the extent necessary in construing any of these sections, apply to all condominiums created before the effective date of this Act, but only to the extent of events or circumstances occurring after the effective date of this Act and do not invalidate existing provisions of the declaration, bylaws, plats, or plans of those condominiums.*
- (3) *Any amendment to the declaration, bylaws, plats, or plans of any condominium created before the effective date of this Act shall conform to Sections 1 to 54 of this Act.*
- (4) *Unit owners of units to which one hundred percent (100%) of the votes in the association are allocated may elect, by unanimous vote, that Sections 1 to 54 of this Act shall apply to a condominium created before the effective date of this Act. In such event the declaration, bylaws, plats, or plans of the condominium shall be modified or amended to the extent necessary to be consistent with Sections 1 to 54 of this Act.*
- (5) *Notwithstanding any provision to the contrary set forth in the declaration, bylaws, plats, or plans of a condominium created before the effective date of this Act, the executive board of the association shall have the right to rely on the provisions set forth in Sections 1 to 54 of this Act to deal with any situation that presents a public safety or public health issue to one (1) or more unit owners in the association.*
- (6) *KRS 381.805 to 381.910 shall not apply to condominiums created after the effective date of this Act and do not invalidate any amendment to the declaration, bylaws, plats, or plans of any condominium created before the effective date of this Act if the amendment would be permitted by Sections 1 to 54 of this Act. The amendment shall be adopted in conformity with the procedures and requirements specified by those instruments and by Sections 1 to 54 of this Act. If the amendment grants to any person any rights, powers, or privileges permitted by Sections 1 to 54 of this Act, all correlative obligations, liabilities, and restrictions in Sections 1 to 54 of this Act shall also apply to that person.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 54 of this Act, or in the declaration or bylaws of any condominium unless specifically provided or the context otherwise requires:

- (1) *"Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant.*
 - (a) *A person controls a declarant if the person:*
 1. *Is a general partner, officer, director, limited liability entity member or manager, or employer of the declarant and has the legal authority to direct the business and affairs of the declarant;*
 2. *Directly, indirectly, or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than fifty percent (50%) of the voting interest in the declarant; or*
 3. *Controls in any manner the election of a majority of the directors of the declarant.*
 - (b) *A person is controlled by a declarant if the declarant:*
 1. *Is a general partner, officer, director, limited liability entity member or manager, or employer of the person and has the legal authority to direct the business and affairs of the person;*

2. *Directly, indirectly, or acting in concert with one (1) or more other persons, or through one (1) or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than fifty percent (50%) of the voting interest in the person; or*
3. *Controls in any manner the election of a majority of the directors of the person.*

Control does not exist if the powers described in paragraph (a) or (b) of this subsection are held solely as security for an obligation and are not exercised;

- (2) *"Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit;*
- (3) *"Association" or "unit owners' association" means the association organized pursuant to Section 33 of this Act;*
- (4) *"Common elements" means all portions of a condominium other than the units;*
- (5) *"Common expenses" means expenditures made or financial liabilities incurred by the association, to the extent permitted by the declaration or Sections 1 to 54 of this Act, together with any allocations to reserves;*
- (6) *"Common expense liability" means the liability for common expenses allocated to each unit pursuant to Section 19 of this Act;*
- (7) *"Condominium" means single units in a single-unit or a multiple-unit structure or structures, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners;*
- (8) *"Declarant" means any person or group of persons acting in concert who:*
 - (a) *As part of a common promotional plan for the condominium, formulated, sponsored, and promoted by the person or persons, offers to dispose of his, her, or their interest in a unit within the condominium not previously disposed of; or*
 - (b) *Reserves or succeeds to any special declarant right;*
- (9) *"Declaration" means any instrument, including a master deed, however denominated, that creates a condominium, and any amendments to those instruments;*
- (10) *"Development rights" means any right or combination of rights reserved by a declarant in the declaration to:*
 - (a) *Add real estate to a condominium;*
 - (b) *Create units, common elements, or limited common elements within a condominium;*
 - (c) *Subdivide units or convert units into common elements;*
 - (d) *Allocate or reallocate common elements among units; or*
 - (e) *Withdraw real estate from a condominium;*
- (11) *"Dispose" or "disposition" means a voluntary transfer to a purchaser of any legal or equitable interest in a unit, but does not include the creation, assignment, transfer, or release of a mortgage or security interest;*
- (12) *"Executive board" means the body, regardless of name, designated in the declaration to act on behalf of the association;*
- (13) *"Identifying number" means a symbol or address that identifies only one (1) unit in a condominium;*
- (14) *"Leasehold condominium" means a condominium in which all or a portion of the real estate is subject to a lease the expiration or termination of which will terminate the condominium or reduce its size;*
- (15) *"Limited common element" means a portion of the common elements allocated by the declaration or by operation of Section 14 of this Act for the exclusive use of one (1) or more but fewer than all of the units;*
- (16) *"Master association" means an organization described in Section 31 of this Act, whether or not it is also an association described in Section 33 of this Act;*

- (17) *"Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, limited liability company, government, governmental subdivision or agency, or other legal or commercial entity;*
- (18) *"Purchaser" means any person other than a declarant or a person in the business of selling real estate for his or her own account, who by means of a voluntary or involuntary transfer acquires a legal or equitable interest in a unit other than:*
 - (a) *A leasehold interest, including renewal options of less than twenty (20) years; or*
 - (b) *As security for an obligation;*
- (19) *"Real estate" means any fee simple interest, leasehold estate, or other estate or interest in, over, or under land, including structures, fixtures, and other improvements and interests which by custom, usage, or law pass with a conveyance of land though not described in the contract of sale or instrument of conveyance. "Real estate" includes parcels with or without upper or lower boundaries, and spaces that may be filled with air or water;*
- (20) *"Recording data" means the book and page number of instruments recorded in the office of a county clerk;*
- (21) *"Residential" means use for dwelling or personal recreation, or both;*
- (22) *"Special declarant rights" means rights reserved for the benefit of a declarant to:*
 - (a) *Complete improvements indicated on plats and plans filed with the declaration;*
 - (b) *Exercise any development rights;*
 - (c) *Maintain sales offices, management offices, signs advertising the condominium, and models;*
 - (d) *Use easements through the common elements for the purpose of making improvements within the condominium or within real estate which may be added to the condominium;*
 - (e) *Make the condominium part of a larger condominium or a planned community;*
 - (f) *Make the condominium subject to a master association; or*
 - (g) *Appoint or remove any officer of the association, master association, or any executive board member during any period of declarant control;*
- (23) *"Unit" means a physical portion of the condominium designated for separate ownership or occupancy, the boundaries of which are described in Section 17 of this Act; and*
- (24) *"Unit owner" means a declarant or other person who owns a unit, or a lessee of a unit in a leasehold condominium whose lease expires simultaneously with any lease the expiration or termination of which will remove the unit from the condominium, but does not include a person having an interest in a unit solely as security for an obligation or as a sublessee of a lessee of a unit.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Except as expressly provided in Sections 1 to 54 of this Act, provisions of Sections 1 to 54 of this Act may not be varied by agreement, and rights conferred by Sections 1 to 54 of this Act may not be waived. A declarant may not act under a power of attorney, or use any other device, to evade the limitations or prohibitions of Sections 1 to 54 of this Act or the declaration.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real estate.*
- (2) *If there is any unit owner other than a declarant, each unit shall be separately taxed and assessed, and no separate tax or assessment may be rendered against any common elements for which a declarant has reserved no development rights.*
- (3) *Any portion of the common elements for which the declarant has reserved any development right shall be separately taxed and assessed against the declarant, and the declarant alone is liable for payment of those taxes.*
- (4) *If there is no unit owner other than a declarant, the real estate comprising the condominium may be taxed and assessed in any manner provided by law.*

- (5) *A residential unit of a condominium may be a homestead as allowed in KRS Chapters 132 and 427.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

A zoning, subdivision, building code, or other real estate use law, ordinance, or regulation shall not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of Sections 1 to 54 of this Act invalidates or modifies any provision of any zoning, subdivision, building code, or other real estate use law, ordinance, or regulation.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *If a unit is acquired by eminent domain, or if part of a unit is acquired by eminent domain leaving the unit owner with a remnant which may not practically or lawfully be used for any purpose permitted by the declaration, the award shall compensate the unit owner for his or her unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.*
- (2) *Except as provided in subsection (1) of this section, if part of a unit is acquired by eminent domain, the award shall compensate the unit owner for the reduction in value of the unit and its interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides:*
 - (a) *The unit's allocated interests are reduced in proportion to the reduction in the size of the unit; and*
 - (b) *The portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.*
- (3) *If part of the common elements is acquired by eminent domain, the portion of the award attributable to the common elements taken shall be paid to the association and, unless the declaration provides otherwise, the award attributable to the acquisition of a limited common element shall be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.*
- (4) *The court decree shall be recorded in every county in which any portion of the condominium is located.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless displaced by a particular provision of Sections 1 to 54 of this Act, the principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause, shall supplement Sections 1 to 54 of this Act.

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 54 of this Act being a general act intended as a unified coverage of its subject matter, no part of it shall be deemed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Sections 1 to 54 of this Act shall be liberally construed and applied to promote its underlying purposes and policies.*
- (2) *The underlying purposes and policies of Sections 1 to 54 of this Act are:*
 - (a) *To simplify, clarify, and modernize the law governing condominiums; and*
 - (b) *To make uniform the law among the various jurisdictions.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

If any provision of Sections 1 to 54 of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of Sections 1 to 54 of this Act that can be given effect without the invalid provision or application, and to this end the provisions of Sections 1 to 54 of this Act are severable.

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Every contract or duty governed by Sections 1 to 54 of this Act imposes an obligation of good faith in its performance or enforcement.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

A condominium may be created pursuant to Sections 1 to 54 of this Act only by recording a declaration executed in the same manner as a deed. The declaration shall be recorded in every county in which any portion of the condominium is located, and shall be indexed in the name of the condominium, the association, and each person executing the declaration. The county clerk shall determine the methods and mechanics for recording and storing any plans and plats associated with a declaration or amendment of a declaration.

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *If walls, floors, or ceilings are designated as boundaries of a unit, all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements unless otherwise specified in the declaration.*
- (2) *If any chute, flue, duct, wire, conduit, heating system, air conditioning system, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one (1) unit or any portion of the common elements is a part of the common elements unless otherwise specified in the declaration.*
- (3) *Subject to subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.*
- (4) *Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but located outside the unit's boundaries, are limited common elements allocated exclusively to that unit.*
- (5) *Any sprinkler system, alarm system, or other system of protection that serves more than one (1) unit, unless all units served are owned by the same owner, shall be part of the common elements.*
- (6) *All interior hallways, stairways, and other interior space, including all fixtures located within these spaces, that are located outside of a unit shall be limited common elements allocated exclusively to the units appurtenant to or otherwise accessible from such interior spaces.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *All provisions of the declaration and bylaws are severable.*
- (2) *The rule against perpetuities shall not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to Section 34 of this Act.*
- (3) *In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with Sections 1 to 54 of this Act.*
- (4) *Title to a unit and common elements is not rendered unmarketable or otherwise affected by reason of an insubstantial failure of the declaration to comply with Sections 1 to 54 of this Act.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

After the declaration is recorded, a description of a unit which sets forth the name of the condominium, the recording data for the deed and declaration, the county in which the condominium is located, and the identifying number of the unit, is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit. The numbering system of units shall be adequate to easily distinguish each unit, including those built at different times.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *The declaration for a condominium shall contain:*
- (a) *The name of the condominium which shall include the word "condominium" or be followed by the words "a condominium," and the association;*
 - (b) *The name of every county in which any part of the condominium is situated;*
 - (c) *A legally sufficient description of the real estate included in the condominium;*
 - (d) *A statement of the maximum number of units which the declarant reserves the right to create;*
 - (e) *A description of the boundaries of each unit created by the declaration, including the unit's identifying number;*
 - (f) *A description of any limited common elements as provided in subsection (2)(h) of Section 21 of this Act, except for those limited common elements specified in subsections (2), (4), and (6) of Section 14 of this Act;*
 - (g) *A description of any real estate, except real estate subject to development rights, which may be allocated subsequently as limited common elements, other than limited common elements specified in subsections (2), (4), and (6) of Section 14 of this Act, together with a statement that they may be so allocated;*
 - (h) *A description of any development rights and other special declarant rights reserved by the declarant, together with a legally sufficient description of the real estate to which each of those rights applies, and a time limit within which each of those rights must be exercised;*
 - (i) *If any development right may be exercised with respect to different parcels of real estate at different times, a statement to that effect together with:*
 - 1. a. *A statement fixing the boundaries of those portions and identifying the proposed order in which those portions may be subjected to the exercise of each development right; or*
 - b. *A statement that no assurances are made concerning the boundaries or order in which the exercise of development rights may occur; and*
 - 2. *A statement as to whether, if any development right is exercised in any portion of the real estate subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real estate;*
 - (j) *Any other conditions or limitations under which the rights described in paragraph (i) of this subsection may be exercised or will lapse;*
 - (k) *An allocation to each unit of the allocated interests in the manner described in Section 19 of this Act;*
 - (l) *Any restrictions on use, occupancy, and alienation of the units;*
 - (m) *The recording data for recorded easements and licenses appurtenant to or included in the condominium or to which any portion of the condominium is or may become subject by virtue of a reservation in the declaration; and*
 - (n) *All matters required by Sections 18, 19, 20, 21, and 27 of this Act, and subsection (4) of Section 35 of this Act.*

- (2) *The declaration may contain any other matters the declarant deems appropriate.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *A memorandum of lease shall be recorded with respect to any lease the expiration or termination of which may terminate the condominium or reduce its size. Every lessor of those leases shall sign the memorandum of lease, and the memorandum of lease shall state:*
- (a) *The elements of recording for the lease;*
 - (b) *The date on which the lease is scheduled to expire;*
 - (c) *A legally sufficient description of the real estate subject to the lease;*

- (d) *Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;*
- (e) *Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and*
- (f) *Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.*
- (2) *After the declaration for a leasehold condominium is recorded, neither the lessor nor his or her successor in interest may terminate the leasehold interest of a unit owner who makes timely payment of his or her share of the rent and otherwise complies with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill any other covenant.*
- (3) *Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired.*
- (4) *If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with subsection (1) of Section 7 of this Act, as though those units had been taken by eminent domain. Reallocations shall be confirmed by an amendment to the declaration prepared, executed, and recorded by the association.*

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas used to establish those allocations. Those allocations shall not discriminate in favor of units owned by the declarant.*
- (2) *If units may be added to or withdrawn from the condominium, the declaration shall state the formulas to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.*
- (3) *The declaration may provide:*
 - (a) *That different allocations of votes shall be made to the units on particular matters specified in the declaration; and*
 - (b) *For class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant shall not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by Sections 1 to 54 of this Act, and units shall not constitute a class because they are owned by a declarant.*
- (4) *The declaration shall not permit cumulative voting, including cumulative voting for the purpose of electing members of the executive board.*
- (5) *Unless otherwise stated in the declaration, the declarant retains full voting rights to any unit until it conveyed.*
- (6) *Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units shall each equal one (1), if stated as fractions, or one hundred percent (100%), if stated as percentages. In the event of a discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails in the absence of error in specifying the allocated interest.*
- (7) *The common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated, shall be void.*

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except for the limited common elements described in subsections (2), (4), and (6) of Section 14 of this Act, the declaration shall specify to which unit or units each limited common element is allocated. That allocation shall not be altered without the consent of the unit owners whose units are affected.*

- (2) *Except as the declaration otherwise provides, a limited common element may be reallocated by an amendment to the declaration executed by the unit owners between or among whose units the reallocation is made. The persons executing the amendment shall provide a copy thereof to the association, which shall record it after receiving all fees and other costs associated with recording the instrument. The amendment shall be recorded in the names of the parties and the condominium.*
- (3) *A common element not previously allocated as a limited common element shall not be so allocated, except pursuant to provisions in the declaration made in accordance with subsection (1)(g) of Section 17 of this Act. The allocations shall be made by amendments to the declaration.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Plats and plans are a part of the declaration. Separate plats and plans are not required by Sections 1 to 54 of this Act if all the information required by this section is contained in either a plat or plan. Each plat and plan shall be clear and legible and contain a certification that the plat or plan contains all information required by this section.*
- (2) *Each plat shall contain:*
 - (a) *The name and a survey or general schematic map of the entire condominium;*
 - (b) *The location and dimensions of all real estate not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing improvements within that real estate;*
 - (c) *A legally sufficient description of any real estate subject to development rights, labeled to identify the rights applicable to each parcel;*
 - (d) *The extent of any encroachments by or upon any portion of the condominium;*
 - (e) *The location, with reference to an established datum, of any horizontal unit boundaries not shown or projected on plans recorded pursuant to subsection (4) of this section and that unit's identifying number;*
 - (f) *A legally sufficient description of any real estate in which the unit owners will own only an estate for years, labeled as "leasehold real estate";*
 - (g) *The distance between noncontiguous parcels of real estate comprising the condominium;*
 - (h) *The location and dimensions of limited common elements, including porches, balconies, and patios, other than parking spaces and the other limited common elements described in subsections (2), (4), and (6) of Section 14 of this Act; and*
 - (i) *In the case of real estate not subject to development rights, all other matters customarily shown on land surveys prepared in accordance with standards established pursuant to KRS 322.290.*
- (3) *A plat may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown shall be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."*
- (4) *To the extent not shown or projected on the plats, plans of the units shall show or project:*
 - (a) *Any horizontal unit boundaries exclusive of elevations, with reference to an established datum, and that unit's identifying number; and*
 - (b) *Any units in which the declarant has reserved the right to create additional units or common elements, identified appropriately.*
- (5) *Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part, and need not be depicted on the plats and plans.*
- (6) *Upon exercising any development right, the declarant shall record either new plats and plans necessary to conform to the requirements of subsections (1), (2), and (4) of this section, or new certifications of plats and plans previously recorded if those plats and plans otherwise conform to the requirements of subsections (1), (2), and (4) of this section.*

- (7) *Any certification of a plat or plan required by this section or Section 13 of this Act shall be made by a professional land surveyor, licensed architect, or professional engineer.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *To exercise any development right reserved under subsection (1)(h) of Section 17 of this Act, the declarant shall prepare, execute, and record an amendment to the declaration and comply with Section 21 of this Act. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (3) of this section, reallocate the allocated interests among all units. The amendment shall describe any common elements and any limited common elements thereby created and, in the case of limited common elements, designate the unit to which each is allocated to the extent required by Section 20 of this Act.*
- (2) *Development rights may be reserved within any real estate added to the condominium if the amendment adding that real estate includes all matters required by Section 17 or 18 of this Act, as the case may be, and the plats and plans include all matters required by Section 21 of this Act. This provision does not extend the time limit on the exercise of development rights imposed by the declaration under subsection (1)(h) of Section 17 of this Act.*
- (3) *If a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both, the declaration shall be amended as follows:*
- (a) *If the declarant converts the unit entirely to common elements, the amendment to the declaration shall reallocate all the allocated interests of that unit among the other units as if that unit had been taken by eminent domain; or*
- (b) *If the declarant subdivides the unit into two (2) or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration shall reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable manner prescribed by the declarant.*
- (4) *If the declaration provides, pursuant to subsection (1)(h) of Section 17 of this Act, that all or a portion of the real estate is subject to the development right of withdrawal, then the following shall apply:*
- (a) *If all the real estate is subject to withdrawal, and the declaration does not describe separate portions of real estate subject to that right, none of the real estate may be withdrawn after a unit has been conveyed to a purchaser without the written consent of all unit owners owning units within the real estate; and*
- (b) *If a portion or portions are subject to withdrawal, no portion may be withdrawn after a unit in that portion has been conveyed to a purchaser without the written consent of all unit owners owning units within that portion.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Subject to the provisions of the declaration and other provisions of law, a unit owner:

- (1) *May make any improvements or alterations to his or her unit that do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium;*
- (2) *Shall not change the appearance of the common elements, or the exterior appearance of a unit or any other portion of the condominium, without permission of the association; and*
- (3) *After acquiring an adjoining unit or an adjoining part of an adjoining unit, may remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not impair the structural integrity or mechanical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not an alteration of boundaries.*

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application shall state the proposed reallocations. Unless the executive board*

determines, within thirty (30) days, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and upon recordation, is indexed in the name of the grantor and the grantee.

- (2) *The association shall prepare and record plats or plans necessary to show the altered boundaries between adjoining units, and their dimensions and identifying numbers.*
- (3) *All costs associated with the preparation and recording of the documents, plats, and plans required by this section shall be paid by the unit owners.*

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *If the declaration expressly so permits, a unit may be subdivided into two (2) or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including the plats and plans, subdividing that unit.*
- (2) *The amendment to the declaration shall be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable manner prescribed by the owner of the subdivided unit.*
- (3) *All costs associated with the preparation and recording of the documents, plats, and plans required by subsection (1) of this section shall be paid by the owner of the unit being subdivided.*

➔SECTION 26. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

To the extent that any unit or common element encroaches on any other unit or common element, a valid easement for the encroachment exists. The easement does not relieve a unit owner of liability in case of his or her willful misconduct or relieve a declarant or any other person of liability for failure to adhere to the plats and plans.

➔SECTION 27. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under Sections 1 to 54 of this Act or reserved in the declaration.

➔SECTION 28. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except in cases of amendments that may be executed by a declarant under subsection (6) of Section 21 of this Act or Section 22 of this Act; the association under Section 7 of this Act, subsection (4) of Section 18 of this Act, subsection (3) of Section 20 of this Act, subsection (1) of Section 24 of this Act, or Section 25 of this Act; or certain unit owners under subsection (2) of Section 20 of this Act, subsection (1) of Section 24 of this Act, or subsection (2) of Section 25 of this Act, and except as limited by subsection (4) of this section and subsection (7) of Section 44 of this Act, the declaration, including the plats and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent (67%) of the votes in the association are allocated, or any larger majority specified in the declaration. The declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.*
- (2) *An action to challenge the validity of an amendment adopted by the association pursuant to this section shall not be brought more than one (1) year after the amendment is recorded.*
- (3) *Every amendment to the declaration shall be recorded in every county in which any portion of the condominium is located, and is effective only upon recordation. An amendment shall be indexed in the name of the condominium and the association and in the name of the parties executing the amendment.*
- (4) *Except to the extent expressly permitted or required by other provisions of Sections 1 to 54 of this Act, an amendment shall not create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of unanimous consent of the unit owners.*
- (5) *Amendments to the declaration required by Sections 1 to 54 of this Act to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the*

association designated for that purpose or, in the absence of designation, by the president of the association.

➔SECTION 29. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except in the case of a taking of all the units by eminent domain, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent (80%) of the votes in the association are allocated, or any larger percentage the declaration specifies. The declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to nonresidential uses.*
- (2) *An agreement to terminate a condominium shall be evidenced by the execution of a termination agreement, or ratification thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement and all ratifications thereof shall be recorded in every county in which a portion of the condominium is situated, and is effective only upon recordation.*
- (3) *In the case of a condominium containing only units having horizontal boundaries described in the declaration, a termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real estate in the condominium is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.*
- (4) *In the case of a condominium containing any units not having horizontal boundaries described in the declaration, a termination agreement may provide for sale of the common elements, but shall not require that the units be sold following termination, unless the declaration as originally recorded provided otherwise or unless all the unit owners consent to the sale.*
- (5) *The association, on behalf of the unit owners, may contract for the sale of real estate in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real estate in the condominium is to be sold following termination, title to that real estate, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to unit owners and lienholders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (8) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real estate, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit. During the period of that occupancy, each unit owner and his or her successors in interest remain liable for all assessments and other obligations imposed on unit owners by Sections 1 to 54 of this Act or the declaration.*
- (6) *If the real estate constituting the condominium is not to be sold following termination, title to the common elements and, in a condominium containing only units having horizontal boundaries described in the declaration, title to all the real estate in the condominium, vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (8) of this section, and liens on the units shift accordingly. While the tenancy in common exists, each unit owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted his or her unit.*
- (7) *Following termination of the condominium, the proceeds of any sale of real estate, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units as their interests may appear. Following termination, creditors of the association holding liens on the units, which were recorded before termination, may enforce those liens in the same manner as any lienholder. All other creditors of the association are to be treated as if they had perfected liens on the units immediately before termination.*
- (8) *The respective interests of unit owners referred to in subsections (5), (6), and (7) of this section are as follows:*
 - (a) *Except as provided in paragraph (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one (1) or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit*

owners and becomes final unless disapproved within thirty (30) days after distribution by unit owners of units to which twenty-five percent (25%) of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements; and

- (b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.*
- (9) Except as provided in subsection (10) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real estate, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real estate does not of itself withdraw that real estate from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real estate from the condominium.*
- (10) If a lien or encumbrance against a portion of the real estate comprising the condominium has priority over the declaration, the parties foreclosing the lien or encumbrance may, upon foreclosure, record an instrument excluding the real estate subject to that lien or encumbrance from the condominium. The provisions of this subsection shall not apply to any common elements constituting a portion of the real estate to the extent the common elements as described in and subject to the declaration have been developed.*

➔SECTION 30. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

The declaration may require that all or a specified number or percentage of the mortgagees encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but a requirement for approval shall not operate to:

- (1) Deny or delegate control over the general administrative affairs of the association by the unit owners or the executive board; or*
- (2) Prevent the association or the executive board from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except as provided in Section 44 of this Act.*

➔SECTION 31. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) If the declaration for a condominium provides that any of the powers described in Section 34 of this Act are to be exercised by or may be delegated to a for-profit or nonprofit corporation or unincorporated association which exercises those or other powers on behalf of one (1) or more condominiums or for the benefit of the unit owners of one (1) or more condominiums, all provisions of Sections 1 to 54 of this Act applicable to unit owners' associations apply to any such corporation or unincorporated association, except as modified by this section.*
- (2) Unless a master association is acting in the capacity of an association described in Section 33 of this Act, it may exercise the powers set forth in subsection (1)(b) of Section 34 of this Act only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.*
- (3) If the declaration of any condominium provides that the executive board may delegate certain powers to a master association, the members of the executive board have no liability for the acts or omissions of the master association with respect to those powers following delegation.*
- (4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in Sections 35, 39, 40, 41, and 43 of this Act apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of Sections 1 to 54 of this Act.*
- (5) Notwithstanding the provisions of subsection (6) of Section 35 of this Act with respect to the election of the executive board of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in Section 33 of this Act, the certificate of incorporation*

or other instrument creating the master association and the declaration of each condominium the powers of which are assigned by the declaration or delegated to the master association may provide that the executive board of the master association shall be elected after the period of declarant control in any of the following ways:

- (a) *All unit owners of all condominiums subject to the master association may elect all members of that executive board;*
- (b) *All members of the executive boards of all condominiums subject to the master association may elect all members of that executive board;*
- (c) *All unit owners of each condominium subject to the master association may elect specified members of that executive board; or*
- (d) *All members of the executive board of each condominium subject to the master association may elect specified members of that executive board.*

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Any two (2) or more condominiums by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the pre-existing condominiums and the operations and activities of all associations of the pre-existing condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all pre-existing associations.*
- (2) *In addition to any other requirements of the declaration, the merger or consolidation of two (2) or more condominiums pursuant to subsection (1) of this section shall be evidenced by a recorded agreement duly executed by the president of the association of each of the pre-existing condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement shall be recorded in every county in which a portion of the condominium is located and is not effective until recorded.*
- (3) *Every merger or consolidation agreement shall provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either:*
 - (a) *By stating the reallocations or the formulas upon which they are based; or*
 - (b) *By stating the percentage of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the pre-existing condominiums, and providing that the portion of the percentages allocated to each unit formerly comprising a part of the pre-existing condominium shall be equal to the percentages of allocated interests allocated to that unit by the declaration of the pre-existing condominium.*

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless stated otherwise in the declaration, a unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association shall at all times consist exclusively of all the unit owners or, following termination of the condominium, of all former unit owners entitled to distributions of proceeds under Section 29 of this Act, or their heirs, successors, or assigns. The association shall be organized as a for-profit or nonprofit corporation or as an unincorporated association.

➔SECTION 34. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section and subject to the provisions of the declaration, the association, even if unincorporated, may:*
 - (a) *Adopt and amend bylaws, rules, and regulations;*
 - (b) *Adopt and amend budgets for revenues, expenditures, and reserves, and collect assessments for common expenses from unit owners;*
 - (c) *Hire and discharge managing agents and other employees, agents, and independent contractors;*
 - (d) *Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two (2) or more unit owners on matters affecting the condominium;*
 - (e) *Make contracts and incur liabilities;*

- (f) *Regulate the use, maintenance, repair, replacement, and modification of common elements, and authorize access to any unit for those purposes;*
- (g) *Cause additional improvements to be made as a part of the common elements;*
- (h) *Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, except that common elements may only be conveyed or subjected to a lien or security interest as provided in Section 43 of this Act;*
- (i) *Grant easements, leases, licenses, and concessions through or over the common elements;*
- (j) *Impose and receive payments, fees, or charges:*
 - 1. *For the use, rental, or operation of the common elements other than limited common elements described in subsections (2), (4), and (6) of Section 14 of this Act;*
 - 2. *For services provided to unit owners; and*
 - 3. *To cover emergency or extraordinary circumstances affecting the condominium or any part thereof;*
- (k) *Impose charges for late payment of assessments and, after notice and an opportunity to be heard, levy reasonable fines for violations of the declaration, bylaws, and rules and regulations of the association that may include reimbursement to the association of reasonable fees and costs associated with the enforcement of this paragraph;*
- (l) *Impose reasonable charges for the preparation and recordation of amendments to the declaration, resale certificates required by Section 52 of this Act, or statements of unpaid assessments;*
- (m) *Provide for the indemnification of its officers and executive board and maintain directors' and officers' liability insurance;*
- (n) *Assign its right to future income, including the right to receive common expense assessments, but only to the extent expressly provided in the declaration and only for the purpose of securing financial accommodations obtained by the association to perform its duties and obligations under the declaration or Sections 1 to 54 of this Act;*
- (o) *Exercise any other powers conferred by the declaration or bylaws;*
- (p) *Exercise all other powers that may be exercised in this Commonwealth by legal entities of the same type as the association; and*
- (q) *Exercise any other powers necessary and proper for the governance and operation of the association.*
- (2) *The declaration shall not impose limitations on the power of the association to deal with the declarant that are more restrictive than the limitations imposed on the power of the association to deal with other persons.*
- (3) *Notwithstanding the declaration, an association may impose an emergency assessment against any unit affected to:*
 - (a) *Comply with a judicial order; or*
 - (b) *Repair an emergency condition of any common structural or mechanical component which has made, or is in imminent danger of making, any unit unsafe, uninhabitable, or uninsurable, provided the association is first provided a certificate from a professional engineer or licensed architect stating the emergency condition.*
- (4) *The emergency assessment provided for in subsection (3) of this section shall be made upon the vote of a simple majority of unit owners present at a special called meeting. If the declaration does not provide for special meetings, one (1) may be called under this subsection to address the issues identified in subsection (3) of this section. Any emergency assessment made under this subsection may be reduced or rescinded by a vote of a simple majority of unit owners present at a subsequent special meeting.*

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in the declaration, the bylaws, or subsection (2) of this section, the executive board may act in all instances on behalf of the association. In the performance of their duties, the officers and members of the executive board shall exercise ordinary and reasonable care.*
- (2) *The executive board shall not act on behalf of the association to amend the declaration, to terminate the condominium, or to elect members of the executive board or determine the qualifications, powers, and duties, or terms of office of executive board members, but the executive board may fill vacancies in its membership for the unexpired portion of any term.*
- (3) *If the executive board adopts a proposed budget for the condominium, the board shall:*
 - (a) *Provide a summary of the budget to all unit owners within thirty (30) days after the adoption; and*
 - (b) *Set a date for a meeting of the unit owners to consider ratification of the budget, which meeting shall not be less than fourteen (14) days nor more than thirty (30) days after providing the summary.*

The budget shall be deemed ratified, whether or not a quorum is present, unless at that meeting a majority of all the unit owners, or any larger vote specified in the declaration, reject the budget. If the proposed budget is rejected, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the executive board.

- (4) *Except as provided in subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by him or her, may appoint and remove the officers and members of the executive board. Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of:*
 - (a) *Sixty (60) days after conveyance of seventy-five percent (75%) of the units which may be created to unit owners other than a declarant;*
 - (b) *Two (2) years after all declarants have ceased to offer units for sale in the ordinary course of business;*
 - (c) *Two (2) years after any development right to add new units was last exercised; or*
 - (d) *Seven (7) years after the first unit was conveyed to a unit owner other than a declarant.*

A declarant may voluntarily surrender the right to appoint and remove officers and members of the executive board before termination of that period, but in that event he or she may require, for the duration of the period of declarant control, that specified actions of the association or executive board, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

- (5) *Not later than sixty (60) days after conveyance of twenty-five percent (25%) of the units which may be created to unit owners other than a declarant, at least one (1) member and not less than twenty-five percent (25%) of the members of the executive board shall be elected by unit owners other than the declarant. Not later than sixty (60) days after conveyance of fifty percent (50%) of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent (33-1/3%) of the members of the executive board shall be elected by unit owners other than the declarant.*
- (6) *Not later than the termination of any period of declarant control, the unit owners shall elect an executive board of at least three (3) members, a majority of whom shall be unit owners or owners of equity interests in units. The executive board shall elect the officers. The executive board members and officers shall take office upon election.*
- (7) *Any provision of the declaration or bylaws to the contrary notwithstanding, the unit owners, by a two-thirds (2/3) vote of all persons present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the executive board with or without cause, other than a member appointed by the declarant.*

➔SECTION 36. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *No special declarant right created or reserved under Sections 1 to 54 of this Act may be transferred except by an instrument evidencing the transfer recorded in every county in which any portion of the condominium is located. The instrument is not effective unless executed by the transferee.*
- (2) *Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:*

- (a) *A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon him or her by Sections 1 to 54 of this Act. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor;*
 - (b) *If a successor to any special declarant right is an affiliate of a declarant, the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium;*
 - (c) *If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by Sections 1 to 54 of this Act or by the declaration relating to the retained special declarant rights and arising after the transfer; and*
 - (d) *A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.*
- (3) *Unless otherwise provided in a mortgage, in case of foreclosure of a mortgage, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of any units owned by a declarant or real estate in a condominium subject to development rights, a person acquiring title to all the real estate being foreclosed or sold, but only upon his or her request, succeeds to all special declarant rights related to that real estate held by that declarant. The judgment or instrument conveying title shall provide for transfer of only the special declarant rights requested.*
- (4) *Upon foreclosure, tax sale, judicial sale, or sale under Bankruptcy Code or receivership proceedings, of all units and other real estate in a condominium owned by a declarant:*
- (a) *The declarant ceases to have any special declarant rights; and*
 - (b) *The period of declarant control terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.*
- (5) *The liabilities and obligations of a person who succeeds to special declarant rights are as follows:*
- (a) *A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by Sections 1 to 54 of this Act or by the declaration;*
 - (b) *A successor to any special declarant right, other than a successor described in paragraph (c) or (d) of this subsection, who is not an affiliate of a declarant, is subject to all obligations and liabilities imposed by Sections 1 to 54 of this Act or the declaration:*
 - 1. *On a declarant which relate to his or her exercise or nonexercise of special declarant rights; or*
 - 2. *On his or her transferor, other than:*
 - a. *Misrepresentations by any previous declarant;*
 - b. *Warranty obligations on improvements made by any previous declarant, or made before the condominium was created;*
 - c. *Breach of any fiduciary obligation by any previous declarant or his or her appointees to the executive board; or*
 - d. *Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;*
 - (c) *A successor to only a right reserved in the declaration to maintain models, sales offices, and signs, if he or she is not an affiliate of a declarant, shall not exercise any other special declarant right, and is not subject to any liability or obligation as a declarant; and*
 - (d) *A successor to all special declarant rights held by his or her transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to units under subsection (3) of this section, may declare his or her*

intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor shall not exercise any of those rights other than a right held by his or her transferor to control the executive board in accordance with subsection (4) of Section 35 of this Act for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, he or she is not subject to any liability or obligation as a declarant other than liability for his or her acts and omissions under subsection (4) of Section 35 of this Act.

- (6) *Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under Sections 1 to 54 of this Act or the declaration.*

➔SECTION 37. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *The bylaws of the association shall provide for:*

- (a) *The number of members of the executive board and the titles of the officers of the association;*
- (b) *Election by the executive board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;*
- (c) *The qualifications, powers and duties, terms of office, and manner of electing and removing executive board members and officers and filling vacancies;*
- (d) *Which, if any, of its powers the executive board or officers may delegate to other persons or to a managing agent;*
- (e) *Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association; and*
- (f) *The method of amending the bylaws.*

- (2) *Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.*

➔SECTION 38. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, subsection (7) of Section 44 of this Act, or as otherwise provided by the declaration, the association is responsible for maintenance, repair, and replacement of the common elements, and each unit owner is responsible for maintenance, repair, and replacement of his or her unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through his or her unit reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, is liable for the prompt repair thereof.*
- (2) *In addition to the liability that a declarant as a unit owner has under Sections 1 to 54 of this Act, the declarant alone is liable for all expenses in connection with real estate subject to development rights. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real estate subject to development rights inures to the declarant.*

➔SECTION 39. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

A meeting of the association shall be held at least once each year. Special meetings of the association may be called by the president, a majority of the executive board, or by unit owners having twenty percent (20%), or any lower percentage specified in the bylaws, of the votes in the association. Not less than ten (10) days nor more than sixty (60) days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda, including the general nature of any proposed amendment to the declaration or bylaws, any budget changes, and any proposal to remove a director or officer.

➔SECTION 40. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Unless the bylaws provide otherwise, a quorum is deemed present throughout any meeting of the association if persons entitled to cast twenty percent (20%) of the votes which may be cast for election of the executive board are present in person or by proxy at the beginning of the meeting.*
- (2) *Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the executive board if persons entitled to cast fifty percent (50%) of the votes on that board are present at the beginning of the meeting.*

➔SECTION 41. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *If only one (1) of the multiple owners of a unit is present at a meeting of the association, he or she is entitled to cast all the votes allocated to that unit. If more than one (1) of the multiple owners of a unit are present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one (1) of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.*
- (2) *Votes allocated to a unit may be cast pursuant to proxy duly executed by a unit owner. If a unit is owned by more than one (1) person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section, except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one (1) year after its date, unless it specifies a shorter term.*
- (3) *If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units:*
 - (a) *Subsections (1) and (2) of this section apply to lessees as if they were unit owners;*
 - (b) *Unit owners who have leased their units to other persons shall not cast votes on those specified matters;*
 - (c) *Lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners; and*
 - (d) *Unit owners shall also be given notice, as provided in Section 39 of this Act, of all meetings at which lessees may be entitled to vote.*
- (4) *No votes allocated to a unit owned by the association may be cast.*

➔SECTION 42. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Neither the association nor any unit owner except the declarant shall be liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain.*
- (2) *An action alleging a wrong done by the association shall be brought against the association and not against any unit owner.*
- (3) *If the wrong occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association shall be liable to the association or to any unit owner:*
 - (a) *For all tort losses not covered by insurance suffered by the association or that unit owner; and*
 - (b) *For all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission.*
- (4) *Whenever the declarant is liable to the association under this section, the declarant shall be liable for all litigation expenses, including reasonable attorneys fees, incurred by the association.*
- (5) *Any statute of limitation affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association shall be governed by Section 48 of this Act.*

➔SECTION 43. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Portions of the common elements may be conveyed or subjected to a lien or security interest by the association if persons entitled to cast at least eighty percent (80%) of the votes in the association, including eighty percent (80%) of the votes allocated to units not owned by a declarant, or any larger percentage the declaration specifies, agree to that action; however, all the owners of units to which any limited common element is allocated shall agree in order to convey that limited common element or subject it to a lien or security interest. The declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale are an asset of the association.*
- (2) *An agreement to convey common elements or subject them to a lien or security interest shall be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement shall specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof shall be recorded in every county in which a portion of the condominium is situated, and shall be effective only upon recordation.*
- (3) *The association, on behalf of the unit owners, may contract to convey common elements, or subject them to a lien or security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.*
- (4) *Any purported conveyance, encumbrance, judicial sale, or other voluntary transfer of common elements, unless made pursuant to this section, shall be void.*
- (5) *A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.*
- (6) *Unless the declaration otherwise provides, a conveyance or encumbrance of common elements pursuant to this section does not affect the priority or validity of pre-existing encumbrances.*

➔SECTION 44. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:*
 - (a) *Property insurance on the common elements insuring against fire and extended coverage perils and such other risks as may be determined by the association. The total amount of insurance after application of any deductibles shall be not less than one hundred percent (100%) of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and*
 - (b) *Liability insurance, including medical payments insurance, in an amount determined by the executive board but not less than any amount specified in the declaration, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.*
- (2) *If the insurance described in subsection (1) of this section is not reasonably available, the association shall immediately cause notice of that fact to be hand-delivered or sent prepaid by United States mail to all unit owners. The declaration may require the association to carry any other insurance, and the association may carry any other insurance it deems appropriate to protect the association or the unit owners.*
- (3) *Insurance policies carried pursuant to subsection (1) of this section shall provide that:*
 - (a) *Each unit owner is an insured person under the policy with respect to liability arising out of his or her interest in the common elements or membership in the association;*
 - (b) *The insurer waives its right to subrogation under the policy against any unit owner or member of his or her household;*
 - (c) *No act or omission by any unit owner, unless acting within the scope of his or her authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and*
 - (d) *If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.*

- (4) *Any loss covered by the property policy under subsection (1) of this section shall be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any mortgagee. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to subsection (7) of this section, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.*
- (5) *An insurance policy issued to the association shall not prevent a unit owner from obtaining insurance for his or her own benefit.*
- (6) *An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or mortgagee. The insurer issuing the policy shall not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or nonrenewal has been mailed to the association, each unit owner, and each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses.*
- (7) *Disposition of insurance proceeds shall be made as follows:*
- (a) *Any portion of the condominium for which insurance is required under this section and which is damaged or destroyed shall be repaired or replaced promptly by the association unless:*
1. *The condominium is terminated;*
 2. *Repair or replacement would be illegal under any state statute or local health or safety ordinance; or*
 3. *Eighty percent (80%) of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild.*
- The cost of repair or replacement in excess of insurance proceeds and reserves shall be a common expense;*
- (b) *If the entire condominium is not repaired or replaced:*
1. *The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium;*
 2. *The insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and*
 3. *The remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units.*
- If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been acquired by eminent domain under Section 7 of this Act, and the association shall promptly prepare, execute, and record an amendment to the declaration reflecting the reallocations; and*
- (c) *Notwithstanding the provisions of this subsection, Section 29 of this Act governs the distribution of insurance proceeds if the condominium is terminated.*
- (8) *The provisions of this section may be varied or waived in the case of a condominium all of whose units are restricted to nonresidential use.*

➔SECTION 45. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves may be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments.

➔SECTION 46. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments shall be made at least annually and based on a budget adopted at least annually by the association.*
- (2) *Except for assessments under subsections (3), (4), and (5) of this section, all common expenses shall be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to subsection (1) of Section 19 of this Act. Any past due common expense assessment or installment thereof shall bear interest at the rate established by the association not exceeding eighteen percent (18%) per year.*
- (3) *To the extent required by the declaration:*
 - (a) *Any common expense associated with the maintenance, repair, or replacement of a limited common element shall be assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;*
 - (b) *Any common expense or portion thereof benefiting fewer than all of the units shall be assessed exclusively against the units benefited; and*
 - (c) *The costs of insurance shall be assessed in proportion to risk and the costs of utilities shall be assessed in proportion to usage.*
- (4) *Assessments may be made to pay a judgment against the association and, if made, shall only be made against the units in the condominium at the time the judgment was entered, in proportion to their common expense liabilities.*
- (5) *If any common expense is caused by the misconduct of any unit owner, the association may assess that expense exclusively against his or her unit.*
- (6) *If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities.*

➔SECTION 47. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *The association shall have a lien on a unit for any assessment levied against that unit or fines imposed against its unit owner from the time the assessment or fine becomes due and, if the assessment is payable in installments, the lien shall be for the full amount of the assessment at the time the first installment becomes due. The association's lien may be foreclosed in like manner as a mortgage on real estate. Unless the declaration otherwise provides, fees, charges, late charges, reasonable collection costs, attorney fees, fines, and interest charged pursuant to subsection (1)(j) to (l) of Section 34 of this Act, shall be secured by the lien and enforceable as assessments under this section.*
- (2) *A lien under this section shall take priority over all other liens and encumbrances on a unit, except:*
 - (a) *Liens and encumbrances recorded before the recordation of the declaration;*
 - (b) *A mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and*
 - (c) *Liens for real estate taxes and other governmental assessments or charges against the unit.*
- (3) *Unless the declaration otherwise provides, if two (2) or more associations have liens for assessments created at any time on the same real estate, those liens shall have equal priority.*
- (4) *Recording of the declaration constitutes record notice and perfection of the lien. No further recordation of any claim of lien for assessment under this section shall be required.*
- (5) *A lien for unpaid assessments shall be extinguished unless proceedings to enforce the lien are instituted within five (5) years after the full amount of the assessments becomes due.*
- (6) *Nothing in this section shall be construed to prohibit actions or suits to recover sums for which subsection (1) of this section creates a lien or to prohibit an association from taking a deed in lieu of foreclosure.*
- (7) *A judgment or decree in any action brought under this section shall include costs and reasonable attorney's fees for the prevailing party.*
- (8) *The association shall, upon written request, provide a unit owner a recordable statement setting forth the amount of unpaid assessments against his or her unit. The statement shall be delivered within ten (10)*

business days after receipt of the request and shall be binding on the association, the executive board, and every unit owner.

➔SECTION 48. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, a judgment for money against the association, if recorded, shall not be a lien on the common elements but shall be a lien in favor of the judgment lienholder against all of the units in the condominium at the time the judgment was entered. No other property of a unit owner shall be subject to the claims of creditors of the association.*
- (2) *If the association has granted a lien or security interest in the common elements to a creditor of the association pursuant to Section 43 of this Act, the holder of that lien or security interest shall exercise its right against the common elements before its judgment lien on any unit may be enforced.*
- (3) *Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien securing the obligation to pay for work performed or materials supplied before creation of the condominium, becomes effective against two (2) or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to his or her unit, and the lienholder, upon receipt of payment, shall promptly deliver a release of the lien covering that unit. The amount of the payment shall be proportionate to the ratio which that unit owner's common expense liability bears to the common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association shall not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.*
- (4) *A judgment against the association shall be indexed in the name of the condominium and the association and, when so indexed, shall be notice of the lien against the units.*

➔SECTION 49. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

The association shall keep financial records sufficiently detailed to enable the association to comply with Section 52 of this Act. All financial and other records shall be made reasonably available for examination by any unit owner and his or her authorized agents.

➔SECTION 50. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

With respect to a third person dealing with the association in the association's capacity as a trustee:

- (1) *The existence of trust powers and their proper exercise by the association may be assumed without inquiry;*
- (2) *A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers;*
- (3) *A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise; and*
- (4) *A third person is not bound to ensure the proper application of trust assets paid or delivered to the association in its capacity as trustee.*

➔SECTION 51. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) *This section and Sections 53 and 54 of this Act apply to all units subject to Sections 1 to 54 of this Act, except as provided in subsection (2) of this section or as modified or waived by agreement of purchasers of units in a condominium in which all units are restricted to nonresidential use.*
- (2) *The certificate referred to in Section 52 of this Act shall also be prepared or delivered in the case of:*
 - (a) *A gratuitous disposition of a unit;*
 - (b) *A disposition pursuant to court order;*
 - (c) *A disposition by a government or governmental agency;*
 - (d) *A disposition by foreclosure or deed in lieu of foreclosure;*
 - (e) *A disposition to a person in the business of selling real estate who intends to offer those units to purchasers; or*

(f) A disposition that may be canceled at any time and for any reason by the purchaser without penalty.

➔SECTION 52. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) A seller of a unit shall furnish to a purchaser, upon request and before execution of any contract for sale of a unit, or otherwise before conveyance, a copy of the declaration, other than the plats and plans, and a copy of the bylaws, the rules or regulations of the association, and a certificate containing:*
 - (a) A statement disclosing the effect on the proposed disposition of any right of first refusal or other restraint on the free alienability of the unit;*
 - (b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner;*
 - (c) A statement of any other fees payable by unit owners;*
 - (d) A statement of any capital expenditures anticipated by the association for the current and, if known, next two (2) fiscal years;*
 - (e) A statement of the amount of any reserves for capital expenditures, if any, and of any portions of those reserves designated by the association for any specified projects;*
 - (f) The most recent regularly prepared balance sheet and income and expense statement, if any, of the association;*
 - (g) The current operating budget of the association;*
 - (h) A statement of any unsatisfied judgments against the association and the status of any pending suits in which the association is a defendant;*
 - (i) A statement describing any insurance coverage provided for the benefit of unit owners; and*
 - (j) If any portion of the condominium is situated upon a leasehold estate, a statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof.*
- (2) The association shall, within ten (10) days after a request by a unit owner, furnish a certificate containing the information necessary to enable the unit owner to comply with subsection (1) of this section. A unit owner providing a purchaser with the certificate issued pursuant to this subsection shall not be liable to the purchaser for any erroneous information provided by the association and included in the certificate.*
- (3) A unit owner shall not be liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the sales contract is voidable by the purchaser until the certificate has been provided and for five (5) days thereafter or until conveyance, whichever first occurs.*

➔SECTION 53. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

Before conveying real estate to the association, the declarant shall have that real estate released from all liens, the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units.

➔SECTION 54. A NEW SECTION OF KRS CHAPTER 381 IS CREATED TO READ AS FOLLOWS:

- (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on plats or plans prepared pursuant to Section 21 of this Act.*
- (2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium affected by the exercise of rights reserved or created by Sections 22, 23, 24, 25, and 27 of this Act.*

➔Section 55. KRS 381.865 is amended to read as follows:

The administrator, or board of administration, or the person appointed pursuant to the bylaws of the regime, shall keep a book with a detailed account of the receipts and expenditures affecting the project and its administration and specifying the maintenance and repair expenses of the common elements and any other common expenses incurred by or in behalf of the regime. Both the book and vouchers accrediting the entries made thereon shall be available for examination by all the co-owners at convenient hours on working days that shall be set and announced for general

knowledge. All books and records shall be kept in accordance with good accounting procedures and be audited **or reviewed** at least once a year by an **independent accountant**~~auditor~~ outside of the organization.

➔Section 56. This Act takes effect January 1, 2011.

Signed by Governor April 8, 2010.

CHAPTER 98

(HB 428)

AN ACT relating to felony offenders.

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

➔Section 1. KRS 186.412 is amended to read as follows:

- (1) (a) A person who was under the age of eighteen (18) years at the time of application for an instruction permit and is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days and has completed a driver training program under KRS 186.410(4).
- (b) A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days.
- (c) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.
- (2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. ***Except as provided in paragraphs (b) and (c) of subsection (8) of this section,*** the application form shall require the person's:
 - (a) Full legal name and signature;
 - (b) Date of birth;
 - (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;
 - (d) Sex;
 - (e) Present Kentucky resident address, exclusive of a post office box address alone;
 - (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
 - (g) A brief physical description of the applicant;
 - (h) A statement if the person has previously been licensed as an operator in another state;
 - (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
 - (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.
- (3) A permanent resident shall present one (1) of the following documents issued by the United States Department of ***Homeland Security***~~Justice~~, ***United States Bureau of Citizenship and Immigration Services***~~Immigration and Naturalization Service~~:
 - (a) An I-551 card with a photograph of the applicant; or

- (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of *Homeland Security*~~[Justice]~~, *United States Bureau of Citizenship and Immigration Services*~~[Immigration and Naturalization Service]~~ has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until -----. Employment authorized."
- (4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
 - (a) The application form shall be accompanied by the person's documentation issued by the United States Department of *Homeland Security*~~[Justice]~~, *United States Bureau of Citizenship and Immigration Services*~~[Immigration and Naturalization Service]~~, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.
 - (b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.
 - (c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.
 - (d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.
 - (e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of *Homeland Security*~~[Justice]~~, *United States Bureau of Citizenship and Immigration Services*~~[Immigration and Naturalization Service]~~, has not been reviewed by the either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
 - (f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an

applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).

- (6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (7)
 - (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.
 - (b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.
 - (c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
 - (d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of ~~Homeland Security~~~~Justice~~, **United States Bureau of Citizenship and Immigration Services**~~Immigration and Naturalization Service~~ is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.
 - (e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.
- (8)
 - (a) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.
 - (b) *Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a released felony offender resides shall issue to any felony offender, if the felony offender is eligible, released from the Department of Corrections on home incarceration, parole, completed service of sentence, shock probation, or pardon, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:*
 - 1. *The offender's certificate of birth;*
 - 2. *A copy of the offender's resident record card and parole certificate or notice of discharge;*

3. *A photograph of the offender, printed on plastic card or paper; and*
4. *A release letter that shall contain the offender's:*
 - a. *Full legal name, subject to the information available to the Department of Corrections;*
 - b. *Discharge/release date;*
 - c. *Signature;*
 - d. *Social Security number;*
 - e. *Date of birth;*
 - f. *Present Kentucky address where he or she resides; and*
 - g. *Physical description.*

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the release letter and shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after the effective date of this Act.

- (c) *Upon receipt of proper documentation provided by the Department of Corrections, the circuit clerk of the county in which a felony offender resides shall issue to any felony offender, if the felony offender is eligible, probated or conditionally discharged by the court and under the supervision of the Division of Probation and Parole, a personal identification card or, if the felony offender is eligible, an operator's license. Proper documentation under this paragraph shall consist of:*

1. *The offender's certificate of birth;*
2. *The offender's sentencing order;*
3. *A photograph of the offender, printed on plastic card or paper; and*
4. *A notarized release letter, signed by the supervising officer verifying the offender's status on supervision, that shall contain the offender's:*
 - a. *Full legal name, subject to the information available to the Division of Probation and Parole;*
 - b. *Signature;*
 - c. *Social Security number;*
 - d. *Date of birth;*
 - e. *Present Kentucky address where he or she resides; and*
 - f. *Physical description.*

The offender shall present this documentation to the circuit clerk within thirty (30) calendar days from the date of the notarized release letter. The offender shall be responsible for paying the fee for the personal identification card or operator's license pursuant to KRS 186.531. The provisions of this paragraph shall apply only to persons released on or after the effective date of this Act.

- (9) The Transportation Cabinet shall implement a voluntary statewide child identification program. The program shall issue a color photo personal identification card to a child two (2) to fifteen (15) years of age. Application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child or other proof of the child's date of birth as provided under subsection (2) of this section. The card shall contain the child's name and the toll-free number of the Kentucky Missing Persons Clearinghouse, Department of Kentucky State Police. The card shall not contain the child's Social Security number. The cabinet shall set a four dollar (\$4) fee for the child identification card. Two dollars (\$2) of the fee shall be used to cover the cabinet's cost for equipment and supplies. Two dollars (\$2) of the fee shall be an administrative fee of the circuit clerk for issuing the card which shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustments to deputy clerks. The card shall expire every four (4) years on the child's birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be four dollars (\$4), with two dollars (\$2) of the

fee going to the cabinet and two dollars (\$2) going to the Administrative Office of the Courts in the same manner as the fee for an initial card as described in this subsection. The descriptive data and a photo image of the child shall be stored in the Kentucky Driver's License Information System and may be retrieved and used by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the Kentucky Missing Persons Clearinghouse.

- (10) If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21."
- (11) A citizen of the Commonwealth renewing an operator's license by mail under subsection (10) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's license. An operator's license being renewed by mail under subsection (10) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."
- (12)
 - (a) If a citizen of the Commonwealth has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the Commonwealth and has allowed his or her operator's license to expire, he or she shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his or her license without having to take a written test or road test.
 - (b) A citizen who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving on an expired license prior to license renewal during the ninety (90) days after the person's return to the Commonwealth if the person can provide proof of his or her out-of-state service and dates of assignment.
 - (c) A citizen who meets the criteria in paragraph (a) of this subsection and who does not renew his or her license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.
 - (d) If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (13) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under KRS 311.195.
- (14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (15) An operator's license pursuant to this section shall be designated a Class D license.
- (16) A person shall not have more than one (1) license.
- (17) Upon marriage, a woman applying for an operator's license or a color photo personal identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (2) and (7) of this section:
 - (a) Use her husband's last name;
 - (b) Retain her maiden name;

- (c) Use her maiden name hyphenated with her husband's last name;
 - (d) Use her maiden name as a middle name and her husband's last name as her last name; or
 - (e) In the case of a previous marriage, retain that husband's last name.
- (18) Upon issuing an operator's license or personal identification card, the clerk shall draw the recipient's attention to the location on the license relating to anatomical gifts under subsection (13)(c) of this section and offer to allow personnel in the clerk's office to serve as the witnesses to the recipient's certification of willingness to make an anatomical gift if the recipient is the person to whom the license is issued.

Signed by Governor April 8, 2010.

CHAPTER 99

(HB 450)

AN ACT relating to extended unemployment benefits.

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

➔Section 1. KRS 341.094 is amended to read as follows:

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

- (1) "Extended benefit period" means a period which:
 - (a) Begins with the third week after a week for which there is a state "on" indicator; and
 - (b) Ends with either of the following weeks, whichever occurs later:
 - 1. The third week after the first week for which there is a state "off" indicator; or
 - 2. The thirteenth consecutive week of such period; provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.
- (2) There is a "state 'on' indicator" for this state for a week if the secretary determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this chapter:
 - (a) Equalled or exceeded one hundred twenty percent (120%) of the average of such rates for the corresponding 13-week period ending in each of the preceding two (2) calendar years, and
 - (b) Equalled or exceeded five percent (5%).
- (3) *Notwithstanding subsection (2) of this section, there is a "state 'on' indicator" for this state with respect to weeks of unemployment until the week ending four (4) weeks prior to the last week of unemployment for which one hundred percent (100%) federal sharing is available under Section 2005(a) of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, or a similar provision in effect, without regard to the extension of federal sharing for certain claims as provided under Section 2005(c) of ARRA if:*
 - (a) *The average rate of total unemployment (seasonally adjusted), as determined by the United States Secretary of Labor, for the period consisting of the most recent three (3) months for which data for all states are published before the close of such week equals or exceeds six and one-half percent (6.5%); and*
 - (b) *The average rate of total unemployment in this state (seasonally adjusted), as determined by the United States Secretary of Labor, for the three (3) month period referred to in paragraph (a) of this subsection equals or exceeds one hundred ten percent (110%) of such average for either or both of the corresponding three (3) month periods ending in the preceding two (2) calendar years.*
- (4) There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding twelve (12) weeks, ~~either~~ paragraph (a) or (b) of subsection (2) **of this section or subsection (3) of this section** was not satisfied.

➔Section 2. KRS 341.730 is amended to read as follows:

The total extended benefit amount payable to any eligible worker with respect to his applicable benefit year shall be the least of the following amounts:

- (1) Fifty percent (50%) of the maximum amount of regular benefits which were payable to him under this chapter in his applicable benefit year; or
- (2) Thirteen (13) times the weekly benefit rate which was payable to him under this chapter for a week of total unemployment in the applicable benefit year.
- (3) *Effective with respect to weeks beginning in a high unemployment period, subsections (1) and (2) of this section shall be applied by substituting:*
 - (a) *Eighty percent (80%) for fifty percent (50%) in subsection (1) of this section; and*
 - (b) *Twenty (20) for thirteen (13) in subsection (2) of this section.*

As used in this subsection, "high unemployment period" means any period during which an extended benefit period would be in effect if subsection (3) of Section 1 of this Act were applied by substituting eight percent (8%) for six and one-half percent (6.5%).

Signed by Governor April 8, 2010.

CHAPTER 100

(HB 486)

AN ACT relating to agriculture.

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

➔Section 1. KRS 413.072 is amended to read as follows:

- (1) It is the declared policy of the Commonwealth to conserve, protect, and encourage the development and improvement of its agricultural land and silvicultural land for the production of food, timber, and other agricultural and silvicultural products. When nonagricultural land uses extend into agricultural and silvicultural areas, agricultural and silvicultural operations often become the subject of nuisance suits or legal actions restricting agricultural or silvicultural operations. As a result, agricultural and silvicultural operations are sometimes either curtailed or forced to cease operations. Investments in farm and timber improvements may be discouraged. It is the purpose of this section to reduce the loss to the state of its agricultural and silvicultural resources by clarifying the circumstances under which agricultural and silvicultural operations may be deemed to be a nuisance or interfered with by local ordinances or legal actions.
- (2) No agricultural or silvicultural operation or any of its appurtenances shall be or become a nuisance or trespass, private or public, or be in violation of any zoning ordinance, or be subject to any ordinance that would restrict the right of the operator of the agricultural or silvicultural operation to utilize normal and accepted practices, by any changed conditions in or about the locality thereof after the same has been in operation for more than one (1) year, when the operation was not a nuisance at the time the operation began. The provisions of this subsection shall not apply whenever a nuisance, trespass, or zoning violation results from the negligent operation of an agricultural or silvicultural operation or its appurtenances.
- (3)
 - (a) For the purposes of this section, "agricultural operation" includes, but is not limited to, any facility for the production of crops, livestock, equine, poultry, livestock products, poultry products, horticultural products, and any generally accepted, reasonable, and prudent method for the operation of a farm to obtain a monetary profit that complies with applicable laws and administrative regulations, and is performed in a reasonable and prudent manner customary among farm operators. Agricultural practices protected by this section shall include, but not be limited to, fertilizer application, the application of pesticides or herbicides that have been approved by public authority, planting, cultivating, mowing, harvesting, land clearing, and constructing farm buildings, roads, lakes, and ponds associated with a farming operation.
 - (b) *An agricultural operation may include the practice of sustainable agriculture. For purposes of this section, sustainable agriculture includes science-based practices that are supported by research and the use of technology, demonstrated to lead to broad outcomes-based performance improvements*

that meet the needs of the present, and that improve the ability of future generations to meet their needs while advancing progress toward environmental, social, and economic goals and the well-being of agricultural producers and rural communities. Sustainable agriculture may use continuous improvement principles, with goals that include increasing agricultural productivity, improving human health through access to safe, nutritious, and affordable food, and enhancing agricultural and surrounding environments, including water, soil, and air quality, biodiversity, and habitat preservation.

- (4) For the purposes of this section, "silvicultural operation" includes timber harvest, site preparation, slash disposal including controlled burning, tree planting, precommercial thinning, release, fertilization, animal damage control, reasonable water resource management, insect and disease control in forest land, and any other generally accepted, reasonable, and prudent practice normally employed in the management of the timber resource for monetary profit. A silvicultural operation inherently includes lengthy periods between harvests and shall be deemed continuously operating so long as the property supports an actual or developing forest.
- (5) An agricultural or silvicultural operation shall not lose its status by reason of a change of ownership or a cessation of operation of no more than five (5) years or one (1) year after the expiration of a state or national program contract, either in whole or in part, nor shall it lose its status by reason of changes of crops or methods of production due to the introduction and use of new and generally accepted technologies which allow the operator to continue an existing agricultural or silvicultural corporation, unless the operation is substantially changed.
- (6) The provisions of this section shall not affect the right of any person, firm, or corporation to recover damages for any injuries or damages sustained by them on account of pollution of the waters of any stream or ground water of the person, firm, or corporation.
- (7) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make an agricultural or silvicultural operation or its appurtenances a nuisance per se, or providing for abatement thereof as a nuisance, a trespass, or a zoning violation in the circumstance set forth in this section shall be void. However, the provisions of this subsection shall not apply whenever a nuisance results from the negligent operation of any such agricultural operation or any of its appurtenances.
- (8) *Any administrative regulation promulgated by any agency that establishes standards for harvesting or producing agricultural crops in a sustainable manner shall be based on the principles outlined in this section and shall allow the use of best management practices developed under KRS 224.71-100 to 224.71-140.*

Signed by Governor April 8, 2010.

CHAPTER 101

(HB 500)

AN ACT relating to crime victims.

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

➔Section 1. KRS 216B.400 is amended to read as follows:

- (1) Where a person has been determined to be in need of emergency care by any person with admitting authority, no such person shall be denied admission by reason only of his or her inability to pay for services to be rendered by the hospital.
- (2) Every hospital of this state which offers emergency services shall provide that a physician, ~~or~~ a sexual assault nurse examiner, who shall be a registered nurse licensed in the Commonwealth and credentialed by the Kentucky Board of Nursing as provided under KRS 314.142, *or another qualified medical professional, as defined by administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in Section 3 of this Act*, is available on call twenty-four (24) hours each day for the examinations of persons *seeking treatment as reported to any law enforcement agency to be* victims of sexual offenses as defined by KRS 510.010 to 510.140, 530.020, 530.064(1)(a), and 531.310.

- (3) An examination provided in accordance with this section of a victim of a sexual offense may be performed in a sexual assault examination facility as defined in KRS 216B.015. An examination under this section shall apply only to an examination of a victim.
- (4) The physician, ~~or~~ sexual assault nurse examiner, *or other qualified medical professional*, acting under a statewide medical *forensic* protocol which shall be developed by the *Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in Section 3 of this Act* ~~chief medical examiner~~, and promulgated by the secretary of justice and public safety pursuant to KRS Chapter 13A shall, upon the request of any peace officer or prosecuting attorney, and with the consent of the ~~reported~~ victim, or upon the request of the ~~reported~~ victim, examine such person for the ~~purposes~~ *purpose* of *providing basic medical care relating to the incident and* gathering *samples that may be used as* physical evidence. This examination shall include but not be limited to:
 - (a) Basic treatment and ~~sample~~ *evidence* gathering services; and
 - (b) Laboratory tests, as appropriate.
- (5) Each ~~reported~~ victim shall be informed of available services for treatment of *sexually transmitted infections* ~~venereal disease~~, pregnancy, and other medical and psychiatric problems. Pregnancy counseling shall not include abortion counseling or referral information.
- (6) Each ~~reported~~ victim shall be informed of available crisis intervention or other mental health services provided by regional rape crisis centers providing services to victims of sexual assault.
- (7) Notwithstanding any other provision of law, a minor may consent to examination under this section. This consent is not subject to disaffirmance because of minority, and consent of the parents or guardians of the minor is not required for the examination.
- (8)
 - (a) The examinations provided in accordance with this section shall be paid for by the Crime Victims' Compensation Board at a rate to be determined by the administrative regulation promulgated by the board after consultation with the Sexual Assault Response Team Advisory Committee as defined in KRS 403.707.
 - (b) Upon receipt of a completed ~~original~~ claim form supplied by the board and itemized billing for a forensic sexual assault examination *or related services within the scope of practice of the respective provider*, the board shall reimburse the hospital or sexual assault examination facility, *pharmacist, health department*, ~~and the~~ physician, ~~or~~ sexual assault nurse examiner, *or other qualified medical professional* as provided in administrative regulations promulgated by the board pursuant to KRS Chapter 13A. Reimbursement shall be made to an out-of-state nurse who is credentialed in the other state to provide sexual assault examinations, an out-of-state hospital, or an out-of-state physician if the sexual assault occurred in Kentucky.
 - (c) Independent investigation by the Crime Victims' Compensation Board shall not be required for payment of claims under this section; however, the board may require additional documentation or proof that the forensic medical examination was performed.
- (9) No charge shall be made to the victim for sexual assault examinations by the hospital, the sexual assault examination facility, the physician, *the pharmacist, the health department*, the sexual assault nurse examiner, *other qualified medical professional*, the victim's insurance carrier, or the Commonwealth.
- (10)
 - (a) *Each victim shall have the right to determine whether a report or other notification shall be made to law enforcement, except where reporting of abuse and neglect of a child, spouse, and other vulnerable adult is required, as set forth in KRS 209.030, 209A.030, and 620.030. No victim shall be denied an examination because the victim chooses not to file a police report, cooperate with law enforcement, or otherwise participate in the criminal justice system.*
 - (b)
 1. *All samples collected during an exam where the victim has chosen not to immediately report to law enforcement shall be stored, released, and destroyed, if appropriate, in accordance with an administrative regulation promulgated by the Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee as defined in Section 3 of this Act.*

2. *Facilities collecting samples pursuant to this section may provide the required secure storage, sample destruction, and related activities, or may enter into agreements with other agencies qualified to do so, pursuant to administrative regulation.*
3. *All samples collected pursuant to this section shall be stored for at least ninety (90) days from the date of collection in accordance with the administrative regulation promulgated pursuant to this subsection.*
4. *Notwithstanding KRS 524.140, samples collected during exams where the victim chose not to report immediately or file a report within ninety (90) days after collection may be destroyed as set forth in accordance with the administrative regulation promulgated pursuant to this subsection. No hospital, sexual assault examination facility, or designated storage facility shall be liable for destruction of samples after the required storage period has expired.*

➔Section 2. KRS 314.011 is amended to read as follows:

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

- (1) "Board" means Kentucky Board of Nursing;
- (2) "Delegation" means directing a competent person to perform a selected nursing activity or task in a selected situation under the nurse's supervision and pursuant to administrative regulations promulgated by the board in accordance with the provisions of KRS Chapter 13A;
- (3) "Nurse" means a person who is licensed or holds the privilege to practice under the provisions of this chapter as a registered nurse or as a licensed practical nurse;
- (4) "Nursing process" means the investigative approach to nursing practice utilizing a method of problem-solving by means of:
 - (a) Nursing diagnosis, a systematic investigation of a health concern, and an analysis of the data collected in order to arrive at an identifiable problem; and
 - (b) Planning, implementation, and evaluation based on nationally accepted standards of nursing practice;
- (5) "Registered nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in registered nursing practice;
- (6) "Registered nursing practice" means the performance of acts requiring substantial specialized knowledge, judgment, and nursing skill based upon the principles of psychological, biological, physical, and social sciences in the application of the nursing process in:
 - (a) The care, counsel, and health teaching of the ill, injured, or infirm;
 - (b) The maintenance of health or prevention of illness of others;
 - (c) The administration of medication and treatment as prescribed by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses. Components of medication administration include but are not limited to:
 1. Preparing and giving medications in the prescribed dosage, route, and frequency, including dispensing medications only as defined in subsection (17)(b) of this section;
 2. Observing, recording, and reporting desired effects, untoward reactions, and side effects of drug therapy;
 3. Intervening when emergency care is required as a result of drug therapy;
 4. Recognizing accepted prescribing limits and reporting deviations to the prescribing individual;
 5. Recognizing drug incompatibilities and reporting interactions or potential interactions to the prescribing individual; and
 6. Instructing an individual regarding medications;
 - (d) The supervision, teaching of, and delegation to other personnel in the performance of activities relating to nursing care; and

- (e) The performance of other nursing acts which are authorized or limited by the board, and which are consistent either with American Nurses' Association Standards of Practice or with Standards of Practice established by nationally accepted organizations of registered nurses;
 - (7) "Advanced registered nurse practitioner" means one who is registered and designated to engage in advanced registered nursing practice including the nurse anesthetist, nurse midwife, clinical nurse specialist, and nurse practitioner pursuant to KRS 314.042;
 - (8) "Advanced registered nursing practice" means the performance of additional acts by registered nurses who have gained added knowledge and skills through an organized postbasic program of study and clinical experience and who are certified by the American Nurses' Association or other nationally established organizations or agencies recognized by the board to certify registered nurses for advanced nursing practice. The additional acts shall, subject to approval of the board, include but not be limited to prescribing treatment, drugs, devices, and ordering diagnostic tests. Advanced registered nurse practitioners who engage in these additional acts shall be authorized to issue prescriptions for and dispense nonscheduled legend drugs as defined in KRS 217.905 and to issue prescriptions for but not to dispense Schedules II through V controlled substances as classified in KRS 218A.060, 218A.070, 218A.080, 218A.090, 218A.100, 218A.110, 218A.120, and 218A.130, under the conditions set forth in KRS 314.042 and regulations promulgated by the Kentucky Board of Nursing on or before August 15, 2006.
 - (a) Prescriptions issued by advanced registered nurse practitioners for Schedule II controlled substances classified under KRS 218A.060 shall be limited to a seventy-two (72) hour supply without any refill. Prescriptions issued under this subsection for psychostimulants may be written for a thirty (30) day supply only by an advanced registered nurse practitioner certified in psychiatric-mental health nursing who is providing services in a health facility as defined in KRS Chapter 216B or in a regional mental health-mental retardation services program as defined in KRS Chapter 210.
 - (b) Prescriptions issued by advanced registered nurse practitioners for Schedule III controlled substances classified under KRS 218A.080 shall be limited to a thirty (30) day supply without any refill. Prescriptions issued by advanced registered nurse practitioners for Schedules IV and V controlled substances classified under KRS 218A.100 and 218A.120 shall be limited to the original prescription and refills not to exceed a six (6) month supply.
 - (c) Limitations for specific controlled substances which are identified as having the greatest potential for abuse or diversion, based on the best available scientific and law enforcement evidence, shall be established in an administrative regulation promulgated by the Kentucky Board of Nursing. The regulation shall be based on recommendations from the Controlled Substances Formulary Development Committee, which is hereby created. The committee shall be composed of two (2) advanced registered nurse practitioners appointed by the Kentucky Board of Nursing, one (1) of whom shall be designated as a committee co-chair; two (2) physicians appointed by the Kentucky Board of Medical Licensure, one (1) of whom shall be designated as a committee co-chair; and one (1) pharmacist appointed by the Kentucky Board of Pharmacy. The initial regulation shall be promulgated on or before August 15, 2006, and shall be reviewed at least annually thereafter by the committee.
- Nothing in this chapter shall be construed as requiring an advanced registered nurse practitioner designated by the board as a nurse anesthetist to obtain prescriptive authority pursuant to this chapter or any other provision of law in order to deliver anesthesia care. The performance of these additional acts shall be consistent with the certifying organization or agencies' scopes and standards of practice recognized by the board by administrative regulation;
- (9) "Licensed practical nurse" means one who is licensed or holds the privilege under the provisions of this chapter to engage in licensed practical nursing practice;
 - (10) "Licensed practical nursing practice" means the performance of acts requiring knowledge and skill such as are taught or acquired in approved schools for practical nursing in:
 - (a) The observing and caring for the ill, injured, or infirm under the direction of a registered nurse, a licensed physician, or dentist;
 - (b) The giving of counsel and applying procedures to safeguard life and health, as defined and authorized by the board;

- (c) The administration of medication or treatment as authorized by a physician, physician assistant, dentist, or advanced registered nurse practitioner and as further authorized or limited by the board which is consistent with the National Federation of Licensed Practical Nurses or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
 - (d) Teaching, supervising, and delegating except as limited by the board; and
 - (e) The performance of other nursing acts which are authorized or limited by the board and which are consistent with the National Federation of Practical Nurses' Standards of Practice or with Standards of Practice established by nationally accepted organizations of licensed practical nurses;
- (11) "School of nursing" means a nursing education program preparing persons for licensure as a registered nurse or a practical nurse;
 - (12) "Continuing education" means offerings beyond the basic nursing program that present specific content planned and evaluated to meet competency based behavioral objectives which develop new skills and upgrade knowledge;
 - (13) "Nursing assistance" means the performance of delegated nursing acts by unlicensed nursing personnel for compensation under supervision of a nurse;
 - (14) "Sexual assault nurse examiner" means a registered nurse who has completed the required education and clinical experience and maintains a current credential from the board as provided under KRS 314.142 to conduct forensic examinations of victims of sexual offenses under the medical protocol issued by the ***Justice and Public Safety Cabinet in consultation with the Sexual Assault Response Team Advisory Committee***~~{Office of the Kentucky State Medical Examiner}~~ pursuant to KRS 216B.400(4);
 - (15) "Competency" means the application of knowledge and skills in the utilization of critical thinking, effective communication, interventions, and caring behaviors consistent with the nurse's practice role within the context of the public's health, safety, and welfare;
 - (16) "Credential" means a current license, registration, certificate, or other similar authorization that is issued by the board;
 - (17) "Dispense" means:
 - (a) To receive and distribute noncontrolled legend drug samples from pharmaceutical manufacturers to patients at no charge to the patient or any other party; or
 - (b) To distribute noncontrolled legend drugs from a local, district, and independent health department, subject to the direction of the appropriate governing board of the individual health department;
 - (18) "Dialysis care" means a process by which dissolved substances are removed from a patient's body by diffusion, osmosis, and convection from one (1) fluid compartment to another across a semipermeable membrane;
 - (19) "Dialysis technician" means a person who is not a nurse, a physician assistant, or a physician and who provides dialysis care in a licensed renal dialysis facility under the direct, on-site supervision of a registered nurse or a physician; and
 - (20) "Clinical internship" means a supervised nursing practice experience which involves any component of direct patient care.

➔Section 3. KRS 403.707 is amended to read as follows:

- (1) The Council on Domestic Violence and Sexual Assault shall create a Sexual Assault Response Team Advisory Committee.
- (2) The Sexual Assault Response Team Advisory Committee shall be co-chaired by the executive director of the Kentucky Association of Sexual Assault Programs and the commissioner of the Department of Kentucky State Police or the commissioner's designee.
- (3) The membership of the Sexual Assault Response Team Advisory Committee shall consist of the following:
 - (a) The executive director of the Kentucky Board of Nursing or the executive director's designee;
 - (b) The executive director of the Kentucky Nurses Association or the executive director's designee;
 - (c) The executive director of the Kentucky Hospital Association or the executive director's designee;

- (d) The director of the Department of Kentucky State Police Crime Lab;
 - (e) The chief medical examiner or the chief medical examiner's designee;
 - (f) The executive director of the Division of Child Abuse and Domestic Violence Services or the executive director's designee;
 - (g) The director of the Victims' Advocacy Division of the Office of the Attorney General or the director's designee;
 - (h) A sexual assault nurse examiner serving on the Governor's Council on Domestic Violence and Sexual Assault;
 - (i) A representative from a sexual assault response team serving on the Council on Domestic Violence and Sexual Assault;
 - (j) A physician appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault; and
 - (k) A Commonwealth's attorney or an assistant Commonwealth's attorney appointed by the co-chairs of the Council on Domestic Violence and Sexual Assault.
- (4) Members appointed under subsection (3)(h) to (k) of this section shall serve at the pleasure of the appointing authority and shall not serve longer than four (4) years without reappointment.
- (5) The Sexual Assault Response Team Advisory Committee shall:
- (a) Serve in an advisory capacity to the Kentucky Board of Nursing in accomplishing the duties set forth under KRS 314.142;
 - (b) Serve in an advisory capacity to the ***Justice and Public Safety Cabinet***~~chief medical examiner~~ in the development of the statewide sexual assault protocol required under KRS 216B.400(4);
 - (c) Develop a model protocol for the operation of sexual assault response teams which shall include the roles of sexual assault nurse examiners, physicians, law enforcement, prosecutors, and victim advocates;
 - (d) Provide information and recommendations concerning the activities of the agency or organization represented by each individual committee member as related to sexual assault issues and programs within the purview of the agency or organization; and
 - (e) Recommend to the Council on Domestic Violence and Sexual Assault any changes in statute, administrative regulation, training, policy, and budget to promote a multidisciplinary response to sexual assault.

Signed by Governor April 8, 2010.

CHAPTER 102

(HJR 209)

A JOINT RESOLUTION relating to the boundary between Boyle County and Lincoln County.

WHEREAS, the exact location of the boundary between Boyle County and Lincoln County was for many years in dispute; and

WHEREAS, the counties were involved in a civil action concerning the boundary dispute in Boyle Circuit Court, the case being styled *The County of Boyle vs. The County of Lincoln*, Civil Action No. 85-CI-00161; and

WHEREAS, the counties were each represented by counsel in the civil action in the Boyle Circuit Court; and

WHEREAS, counsel for the counties entered into an agreed order to settle the dispute; and

WHEREAS, counsel agreed that a survey performed by Lindon Estes, Estes Engineering and Surveying, Inc., under date of February 28, 1993, would be adopted and confirmed as the official boundary line between Boyle County and Lincoln County; and

WHEREAS, the Boyle Circuit Court entered a Final Judgment on September 30, 1993, that recognized the agreement between the parties and adopted, confirmed, and ratified the survey by Lindon Estes as the official line between the two counties, a copy of which was attached to the Final Judgment for reference; and

WHEREAS, the Boyle Circuit Court ordered a copy of the Final Judgment and the attached survey to be filed in the Circuit Clerk's office in both counties, and ordered the Final Judgment and the attached survey to be filed of record in the County Clerk's office in both counties; and

WHEREAS, the Boyle Circuit Court directed Lindon Estes to set appropriate markers at each logical juncture, road crossing, or other definable landmark so that the county boundary line could be perceived and easily detected by all concerned; and

WHEREAS, the Boyle Circuit Court instructed each county to give newspaper advertising in conformity with KRS Chapter 424 advising the public of the changes in the county boundary line; and

WHEREAS, the Boyle Circuit Court's Final Judgment was a final and appealable judgment as of September 22, 1993; and

WHEREAS, the Boyle Circuit Court's judgment was not appealed by either party;

NOW, THEREFORE,

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

➔Section 1. The General Assembly recognizes that the boundary between Boyle County and Lincoln County was in dispute for many years prior to the Boyle Circuit Court's entry of Final Judgment in Civil Action No. 85-CI-00161.

➔Section 2. The General Assembly approves the Boyle Circuit Court's Final Judgment recognizing the agreement between the parties and establishing the boundary between Boyle County and Lincoln County.

➔Section 3. The General Assembly recognizes the boundary line established by the survey performed by Lindon Estes, Estes Engineering and Surveying, Inc., under date of February 28, 1993, and attached to the Boyle Circuit Court's Final Judgment entered September 30, 1993, in Civil Action No. 85-CI-00161, as the official boundary line between Boyle County and Lincoln County.

Signed by Governor April 8, 2010.

CHAPTER 103

(HB 283)

AN ACT relating to coal mining permits and declaring an emergency.

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

➔Section 1. KRS 350.060 is amended to read as follows:

- (1) (a) No person shall engage in surface coal mining and reclamation operations without having first obtained from the cabinet a permit designating the area of land affected by the operation. Permits shall authorize the permittee to engage in surface coal mining and reclamation operations upon the area of land described in his application for a period not to exceed five (5) years. However, if an applicant demonstrates that a specified longer term is reasonably needed to obtain necessary financing for equipment and the opening of the operation and if the application is full and complete for the specified longer term, the cabinet may grant a permit for the longer term. No mining shall be permitted beyond the time period obligations of the initial or extended bond coverage.
- (b) Subject to the provisions of KRS 350.010(1) and (2), no person shall knowingly and willfully receive, transport, sell, convey, transfer, trade, exchange, donate, purchase, deliver, or in any way derive benefit from coal removed from any surface mining operation which does not have a permit as required under this section.
- (2) No permit or revision application shall be approved unless the application affirmatively demonstrates, and the cabinet finds in writing on the basis of the information set forth in the application or from information otherwise available, that the permit application is accurate and complete and that all the requirements of this chapter have been complied with.

- (3) A person desiring a permit to engage in surface coal mining operations shall file an application which shall state:
- (a) The location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;
 - (b) The owner or owners of the surface of the area of land to be affected by the permit and the owner or owners of all surface area adjacent to any part of the affected area;
 - (c) The owner or owners of the coal to be mined;
 - (d) The source of the applicant's legal right to mine the coal on the land affected by the permit;
 - (e) The permanent and temporary post office addresses of the applicant, which shall be updated immediately if changed at any point prior to final bond release;
 - (f) Whether the applicant or any person, partnership, or corporation associated with the applicant holds or has held any other permits under this chapter, and an identification of the permits;
 - (g) The names and addresses of every officer, partner, director, or person performing a function similar to a director of the applicant, together with the names and addresses of any individual owning of record ten percent (10%) or more of any class of voting stock of the applicant, and whether the applicant or any person is subject to any of the provisions of subsection (3) of KRS 350.130 and he shall so certify. The permittee shall submit updates of this information as changes occur or as otherwise provided by administrative regulation; however, failure to submit updated information shall constitute a violation of this chapter only upon the permittee's refusal or failure to timely submit the information to the cabinet upon request. Upon receipt of updated information satisfactory to the cabinet, the cabinet shall promptly update its computer system containing the information;
 - (h) A listing of any violations of this chapter, Public Law 95-87, and any law, rule, or regulation in effect for the protection of air or water resources incurred by the applicant in connection with any surface coal mining and reclamation operation during the three (3) year period prior to the date of an application. The list shall indicate the final resolution of the violations; and
 - (i) Whether the area of land to be affected by the operation has been previously mined and is in compliance with current reclamation standards, and, if not, identify the needed reclamation work.
- (4) The application for a permit shall be accompanied by an official document, and an affidavit attesting to the document's authenticity, which will evidence what particular business entity the applicant is, whether a foreign or domestic corporation, a partnership, an entity doing business as another, or, if sole proprietorship, an affidavit so stating.
- (5) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of a United States Geological Survey topographic map or other map acceptable to the cabinet on which the applicant has indicated the location of the operation, the course which would be taken by drainage from the operation to the stream or streams to which the drainage would normally flow, the name of the applicant and date, and the name of the person who located the operation on the map.
- (6) The application for a permit shall be accompanied by copies, in numbers satisfactory to the cabinet, of an enlarged United States Geological Survey topographic map or other map acceptable to the cabinet meeting the requirements of paragraphs (a) to (i) of this subsection. The map shall:
- (a) Be prepared and certified by a professional engineer registered under the provisions of KRS Chapter 322. The certification shall be in the form as provided in subsection (8) of this section, except that the engineer shall not be required to certify the true ownership of property under paragraph (d) of this subsection;
 - (b) Identify the area to correspond with the application;
 - (c) Show adjacent deep mining;
 - (d) Show the boundaries of surface properties and names of owners of the affected area and adjacent to any part of the affected area;
 - (e) Be of a scale of 1:24,000 or larger;

- (f) Show the names and locations of all streams, creeks, or other bodies of public water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected within three hundred (300) feet of an as-drilled oil or gas well, but as-drilled locations of oil and gas wells shall be certified only by a licensed surveyor and the well locations shall be entered in coordinates in feet units, using NAD 83, with Single Zone Projection, as those terms are defined in KRS 350.010;
 - (g) Show by appropriate markings the boundaries of the area of land affected, the cropline of the seam or deposit of coal to be mined, and the total number of acres involved in the area of land affected;
 - (h) Show the date on which the map was prepared, the north point, and the quadrangle name; and
 - (i) Show the drainage plan on and away from the area of land affected. The plan shall indicate the directional flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge.
- (7) Each application shall include a determination of the probable hydrologic consequences of the mining and reclamation operations, both on and off the mine site, with respect to the hydrologic regime, quantity and quality of water in surface and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions, and the collection of sufficient data for the mine site and surrounding areas so that an assessment can be made by the cabinet of the probable cumulative impacts of all anticipated mining in the area upon the hydrology of the area and particularly upon water availability. This determination shall not be required until the time hydrologic information on the general area prior to mining is made available from an appropriate federal or state agency. The permit shall not be approved until the information is available and is incorporated into the application.
- (8) All certifications required by this chapter to be made by professional engineers shall be done in the form prescribed by the cabinet and shall be reasonably specific as to the work being certified. The cabinet may reject any document or map as incomplete if it is not properly certified.
- (9) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation; the manner, time, and distance for backfilling; grading work; and a reclamation plan for the affected area, which proposals shall meet the requirements of this chapter and administrative regulations adopted pursuant thereto.
- (10) The application for a permit shall be accompanied by proof that the applicant has public liability insurance coverage satisfactory to the cabinet for the surface mining and reclamation operations for which the permit is sought, or proof that the applicant has satisfied self-insurance requirements as provided by administrative regulations of the cabinet. The coverage shall be maintained in full force and effect during the terms of the permit and any permit renewal, and until reclamation operations are completed.
- (11) A basic fee set by administrative regulation, and bearing a reasonable relationship to the cost of processing the permit application but not to exceed **two thousand five hundred dollars (\$2,500)**~~three hundred seventy-five dollars (\$375)~~, plus a fee set by administrative regulation but not to exceed seventy-five dollars (\$75), for each acre or fraction thereof of the area of land to be affected by the operation, shall be paid before the permit required in this section shall be issued; provided that if the cabinet approves an incremental bonding plan submitted by the applicant, the acreage fees may be paid in increments and at times corresponding to the approved plan. The applicant shall file with the cabinet a bond payable to the Commonwealth of Kentucky with surety satisfactory to the cabinet in the sum to be determined by the cabinet for each acre or fraction thereof of the area of land affected, with a minimum bond of ten thousand dollars (\$10,000), conditioned upon the faithful performance of the requirements set forth in this chapter and of the administrative regulations of the cabinet. The cabinet shall forfeit the entire amount of the bond for the permit area or increment in the event of forfeiture. In determining the amount of the bond, the cabinet shall take into consideration the character and nature of the overburden; the future suitable use of the land involved; the cost of backfilling, grading, and reclamation to be required; and the probable difficulty of reclamation, giving consideration to such factors as topography, geology, hydrology, and revegetation potential. The bond amount shall initially be computed to be sufficient to assure completion of reclamation if the work had to be performed by the cabinet in the event of forfeiture. The cabinet shall promulgate administrative regulations setting forth bonding requirements including, but not limited to, requirements for the amount, duration, release, and forfeiture of bonds.
- (12) The cabinet shall promulgate administrative regulations for the permitting of operations with surface effects of underground mining and other surface coal mining and reclamation operations consistent with this section. The cabinet shall recognize the distinct differences between the surface effects of underground mining and strip

mining, as also provided in KRS 350.151, in promulgating permitting requirements for these operations; provided, that the cabinet shall require that all the areas overlying underground workings be permitted but that the areas overlying underground workings not affected by operations and facilities occurring on the surface shall not be subject to the payment of acreage fees or bond requirements of subsection (11) of this section, KRS 350.070, or KRS 350.151.

- (13) Any valid permit issued pursuant to this chapter shall carry with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. An applicant for renewal of a permit shall pay a basic fee set by regulation, not to exceed *seven hundred fifty dollars (\$750)*~~three hundred seventy-five dollars (\$375)~~. The holders of the permit may apply for renewal and the renewal shall be issued, provided that on application for renewal the burden shall be on the opponents of renewal, subsequent to the fulfillment of the public notice requirements of this chapter, unless it is established and written findings by the cabinet are made that:
- (a) The terms and conditions of the existing permit are not being satisfactorily met;
 - (b) The present surface coal mining and reclamation operation is not in compliance with the environmental protection standards of this chapter;
 - (c) The renewal requested substantially jeopardizes the applicant's continuing responsibility on existing permit areas;
 - (d) The applicant has not provided evidence that the performance bond in effect for the operation will continue in full force and effect for any renewal requested in the application as well as any additional bond the cabinet might require; or
 - (e) Any additional revised or updated information required by the cabinet has not been provided.

Prior to the approval of any renewal of permit, the cabinet shall provide notice to the appropriate public authorities.

- (14) If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of a valid permit which addresses any new areas of surface disturbance shall be subject to the full standards applicable to new applications under this chapter.
- (15) Any permit renewal shall be for a term not to exceed the period of the original permit. Application for permit renewal shall be made at least one hundred twenty (120) days prior to the expiration of the valid permit.
- (16) Notwithstanding any of the provisions of this section, a permit shall terminate if the permittee has not commenced the surface coal mining operations covered by the permit within three (3) years of the issuance of the permit. However, the cabinet may grant reasonable extensions of time upon a showing that the extensions are necessary by reason of litigation precluding commencement of operations, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee. With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, the permittee shall be deemed to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.
- (17) Each application for a permit or revision for auger mining on a previously mined area shall contain information to describe the area to be affected, to show that the proposed method of operation will result in stable post-mining conditions, and reduce or eliminate adverse environmental conditions created by previous mining activities. If the cabinet determines that the affected area cannot be stabilized and reclaimed subsequent to augering or that the operation will result in an adverse impact to the proposed or adjacent area, the permit or revision shall not be issued. The cabinet shall, consistent with all applicable requirements of this chapter, issue a permit or revision if the applicant demonstrates that the proposed coal mining operations will provide for reduction or elimination of the highwall, or reduction or abatement of adverse impacts resulting from past mining activities, or stabilization or enhancement of a previously mined area. The cabinet shall insure that all reasonably available spoil material will be used to backfill the highwall to the extent practical and feasible; provided, however, that in all cases the holes be properly sealed and backfilled to a minimum of four (4) feet above the coal seam being mined.
- (18) All operations involving the loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

➔Section 2. KRS 350.070 is amended to read as follows:

- (1) Any extensions of the area covered by the permit, except incidental boundary revisions, shall be made by application for another permit or an amendment to the permit. However, extensions of the underground mining area that are not incidental boundary revisions and do not include planned subsidence or other new proposed surface disturbances may be made by application for a major revision to the permit.
- (2) For an amendment, the permittee shall file an application, map, and revised reclamation plan in the same form and with the same content as required for an original application under this chapter. He shall pay a basic fee set by regulation and bearing a reasonable relationship to the cost of processing the permit application, not to exceed **one thousand seven hundred fifty dollars (\$1,750)**~~three hundred seventy-five dollars (\$375)~~, plus a fee set by regulation, not to exceed seventy-five dollars (\$75), for each acre or fraction of an acre for the increase requested. He shall file with the cabinet a supplemental bond in the amount to be determined under the provisions of KRS 350.060(11) for each acre or fraction of an acre of the increase approved. This application shall be subject to all of the same requirements as an original application, including, but not limited to, the same public notice, review, and issuance or denial provisions.
- (3) If the cabinet approves a reduction in the acreage covered by the permit, it shall release the bond for each acre reduced, but the bond shall not be reduced below ten thousand dollars (\$10,000). If the cabinet approves a reduction in acreage, it shall transfer the acreage fee for each acre reduced to acreage fees for subsequent permit applications by the permittee.
- (4) The cabinet shall promulgate regulations specifying the permit application information requirements and procedures, including notice and hearing, which shall apply depending on the scale or extent of a permit revision. Any revision which proposes significant alterations in the reclamation plan shall be subject to the notice and hearing requirements as set forth in the regulations of the cabinet. The applicant for a revision shall pay a basic fee set by regulation, not to exceed **seven hundred fifty dollars (\$750) for a minor revision and one thousand seven hundred fifty dollars (\$1,750) for a major revision**~~three hundred seventy-five dollars (\$375)~~, plus a fee set by regulation not to exceed seventy-five dollars (\$75), for each acre or fraction of an acre included in an incidental boundary revision.
- (5) Incidental boundary revisions shall be deemed minor revisions if they:
 - (a) Do not exceed ten percent (10%) of the initial permit acreage;
 - (b) Are contiguous with the permit acreage;
 - (c) Are within the same watershed as the initial permit acreage;
 - (d) Are required for an orderly continuation of the mining operation;
 - (e) Cover the same coal seam or seams as in the permit;
 - (f) Would only involve lands for which the hydrologic and geologic data and the probable hydrologic consequences analysis contained in the permit are applicable to the proposed incidental boundary revision;
 - (g) Would not involve properties designated as unsuitable for mining, or any properties eligible for listing on the National Register of Historic Places;
 - (h) Would not involve any of the special categories of mining listed in 30 C.F.R. Part 785 including, but not limited to, prime farmland and coal preparation plants, unless the approved permit already includes the relevant category;
 - (i) Would not constitute a change in the method of mining; and
 - (j) Would be reclaimed in conformity with the initial reclamation plan.
- (6) For the purpose of this section, the maximum acreage allowed to be added by an incidental boundary revision shall be as follows:
 - (a) Surface operations shall be allowed up to twenty (20) acres;
 - (b) Underground operations shall be allowed up to ten percent (10%) of the original permitted acreage of the underground workings or twenty (20) acres, whichever is less;

- (c) Surface disturbances of underground mines including, but not limited to, face-up areas and haul roads, shall be allowed up to twenty (20) acres;
- (d) The cumulative acreage added by successive revisions shall not exceed the above limitations.

➔Section 3. KRS 350.135 is amended to read as follows:

- (1) No surface coal mining permit issued pursuant to this chapter shall be transferred by sale, assignment, lease, or otherwise except upon the written approval by the cabinet of a joint application submitted by both the transferor and the transferee. A basic fee set by regulation, and bearing a reasonable relationship to the cost of processing the transfer, but not to exceed **seven hundred fifty dollars (\$750)**~~three hundred seventy-five dollars (\$375)~~ shall accompany the application and no acreage fee will be assessed. The transferee shall file with the application a bond satisfactory to the cabinet which shall ensure reclamation of the entire area of land affected under the permit, including areas previously affected by the transferor. All rights and liabilities under the permit shall pass to the transferee upon written approval of the transfer by the cabinet, except that the transferor shall remain liable for any civil penalties resulting from violations occurring prior to the date of approval of the transfer. The cabinet shall not approve transfer of a surface coal mining permit to any person who would be ineligible to receive a new permit under this chapter.
- (2) After the cabinet has given its written approval to the transfer, the transferee may conduct surface coal mining and reclamation operations according to the approved mining and reclamation plan of the original permittee. Any transferee seeking to change the conditions of mining or reclamation operations, or any of the terms or conditions of the original permit, shall apply for a new or revised permit pursuant to the requirements of the cabinet.
- (3) The cabinet shall not release the first permittee from bond liability under this chapter as to that particular operation until the transferee, having filed a bond satisfactory to the cabinet, receives written approval from the cabinet for the transfer, and otherwise complies with the requirements of this chapter, and provided further that the transferee shall assume as part of his obligation under this chapter, all liability for the reclamation of the area of land affected by the former permittee.
- (4) The cabinet may promulgate reasonable regulations and administrative procedures to implement this section.
- (5) The cabinet shall approve the transfer application if:
 - (a) A joint agreement or sale has been executed;
 - (b) The transferee has posted bond satisfactory to the cabinet which insures reclamation of the entire area of land affected under the permit;
 - (c) The transferee has paid the fee pursuant to subsection (1) of this section;
 - (d) The transferee has agreed to operate under provisions of the approved permit being transferred.

➔Section 4. KRS 350.139 is amended to read as follows:

- (1) All prior enactments of this General Assembly to the contrary notwithstanding, all funds received by the Environmental and Public Protection Cabinet through the payment of fees and civil penalties shall be deposited in the State Treasury to the credit of the general fund, except **those fees established in KRS 350.060(11) and (13), 350.070(2) and (4), 350.135(1), and** as provided in KRS 350.990(1). All funds from the forfeiture of bonds shall be placed in the State Treasury in an interest-bearing account and credited to a special agency account. The interest shall become a supplemental fund and may be used to supplement forfeited bonds which are inadequate to complete the reclamation plan. Except as provided in KRS 350.131(1), forfeited bond funds shall be expended upon the lands for which the bond was given. The interest may be expended upon lands other than those for which the bond was given. No more than twenty-five percent (25%) of the supplemental fund may be expended upon any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.
- (2) (a) **Subject to the limitation in paragraph (b) of this subsection, the Department for Natural Resources**~~State Treasurer~~ shall, on or before August 1 of each year, transfer **to the fiscal court of the county in which the permitted operation is located, an amount equal to** thirty-three and one-third percent (33-1/3%) of all funds paid during the preceding fiscal year as fees for the issuance of any

permit for surface coal mining operations~~[to the fiscal courts of the county in which the permitted operation is located]~~ for the general purposes of that fiscal court.

- (b) *The department shall calculate the amount to be transferred each year under this subsection as if the fee rates in effect pursuant to this chapter on October 1, 2009, were still in effect during the preceding fiscal year.*
- (3) *Except for the amount of fees paid to fiscal courts pursuant to subsection (2) of this section, all permit and acreage fees established in subsections (11) and (13) of Section 1 of this Act, subsections (2) and (4) of Section 2 of this Act, and subsection (1) of Section 3 of this Act shall be held specifically for the use of the Division of Mine Permits.*

➔Section 5. Whereas mine permit fees have been insufficient to adequately fund the permit reviewers essential to the processing of coal mine permits creating excessive and costly delays to the coal extraction industry and reducing needed coal severance revenues to the Commonwealth, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 8, 2010.

CHAPTER 104

(HB 164)

AN ACT relating to the transfer of faculty and staff providing educational services to Department of Corrections' inmates and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 196 IS CREATED TO READ AS FOLLOWS:

- (1) *Effective July 1, 2010, faculty and staff of the Kentucky Community and Technical College System who:*
 - (a) *Are engaged in providing educational services and support to inmates at institutions; and*
 - (b) *Exercise the option in subsection (4) of this section;**shall be transferred to the Department of Corrections along with the funding associated with those employees. The Personnel Cabinet shall assist the department in implementing the transfer of employees according to this section.*
- (2) *Employees transferred pursuant to subsection (1) of this section shall retain:*
 - (a) *Their salaries and leave time balances accumulated as of the transfer date;*
 - (b) *For purposes of determining leave time accumulation, the date of initial employment with a state agency or a postsecondary educational institution, whichever is earlier; and*
 - (c) *For purposes of calculating retirement and retiree health benefits and contributions, the earlier of the date of initial participation in:*
 - 1. *A state-administered retirement system if the employee has participated or is participating in the Kentucky Employees Retirement System or the Kentucky Teachers' Retirement System; or*
 - 2. *A defined contribution plan that meets requirements of 26 U.S.C. sec. 403(b), for employees of the Kentucky Community and Technical College System.*

Nothing in this paragraph shall be construed to provide additional service credit for the employee prior to the transfer date other than what has been credited to the appropriate retirement system.

- (3) *Employees exercising their option under subsection (4) of this section may elect to be covered under KRS Chapter 18A and receive:*
 - (a) *All rights and benefits provided to other employees in the department; and*
 - (b) *Their choice of retirement benefits under:*
 - 1. *The Kentucky Teachers' Retirement System; or*

2. *Hazardous duty retirement benefits under the Kentucky Employees Retirement System with hazardous duty contributions and coverage beginning July 1, 2010. The hazardous duty retirement benefits shall be calculated in accordance with KRS 61.510 to 61.705.*

- (4) *Employees of the Kentucky Community and Technical College System engaged in providing educational services and support to inmates at institutions shall choose whether to remain in their present employment and be assigned to the department to continue providing these services, or become an employee of the department under the terms of this section. Employees shall make their choice on or before June 15, 2010, and shall have access to counseling prior to June 15, 2010, by representatives of the department, the Kentucky Community and Technical College System, applicable retirement systems, and the Personnel Cabinet concerning the effect that choosing employment with the department would have on the employee. If an employee does not make a choice on or before June 15, 2010, that employee shall be deemed to have chosen to exercise the option to become an employee of the department with retirement benefits described in subsection (3)(b)2. of this section.*
- (5) *Effective July 1, 2010, all instructional supplies, equipment, funds, and records of the Kentucky Community and Technical College System associated with the provision of educational services and support to inmates at institutions shall be transferred to the department along with all financial and management oversight responsibility and liability for these programs.*

➔Section 2. KRS 61.510 is amended to read as follows:

As used in KRS 61.510 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.510 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.510 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, interim, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.510 to 61.705;
- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he serves in the position;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General

Assembly shall be credited with a month of prior service for each month he served in the position prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;

- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). For members of the General Assembly, it shall mean all amounts which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 6.505(4) or 61.560(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" of a member means:
 - (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
 - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
 - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
 - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the

- five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
- (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.510 to 61.705;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefit limits as established by 26 U.S.C. sec. 415;
- (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150. The term shall also apply to assistants who were employed by the General Assembly for at least one (1) regular legislative session prior to July 13, 2004, who elect to participate in the retirement system, and who serve for at least six (6) regular legislative sessions. Assistants hired after July 13, 2004, shall be designated as interim employees;
- (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:
- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
 - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;
 - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
 - (e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;
- (22) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;

- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall be considered a recipient only for purposes of KRS 61.691;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded actuarial accrued liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (33) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543;
- (35) "Month" means a calendar month; and
- (36) "Membership date" means:
 - (a) The date upon which the member began participating in the system as provided in KRS 61.543; *or*
 - (b) *For a member electing to participate in the system pursuant to subsection (4) of Section 1 of this Act who has not previously participated in the system or the Kentucky Teachers' Retirement System, the date the member began participating in a defined contribution plan that meets the requirements of 26 U.S.C. sec. 403(b).*

➔Section 3. KRS 61.592 is amended to read as follows:

- (1) (a) "Hazardous position" for employees participating in the Kentucky Employees Retirement System, and for employees who begin participating in the County Employees Retirement System before September 1, 2008, means:

1. Any position whose principal duties involve active law enforcement, including the positions of probation and parole officer and Commonwealth detective, active fire suppression or prevention, or other positions, including, but not limited to, pilots of the Transportation Cabinet and paramedics and emergency medical technicians, with duties that require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning; ~~and~~
 2. Positions in the Department of Corrections in state correctional institutions and the Kentucky Correctional Psychiatric Center with duties that regularly and routinely require face-to-face contact with inmates; *and*
 3. ***Positions of employees who elect coverage under subsection (3)(b)2. of Section 1 of this Act and who continue to provide educational services and support to inmates as a Department of Corrections employee.***
- (b) "Hazardous position" for employees who begin participating in the County Employees Retirement System on or after September 1, 2008, means police officers and firefighters as defined in KRS 61.315(1), paramedics, correctional officers with duties that routinely and regularly require face-to-face contact with inmates, and emergency medical technicians if:
1. The employee's duties require frequent exposure to a high degree of danger or peril and a high degree of physical conditioning; and
 2. The employee's duties are not primarily clerical or administrative.
- (c) The effective date of participation under hazardous duty coverage for positions in the Office of Alcoholic Beverage Control shall be April 1, 1998. The employer and employee contributions shall be paid by the employer and forwarded to the retirement system for the period not previously reported.
- (2) (a) Each employer may request of the board hazardous duty coverage for those positions as defined in subsection (1) of this section. Upon request, each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1) of this section for which coverage is requested. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as provided by subsection (1) of this section. ***This process shall not be required for employees who elect coverage under subsection (3)(b)2. of Section 1 of this Act.***
- (b) Each employer desiring to provide hazardous duty coverage to employees who begin participating in the County Employees Retirement System on or after September 1, 2008, may request that the board approve hazardous duty coverage for those positions that meet the criteria set forth in subsection (1)(b) of this section. Each employer shall certify to the system, in the manner prescribed by the board, the names of all employees working in a hazardous position as defined in subsection (1)(b) of this section for which coverage is requested and a job description for each position or employee. The certification of the employer shall bear the approval of the agent or agency responsible for the budget of the department or county indicating that the required employer contributions have been provided for in the budget of the employing department or county. Each employer shall also certify, under penalty of perjury in accordance with KRS Chapter 523, that each employee's actual job duties are accurately reflected in the job description provided to the system. The system shall determine whether the employees whose names have been certified by the employer are working in positions meeting the definition of a hazardous position as defined in subsection (1)(b) of this section. The board shall have the authority to remove any employee from hazardous duty coverage if the board determines the employee is not working in a hazardous duty position or if the employee is classified in a hazardous duty position but has individual job duties that do not meet the definition of a hazardous duty position or are not accurately reflected in the job descriptions filed by the employer with the system.
- (3) (a) ***An employee who elects coverage under subsection (3)(b)2. of Section 1 of this Act, and*** an employee participating in the Kentucky Employees Retirement System who is determined by the system to be working in a hazardous position in accordance with subsection (2) of this section, shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation.

An employee participating in the County Employees Retirement System who is determined by the system to be working in a hazardous duty position in accordance with subsection (2) of this section shall contribute, for each pay period for which he receives compensation, eight percent (8%) of his creditable compensation.

- (b) Each employer shall pay employer contributions based on the creditable compensation of the employees determined by the system to be working in a hazardous position at the employer contribution rate as determined by the board. The rate shall be determined by actuarial methods consistent with the provisions of KRS 61.565.
- (c) If the employer participated in the system prior to electing hazardous duty coverage, the employer may pay to the system the cost of converting the nonhazardous service to hazardous service from the date of participation to the date the payment is made, or the employer may establish a payment schedule for payment of the cost of the hazardous service above that which would be funded within the existing employer contribution rate. The employer may extend the payment schedule to a maximum of thirty (30) years. Payments made by the employer under this subsection shall be deposited to the retirement allowance account of the proper retirement system and these funds shall not be considered accumulated contributions of the individual members. If the employer elects not to make the additional payment, the employee may make the lump-sum payment in his own behalf or may pay by increments. Payments made by the employee under this subsection shall not be picked up, as described in KRS 61.560(4), by the employer. If neither the employer nor employee makes the payment, the service prior to hazardous coverage shall remain nonhazardous.
- (4) The normal retirement age, retirement allowance, other benefits, eligibility requirements, rights, and responsibilities of a member in a hazardous position, as prescribed by subsections (1), (2), and (3) of this section, and the responsibilities, rights, and requirements of his employer shall be as prescribed for a member and employer participating in the State Police Retirement System as provided for by KRS 16.505 to 16.652.
- (5) Any person employed in a hazardous position after July 1, 1972, shall be required to undergo a thorough medical examination by a licensed physician, and a copy of the medical report of the physician shall be retained on file by the employee's department or county and made available to the system upon request.
- (6) If doubt exists regarding the benefits payable to a hazardous position employee under this section, the board shall determine the benefits payable under KRS 61.510 to 61.705, or 78.510 to 78.852, or 16.505 to 16.652.

➔Section 4. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, *employees participating in the system pursuant to subsection (3)(b) 1. of Section 1 of this Act*, and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
 - (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;

- (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
 - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
 - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
 - (i) The Office of Vocational Rehabilitation;
 - (j) The Kentucky Educational Collaborative for State Agency Children;
 - (k) The Governor's Scholars Program;
 - (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
 - (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;
 - (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;
 - (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000; and
 - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional position as defined by the department.
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to

be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);

- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
 - (a) The member's actual salary; or
 - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;

- (13) "Regular interest" means interest at three percent (3%) per annum, except for an individual who becomes a member on or after July 1, 2008, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400; and
- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation.

➔Section 5. For employees electing to be covered under KRS Chapter 18A pursuant to subsection (3)(b)2. of Section 1 of this Act, hazardous duty contributions, coverage, and benefits shall begin July 1, 2010. Hazardous duty coverage shall continue while the employee is employed with the Department of Corrections in a position providing educational service and support to inmates.

➔Section 6. Whereas the transfer of employees under Section 1 of this Act takes effect on July 1, 2010, and whereas effected employees must make their choice of benefits as of June 15, 2010, after being counseled by the Department of Corrections, the Kentucky Community and Technical College System, and the Personnel Cabinet, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 8, 2010.

CHAPTER 105**(HJR 141)**

A JOINT RESOLUTION relating to natural gas retail competition.

WHEREAS, it is the policy of the Commonwealth of Kentucky to ensure that Kentucky natural gas customers receive reliable natural gas services at fair, just and reasonable rates; and

WHEREAS, in order to ensure price transparency and to create purchasing options for consumers, and with the understanding that competition is reliant upon properly structured markets supported by both regulated and competitive business entities, natural gas retail competition programs should be evaluated;

NOW, THEREFORE,

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

➔Section 1. The Kentucky Public Service Commission (PSC) is hereby directed to commence a collaborative study of natural gas retail competition programs to determine if benefits could be derived from these programs, and to determine whether natural gas retail competition programs could be crafted to benefit Kentucky consumers. The study shall include an evaluation of existing natural gas retail competition programs. Upon completion of the study, the PSC shall make a written report to the General Assembly and the Legislative Research Commission of its findings and recommendations.

➔Section 2. As a part of the study directed by this Resolution, the PSC is encouraged to seek input from interested stakeholders, including but not limited to:

- (1) The Attorney General;
- (2) Regulated local distribution companies in Kentucky as defined in KRS 278.010(3)(b), if the local distribution companies do not include natural gas marketers;
- (3) Natural gas marketers, including natural gas marketers that are not local distribution companies, utilities, natural gas companies, public service companies, or similar companies;
- (4) Representatives from consumer groups; and
- (5) Representatives from all classes of customers.

➔Section 3. The study and subsequent report to the General Assembly and the Legislative Research Commission directed by this Resolution shall consider and examine elements that shall be incorporated into any proposed natural gas retail competition program. The report shall examine the following issues which need to be addressed in order to adequately protect the public interest in any new natural gas retail competition program:

- (1) The role of the PSC in a competitive marketplace;
- (2) The obligation to serve;
- (3) The supplier of last resort;
- (4) Alternative commodity procurement procedures;
- (5) Non-discriminatory access to services offered;
- (6) Codes of conduct for marketers and affiliates of regulated utilities;
- (7) Billing which should include the desirability of the purchase of receivables;
- (8) Certification of suppliers;
- (9) Transition costs;
- (10) Stranded costs;
- (11) Uncollectibles;
- (12) Disconnections;
- (13) Steps necessary to maintain system integrity;

- (14) Access to pipeline storage capacity; and
- (15) Impacts of new natural gas retail competition programs on existing utility services and customers.

The PSC shall also establish criteria by which the effectiveness of competition and benefits to customers can be measured.

➔Section 4. The report directed by this Resolution shall be provided to the Legislative Research Commission for appropriate distribution no later than January 1, 2011. Nothing in this joint resolution shall be construed to interfere with existing natural gas retail competition programs, including the continuation or extension of programs.

Signed by Governor April 12, 2010.

CHAPTER 106

(HB 398)

AN ACT relating to agriculture.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

- (1) *The Kentucky Equine Health and Welfare Council is hereby established and shall be attached to the Kentucky Department of Agriculture for administrative purposes only. The council shall:*
 - (a) *Assist, advise, and consult with the commission created by Section 7 of this Act on equine health and welfare issues;*
 - (b) *Act to maintain the health, welfare, and safety of equines in the Commonwealth; and*
 - (c) *Carry out the duties assigned to the council in Section 2 of this Act.*
- (2) *The council shall be composed of thirteen (13) voting members and two (2) nonvoting ex officio members as follows:*
 - (a) *The Commissioner of Agriculture or his or her designee;*
 - (b) *The state veterinarian or his or her designee;*
 - (c) *One (1) representative of the University of Kentucky College of Agriculture Equine Initiative to be designated by the dean of the University of Kentucky College of Agriculture;*
 - (d) *One (1) representative of the University of Louisville Equine Industry Program to be designated by the dean of the College of Business;*
 - (e) *One (1) representative of equine education programs chosen by Morehead State University, Murray State University, or Western Kentucky University on a rotating basis at the pleasure of the university to serve a one (1) year term;*
 - (f) *The executive director of the University of Kentucky Livestock Disease Diagnostic Center, or his or her designee, or the executive director of the Murray State University Breathitt Veterinary Center, or his or her designee, who shall serve one (1) year terms on a rotating basis;*
 - (g) *One (1) representative of the Kentucky Farm Bureau Federation with an interest in equine issues;*
 - (h) *One (1) veterinarian representing the Kentucky Equine Health and Welfare Alliance Inc.;*
 - (i) *One (1) member representing the Kentucky Veterinary Medical Association;*
 - (j) *One (1) member to be appointed by the Governor from a list of three (3) nominees submitted by the Kentucky Horse Council;*
 - (k) *One (1) member representing organized horse rescue entities to be selected by the Governor from a listing of those who apply for membership on the council;*
 - (l) *Two (2) members at large who live in diverse regions of the state to be appointed by the Governor. Each member at large shall primarily represent one (1) of the following:*

1. *Equine breeders and owners; and*
2. *Agricultural interests;*
- (m) *The chair of the Senate Standing Committee on Agriculture, who shall serve as a nonvoting ex officio member; and*
- (n) *The chair of the House Standing Committee on Agriculture and Small Business, who shall serve as a nonvoting ex officio member.*
- (3) *Initial terms of members serving under subsection (2)(c), (d), and (g) to (l) of this section shall be staggered by the Governor. Thereafter, terms shall be for four (4) years or until their successors are duly appointed and qualified. Vacancies on the council shall be filled for the remainder of the unexpired term in the same manner as the original appointment.*
- (4) *Consideration shall be given to racial and gender equity in the appointment of council members.*
- (5) *The council shall elect one (1) of its members to serve as chair for a term of two (2) years.*
- (6) *The council shall meet quarterly or upon the call of the chair. The first meeting of the council shall occur at the beginning of the quarter following appointments to the council.*
- (7) *A quorum of the council shall consist of seven (7) voting members. A majority of the voting members present may act upon matters before the council.*
- (8) *Members of the council shall serve without compensation.*
- (9) *Nothing in Sections 1 to 3 of this Act shall be construed to infringe upon the regulatory authority of:*
 - (a) *The Kentucky Horse Racing Authority to inspect, investigate, and supervise horses and other participants in horse racing and breeders incentive funds as provided by KRS Chapter 230, administrative regulations promulgated under by KRS Chapter 230, or any other law applicable to the regulation of horse racing in the Commonwealth;*
 - (b) *The Kentucky Board of Veterinary Examiners to license and certify veterinarians as provided by KRS Chapter 321, administrative regulations promulgated under KRS Chapter 321, or any other law applicable to the regulation of veterinarians in the Commonwealth; or*
 - (c) *The Kentucky Livestock Care Standards Commission to make recommendations to the Board of Agriculture to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry, or any other authority of the commission authorized under this Act.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

In addition to the duties relating to equine health and welfare matters set forth in subsection (1) of Section 1 of this Act, the duties and functions of the council include but are not limited to:

- (1) *Undertaking research, conducting public hearings, and collecting data to determine the prevalent equine health and welfare issues;*
- (2) *Striving to develop regional centers of care for unwanted, abused, neglected, or confiscated equines. The development of the centers may be undertaken in cooperation with state and local governments, private entities, universities, or other groups;*
- (3) *Creating a system of voluntary certification of equine rescue and retirement operations that includes, at a minimum, industry-accepted standards of care for equines;*
- (4) *Researching and offering suggestions to the commission for statutory changes affecting equine health, welfare, abuse, and neglect issues;*
- (5) *Assisting veterinarians and others in maintaining the health and welfare of equines by identifying and referring to the appropriate authorities critical areas of need; and*
- (6) *Submitting a written report annually to the Governor, the Department of Agriculture, and the Legislative Research Commission regarding its administrative, financial, and programmatic activities.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

- (1) *The equine health and welfare fund is created in the State Treasury as a trust and agency account to be administered by the council for the purposes provided in this section.*

- (2) *Notwithstanding KRS 45.229, any moneys accruing to this fund in any fiscal year, including state appropriations, gifts, grants, federal funds, interest, and any other funds both public and private, shall not lapse but shall be carried forward to the next fiscal year.*
- (3) *Any interest earnings of the fund shall become a part of the fund and shall not lapse.*
- (4) *Moneys received in the fund shall be used for carrying out the provisions of Sections 1 to 3 of this Act.*

➔Section 4. KRS 257.010 is amended to read as follows:

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

- (1) "Abandon" means to forsake entirely, or to neglect or refuse to provide or perform the legal obligations for care and support of an animal by its owner or his agent;
- (2) "Board" means the Board of Agriculture;
- (3) **"Commission" means the Kentucky Livestock Care Standards Commission;**
- (4) "Commissioner" means the Commissioner of Agriculture;
- (5)~~[(4)]~~ "Communicable disease" means a disease that can be directly or indirectly transmitted from one (1) animal to another;
- (6)~~[(5)]~~ "Compost" means the humus-like product of the process of composting domestic livestock, poultry, or fish, which may be used as a soil conditioner or enhancer;
- (7)~~[(6)]~~ "Composting" means the biological decomposition of organic matter;
- (8) **"Council" means the Kentucky Equine Health and Welfare Council;**
- (9)~~[(7)]~~ "Department" means the Department of Agriculture;
- (10)~~[(8)]~~ "Fish" means the bodies and parts of bodies of all animal aquatic life being raised, or kept for sale to a wholesaler or retailer, or for direct sale to the public;
- (11)~~[(9)]~~ "Livestock" means:
 - (a) Cattle, sheep, swine, goats, horses, llamas, buffaloes, or any other animals of the bovine, ovine, porcine, caprine, equine, or camelid species; and
 - (b) Deer, elk, and any other animal of the cervid species ~~[(1)]~~

—whose regulatory requirements are under KRS Chapters 150 and 246, and are privately owned and raised in a confined area for breeding stock, food, fiber, and other products;
- (12)~~[(10)]~~ "National animal identification system" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdmates from their premises of origin;
- (13)~~[(11)]~~ "National Poultry Improvement Plan" shall have the same meaning as set out in the United States Code of Federal Regulations, 9 C.F.R. Part 145, and the auxiliary provisions in 9 C.F.R. Part 147;
- (14)~~[(12)]~~ "Owner" means any person owning or leasing from another, or having in charge any domestic animal;
- (15)~~[(13)]~~ "Poultry" means chickens, ducks, turkeys, or other domestic fowl being raised or kept on any premises in the Commonwealth;
- (16)~~[(14)]~~ "Premises" means any portion of land, or any structure erected on land; and
- (17)~~[(15)]~~ "Reportable disease" means an animal disease that shall be reported to state or federal animal health officials when suspected or diagnosed.

➔Section 5. KRS 257.020 is amended to read as follows:

The board shall:

- (1) Enforce the provisions of this chapter;

- (2) Adopt and enforce~~[such]~~ measures as it deems necessary to protect and promote the livestock, poultry, fish, and animal industries. ***Measures falling within the scope of Section 9 of this Act shall be adopted and enforced in conformity with that section;***
- (3) Prevent, control, and eradicate any communicable disease of livestock, poultry, and fish;
- (4) Investigate the prevalence of communicable diseases in livestock, poultry, and fish upon receipt of reports of ~~those[such]~~ diseases;
- (5) Issue~~[such]~~ information as it deems necessary for public distribution;
- (6) Give information and instruction to farmers and breeders and feeders of livestock, poultry, and fish in the nature, cause, prevention, and control of communicable diseases; and
- (7) Regulate the importation, sale, use, and distribution of products or material used in the diagnosis, treatment, or prevention of animal diseases.

➔Section 6. KRS 257.030 is amended to read as follows:

The board may:

- (1) Cooperate with universities and other entities in conducting the necessary scientific investigations relating to the cause, nature, prevention, and treatment of communicable diseases of livestock, poultry, and fish;
- (2) Establish, maintain, and enforce ~~any[such]~~ quarantine and other measures as it deems necessary in controlling the movement of livestock, poultry, and fish into, through, or within the state;
- (3) Order and enforce the cleaning and disinfection of premises and all articles and materials by which communicable diseases may be transmitted, and the destruction of diseased and exposed animals and all~~[such]~~ property and materials, as may be necessary in the eradication of disease;
- (4) Adopt, issue, and enforce ***administrative*** regulations necessary for the proper administration and enforcement of the provisions of this chapter, and for the accomplishment of the purposes intended to be accomplished by this chapter. ***Administrative regulations falling within the scope of Section 9 of this Act shall be adopted, issued, and enforced in conformity with that section;*** and
- (5) Employ necessary scientific, field, stenographic, and clerical assistants and fix their salaries.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

The Kentucky Livestock Care Standards Commission is hereby created to make recommendations to the board to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry. The commission shall be attached to the Department of Agriculture for administrative purposes and shall consist of sixteen (16) members as follows:

- (1) ***The State Veterinarian, who shall be a nonvoting member;***
- (2) ***The co-chairs of the Interim Joint Committee on Agriculture, who shall be nonvoting, ex officio members; and***
- (3) ***Thirteen (13) voting members as follows:***
 - (a) ***The commissioner or the commissioner's designee, who shall serve as chair;***
 - (b) ***The dean of the University of Kentucky College of Agriculture or the dean's designee;***
 - (c) ***The chair of the Animal Control Advisory Board or the chair's designee;***
 - (d) ***The Director of the University of Kentucky Livestock Disease Diagnostic Center or the Director of the Murray State University Breathitt Veterinary Center. Each director shall serve one (1) year terms on a rotating basis;***
 - (e) ***Four (4) members appointed by the Governor as follows:***
 1. ***One (1) person selected from a list of three (3) submitted by the Kentucky Farm Bureau;***
 2. ***One (1) person selected from a list of three (3) submitted by the Kentucky County Judge/Executive Association;***

3. *One (1) veterinarian selected from a list of three (3) submitted by the Kentucky Veterinary Medical Association. The veterinarian's practice shall include working on one (1) or more of the species named in paragraph (f) of this subsection; and*
4. *One (1) citizen at large with an interest in food safety; and*
- (f) *Five (5) members actively engaged in farming and appointed by the Governor with assistance by the department. The department shall contact commodity organizations named in this paragraph, collect a list of potential representatives from the organizations, and deliver the list to the Governor. The Governor shall appoint:*
 1. *One (1) active producer from the list submitted by Kentucky commodity organizations representing bovine species;*
 2. *One (1) active producer from the list submitted by Kentucky commodity organizations representing ovine and caprine species;*
 3. *One (1) active producer from the list submitted by Kentucky commodity organizations representing porcine species;*
 4. *One (1) active producer from the list submitted by Kentucky commodity organizations representing equine species; and*
 5. *One (1) active producer from the list submitted by Kentucky commodity organizations representing poultry species.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

- (1) *Initial terms of appointed members shall be staggered by the Governor. Thereafter, terms shall be for four (4) years or until their successors are duly appointed and qualified. Vacancies on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment.*
- (2) *The commission shall meet at the call of the chair or a majority of the voting members.*
- (3) *The Governor shall name the appointed members of the commission by August 1, 2010.*
- (4) *No members of the commission shall be a lobbyist as defined by KRS 11A.010.*
- (5) *No appointed member of the commission shall concurrently serve on the board.*
- (6) *A majority of the voting members shall:*
 - (a) *Constitute a quorum for conducting business; and*
 - (b) *Be required in order for the commission to take any action.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 257 IS CREATED TO READ AS FOLLOWS:

- (1) *The commission shall make recommendations to the board to establish, maintain, or revise standards governing the care and well-being of on-farm livestock and poultry. The board shall approve or reject recommendations within ninety (90) days of receiving recommendations. If approved, the board shall promulgate administrative regulations establishing the standards within thirty (30) days of approval. If rejected, the board shall notify the commission in writing within thirty (30) days of the rejection, and shall list the reasons for the rejection. The board shall not establish, maintain, or revise on-farm livestock and poultry care standards without a recommendation by the commission.*
- (2) *Before recommending on-farm livestock and poultry care standards to the board, the commission may consult with agricultural representatives from Kentucky State University, Western Kentucky University, Eastern Kentucky University, Morehead State University, and Murray State University.*
- (3) *When developing recommendations for on-farm livestock and poultry care standards to the board, the commission shall consider factors that include but are not limited to:*
 - (a) *Animal well-being and agricultural best management practices;*
 - (b) *Herd health; and*
 - (c) *Safe, affordable, healthy food supplies for consumers.*

(4) Nothing in this section shall be construed to abrogate the regulatory authority of:

- (a) The Kentucky Horse Racing Authority to inspect, investigate, and supervise horses and other participants in horse racing as provided by KRS Chapter 230 and the administrative regulations promulgated under KRS Chapter 230, or any other law applicable to the regulation of horse racing in the Commonwealth;**
- (b) The Kentucky Board of Veterinary Examiners to license and certify veterinarians as provided by KRS Chapter 321 and the administrative regulations promulgated under KRS Chapter 321, or any other law applicable to the regulation of veterinarians in the Commonwealth; or**
- (c) The Board of Agriculture to prevent, control, or eradicate any communicable disease of on-farm livestock or poultry as provided by this chapter and the administrative regulations promulgated under this chapter, or any other law applicable to the prevention, control, or eradication of communicable diseases of on-farm livestock or poultry.**

- (5) (a) A city, town, county, urban-county, charter county, consolidated local government, unified local government, or other political subdivision of the Commonwealth shall not adopt any ordinance, resolution, rule, or regulation regarding on-farm livestock or poultry care that is more stringent than the administrative regulations promulgated by the board under subsection (1) of this section. Local legislation in violation of this subsection is void and unenforceable.**
- (b) Nothing in this subsection shall be construed to preempt any local ordinance or regulation affecting planning and zoning adopted in accordance with KRS Chapter 100.**
- (c) The provisions of paragraph (a) of this subsection shall not affect ordinances, resolutions, rules, or regulations adopted before the effective date of this Act.**

➔Section 10. KRS 257.990 is amended to read as follows:

- (1) (a) Except as provided by paragraph (b) of this subsection, any person who violates any administrative regulation promulgated by the board under the provisions of this chapter, for the violation of which no other penalty is provided in this section, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the first offense; for each subsequent offense he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or be imprisoned not more than thirty (30) days, or both.**
- (b) This subsection shall not apply to administrative regulations promulgated under Section 9 of this Act.**
- (2) Any person who violates KRS 257.040 shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000).**
- (3) Any person who violates KRS 257.050 shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for the first offense; for each subsequent offense he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), and shall be imprisoned for not less than sixty (60) days nor more than one hundred and twenty (120) days.**
- (4) Any person who violates subsection (1) of KRS 257.060 shall be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) for the first offense; for each subsequent offense he shall be fined not less than one thousand dollars (\$1,000) nor more than two thousand dollars (\$2,000), and shall be imprisoned for not less than sixty (60) days nor more than one hundred and twenty (120) days.**
- (5) Any person who violates subsection (2) of KRS 257.060 shall be fined not more than one thousand dollars (\$1,000).**
- (6) Any person who violates any of the provisions of KRS 257.080 or 257.180 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).**
- (7) Any person who violates any of the provisions of KRS 257.160 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for the first offense. For each subsequent offense, he shall be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000), or be imprisoned not more than thirty (30) days, or both.**

- (8) Any person who violates any ruling of the board or who hinders any agent of the board in carrying out the duties assigned to him, or any officer who refuses to enforce the provisions of this chapter when called upon by the board to do so, or any other person who in any way attempts to hinder or obstruct the board in carrying out the provisions of this chapter shall be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) for each offense.
- (9) Any person who violates any provision of KRS 257.330 to 257.350 or the regulations made thereunder for carrying out their provisions, or who fails or refuses to comply with or intends to deceive, or who answers or represents falsely in response to any requirement of KRS 257.330 to 257.350, or who willfully interferes with the Office of State Veterinarian or their employees or agents, in the carrying out of their duties provided in KRS 257.330 to 257.350, shall be guilty of a misdemeanor. Any person who shall violate any of the provisions of KRS 257.330 to 257.350 shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars (\$500).
- (10) Any person, firm, or corporation who shall violate any provision of KRS 257.370 to 257.460 or any rule or regulation made under authority thereof shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in any sum not to exceed five hundred dollars (\$500) for each offense.
- (11) Any person who resists, obstructs, interferes with, threatens, attempts to intimidate, or in any other manner interferes with an officer under KRS 257.490 or who willfully refuses to obey his lawful orders shall be fined not more than one thousand dollars (\$1,000), or imprisoned in the county jail not more than thirty (30) days, or both.

Signed by Governor April 12, 2010.

CHAPTER 107

(HB 564)

AN ACT relating to the justice system and declaring an emergency.

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

➔Section 1. KRS 31.015 is amended to read as follows:

- (1) (a) The Public Advocacy Commission shall consist of the following members, none of whom shall be a prosecutor, law enforcement official, or judge, who shall serve terms of four (4) years, except the initial terms shall be established as hereafter provided:
 - 1. Two (2) members appointed by the Governor;
 - 2. One (1) member appointed by the Governor. This member shall be a child advocate or a person with substantial experience in the representation of children;
 - 3. ~~One (1) member who is the executive director of the Office of Legislative and Intergovernmental Services of the Justice and Public Safety Cabinet;~~
 - 4. ~~Two (2) members appointed by the Kentucky Supreme Court;~~
 - 4. **Three (3)**~~5. Two (2)~~ members, who are licensed to practice law in Kentucky and have substantial experience in the representation of persons accused of crime, appointed by the Governor from a list of three (3) persons submitted to him **or her** for each individual vacancy by the board of governors of the Kentucky Bar Association;
 - 5.~~6.~~ The dean, ex officio, of each of the law schools in Kentucky or his **or her** designee; and
 - 6.~~7.~~ One (1) member appointed by the Governor from a list of three (3) persons submitted to him or her by the joint advisory boards of the Protection and Advocacy Division of the Department for Public Advocacy.
- (b) Any member of the commission serving prior to July 15, 2002, shall serve until the expiration of his or her current term of office. Subsequent appointments shall be for a term of four (4) years from the date of expiration of the term for which his or her predecessor was appointed.

- (2) At the first meeting of the commission, a drawing by lot shall be conducted to determine the length of each original member's term. Initially there shall be four (4) two (2) year terms, four (4) three (3) year terms, and four (4) four (4) year terms. Vacancies in the membership of the commission shall be filled in the same manner as original appointments. Appointments to fill vacancies occurring before the expiration of a term shall be for the remainder of the unexpired term.
- (3) The commission shall first meet at the call of the Governor and thereafter as the commission shall determine on a regular basis, but at least quarterly, and shall be presided over by a chairperson elected by its members for a one (1) year term. A majority of commission members shall constitute a quorum, and decisions shall require the majority vote of those present; except that a recommendation to the Governor pertaining to the appointment, renewal of the appointment, or removal of the public advocate shall require a majority vote of the commission. Each member of the commission shall have one (1) vote, and voting by proxy shall be prohibited.
- (4) The public advocate shall, upon appointment or renewal, be an ex officio member of the commission without the power to vote, shall serve as secretary of the commission, and shall be entitled to attend and participate in all meetings of the commission except discussions relating to renewal of his *or her* term or his *or her* removal.
- (5) Commission members shall be reimbursed for reasonable and necessary expenses incurred while engaged in carrying out the duties of the commission and shall receive one hundred dollars (\$100) per day for each meeting attended unless prohibited by law from receiving such compensation.
- (6) The commission shall:
 - (a) Receive applications, interview, and recommend to the Governor three (3) attorneys as nominees for appointment as the public advocate;
 - (b) Assist the public advocate in drawing up procedures for the selection of his *or her* staff;
 - (c) Review the performance of the public advocacy system and provide general supervision of the public advocate;
 - (d) Assist the Department for Public Advocacy in ensuring its independence through public education regarding the purposes of the public advocacy system; and
 - (e) Review and adopt an annual budget prepared by the public advocate for the system and provide support for budgetary requests to the General Assembly.
- (7) In no event shall the commission or its members interfere with the discretion, judgment, or advocacy of employees of the Department for Public Advocacy in their handling of individual cases.

➔Section 2. KRS 196.180 is amended to read as follows:

- (1) The warden shall have the general management of the institution, and the inmates thereof, subject to the administrative regulations of the Department of Corrections, and he *or she* shall devote his *or her* entire time to the duties of his *or her* office.
- (2) The warden of each institution shall be held responsible for the management of his *or her* institution and shall be subject to removal at any time by the commissioner.
- (3) ***The warden of each Department of Corrections institution shall expunge inmate prison disciplinary reports that have been dismissed or otherwise ordered void, and shall further remove any reference to dismissed or voided disciplinary reports from inmate records.***

➔Section 3. KRS 197.045 is amended to read as follows:

- (1) Any person convicted and sentenced to a state penal institution may receive a credit on his sentence of not exceeding ten (10) days for each month served, except as otherwise provided in this section, to be determined by the department from the conduct of the prisoner. In addition, the department shall provide an educational good time credit of ***ninety (90)***~~sixty (60)~~ days to any prisoner who successfully receives a ***general***~~graduate~~ equivalency diploma or a high school diploma, a two (2) or four (4) year college degree,~~or~~ a two (2) year or four (4) year certification in applied sciences,~~or who receives~~ a technical education diploma as provided and defined by the department, ***or who completes a drug treatment program or other program as defined by the department that requires participation in the program for a minimum of six (6) months***; prisoners may earn additional credit for each program completed. The department may forfeit any good time previously earned by the prisoner or deny the prisoner the right to earn good time in any amount if during the term of imprisonment, a prisoner commits any offense or violates the rules of the institution.

- (2) When two (2) or more consecutive sentences are to be served, the several sentences shall be merged and served in the aggregate for the purposes of the good time credit computation or in computing dates of expiration of sentence.
- (3) An inmate may, at the discretion of the commissioner, be allowed a deduction from a sentence not to exceed ~~seven (7)~~~~five (5)~~ days per month for performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations and programs, **and may be allowed an additional seven (7) days per month served for acts of exceptional service during times of emergency.** The allowance shall be an addition to commutation of time for good conduct and under the same terms and conditions and without regard to length of sentence.
- (4) Until successful completion of the sex offender treatment program, an eligible sexual offender may earn good time. However, the good time shall not be credited to the eligible sexual offender's sentence. Upon the successful completion of the sex offender treatment program, as determined by the program director, the offender shall be eligible for all good time earned but not otherwise forfeited under administrative regulations promulgated by the Department of Corrections. After successful completion of the sex offender treatment program, an eligible sexual offender may continue to earn good time in the manner provided by administrative regulations promulgated by the Department of Corrections. Any eligible sexual offender, as defined in KRS 197.410, who has not successfully completed the sex offender treatment program as determined by the program director shall not be entitled to the benefit of any credit on his **or her** sentence. A sexual offender who does not complete the sex offender treatment program for any reason shall serve his **or her** entire sentence without benefit of good time, parole, or other form of early release. The provisions of this section shall not apply to any sexual offender convicted before July 15, 1998, or to any mentally retarded sexual offender.
- (5)
 - (a) The Department of Corrections shall, by administrative regulation, specify the length of forfeiture of good time and the ability to earn good time in the future for those inmates who have civil actions dismissed because the court found the action to be malicious, harassing, or factually frivolous.
 - (b) Penalties set by administrative regulation pursuant to this subsection shall be as uniform as practicable throughout all institutions operated by, under contract to, or under the control of the department and shall specify a specific number of days or months of good time forfeited as well as any prohibition imposed on the future earning of good time.

➔Section 4. KRS 439.320 is repealed, reenacted, and amended to read as follows:

- (1) The Governor shall appoint a Parole Board consisting of nine (9) full-time members~~and two (2) part-time members, as described in subsection (7) of this section,~~ to be confirmed by the Senate in accordance with KRS 11.160.~~Each of the two (2) part-time members shall be from a different political party.~~ The Governor shall make each appointment~~for full-time and part-time members~~ from a list of three (3) names given to him **or her** by the Kentucky State Corrections Commission. Each member appointed to the board shall have had at least five (5) years of actual experience in the field of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or a combination thereof, or have served at least five (5) years previously on the Parole Board. No more than six (6) board members shall be of the same political party. The board shall be attached to the Justice and Public Safety Cabinet for administrative purposes only. The Department of Corrections shall provide any clerical, stenographic, administrative, and expert staff assistance the board deems necessary to carry out its duties.
- (2) The Governor shall **designate**~~name~~ one (1)~~full-time~~ member as **chairperson**~~chairman~~ of the board. **The member designated as chairperson shall serve in that capacity at the pleasure of the Governor or until his or her term expires.**
- (3) The~~full-time~~ members of the board shall give full time to the duties of their office and shall receive necessary traveling expenses and a salary to be determined pursuant to KRS 64.640(2), except the **chairperson**~~chairman~~ of the board shall receive additional compensation of one thousand dollars (\$1,000) per year for his or her services. Their terms of office shall be four (4) years and until their successors are appointed and have qualified. Their successors shall be appointed thereafter as provided in this section for terms of four (4) years, and a vacancy occurring before expiration of the term of office shall be similarly filled for the unexpired term.~~The chairman of the board shall serve as such until the expiration of his or her term at which time the Governor shall name his or her successor and designate the chairman of the board. If a vacancy occurs in the chairmanship of the board before the expiration of the term, the Governor may name a successor to serve for the remainder of the unexpired term.~~

- (4) The organization of the board shall be determined by the ***chairperson***~~[chairman]~~ and shall be consistent with administrative regulations promulgated pursuant to KRS 439.340. For policy and procedural matters, five (5) members shall constitute a quorum. Parole and final parole revocation hearings may be done by panels of the board, subject to the following requirements:
 - (a) If a two (2) member panel is utilized, both members of the panel shall agree on the decision or the matter shall be referred to the full board;
 - (b) If a three (3) member panel is utilized, two (2) of the three (3) members of the panel shall agree on a decision or the matter shall be referred to the full board; and
 - (c) If a panel of four (4) or more members is utilized, a majority of the panel shall agree on a decision or the matter shall be referred to the full board.
- (5) The Governor may not remove any member of the board except for disability, inefficiency, neglect of duty, or malfeasance in office. Before removal, he or she shall give the member a written copy of the charges against him or her and shall fix the time when he or she can be heard in his or her defense, which shall not be less than ten (10) days thereafter. Upon removal, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and the findings thereupon with a record of the proceedings.
- (6) Upon the expiration of the terms of office of the two (2) full-time board members whose terms expire May 23, 1994, the Governor shall appoint two (2) full-time members to serve terms which will expire June 30, 1995. Thereafter, appointments to these two (2) full-time terms shall be for four (4) years and shall be filled as provided for in subsection (3) of this section. The Governor may reappoint present members if they meet the qualifications set forth in subsection (1) of this section.
- (7) The part-time members ***of the board, whose terms have not expired upon the effective date of this Act, shall serve until their terms expire and*** may participate in considering the grant or revocation of parole at the request of the ***chairperson***~~[chairman]~~. No more than one (1) part-time Parole Board member shall serve on any panel of the board as set forth in subsection (4) of this section. The part-time Parole Board member called upon to serve shall be paid at a per diem rate equal to the per diem rate for the salary of a newly appointed full-time member and shall receive necessary travel expenses.~~[The part-time Parole Board member shall serve for a period of four (4) years from the date of appointment and may be reappointed.]~~
- (8) The Office of Executive Director of the Parole Board is created. The office shall be headed by an executive director who shall be appointed by and directly responsible to the secretary of the Justice and Public Safety Cabinet in matters relating to administration. The executive director shall be responsible for the support services to the Parole Board in the area of financial, personnel, and facilities management; shall provide recommendations on administrative issues affecting the board to the secretary of the Justice and Public Safety Cabinet, the ***chairperson***~~[chairman]~~ of the Parole Board, and Parole Board members; shall review and draft legislation and promulgate administrative regulations for the board; and shall review parole data and conduct long-range planning as relevant to the planning needs of the board.

➔Section 5. KRS 439.340 is repealed and reenacted to read as follows:

- (1) The board may release on parole persons confined in any adult state penal or correctional institution of Kentucky or sentenced felons incarcerated in county jails eligible for parole. All paroles shall issue upon order of the board duly adopted. As soon as practicable after his or her admission to an adult state penal or correctional institution or county jail if he or she is a sentenced felon, and at such intervals thereafter as it may determine, the Department of Corrections shall obtain all pertinent information regarding each prisoner, except those not eligible for parole. The information shall include his or her criminal record, his or her conduct, employment, and attitude in prison, and the reports of physical and mental examinations that have been made. The Department of Corrections shall furnish the circumstances of his or her offense and his or her previous social history to the institution and the board. The Department of Corrections shall prepare a report on any information it obtains. It shall be the duty of the Department of Corrections to supplement this report with any material the board may request and submit the report to the board.
- (2) Before granting the parole of any prisoner, the board shall consider the pertinent information regarding the prisoner and shall have him or her appear before it for interview and hearing. The board in its discretion may hold interviews and hearings for prisoners convicted of Class C felonies not included within the definition of "violent offender" in KRS 439.3401 and Class D felonies. The board in its discretion may request the parole board of another state confining prisoners pursuant to KRS 196.610 to interview eligible prisoners and make a

parole recommendation to the board. A parole shall be ordered only for the best interest of society and not as an award of clemency, and it shall not be considered a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his or her proper employment or for his or her maintenance and care, and when the board believes he or she is able and willing to fulfill the obligations of a law abiding citizen. Notwithstanding any statute to the contrary, including KRS 440.330, when a prisoner is otherwise eligible for parole and the board has recommended parole for that prisoner for the reasons set forth in this subsection, the board may grant parole to any prisoner wanted as a fugitive by any other jurisdiction, and the prisoner shall be released to the detainer from that jurisdiction. Such parole shall not constitute a relinquishment of jurisdiction over the prisoner, and the board in all cases expressly reserves the right to return the prisoner to confinement in a correctional institution of the Commonwealth if the prisoner violates the terms of his or her parole.

- (3) (a) A nonviolent offender convicted of a Class D felony with an aggregate sentence of one (1) to five (5) years who is confined to a state penal institution or county jail shall have his or her case reviewed by the Parole Board after serving fifteen percent (15%) or two (2) months of the original sentence, whichever is longer.
 - (b) Except as provided in paragraph (a) of this subsection, the board shall adopt administrative regulations with respect to the eligibility of prisoners for parole, the conduct of parole and parole revocation hearings and all other matters that come before it, or conditions to be imposed upon parolees. Regulations governing the eligibility of prisoners for parole shall be in accordance with professionally accepted ideas of correction and reform and may utilize in part objective, performance-based criteria; however, nothing herein contained shall preclude the board from utilizing its present regulations in conjunction with other factors involved that would relate to the inmate's needs and the safety of the public.
- (4) The board shall insure that sentenced felons confined in county jails are considered for parole within thirty (30) days of their parole eligibility date and the Department of Corrections shall provide the necessary assistance and information to the board in order for it to conduct timely parole reviews.
- (5) In addition to or in conjunction with each hearing conducted under subsection (2) of this section for any prisoner convicted of a Class A, B, or C felony and prior to the granting of a parole to any such prisoner, the parole board shall conduct a hearing of which the following persons shall receive not less than forty-five (45) nor more than ninety (90) days' notice: the Commonwealth's attorney who shall notify the sheriff of every county and the chief of police of every city and county in which the prisoner committed any Class A, B, or C felony for which he or she is imprisoned, and all identified victims of the crimes or the next of kin of any victim who is deceased. Notice to the Commonwealth's attorney shall be by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt at the Commonwealth attorney's business office. Notices received by chiefs of police and sheriffs shall be posted in a conspicuous location where police employed by the department may see it. Notices shall be posted in a manner and at a time that will allow officers to make comment thereon to the Parole Board. Notice to victims or their next of kin shall be made, for prisoners incarcerated prior to July 15, 1986, by mail, fax, or electronic means at the discretion of the board, and shall be in a manner that ensures receipt by the Commonwealth's attorney, who shall forward the notice promptly to the victims or their next of kin at their last known address. For prisoners incarcerated on or after July 15, 1986, notice to the victims or their next of kin shall be by mail from the Parole Board to their last known address as provided by the Commonwealth's attorney to the Parole Board at the time of incarceration of the prisoner. Notice to the victim or the next of kin of subsequent considerations for parole after the initial consideration shall not be sent if the victim or the next of kin gives notice to the board that he or she no longer wants to receive such notices. The notice shall include the time, date, and place of the hearing provided for in this subsection, and the name and address of a person to write if the recipient of the notice desires to attend the hearing or to submit written comments.
- (6) Persons receiving notice as provided for in subsection (5) of this section may submit comments, in person or in writing, to the board upon all issues relating to the parole of the prisoner. The board shall read and consider all comments prior to making its parole decision, if they are received by the board not less than seven (7) days before the date for the hearing. The board shall retain all comments in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decisions affecting the prisoner. In addition to officers listed in subsection (5) of this section, the crime victims or the next of kin of any victim who is deceased or who is disabled and cannot attend the hearing or the parent or legal guardian of any victim

who is a minor may attend the hearing provided for in subsection (5) of this section and present oral and written comments upon all issues relating to the parole of the prisoner, if they have advised the board, in writing received by the board not less than seven (7) days prior to the date set for the hearing, of their intention to attend the hearing. The board shall receive and consider all comments, shall make a record of them which it shall retain in the prisoner's permanent Parole Board file, and shall consider them in conjunction with any subsequent parole decision affecting the prisoner. Persons appearing before the Parole Board pursuant to this subsection may elect to make their presentations outside of the presence of the prisoner.

- (7) Victims of Class D felonies may submit comments in person or in writing to the board upon all issues relating to the parole of a prisoner.
- (8) Any hearing provided for in subsections (5), (6), and (7) of this section shall be open to the public unless the persons having a right to appear before the board as specified in those subsections request closure of hearing for reasons of personal safety, in which event the hearing shall be closed. The time, date, and location of closed hearings shall not be disclosed to the public.
- (9) Except as specifically set forth in this section, nothing in this section shall be deemed to expand or abridge any existing rights of persons to contact and communicate with the Parole Board or any of its members, agents, or employees.
- (10) The unintentional failure by the Parole Board, sheriff, chief of police, or any of its members, agents, or employees or by a Commonwealth's attorney or any of his or her agents or employees to comply with any of the provisions of subsections (5), (6), and (8) of this section shall not affect the validity of any parole decision or give rise to any right or cause of action by the crime victim, the prisoner, or any other person.
- (11) No eligible sexual offender within the meaning of KRS 197.400 to 197.440 shall be granted parole unless he or she has successfully completed the Sexual Offender Treatment Program.
- (12) Any prisoner who is granted parole after completion of the Sexual Offender Treatment Program shall be required, as a condition of his or her parole, to participate in regular treatment in a mental health program approved or operated by the Department of Corrections.
- (13) When an order for parole is issued, it shall recite the conditions thereof.

➔Section 6. KRS 439.344 is amended to read as follows:

The period of time spent on parole shall count as a part of the prisoner's sentence, except when a parolee is:

- (1) Returned to prison as a parole violator for a new felony conviction;
- (2) *Returned to prison as a parole violator after charges have been filed or an indictment has been returned for a felony offense committed while on parole and the prisoner is subsequently convicted of that offense;*
- (3) *Returned to prison as a parole violator and is subsequently convicted of a felony offense committed while on parole;*
- (4) *Returned to prison as a parole violator for absconding from parole supervision, except that the time spent on parole prior to absconding shall count as part of the prisoner's sentence;*
- (5) *Returned to prison as a parole violator and it is subsequently determined that he or she owes restitution pursuant to KRS 439.563 and has an arrearage on that restitution. Any credit withheld pursuant to this subsection shall be reinstated when the arrearage is paid in full;*
- (6) Classified as a violent offender pursuant to KRS 439.3401; or
- (7)~~(3)~~ A registered sex offender pursuant to KRS 17.500 to 17.580.

➔Section 7. KRS 441.064 is amended to read as follows:

- (1) The department shall employ the jail consultants, inspectors, and other employees necessary to administer and enforce the provisions of KRS 441.055 to 441.075.
- (2) The department shall inspect each jail biannually and may inspect jails more frequently.
- (3) The department shall be granted access at any reasonable time to any jail facility or part of any jail facility and shall be granted access to all books, records, and data pertaining to any jail which the department deems necessary for the administration and enforcement of the provisions of KRS 441.055 to 441.075.

- (4) Following an inspection of a jail, the department shall notify the jailer and the fiscal court by certified **or electronic** mail of any deficiencies which are discovered and documented. If the deficiencies are related to health or safety, the notification shall be sent within ten (10) working days, excluding weekends and holidays. The department shall submit an annual written report of the findings of its inspections and the condition of the jail to the jailer and the fiscal court.

➔Section 8. KRS 441.075 is amended to read as follows:

- (1) If the department finds that a violation of its regulations, or the laws or other state regulations pertaining to the protection of persons and property, exists in any jail which holds state prisoners, the commissioner of the department, or his **or her** designee, shall order that the violation be corrected immediately. In order to enforce an order made pursuant to this subsection, the commissioner may order the jail to cease housing state prisoners.
- (2) If the department finds a violation of the health and life safety regulations in KRS 441.055 pertaining to the protection of persons or property, exists in any jail, the commissioner of the department, or his **or her** designee, shall order that the violations be corrected immediately. In order to enforce an order made pursuant to this subsection, the commissioner may order the jail closed until the violations are corrected.
- (3) No jail that was ordered by the Department of Corrections prior to July 15, 1996, to be closed or to operate other than as a full-service facility shall operate as a full-service facility to hold state prisoners unless it is granted a certificate of occupancy by the Department of Corrections. In order to enforce an order made pursuant to subsection (1) of this section, the commissioner may:
 - (a) Order the jail or portions thereof to be vacated and closed until the violation is eliminated.
 - (b) Order the jail to cease to house certain classes of prisoners or limit the length of time prisoners or certain classes of prisoners may be housed in the jail.
 - (c) Order the state contribution made pursuant to KRS 441.206 to be used, in whole or in part, to contract with another county for the incarceration of prisoners.
- (4) An order issued under this section shall be in writing, incorporating the findings of the department and other agencies, if appropriate, and shall be delivered, **electronically mailed**, or mailed by certified mail, return receipt requested, to the county jailer and county judge/executive within twenty-four (24) hours of the issuance of the order. The county jailer or county judge/executive may, within seventy-two (72) hours of receipt of the notification, request in writing a public hearing before the commissioner of the department or his **or her** designee on the matters covered by the order. Upon the hearing, the commissioner of the department or his **or her** designee may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers. The commissioner of the department or his **or her** designee may issue, modify, or repeal the order at the conclusion of the hearing.

➔Section 9. KRS 441.105 is amended to read as follows:

The jailer shall:

- (1) Submit a quarterly report to the fiscal court concerning the physical condition of the jail, the number of jail personnel and personnel needs, and other matters requested by the fiscal court.
- (2) Submit a monthly report to the department **in electronic format**, on forms supplied by the department, containing, but not limited to, the following information on each prisoner:
 - (a) The unit of government whose law the prisoner is charged with violating, the statute or ordinance the prisoner is charged with violating, and whether the charge is a felony or misdemeanor;
 - (b) The status of the prisoner, whether pending trial or post conviction;
 - (c) The age and sex of the prisoner; and
 - (d) The county responsible for the incarceration of the prisoner.

➔Section 10. KRS 532.200 is repealed and reenacted to read as follows:

As used in KRS 532.210 to 532.250, unless the context otherwise requires:

- (1) "Home" means the temporary or permanent residence of a defendant consisting of the actual living area. If more than one (1) residence or family is located on a single piece of property, "home" does not include the

residence of any other person who is not part of the social unit formed by the defendant's immediate family. A hospital, nursing care facility, hospice, half-way house, group home, residential treatment facility, or boarding house may serve as a "home" under this section;

- (2) "Home incarceration" means the use of a monitoring device approved by the commissioner of the Department of Corrections to facilitate a prisoner's ability to maintain gainful employment or to participate in programs approved as a condition of his or her incarceration, or both, using the person's home for purposes of confinement;
- (3) "Violent felony offense" means an offense defined in KRS 507.020 (murder), 507.030 (manslaughter in the first degree), 508.010 (assault in the first degree), 508.020 (assault in the second degree), 509.040 (kidnapping), 510.040 (rape in the first degree), 510.070 (sodomy in the first degree), 510.110 (sexual abuse in the first degree), 511.020 (burglary in the first degree), 513.020 (arson in the first degree), 513.030 (arson in the second degree), 513.040 (arson in the third degree), 515.020 (robbery in the first degree), 515.030 (robbery in the second degree), 520.020 (escape in the first degree), any criminal attempt to commit the offense (KRS 506.010), or conviction as a persistent felony offender (KRS 532.080) when the offender has a felony conviction for any of the above-listed offenses within the five (5) year period preceding the date of the latest conviction;
- (4) "Terminal illness" means a medically recognized disease for which the prognosis is death within six (6) months to a reasonable degree of medical certainty; and
- (5) "Approved monitoring device" means an electronic device or apparatus which is capable of recording, tracking, or transmitting information as to the prisoner's location or verifying the prisoner's presence or non-presence in the home, or both. The devices shall be minimally intrusive. Devices shall not be used without the prisoner's knowledge to record or transmit:
 - (a) Visual images other than the defendant's face;
 - (b) Oral or wire communications or any auditory sound other than the defendant's voice; or
 - (c) Information as to the prisoner's activities while inside the home.

➔Section 11. KRS 532.260 is amended to read as follows:

- (1) Any Class C or Class D felon who is serving a sentence in a state-operated prison, contract facility, or county jail shall, at the discretion of the commissioner, be eligible to serve the remainder of his or her sentence outside the walls of the detention facility under terms of home incarceration using an approved monitoring device as defined in KRS 532.200, if the felon:
 - (a)
 1. Has not been convicted of, pled guilty to, or entered an Alford plea to a violent felony as defined by the Department of Corrections classification system; or
 2. Has not been convicted of, pled guilty to, or entered an Alford plea to a sex crime as defined in KRS 17.500;
 - (b) Has **one hundred eighty (180)**~~ninety (90)~~ days or less to serve on his or her sentence;
 - (c) Has voluntarily participated in a discharge planning process with the department to address his or her:
 1. Education;
 2. Employment, technical, and vocational skills; and
 3. Housing, medical, and mental health needs; and
 - (d) Has needs that may be adequately met in the community where he or she will reside upon release.
- (2) A person who is placed under terms of home incarceration pursuant to subsection (1) of this section shall remain in the custody of the Department of Corrections. Any unauthorized departure from the terms of home incarceration may be prosecuted as an escape pursuant to KRS Chapter 520 and shall result in the person being returned to prison.
- (3) The Department of Corrections shall promulgate administrative regulations to implement the provisions of this section.

➔Section 12. The intent of the General Assembly in repealing and reenacting KRS 439.320, 439.340, and 532.200 in Sections 4, 5, and 10 of this Act is to affirm the amendments made to these sections in 2008 Ky. Acts. ch.

158. The specific textual provisions of Sections 4, 5, and 10 of this Act which reflect amendments made to those sections by 2008 Ky. Acts. ch. 158 shall be deemed effective as of April 24, 2008, and those provisions are hereby made expressly retroactive to that date, with the remainder of the text from those sections being unaffected by the provisions of this section.

➔Section 13. To the extent that any provision included in this Act is considered new language, the provisions of KRS 446.145 requiring such new language to be underlined are notwithstanding.

➔Section 14. Whereas the effective and efficient protection of the public from crime is a fundamental duty of government and a needless delay in the implementation of Section 6 of this Act impedes that protection, an emergency is declared to exist, and Section 6 of this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 12, 2010.

CHAPTER 108

(HB 160)

AN ACT relating to the establishment of common undergraduate college course credits for transfer and the awarding of degrees.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 164 IS CREATED TO READ AS FOLLOWS:

- (1) *Beginning with the 2012-2013 academic year and each academic year thereafter for first-time students enrolling in a public college or university, postsecondary education institutions are encouraged to limit the credit-hour requirements to sixty (60) credit hours for each associate of science or associate of arts degree program and to one hundred twenty (120) credit hours for each bachelor of arts or bachelor of science degree program, except in situations in which:*
 - (a) *Quality and content of a program would be negatively impacted; or*
 - (b) *A program must comply with specific program standards established by external accreditation bodies.*
- (2) *The Council on Postsecondary Education, in collaboration with the public universities and community and technical colleges, shall:*
 - (a) *Facilitate the development and implementation of a statewide agreement for alignment of Kentucky Community and Technical College System lower-division associate of arts and associate of science coursework that shall be accepted and fully credited to related bachelors degree programs by all public universities. The agreement shall specify the general education learning outcomes and program-specific prerequisite learning outcomes of the coursework. Where applicable, curricula shall be reviewed to determine comparability of core content standards required under KRS 164.302. The agreement shall direct that the associate of arts and associate of science coursework meeting the learning outcomes specified shall be accepted for transfer and degree credit, whether earned as individual courses or within block programs;*
 - (b) *Develop, implement, and maintain a Kentucky Community and Technical College System statewide course numbering system for lower-division general education and program-specific prerequisite courses that include the same learning outcomes;*
 - (c) *Establish a statewide course classification system and procedures to monitor the transfer and crediting of lower-division coursework, including a system of ongoing assessment that ensures comparability for transfer purposes;*
 - (d) *Establish a procedure for approval of changes in learning outcomes at public universities as described in subsection (3) of this section;*
 - (e) *Standardize credit-by-exam equivalencies and common passing scores for national exams transferable for general education courses and program-specific prerequisites courses;*

- (f) *Develop policies to align statewide articulation and transfer procedures across educational institutions, including admissions criteria, student declaration of major, and student guidance and counseling policies designed to ensure that students pursuing an associate of arts or associate of science degree program provide timely notification of their intention to transfer to a public university;*
 - (g) *Develop uniform data collection and reporting methods to facilitate and ensure statewide and institutional compliance with course transfer and credit requirements;*
 - (h) *Guarantee that, upon admission to a public university, graduates of an associate of arts or an associate of science degree program approved by the council in consultation with public universities shall be deemed to have met all general education requirements;*
 - (i) *Provide that graduates of approved associate of arts and associate of science degree programs of Kentucky public postsecondary institutions who complete the prerequisite learning outcomes for a bachelor of arts or bachelor of science program while fulfilling the requirements for an associate of art or associate of science degree, shall not be required to repeat or to take any additional lower-level courses to fulfill bachelor degree requirements in the same major, and these students shall be granted admission to related upper-division bachelors degree programs of a state public college or university on the same criteria as those students earning lower-division credits at the university to which the student transferred;*
 - (j) *Provide that graduates of approved associate of arts and associate of science degree programs shall receive priority for admission to a state public university over out-of-state students if they meet the same admission criteria;*
 - (k) *Establish a commonality in college transcripts to be used in all public colleges and universities to facilitate transfer from community and technical colleges;*
 - (l) *Encourage private colleges and universities to collaborate with public educational institutions in developing programs and agreement to expedite the transfer of students and credits between institutions;*
 - (m) *Establish an appeals process to resolve disagreements between transferring students and receiving educational institutions regarding the transfer and acceptance of credits earned at another institution;*
 - (n) *Ensure that all articulation and transfer policies are consistent with the rules and regulations established by all appropriate discipline-specific accrediting bodies and institutional accrediting agencies as recognized by the United States Department of Education.*
- (3) *When an institution seeks to change learning outcomes for a bachelor of arts or bachelor of science program that affect lower-division courses, the university shall notify the Council of Postsecondary Education and the Kentucky Community and Technical College System of the proposed changes at the same time as the initiation of the university's approval process. If it is determined that the proposed change will have an adverse effect on transferability, the university proposing the change shall enter into discussion with the council and the Kentucky Community and Technical College System to verify there remains a clearly defined path to a bachelor's degree for those students who plan to transfer from the Kentucky Community and Technical College System to the public university.*

➔Section 2. KRS 164.020 is amended to read as follows:

The Council on Postsecondary Education in Kentucky shall:

- (1) Develop and implement the strategic agenda with the advice and counsel of the Strategic Committee on Postsecondary Education. The council shall provide for and direct the planning process and subsequent strategic implementation plans based on the strategic agenda as provided in KRS 164.0203;
- (2) Revise the strategic agenda and strategic implementation plan with the advice and counsel of the committee as set forth in KRS 164.004;
- (3) Develop a system of public accountability related to the strategic agenda by evaluating the performance and effectiveness of the state's postsecondary system. The council shall prepare a report in conjunction with the accountability reporting described in KRS 164.095, which shall be submitted to the committee, the Governor,

and the General Assembly by December 1 annually. This report shall include a description of contributions by postsecondary institutions to the quality of elementary and secondary education in the Commonwealth;

- (4) Review, revise, and approve the missions of the state's universities and the Kentucky Community and Technical College System. The Council on Postsecondary Education shall have the final authority to determine the compliance of postsecondary institutions with their academic, service, and research missions;
- (5) Establish and ensure that all postsecondary institutions in Kentucky cooperatively provide for an integrated system of postsecondary education. The council shall guard against inappropriate and unnecessary conflict and duplication by promoting transferability of credits and easy access of information among institutions;
- (6) Engage in analyses and research to determine the overall needs of postsecondary education and adult education in the Commonwealth;
- (7) Develop plans that may be required by federal legislation. The council shall for all purposes of federal legislation relating to planning be considered the "single state agency" as that term may be used in federal legislation. When federal legislation requires additional representation on any "single state agency," the Council on Postsecondary Education shall establish advisory groups necessary to satisfy federal legislative or regulatory guidelines;
- (8) Determine tuition and approve the minimum qualifications for admission to the state postsecondary educational system. In defining residency, the council shall classify a student as having Kentucky residency if the student met the residency requirements at the beginning of his or her last year in high school and enters a Kentucky postsecondary education institution within two (2) years of high school graduation. In determining the tuition for non-Kentucky residents, the council shall consider the fees required of Kentucky students by institutions in adjoining states, the resident fees charged by other states, the total actual per student cost of training in the institutions for which the fees are being determined, and the ratios of Kentucky students to non-Kentucky students comprising the enrollments of the respective institutions, and other factors the council may in its sole discretion deem pertinent;
- (9) Devise, establish, and periodically review and revise policies to be used in making recommendations to the Governor for consideration in developing recommendations to the General Assembly for appropriations to the universities, the Kentucky Community and Technical College System, and to support strategies for persons to maintain necessary levels of literacy throughout their lifetimes including but not limited to appropriations to the Kentucky Adult Education Program. The council has sole discretion, with advice of the Strategic Committee on Postsecondary Education and the executive officers of the postsecondary education system, to devise policies that provide for allocation of funds among the universities and the Kentucky Community and Technical College System;
- (10) Lead and provide staff support for the biennial budget process as provided under KRS Chapter 48, in cooperation with the committee;
- (11)
 - (a) Except as provided in paragraph (b) of this subsection, review and approve all capital construction projects covered by KRS 45.750(1)(f), including real property acquisitions, and regardless of the source of funding for projects or acquisitions. Approval of capital projects and real property acquisitions shall be on a basis consistent with the strategic agenda and the mission of the respective universities and the Kentucky Community and Technical College System.
 - (b) The organized groups that are establishing community college satellites as branches of existing community colleges in the counties of Laurel, Leslie, and Muhlenberg, and that have substantially obtained cash, pledges, real property, or other commitments to build the satellite at no cost to the Commonwealth, other than operating costs that shall be paid as part of the operating budget of the main community college of which the satellite is a branch, are authorized to begin construction of the satellite on or after January 1, 1998;
- (12) Require reports from the executive officer of each institution it deems necessary for the effectual performance of its duties;
- (13) Ensure that the state postsecondary system does not unnecessarily duplicate services and programs provided by private postsecondary institutions and shall promote maximum cooperation between the state postsecondary system and private postsecondary institutions. Receive and consider an annual report prepared by the Association of Independent Kentucky Colleges and Universities stating the condition of independent

institutions, listing opportunities for more collaboration between the state and independent institutions and other information as appropriate;

- (14) ~~*Establish course credit, transfer and degree components as required in Section 1 of this Act*~~ ~~Develop a university track program within the Kentucky Community and Technical College System consisting of sixty (60) hours of instruction that can be transferred and applied toward the requirements for a bachelor's degree at the public universities. The track shall consist of general education courses and pre-major courses as prescribed by the council. Courses in the university track program shall transfer and apply toward the requirements for graduation with a bachelor's degree at all public universities. Successful completion of the university track program shall meet the academic requirement for transfer to a public university as a junior. By fall semester of 1997, requirements for track programs shall be established for all majors and baccalaureate degree programs~~;
- (15) Define and approve the offering of all postsecondary education technical, associate, baccalaureate, graduate, and professional degree, certificate, or diploma programs in the public postsecondary education institutions. The council shall expedite wherever possible the approval of requests from the Kentucky Community and Technical College System board of regents relating to new certificate, diploma, technical, or associate degree programs of a vocational-technical and occupational nature. Without the consent of the General Assembly, the council shall not abolish or limit the total enrollment of the general program offered at any community college to meet the goal of reasonable access throughout the Commonwealth to a two (2) year course of general studies designed for transfer to a baccalaureate program. This does not restrict or limit the authority of the council, as set forth in this section, to eliminate or make changes in individual programs within that general program;
- (16) Eliminate, in its discretion, existing programs or make any changes in existing academic programs at the state's postsecondary educational institutions, taking into consideration these criteria:
 - (a) Consistency with the institution's mission and the strategic agenda;
 - (b) Alignment with the priorities in the strategic implementation plan for achieving the strategic agenda;
 - (c) Elimination of unnecessary duplication of programs within and among institutions; and
 - (d) Efforts to create cooperative programs with other institutions through traditional means, or by use of distance learning technology and electronic resources, to achieve effective and efficient program delivery;
- (17) Ensure the governing board and faculty of all postsecondary education institutions are committed to providing instruction free of discrimination against students who hold political views and opinions contrary to those of the governing board and faculty;
- (18) Review proposals and make recommendations to the Governor regarding the establishment of new public community colleges, technical institutions, and new four (4) year colleges;
- (19) Postpone the approval of any new program at a state postsecondary educational institution, unless the institution has met its equal educational opportunity goals, as established by the council. In accordance with administrative regulations promulgated by the council, those institutions not meeting the goals shall be able to obtain a temporary waiver, if the institution has made substantial progress toward meeting its equal educational opportunity goals;
- (20) Ensure the coordination, transferability, and connectivity of technology among postsecondary institutions in the Commonwealth including the development and implementation of a technology plan as a component of the strategic agenda;
- (21) Approve the teacher education programs in the public institutions that comply with standards established by the Education Professional Standards Board pursuant to KRS 161.028;
- (22) Constitute the representative agency of the Commonwealth in all matters of postsecondary education of a general and statewide nature which are not otherwise delegated to one (1) or more institutions of postsecondary learning. The responsibility may be exercised through appropriate contractual relationships with individuals or agencies located within or without the Commonwealth. The authority includes but is not limited to contractual arrangements for programs of research, specialized training, and cultural enrichment;
- (23) Maintain procedures for the approval of a designated receiver to provide for the maintenance of student records of the public institutions of higher education and the colleges as defined in KRS 164.945, and institutions operating pursuant to KRS 165A.310 which offer collegiate level courses for academic credit,

which cease to operate. Procedures shall include assurances that, upon proper request, subject to federal and state laws and regulations, copies of student records shall be made available within a reasonable length of time for a minimum fee;

- (24) Monitor and transmit a report on compliance with KRS 164.351 to the director of the Legislative Research Commission for distribution to the Health and Welfare Committee;
- (25) Develop in cooperation with each state postsecondary educational institution a comprehensive orientation program for new members of the council and the governing boards. The orientation program shall include but not be limited to the information concerning the roles of the council, the strategic agenda and the strategic implementation plan, and the respective institution's mission, budget, plans, policies, strengths, and weaknesses;
- (26) Develop a financial reporting procedure to be used by all state postsecondary education institutions to ensure uniformity of financial information available to state agencies and the public;
- (27) Select and appoint a president of the council under KRS 164.013;
- (28) Employ consultants and other persons and employees as may be required for the council's operations, functions, and responsibilities;
- (29) Promulgate administrative regulations, in accordance with KRS Chapter 13A, governing its powers, duties, and responsibilities as described in this section;
- (30) Prepare and present by January 31 of each year an annual status report on postsecondary education in the Commonwealth to the Governor, the Strategic Committee on Postsecondary Education, and the Legislative Research Commission;
- (31) Consider the role, function, and capacity of independent institutions of postsecondary education in developing policies to meet the immediate and future needs of the state. When it is found that independent institutions can meet state needs effectively, state resources may be used to contract with or otherwise assist independent institutions in meeting these needs;
- (32) Create advisory groups representing the presidents, faculty, nonteaching staff, and students of the public postsecondary education system and the independent colleges and universities;
- (33) Develop a statewide policy to promote employee and faculty development in all postsecondary institutions and in state and locally operated secondary area technology centers through the waiver of tuition for college credit coursework in the public postsecondary education system. Any regular full-time employee of a postsecondary public institution or a state or locally operated secondary area technology center may, with prior administrative approval of the course offering institution, take a maximum of six (6) credit hours per term at any public postsecondary institution. The institution shall waive the tuition up to a maximum of six (6) credit hours per term;
- (34) Establish a statewide mission for adult education and develop a twenty (20) year strategy, in partnership with the Kentucky Adult Education Program, under the provisions of KRS 164.0203 for raising the knowledge and skills of the state's adult population. The council shall:
 - (a) Promote coordination of programs and responsibilities linked to the issue of adult education with the Kentucky Adult Education Program and with other agencies and institutions;
 - (b) Facilitate the development of strategies to increase the knowledge and skills of adults in all counties by promoting the efficient and effective coordination of all available education and training resources;
 - (c) Lead a statewide public information and marketing campaign to convey the critical nature of Kentucky's adult literacy challenge and to reach adults and employers with practical information about available education and training opportunities;
 - (d) Establish standards for adult literacy and monitor progress in achieving the state's adult literacy goals, including existing standards that may have been developed to meet requirements of federal law in conjunction with the Collaborative Center for Literacy Development: Early Childhood through Adulthood; and
 - (e) Administer the adult education and literacy initiative fund created under KRS 164.041;

- (35) Participate with the Kentucky Department of Education, the Kentucky Board of Education, and postsecondary education institutions to ensure that academic content requirements for successful entry into postsecondary education programs are aligned with high school content standards and that students who master the high school academic content standards shall not need remedial courses. The council shall monitor the results on an ongoing basis;
- (36) Cooperate with the Kentucky Department of Education and the Education Professional Standards Board in providing information sessions to selected postsecondary education content faculty and teacher educators of the high school academic content standards as required under KRS 158.6453(2)(j); and
- (37) Exercise any other powers, duties, and responsibilities necessary to carry out the purposes of this chapter. Nothing in this chapter shall be construed to grant the Council on Postsecondary Education authority to disestablish or eliminate any college of law which became a part of the state system of higher education through merger with a state college.

➔Section 3. KRS 164.001 is amended to read as follows:

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

- (1) "Administrator" means the chief executive officer of the institution;
- (2) "Adult basic education" means instruction in mathematics, science, social studies, reading, language arts, and related areas to enable individuals to better function in society;
- (3) "Benchmarks" means objective measures developed where applicable or practical by the Council on Postsecondary Education to judge the performance of the postsecondary education system and progress toward the goals as stated in KRS 164.003(2);
- (4) "Board" or "governing board" means the board of trustees for the University of Kentucky or the University of Louisville, the board of regents for a comprehensive university, or the board of regents for the Kentucky Community and Technical College System;
- (5) "Board of regents" means the governing board of each comprehensive university and the Kentucky Community and Technical College System;
- (6) "Committee" means the Strategic Committee on Postsecondary Education created in KRS 164.004;
- (7) "Comprehensive university" means the following public institutions: Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, and Western Kentucky University;
- (8) "Council" means the Council on Postsecondary Education created in KRS 164.011;
- (9) "Customized training" means training in specific academic areas, work processes, or technical skills that are designed to serve a specific industry or industries to upgrade worker skills;
- (10) "Goals" means the six (6) goals specified in KRS 164.003(2);
- (11) "Independent institution" means a nonpublic postsecondary education institution in Kentucky whose instruction is not solely sectarian in nature, is accredited by a regional accrediting association recognized by the United States Department of Education, and is licensed by the Council on Postsecondary Education;
- (12) "Institution" means a university, college, community college, health technology center, vocational-technical school, technical institute, technical college, technology center, or the Kentucky Community and Technical College System;
- (13) "Kentucky Community and Technical College System" means the system composed of public community and technical colleges, including those postsecondary institutions operated by the former Cabinet for Workforce Development and those community colleges in the University of Kentucky Community College System on May 30, 1997.

The system also includes institutions created by the board of regents for the Kentucky Community and Technical College System and approved by the General Assembly;

- (14) "Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge and potential;

- (15) "Lower division academic course" means any academic course offered for college or university credit that is designated as a freshman or sophomore level academic course;
- (16) "Nonteaching personnel" means any employee who is a full-time staff member, excluding a president, chancellor, vice president, academic dean, academic department chair, or administrator;
- (17) "Postsecondary education system" means the following public institutions: University of Kentucky, University of Louisville, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, Western Kentucky University, and the Kentucky Community and Technical College System;
- (18) "P-16 council" or "council of partners" means a local or state council that is composed of educators from public and private preschools, elementary, secondary, and postsecondary education institutions, local board of education members, and may include community and business representatives that have voluntarily organized themselves for the purpose of improving the alignment and quality of the education continuum from preschool through postsecondary education as well as student achievement at all levels;
- (19) "Public" means operated with state support;
- (20) "Relative" means a person's father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, son-in-law, or daughter-in-law;
- (21) "Remedial education" means any program, course, or activity that is designed specifically for students who have basic deficiencies in reading, written or oral communication, mathematics, study skills, or other skills necessary to do beginning postsecondary work as defined by the institution;
- (22) "Standardized degree program" means a program, approved by the Council on Postsecondary Education, that consists of specific competencies, curriculum, and performance requirements regardless of the providing institution;
- (23) "Strategic agenda" means the state strategic postsecondary education agenda described in KRS 164.0203;{
~~and~~}
- (24) "Technical institution" means an educational institution that offers certificates, diplomas, or technical degrees in technical or occupational-related programs, including a facility called a vocational-technical school, technical institute, health technology center, technology center, technical college, or similar designation; **and**
- (25) ***"Learning outcomes" means the knowledge, skills, and abilities that students have attained as a result of their involvement in a particular set of educational experiences.***

Signed by Governor April 12, 2010.

CHAPTER 109

(HB 376)

AN ACT relating to health care professionals and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS 157.310 TO 157.440 IS CREATED TO READ AS FOLLOWS:

Notwithstanding any other statute to the contrary:

- (1) (a) ***If funds are appropriated by the General Assembly for this purpose, a local board of education shall provide an annual salary supplement to all speech-language pathologists or audiologists:***
 - 1. ***Who are employed by the local board of education to provide or coordinate speech-language pathology or audiology services for students; and***
 - 2. ***Who hold:***
 - a. ***i. A certificate of clinical competence issued by the American Speech-Language Hearing Association; or***
 - ii. Board certification from the American Board of Audiology; and***

- b.
 - i. *A valid Kentucky credential approved and issued by the Education Professional Standards Board under KRS Chapter 161; or*
 - ii. *A license approved and issued by the Kentucky Board of Speech-Language Pathology and Audiology under KRS Chapter 334A.*
 - (b) *The salary supplement shall be in the same amount as the salary supplement provided to a public school teacher who has attained certification from the National Board for Professional Teaching Standards as provided in KRS 157.395. If the amount appropriated by the General Assembly is less than the amount necessary to meet the requirements of this paragraph, the salary supplement received by each qualified speech-language pathologist or audiologist shall be reduced proportionately by the Department of Education so that all eligible individuals receive the same amount as a supplement.*
 - (c) *The supplement shall remain available to a speech-language pathologist or audiologist so long as funds are appropriated for this purpose by the General Assembly, and the speech-language pathologist or audiologist continues to meet the requirements established by this subsection. The supplement shall cease if the speech-language pathologist or audiologist is employed in another capacity by the local board where the provision of speech-language pathology or audiology services is incidental to his or her other duties.*
 - (d) *The Department of Education shall:*
 - 1. *Determine how many speech-language pathologists and audiologists qualify for the supplement each year;*
 - 2. *Determine the amount of the supplement available each year for each qualified speech-language pathologist and audiologist based on appropriated funds available;*
 - 3. *Notify each local board of education of the supplement amount available to each qualifying speech-language pathologist and audiologist employed by the local board of education; and*
 - 4. *Develop a process for payment to local boards of education of supplement amounts due.*
 - (2) *If funds are not appropriated by the General Assembly to support the salary supplement established by subsection (1) of this section, a local board of education may provide an annual salary supplement under the conditions established by subsection (1) of this section using the resources available to the local board of education.*
 - (3) *The supplement authorized by this section shall be considered in the calculation for contribution to the Kentucky Teachers' Retirement System.*

➔SECTION 2. KRS CHAPTER 319B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Board" means the Kentucky Board of Prosthetics, Orthotics, and Pedorthics;*
- (2) *"CAAHEP" means the Commission on Accreditation of Allied Health Education Programs;*
- (3) *"Custom fabricated and fitted device" means an orthosis, prosthesis, or pedorthic device that is fabricated to original measurements, or to a mold for use by a patient in accordance with a prescription from a health care practitioner or provider authorized by law to write such prescriptions, and that requires substantial clinical and technical judgment in its design and fitting;*
- (4) *"Custom fitted device" means a prefabricated orthosis, prosthesis, or pedorthic device sized or modified for use by the patient in accordance with a prescription from a health care practitioner or provider authorized by law to write such prescriptions that requires substantial clinical judgment and substantive alteration for appropriate use;*
- (5) *"Facility" means the business location where orthotic, prosthetic, or pedorthic care is provided. The orthotic/prosthetic/pedorthic facility has the appropriate clinical and laboratory space and equipment to provide comprehensive orthotic, prosthetic, and pedorthic care. Licensed orthotists, prosthetists, and pedorthists shall be available to either provide care or to supervise the provision of care by nonlicensed staff;*

- (6) *"Licensed orthotic fitter" means a person who receives a license under this chapter to fit the following noncustom orthotic devices:*
- (a) *Cervical orthoses, except those requiring more than minor modification or those used to treat an unstable cervical condition;*
 - (b) *Pressure gradient hose;*
 - (c) *Trusses;*
 - (d) *Prefabricated spinal orthoses, except those used in the treatment of scoliosis or unstable spinal conditions, rigid body jackets made of thermoformable materials, and "halo" devices; and*
 - (e) *Prefabricated orthoses of upper and lower extremities, except those used in the treatment of bone fractures and dislocations, therapeutic (diabetic) shoes or inserts, and functional electrical stimulation orthoses, such as myo-orthosis or neuroprosthesis;*
- (7) *"Licensed orthotist" means a person who is licensed under this chapter to practice orthotics and who represents the person to the public by title or description of services that includes the term "orthotic," "orthotist," "brace," or a similar title or description of services;*
- (8) *"Licensed pedorthist" means a person who is licensed under this chapter to practice pedorthics and who represents the person to the public by the title or description of services that includes the term "pedorthic," "pedorthist," or a similar title or description of services;*
- (9) *"Licensed prosthetist" means a person who is licensed under this chapter to practice prosthetics and who represents the person to the public by title or description of services that includes the term "prosthetic," "prosthetist," "artificial limb," or a similar title or description of services;*
- (10) *"NCOPE" means the National Commission on Orthotic and Prosthetic Education;*
- (11) *"Orthosis" means a custom-designed, fabricated, fitted, or modified device to correct, support, or compensate for a neuro-musculoskeletal disorder or acquired condition. "Orthosis" does not include fabric or elastic supports, corsets, arch supports, low-temperature plastic splints, trusses, elastic hoses, canes, crutches, soft cervical collars, dental appliances, or other similar devices that are carried in stock and sold without modification as "over-the-counter" items by a pharmacy, department store, corset shop, or surgical supply facility;*
- (12) *"Orthotic and prosthetic education program" means a course of instruction accredited by CAAHEP, consisting of:*
- (a) *An adequate curriculum of college level training and instruction in math, physics, biology, chemistry, and psychology; and*
 - (b) *A specific curriculum in orthotic or prosthetic courses, including:*
 - 1. *Lectures covering pertinent anatomy, biomechanics, pathomechanics, prosthetic-orthotic components and materials, training and functional capabilities, prosthetic or orthotic performance evaluation, prescription considerations, etiology of amputations and disease processes necessitating prosthetic or orthotic use, and medical management;*
 - 2. *Subject matter related to pediatric and geriatric problems;*
 - 3. *Instruction in acute care techniques, such as immediate and early postsurgical prosthetics and fracture-bracing techniques; and*
 - 4. *Lectures, demonstrations, and laboratory experiences related to the entire process of measuring, casting, fitting, fabricating, aligning, and completing prostheses or orthoses;*
- (13) *"Orthotics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing an orthosis, under an order from a licensed health care practitioner or provider authorized by law to issue such an order, for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity;*
- (14) *"Orthotist" means a person who is specifically trained and educated to provide or manage the provision of a custom-designed, fabricated, modified, and fitted external orthosis to an orthotic patient, based on a*

clinical assessment and a prescription from a health care practitioner or provider authorized by law to write such prescriptions, to restore physiological function or cosmesis;

- (15) *"Over-the-counter device" means a prefabricated, mass-produced device that is prepackaged and requires no professional advice or judgment in either size selection or use, including fabric or elastic supports, corsets, generic arch supports, and elastic hoses;*
- (16) *"Pedorthic device" means therapeutic footwear, foot orthoses, or orthotics for use at the ankle or below, below the ankle partial foot prostheses, and modified footwear made for therapeutic purposes, as prescribed by a licensed health care practitioner or provider authorized by law to issue such a prescription. "Pedorthic device" does not include nontherapeutic accommodative inlays or nontherapeutic accommodative footwear, regardless of method of manufacture; shoe modifications made for nontherapeutic purposes; unmodified over-the-counter shoes; or prefabricated foot care products;*
- (17) *"Pedorthic education program" means a course of instruction accredited by NCOPE, consisting of:*
 - (a) *A basic curriculum of instruction in foot-related pathology of diseases, anatomy, and biomechanics;*
 - (b) *A specific curriculum in pedorthic courses, including lectures covering shoes, foot orthoses, and shoe modifications, pedorthic components and materials, training and functional capabilities, pedorthic performance evaluation, prescription considerations, etiology of disease processes necessitating use of pedorthic devices, medical management, and subject matter related to pediatric and geriatric problems; and*
 - (c) *Lectures, demonstrations, and laboratory experiences related to the entire process of measuring and casting, fitting, fabricating, aligning, and completing pedorthic devices;*
- (18) *"Pedorthics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a pedorthic device, under an order from a licensed health care practitioner or provider authorized by law to issue such an order for the correction or alleviation of neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity;*
- (19) *"Pedorthist" means a person who measures, designs, fabricates, fits, or services pedorthic devices and assists in the formulation of the order of pedorthic devices, as ordered by a licensed health care practitioner or provider authorized by law to issue such an order for the support or correction of disabilities caused by neuromuscular or musculoskeletal dysfunction, disease, injury, or deformity;*
- (20) *"Person" means a natural person;*
- (21) *"Prosthesis" means a custom designed, fabricated, fitted, or modified device to replace an absent external limb, for the purpose of restoring physiological function or cosmesis. "Prosthesis" does not include artificial eyes or ears, dental appliances, artificial breasts, cosmetic devices such as artificial eyelashes or wigs, or other devices that do not have a significant impact on the musculoskeletal functions of the body;*
- (22) *"Prosthetics" means the science and practice of evaluating, measuring, designing, fabricating, assembling, fitting, adjusting, or servicing a prosthesis, under an order from a licensed health care practitioner or provider authorized by law to issue such an order;*
- (23) *"Prosthetist" means a person who is specifically trained and educated to provide or manage the provision of a custom designed, fabricated, modified, and fitted external limb prosthesis to a prosthetic patient, based on a clinical assessment and a prescription from a health care practitioner or provider authorized to write such prescriptions, to restore physiological function or cosmesis;*
- (24) *"Prosthetist/Orthotist" means a person who practices both disciplines of prosthetics and orthotics and who represents the person to the public by title or by description of services;*
- (25) *"Resident" means a person who has completed a CAAHEP accredited education program in orthotics, prosthetics, or both and is obtaining his or her clinical training in a residency accredited by NCOPE;*
- (26) *"Residency" means a minimum of a one-year NCOPE accredited program to acquire practical clinical training in orthotics, prosthetics, or both, in a patient care setting; and*
- (27) *"Supervision" means the act of critical observing and directing the work or tasks of another who may lack full knowledge of the concept at hand.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The Kentucky Board of Prosthetics, Orthotics, and Pedorthics is hereby established. The board shall consist of five (5) members who shall be appointed by the Governor.

- (1) *One (1) member shall be a citizen at large who is a consumer of orthotic, prosthetic, or pedorthic professional services and is not affiliated with and does not have more than five percent (5%) financial interest in any one (1) health care profession or business.*
- (2) *Four (4) members shall be practicing, licensed orthotists, licensed prosthetists, or licensed pedorthists. These members may be licensed in more than one (1) discipline and at least one (1) board member shall be a licensed pedorthist. Membership of the board shall reasonably reflect representation from the geographic areas in the Commonwealth.*
- (3) *Each member of the board shall serve a term of three (3) years, except that of the initial appointments to the board, two (2) members shall be appointed for two (2) years, two (2) members shall be appointed for three (3) years, and one (1) member shall be appointed for one (1) year. No member of the board shall serve more than the greater of eight (8) consecutive years or two (2) full terms. The Governor may remove any member of the board for misconduct, incompetence, or neglect of duty.*
- (4) *The board shall meet at least annually and may meet at other times if necessary to complete required business. A quorum of the board shall consist of a majority of board members currently appointed. The board shall annually elect a chairperson and vice chairperson who shall be licensed under this chapter.*
- (5) *There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is acting with ordinary care, is functioning within the scope of board duties, is acting without malice, and has the reasonable belief that the actions taken by him or her are warranted by law.*
- (6) *Members of the board shall receive a per diem reimbursement of reasonable expenses incurred as determined by the board in consultation with the Division of Occupations and Professions for each day actually engaged in the duties of the office.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board shall:

- (1) *Promulgate administrative regulations to:*
 - (a) *Establish licensure categories and issue licenses for orthotists, prosthetists, pedorthists, and orthotic fitters;*
 - (b) *Establish the qualifications, educational courses, curriculum, hours, and standards that are prerequisite to issuance of all levels and types of licensure established pursuant to paragraph (a) of this subsection. Any qualifications established by the board shall include the following:*
 1. *To qualify for a license to practice orthotics or prosthetics, a person shall:*
 - a. *Possess a minimum of a baccalaureate degree from an accredited college or university;*
 - b. *Complete a CAAHEP accredited education program in orthotics, prosthetics, or both;*
 - c. *Complete a residency as defined in this chapter in the discipline for which a license is sought;*
 - d. *Pass all written and practical examinations in any combination that is required and approved by the board; and*
 - e. *Be qualified to practice in accordance with internationally accepted standards of orthotic and prosthetic care;*
 2. *To qualify for a license to practice pedorthics, a person shall:*
 - a. *Possess a minimum of a high school diploma or comparable credential approved by the board;*
 - b. *Complete an NCOPE-approved pedorthic education program;*

- c. *Pass all written and practical examinations that are required and approved by the board;*
- d. *Have a minimum of one thousand (1,000) hours of pedorthic patient care experience as approved by the board;*
- e. *Be qualified to practice in accordance with nationally accepted standards of pedorthic care;*
- 3. *To qualify for a license to practice as an orthotic fitter, a person shall:*
 - a. *Possess a minimum of a high school diploma or comparable credential approved by the board;*
 - b. *Complete an NCOPE-approved orthotic fitter course;*
 - c. *Pass all examinations that are required and approved by the board;*
 - d. *Complete a minimum of one thousand (1,000) hours of experience in orthotic fitting as approved by the board;*
 - e. *Be qualified to practice in accordance with nationally accepted standards of care acceptable to the board;*
- 4. *Provisions that a person may be licensed in more than one (1) discipline;*
 - (c) *Establish the circumstances or conditions, if any, under which persons may be exempt from licensure after completion of training, while waiting to take or receive the results of any required examination, or upon meeting specified minimum educational and clinical qualifications;*
 - (d) *Select the examination or examinations to be utilized as the board's licensure examination or examinations and the prerequisites for admission to the examination or examinations. The board may enter into a contract or agreement with the chosen examination service or services, or select an intermediary between the board and the examination service or services, to process applicants for the examination or examinations;*
 - (e) *Establish any other criteria for licensure that are reasonably related to the safe and competent performance of prosthetics, orthotics, and pedorthics;*
 - (f) 1. *Establish the fees to be paid for each of the following:*
 - a. *Application for licensure;*
 - b. *Renewal or reinstatement of licensure;*
 - c. *Late renewal of licensure;*
 - d. *Application for continuing education course approval; and*
 - e. *Duplicate or replacement license.*
 - 2. *The fees shall be set at a level that is adequate to pay all of the expenses of implementing and administering licensure under this chapter;*
 - (g) *Establish the continuing education requirements for licensees, which shall include the frequency of reporting, number of hours, types of courses, approval of courses, methods of proving compliance, penalties for violation, and all fees necessary for implementing the continuing education process; and*
 - (h) *Delineate the standards of practice for persons licensed under this chapter; and*
- (2) *Administer and enforce the provisions of this chapter and evaluate the qualifications of applicants for licensure.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board may:

- (1) *Employ needed personnel and contract with the Division of Occupations and Professions within the Public Protection Cabinet for the provision of administrative services;*

- (2) *Issue subpoenas, examine witnesses, pay appropriate witness fees, administer oaths, and investigate allegations of practices violating the provisions of this chapter;*
- (3) *Seek injunctive relief in the Circuit Court of the county where the violation occurred to stop the unlawful practice of prosthetics, orthotics, and pedorthics by unlicensed persons;*
- (4) *Conduct hearings pursuant to KRS Chapter 13B and keep records and minutes necessary to carry out the functions of this chapter;*
- (5) *Suspend or revoke licenses, impose supervisory or probationary conditions upon licensees, impose administrative disciplinary fines, issue written reprimands or admonishments, or impose any combination of these penalties;*
- (6) *Grant retired or inactive licensure status under conditions set forth by the board by the promulgation of administrative regulations; and*
- (7) *Issue advisory private letter rulings to any affected licensee who makes such a request regarding any matters within the board's primary jurisdiction. Any private letter ruling shall affect only the person making the inquiry and shall have no precedential value for any other inquiry or future contested case that might come before the board. Any dispute regarding a private letter ruling may, if the board chooses to do so, be resolved pursuant to KRS Chapter 13B.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *Any license issued by the board shall contain the name of the person to whom it is issued, the address of the person, the date and number of the license, and other information the board deems necessary. The address contained on the license shall be the address where all correspondence and renewal forms from the board shall be sent. Any person whose address changes shall, within thirty (30) days after the address change, notify the board of the address change. The most recent address contained in the board's records for each licensee shall be the address deemed sufficient for purposes of service of process.*
- (2) *Every licensee shall either keep his or her license prominently displayed in the office or place in which the licensee practices or have it stored in a place from which it can be immediately produced upon request of a patient or a representative of the board.*
- (3) *Any person whose license has been lost or destroyed may apply to the board for a replacement. This application shall be accompanied by an affidavit setting out the facts concerning the loss or destruction of the original license and the payment of a reasonable replacement fee as established by the board in subsection (1)(f) of Section 4 of this Act.*
- (4) *Any person whose name is changed by marriage or court order or who changes employment, home address, or telephone shall notify the board in writing within thirty (30) days of the change.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *On and after January 1, 2013, no person shall practice any profession governed by this chapter, or hold himself or herself out as being able to practice any such profession, or dispense a custom orthosis, prosthesis, or pedorthic device, unless that person is licensed by the board.*
- (2)
 - (a) *Until January 1, 2013, a person certified by the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), with the title of Certified Orthotist (CO), Certified Prosthetist (CP), or Certified Prosthetist/Orthotist (CPO), or by the Board of Certification/Accreditation, International (BOC) with the title of Board of Certification-Orthotist (BOCO), Board of Certification-Prosthetist (BOCP), or Board of Certification-Prosthetist/Orthotist (BOCPO), or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards, may apply for and may be granted orthotic or prosthetic licensure by the board, upon payment of the required fee and after the board has completed a review of the applicant's work history. The board shall complete its review for the purposes of this section within six (6) months of the date of application. The review may include but is not limited to completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.*
 - (b) *Until January 1, 2013, an orthotist or prosthetist certified by either the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), or the Board of Certification/Accreditation, International (BOC), shall be held to the standards of practice enforced*

by the board that has certified the orthotist or prosthetist. For these purposes, certification by either board shall be considered equally valid and enforceable regarding pedorthist certification and standards of practice.

- (c) *After December 31, 2012, any applicant for licensure as an orthotist or a prosthetist shall meet the requirements of this chapter regarding the applicable license.*
- (3)
 - (a) *Until January 1, 2013, a person certified as a Certified Pedorthist (C.Ped) by the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), or certified as a Board of Certification-Pedorthist (BOCPD) by the Board of Certification/Accreditation, International (BOC), or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards, may apply for and may be granted pedorthic licensure under this chapter, upon payment of the required fee and after the board has completed a review of the applicant's work history. The board shall complete its review for the purposes of this section within six (6) months of the date of application. The review may include but is not limited to completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.*
 - (b) *Until January 1, 2013, a pedorthist certified by either the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), or the Board of Certification/Accreditation, International (BOC), shall be held to the standards of practice enforced by the board that has certified the pedorthist. For these purposes, certification by either board shall be considered equally valid and enforceable regarding pedorthist certification and standards of practice.*
 - (c) *After December 31, 2012, any applicant for licensure as a pedorthist shall meet the requirements of the board regarding licensure.*
- (4) *Notwithstanding any other provision of this chapter to the contrary, as an alternative mechanism for those in practice who are not currently certified, a person who has practiced full-time for a minimum of the past four (4) years in a prosthetic/orthotic/pedorthic facility as an orthotist, prosthetist, or pedorthist, may file an application with the board before January 1, 2013, in order to continue to practice orthotics, prosthetics, or pedorthics, and may be issued a license to practice orthotics, prosthetics, or pedorthics by the board without examination, upon the board's receipt of payment of the required licensing fee and after the board has completed a review of the applicant's work history. The board shall complete its review for the purposes of this section within six (6) months of the date of application. The review may include but is not limited to completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.*
- (5)
 - (a) *Until January 1, 2013, a person certified as a Certified Fitter-orthotics (CFo) by the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), or certified as a Certified Orthotic Fitter (COF) by the Board of Certification/Accreditation, International (BOC), or holding similar certifications from other accrediting bodies with equivalent educational requirements and examination standards, may apply for and may be granted licensure as an orthotic fitter under this chapter, upon payment of the required fee and after the board has completed a review of the applicant's work history. The board shall complete its review for the purposes of this section within six (6) months of the date of application. The review may include but is not limited to completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.*
 - (b) *Until January 1, 2013, an orthotic fitter certified by either the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC), or the Board of Certification/Accreditation, International (BOC), shall be held to the standards of practice enforced by the board that has certified the orthotic fitter. For these purposes, certification by either board shall be considered equally valid and enforceable regarding orthotic fitter certification and standards of practice.*
 - (c) *After December 31, 2012, any applicant for licensure as an orthotic fitter shall meet the requirements of the board regarding licensure.*
- (6) *Notwithstanding any other provision of this chapter to the contrary, a person who has practiced full-time for a minimum of the past four (4) years in a prosthetic/orthotic facility as an orthotic fitter, may file an application with the board before January 1, 2013, in order to continue to practice as an orthotic fitter, and shall be issued a license to practice as an orthotic fitter by the board without examination, upon the board's receipt of payment of the required licensing fee and after the board has completed a review of the applicant's work history. The board shall complete its review for the purposes of this section within six (6)*

months of the date of application. The review may include but is not limited to completion by the applicant of a questionnaire regarding the applicant's work history and scope of practice.

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

A licensee may provide care or services only if the care or services are provided pursuant to an order from:

- (1) A licensed health care practitioner authorized to issue such an order; or*
- (2) A physician licensed under KRS Chapter 311 or an advanced registered nurse practitioner licensed under KRS Chapter 314, if the care or services are eligible for reimbursement from Medicare, Medicaid, or health insurance.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) The scope of practice of a licensee shall not include the right to diagnose a medical problem or condition or the right to give medical advice as to the nature, cause, or treatment for the problem or condition for which the orthotic, prosthetic, or pedorthic device is being dispensed. However, the scope of practice of a licensee shall include the right to provide information or demonstration regarding the proper use and care of the device and to make adjustments to the device as needed.*
- (2) No person shall dispense or sell a custom or custom-fit device, based upon an image of the customer's limb captured by the person through a mold, cast, scanning device, digital appliance, or pressure sensitive device, unless the customer has first presented to that person a written prescription for that device from a health care practitioner or provider authorized by law to write such a prescription.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

Nothing in this chapter or in the administrative regulations promulgated by the board pursuant to this chapter shall be interpreted to limit or restrict:

- (1) A licensed health care practitioner or provider from engaging in the full scope of practice authorized by the license for that person's profession, training, or services;*
- (2) A person licensed as a physical therapist under KRS Chapter 327 or as an occupational therapist under KRS Chapter 319A from engaging in that person's profession pursuant to his or her education and training;*
- (3) A person certified as an athletic trainer under KRS Chapter 311 from engaging in that person's profession pursuant to his or her education and training;*
- (4) A person licensed as a physician under KRS Chapter 311 from engaging in that person's profession pursuant to his or her education and training;*
- (5) A person licensed as a chiropractor under KRS Chapter 312 from engaging in that person's profession pursuant to his or her education and training;*
- (6) A person licensed as a pharmacist under KRS Chapter 315 from engaging in that person's profession pursuant to his or her education and training;*
- (7) A person certified as a therapeutic shoe fitter by a nationally recognized board from engaging in that person's profession pursuant to his or her education and training and within that person's scope of practice as defined by the certifying board;*
- (8) Individuals acting under the supervision and control of a licensed pharmacist or pharmacy from measuring, fitting, or adjusting any noncustom fabricated and fitted device including but not limited to over-the-counter devices, so long as such individual does not create a cast, mold, or scan of a part of the human body for the purpose of constructing a medical device to treat a patient's medical condition, and so long as such individual meets one (1) of the following criteria for the device:*
 - (a) Documented training from a manufacturer or training from a licensed or certified orthotist, prosthetist, or pedorthist;*
 - (b) Certification or registration as a fitter of orthotic, prosthetic, or pedorthic devices from a nationally recognized board or association such as the Board of Certification/Accreditation, International*

(BOC), the National Community Pharmacists Association (NCPA), or the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Inc. (ABC); or

- (c) Direct supervision by a trained and experienced, or certified, or registered, fitter of orthotic, prosthetic, or pedorthic devices; or*
- (9) Individuals acting under the supervision and control of a licensed pharmacist or pharmacy from measuring, fitting, or adjusting any noncustom fabricated and fitted pedorthic devices including but not limited to diabetic shoes, so long as the individual meets the criteria of either subsection (8)(a) or (8)(b) of this section, and so long as the individual does not create a cast, mold, or scan of a part of the human body for the purpose of constructing a medical device to treat a patient's medical problem.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

This chapter shall not apply to:

- (1) The practice of orthotics, prosthetics, or pedorthics by a person who is employed by the federal government or any bureau, division, or agency of the federal government while in the discharge of the employee's official duties;*
- (2) The practice of orthotics, prosthetics, or pedorthics by:*
 - (a) A student enrolled in a school of orthotics, prosthetics, or pedorthics;*
 - (b) A resident continuing his or her clinical education in a residency accredited by CAAHEP or NCOPE;*
 - (c) A student in a qualified work experience program or internship in pedorthics; or*
 - (d) A physician licensed under KRS Chapter 311; or*
- (3) The measuring, fitting, or adjusting of an orthotic device by an employee or authorized representative of an orthosis manufacturer registered with the federal food and drug administration, when the employee or representative is directly supervised by a licensed health care professional authorized by law to prescribe, measure, or fit the device, and the measuring, fitting, or adjusting of the device occurs in the office of the licensed health care professional or in a health care facility.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

No person shall profess to be a licensee, or practice or assume the duties incident to a license issued under this chapter, or use the title "orthotist," "prosthetist," "pedorthist," "orthotic fitter," or any words or letters which designate or tend to designate to the public that the person is an orthotist, prosthetist, pedorthist, or orthotic fitter, unless he or she holds a valid, current license from the board.

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) Every license issued under this chapter shall expire on June 30 following the date of issuance unless sooner revoked and canceled.*
- (2) On or before June 1 of each year, the board shall send notices to all licensees, at their last known addresses, advising them that the annual renewal fee is due on July 1 of each year. Every licensee shall renew his or her license on or before July 1 of each year by the payment to the board of an annual renewal fee which shall be a reasonable fee set by administrative regulation of the board and upon submission of a statement of compliance with the continuing education regulations of the board. If this renewal fee is not paid or the statement of compliance is not submitted on or before July 1, the board shall notify the delinquent licensee by mail at his or her last known address that the fee and statement are past due and that a delinquent penalty fee is assessed, in addition to the renewal fee, and that the renewal fee and penalty must be paid and the statement of compliance submitted on or before January 1. If these fees, penalties, and statement are not submitted by January 1, it shall be the duty of the board to suspend or revoke the license for nonpayment of the annual renewal and delinquent fees or for failure to submit the statement of compliance for the current year.*
- (3) All fees collected under the provisions of this chapter, or the administrative regulations adopted pursuant to this chapter, shall be paid into the State Treasury, and credited to a trust and agency fund to be used in defraying the costs and expenses in the administration of this chapter, including but not limited to salaries and necessary travel expenses.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board is authorized in its sound discretion to:

- (1) *Enter into reciprocal agreements with corresponding boards of other states having qualifications and standards at least as high as those of this state, providing for reciprocal licensure without further examination of persons who have been duly licensed upon written examination. Approval of such agreements by the Governor, or any other officer or agency of this state, shall not be required; and*
- (2) *Issue licenses by reciprocity or endorsement, and without further examination, to persons who have been duly licensed upon written examination in another state having qualifications and standards at least as high as those of this state, or who have successfully passed the appropriate national examination.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board may deny or refuse to renew a license, may suspend or revoke a license, or may impose probationary conditions where the licensee or applicant for licensure has engaged in unprofessional conduct which has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct shall include:*
 - (a) *Obtaining a license by means of fraud, misrepresentation, or concealment of material facts;*
 - (b) *Unprofessional conduct as defined by administrative regulations promulgated by the board or violation of the code of ethics promulgated by the board through administrative regulations;*
 - (c) *Being convicted of a felony in any court if the act or acts for which the applicant or licensee was convicted are found by the board to have a direct bearing on whether he or she should be entrusted to serve the public in the capacity of the licensed profession;*
 - (d) *Violating any lawful order or administrative regulation rendered or promulgated by the board; or*
 - (e) *Violating any provision of this chapter.*
- (2) *A denial, refusal to renew, suspension, revocation, or imposition of probationary conditions upon an applicant or licensee may be ordered by the board in a decision made after an administrative hearing conducted in accordance with KRS Chapter 13B and administrative regulations promulgated by the board. The board may accept or reject an application for reinstatement following an administrative hearing conducted in accordance with KRS Chapter 13B.*
- (3) *The surrender of a license shall not serve to deprive the board of jurisdiction to proceed with disciplinary actions under this chapter.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *Until January 1, 2013, any person who practices as an orthotic fitter, orthotist, prosthetist, or pedorthist in violation of this chapter shall be subject to only a warning for the first offense. The person shall be granted thirty (30) days to comply with the provisions of this chapter. Any subsequent offenses committed at any time shall be subject to the relevant penalties in subsection (2) of this section.*
- (2) *Except as otherwise indicated in subsection (1) of this section, any person who violates any provision of this chapter shall be guilty of a Class A misdemeanor and shall pay a fine not to exceed five thousand dollars (\$5,000) per violation.*

➔Section 17. The initial appointments of the four orthotists, prosthetists, or pedorthists to the Kentucky Board of Prosthetics, Orthotics, and Pedorthics shall include at least one pedorthist and shall consist of orthotists, prosthetists, or pedorthists who are not licensed under KRS Chapter 319B but who have engaged in their respective practices for at least two years. Once licensing under KRS Chapter 319B is implemented, orthotists, prosthetists, or pedorthists appointed to the board shall hold the requisite license.

➔Section 18. Sections 2 to 18 of this Act shall be known and may be cited as the "Henry Brown Prosthetics, Orthotics, and Pedorthics Act."

Signed by Governor April 12, 2010.

CHAPTER 110**(HB 415)**

AN ACT relating to public safety.

WHEREAS, the certification of personal services agencies is critical to the safety and well-being of the clients and the professionalism of personal service agency employees; and

WHEREAS, Senate Bill 22 was passed by the 2009 Regular Session of the General Assembly to require certification of personal services agencies; and

WHEREAS, the safety of disabled veterans and others in the disabled community is enhanced when personal service agencies have a policy addressing the acceptance of personal gifts, gratuities, or loans from the clients they serve;

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

➔Section 1. KRS 216.712 is amended to read as follows:

- (1) No personal services agency shall be operated, maintained, or advertised without obtaining a certificate as provided in this section. Entities that operate personal services agencies, as defined in KRS 216.710, in Kentucky on June 25, 2009, shall have until December 31, 2009, to file an application for certification pursuant to this section. All other agencies shall be required to obtain certification prior to providing personal services. A parent personal services agency with one (1) or more branch offices in Kentucky shall not be required to obtain separate certificates for each of its branch offices.
- (2) Each personal services agency providing direct services to clients as defined in KRS 216.710 shall perform a criminal background check on any applicant for employment prior to employing the applicant. Each application provided by the personal services agency to the applicant for initial employment shall state in a conspicuous manner on the application "For This Type of Employment State Law Requires a Criminal Background Check as Condition of Employment."
- (3) No personal services agency shall employ a person in a position which involves providing direct services to a client if the employee has been convicted of a crime as defined by KRS 216.710.
- (4) The secretary shall promulgate administrative regulations to implement this section and KRS 216.714 and 216.716. The administrative regulations at a minimum shall establish:
 - (a) An initial and annual certification review process for personal services agencies that does not require an on-site visit;
 - (b) Procedures related to applying for, reviewing, approving, denying, and revoking certification;
 - (c) Fees for application and reapplication in an amount sufficient to offset the cost to administer KRS 216.712 and 216.714;
 - (d) Procedures for complaint investigations;
 - (e) Procedures for the imposition and collection of fines as provided by KRS 216.714;
 - (f) Policies and procedures for the personal services agencies;
 - (g) Procedures for criminal background checks;
 - (h) Procedures to ensure the competency of the individuals providing personal services, the requirements of written service agreements between the personal services agencies and clients or designated representatives, and the requirements of personal service plans for the clients; and
 - (i) Procedures to be utilized in the conduct of hearings upon appeals in accordance with KRS Chapter 13B.
- (5) Only those personal services agencies meeting the standards prescribed for certification shall be granted a certificate.
- (6) All fees collected under the provisions of this section shall be paid into the State Treasury and credited to the Kentucky personal services agency fund created by KRS 216.716.

- (7) *Each personal services agency providing direct care to clients shall have a policy that addresses the acceptance of personal gifts, gratuities, or loans from a client by the agency and by any employee, agent, or contractor of the personal services agency. The policy shall not be required to apply to personal gifts, gratuities, or loans to the agency made by family members or friends of the client. The policy shall, at a minimum:*

- (a) *Prohibit the solicitation of personal gifts, gratuities, or loans from a client; and*
- (b) *Specify the conditions under which gifts, gratuities, or loans from a client may be accepted by the agency and by any employee, agent, or contractor of the personal services agency.*

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

- (1) *As used in this section, "personal communication device" means a device capable of two (2) way audio or text communication that emits an audible signal, vibrates, displays a message, or otherwise summons or delivers communication to the possessor, including but not limited to a paging device and a cellular telephone.*
- (2) *Except as provided in subsection (3) of this section, no person shall, while operating a motor vehicle that is in motion on the traveled portion of a roadway, write, send, or read text-based communication using a personal communication device to manually communicate with any person using text-based communication, including but not limited to communications referred to as a text message, instant message, or electronic mail.*
- (3) *Subsection (2) of this section shall not apply to:*
 - (a) *The use of a global positioning system feature of a personal communication device;*
 - (b) *The reading, selecting, or entering of a telephone number or name in a personal communication device for the purpose of making a phone call;*
 - (c) *An operator of an emergency or public safety vehicle, when the use of a personal communication device is an essential function of the operator's official duties; or*
 - (d) *The operator of a motor vehicle who writes a text message on a personal communication device to:*
 - 1. *Report illegal activity;*
 - 2. *Summon medical help;*
 - 3. *Summon a law enforcement or public safety agency; or*
 - 4. *Prevent injury to a person or property.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 189 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "personal communication device" shall have the same meaning as defined in Section 2 of this Act.*
- (2) *Any person under the age of eighteen (18) who has been issued an instruction permit, intermediate license, or operator's license shall not operate a motor vehicle, motorcycle, or moped that is in motion on the traveled portion of a roadway while using a personal communication device, except to summon medical help or a law enforcement or public safety agency in an emergency situation.*
- (3) *Use of a personal communication device does not include a stand-alone global positioning system or an in-vehicle security, diagnostics, and communications system, but does include manually entering information into the global positioning system feature of a personal communication device.*
- (4) *This section shall not apply to the use of a citizens band radio or an amateur radio by a motor vehicle operator.*

➔Section 4. KRS 189.990 is amended to read as follows:

- (1) Any person who violates any of the provisions of KRS 189.020 to 189.040, subsection (1) or (4) of KRS 189.050, KRS 189.060 to 189.080, subsections (1) to (3) of KRS 189.090, KRS 189.100, 189.110, 189.130 to 189.160, subsections (2) to (4) of KRS 189.190, KRS 189.200, 189.285, 189.290, 189.300 to 189.360, KRS 189.380, KRS 189.400 to 189.430, KRS 189.450 to 189.458, KRS 189.4595 to 189.480, subsection (1) of

KRS 189.520, KRS 189.540, KRS 189.570 to 189.590, except subsection (1)(b) or (6)(b) of KRS 189.580, KRS 189.345, subsection (4) of KRS 189.456, and 189.960 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense. Any person who violates subsection (1)(a) of KRS 189.580 shall be fined not less than twenty dollars (\$20) nor more than two thousand dollars (\$2,000) or imprisoned in the county jail for not more than one (1) year, or both, unless the accident involved death or serious physical injury and the person knew or should have known of the death or serious physical injury, in which case the person shall be guilty of a Class D felony. Any person who violates paragraph (c) of subsection (5) of KRS 189.390 shall be fined not less than eleven dollars (\$11) nor more than thirty dollars (\$30). Neither court costs nor fees shall be taxed against any person violating paragraph (c) of subsection (5) of KRS 189.390.

- (2)
 - (a) Any person who violates the weight provisions of KRS 189.212, 189.221, 189.222, 189.226, 189.230, or 189.270 shall be fined two cents (\$0.02) per pound for each pound of excess load when the excess is five thousand (5,000) pounds or less. When the excess exceeds five thousand (5,000) pounds the fine shall be two cents (\$0.02) per pound for each pound of excess load, but the fine levied shall not be less than one hundred dollars (\$100) and shall not be more than five hundred dollars (\$500).
 - (b) Any person who violates the provisions of KRS 189.271 and is operating on a route designated on the permit shall be fined one hundred dollars (\$100); otherwise, the penalties in paragraph (a) of this subsection shall apply.
 - (c) Any person who violates any provision of subsection (2) or (3) of KRS 189.050, subsection (4) of KRS 189.090, KRS 189.221 to 189.230, 189.270, 189.280, or the dimension provisions of KRS 189.212, for which another penalty is not specifically provided shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
 - (d) Nothing in this subsection or in KRS 189.221 to 189.228 shall be deemed to prejudice or affect the authority of the Department of Vehicle Regulation to suspend or revoke certificates of common carriers, permits of contract carriers, or drivers' or chauffeurs' licenses, for any violation of KRS 189.221 to 189.228 or any other act applicable to motor vehicles, as provided by law.
 - (3)
 - (a) Any person who violates subsection (1) of KRS 189.190 shall be fined not more than fifteen dollars (\$15).
 - (b) Any person who violates subsection (5) of KRS 189.190 shall be fined not less than thirty-five dollars (\$35) nor more than two hundred dollars (\$200).
 - (4)
 - (a) Any person who violates subsection (1) of KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (b) Any peace officer who fails, when properly informed, to enforce KRS 189.210 shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).
 - (c) All fines collected under this subsection, after payment of commissions to officers entitled thereto, shall go to the county road fund if the offense is committed in the county, or to the city street fund if committed in the city.
 - (5) Any person who violates KRS 189.370 shall for the first offense be fined not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) or imprisoned not less than thirty (30) days nor more than sixty (60) days, or both. For each subsequent offense occurring within three (3) years, the person shall be fined not less than three hundred dollars (\$300) nor more than five hundred dollars (\$500) or imprisoned not less than sixty (60) days nor more than six (6) months, or both. The minimum fine for this violation shall not be subject to suspension. A minimum of six (6) points shall be assessed against the driving record of any person convicted.
 - (6) Any person who violates KRS 189.500 shall be fined not more than fifteen dollars (\$15) in excess of the cost of the repair of the road.
 - (7) Any person who violates KRS 189.510 or KRS 189.515 shall be fined not less than twenty dollars (\$20) nor more than fifty dollars (\$50).
 - (8) Any peace officer who violates subsection (2) of KRS 189.520 shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).

- (9) (a) Any person who violates KRS 189.530(1) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned not less than thirty (30) days nor more than twelve (12) months, or both.
- (b) Any person who violates KRS 189.530(2) shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100).
- (10) Any person who violates any of the provisions of KRS 189.550 shall be guilty of a Class B misdemeanor.
- (11) Any person who violates subsection (2) of KRS 189.560 shall be fined not less than thirty dollars (\$30) nor more than one hundred dollars (\$100) for each offense.
- (12) The fines imposed by paragraph (a) of subsection (3) and subsections (6) and (7) of this section shall, in the case of a public highway, be paid into the county road fund, and, in the case of a privately owned road or bridge, be paid to the owner. These fines shall not bar an action for damages for breach of contract.
- (13) Any person who violates any of the provisions of KRS 189.120 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (14) Any person who violates any provision of KRS 189.575 shall be fined not less than twenty dollars (\$20) nor more than twenty-five dollars (\$25).
- (15) Any person who violates subsection (2) of KRS 189.231 shall be fined not less than twenty dollars (\$20) nor more than one hundred dollars (\$100) for each offense.
- (16) Any person who violates restrictions or regulations established by the secretary of transportation pursuant to subsection (3) of KRS 189.231 shall, upon first offense, be fined one hundred dollars (\$100) and, upon subsequent convictions, be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for thirty (30) days, or both.
- (17) (a) Any person who violates any of the provisions of KRS 189.565 shall be guilty of a Class B misdemeanor.
- (b) In addition to the penalties prescribed in paragraph (a) of this subsection, in case of violation by any person in whose name the vehicle used in the transportation of inflammable liquids or explosives is licensed, the person shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Each violation shall constitute a separate offense.
- (18) Any person who abandons a vehicle upon the right-of-way of a state highway for three (3) consecutive days shall be fined not less than thirty-five dollars (\$35) nor more than one hundred dollars (\$100), or imprisoned for not less than ten (10) days nor more than thirty (30) days.
- (19) Every person violating KRS 189.393 shall be guilty of a Class B misdemeanor, unless the offense is being committed by a defendant fleeing the commission of a felony offense which the defendant was also charged with violating and was subsequently convicted of that felony, in which case it is a Class A misdemeanor.
- (20) Any law enforcement agency which fails or refuses to forward the reports required by KRS 189.635 shall be subject to the penalties prescribed in KRS 17.157.
- (21) A person who operates a bicycle in violation of the administrative regulations promulgated pursuant to KRS 189.287 shall be fined not less than ten dollars (\$10) nor more than one hundred dollars (\$100).
- (22) Any person who violates KRS 189.860 shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (23) Any person who violates KRS 189.754 shall be fined not less than twenty-five dollars (\$25) nor more than three hundred dollars (\$300).
- (24) Any person who violates the provisions of KRS 189.125(3)(a) shall be fined fifty dollars (\$50). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (25) Any person who violates the provisions of KRS 189.125(3)(b) shall not be issued a uniform citation, but shall instead receive a courtesy warning up until July 1, 2009. For a violation on or after July 1, 2009, the person shall be fined thirty dollars (\$30). This fine shall be subject to prepayment. A fine imposed under this

subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, a fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs. A person who has not been previously charged with a violation of KRS 189.125(3)(b) may elect to acquire a booster seat meeting the requirements of KRS 189.125. Upon presentation of sufficient proof of the acquisition, the charge shall be dismissed and no fees or costs shall be imposed.

- (26) Any person who violates the provisions of KRS 189.125(6) shall be fined an amount not to exceed twenty-five dollars (\$25). This fine shall be subject to prepayment. A fine imposed under this subsection shall not be subject to court costs pursuant to KRS 24A.175, additional court costs pursuant to KRS 24A.176, the fee imposed pursuant to KRS 24A.1765, or any other additional fees or costs.
- (27) Fines levied pursuant to this chapter shall be assessed in the manner required by KRS 534.020, in amounts consistent with this chapter. Nonpayment of fines shall be governed by KRS 534.060.
- (28) A licensed driver under the age of eighteen (18) charged with a moving violation pursuant to this chapter as the driver of a motor vehicle may be referred, prior to trial, by the court to a diversionary program. The diversionary program under this subsection shall consist of one (1) or both of the following:
 - (a) Execution of a diversion agreement which prohibits the driver from operating a vehicle for a period not to exceed forty-five (45) days and which allows the court to retain the driver's operator's license during this period; and
 - (b) Attendance at a driver improvement clinic established pursuant to KRS 186.574. If the person completes the terms of this diversionary program satisfactorily the violation shall be dismissed.
- (29) A person who violates the provisions of subsection (2) or (3) of KRS 189.459 shall be fined two hundred fifty dollars (\$250). The fines and costs for a violation of subsection (2) or (3) of KRS 189.459 shall be collected and disposed of in accordance with KRS 24A.180. Once deposited into the State Treasury, ninety percent (90%) of the fine collected under this subsection shall immediately be forwarded to the personal care assistance program under KRS 205.900 to 205.920. Ten percent (10%) of the fine collected under this subsection shall annually be returned to the county where the violation occurred and distributed equally to all law enforcement agencies within the county.
- (30)
 - (a) *Prior to January 1, 2011, any person who violates Section 2 or 3 of this Act shall not be issued a uniform citation, but shall instead receive a courtesy warning.*
 - (b) *On or after January 1, 2011, any person who violates Section 2 or 3 of this Act shall be fined twenty-five dollars (\$25) for the first offense and fifty dollars (\$50) for each subsequent offense.*

➔Section 5. KRS 186.452 is amended to read as follows:

- (1) Except as provided in KRS 186.415, a person who is under eighteen (18) years of age may apply for an intermediate license to operate a motor vehicle if the person has:
 - (a) Held an instruction permit a minimum of one hundred eighty (180) days without a violation under KRS 186.450(4), (5), or (6), **a conviction for a violation of Section 2 or 3 of this Act**, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1); and
 - (b) Presented a statement to the Department of Kentucky State Police signed by a parent or guardian of the applicant attesting that the applicant has completed at least sixty (60) hours of supervised driving experience, including at least ten (10) hours at night, while accompanied by a person who has attained the age of twenty-one (21) years and holds a valid operator's license occupying the seat beside the applicant.
- (2) If an applicant for an intermediate license successfully completes the examinations required under KRS 186.480, the Department of Kentucky State Police shall affix an intermediate license sticker to the instruction permit and report the applicant's new status to the Transportation Cabinet. The Transportation Cabinet shall update the information in its computer system to reflect that the applicant has been granted an intermediate license. An intermediate license shall be valid for two (2) years and may be renewed.
- (3) A person shall have the intermediate license in his or her possession at all times when operating a motor vehicle.

- (4) A person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle, motorcycle, or moped between the hours of 12 midnight and 6 a.m. unless the person can demonstrate good cause for driving, including emergencies, involvement in school-related activities, or involvement in work-related activities.
- (5) Except when accompanied by a driver training instructor affiliated with a driver training school licensed under KRS Chapter 332 or a public or nonpublic secondary school, a person with an intermediate license who is under the age of eighteen (18) years shall not operate a motor vehicle at any time when accompanied by more than one (1) unrelated person who is under the age of twenty (20) years. A peace officer shall not stop or seize a person nor issue a uniform citation for a violation of this subsection if the officer has no other cause to stop or seize the person other than a violation of this subsection. This subsection shall not apply to any operator of a vehicle registered under the provisions of KRS 186.050(4) who is engaged in agricultural activities.
- (6) A violation under subsection (3), (4), or (5) of this section, a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, or a conviction for a violation of KRS 189A.010(1) shall add an additional minimum of one hundred eighty (180) days from the date of the violation before a person who is under the age of eighteen (18) years may apply for an operator's license.

➔Section 6. KRS 186.454 is amended to read as follows:

- (1) Except as provided in KRS 186.415, a person with an intermediate license who is under the age of eighteen (18) years may apply for an operator's license to operate a motor vehicle if the person has:
 - (a) Held an intermediate license for a minimum of one hundred eighty (180) days without a conviction for a moving violation under KRS Chapter 189 for which points are assessed by the cabinet, ***a conviction for a violation of Section 2 or 3 of this Act***, a conviction for a violation of KRS 189A.010(1), or a conviction under KRS 186.452(3), (4), or (5); and
 - (b) Completed a driver training program under KRS 186.410(4).
- (2) A person with an intermediate license who is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle if the person has completed a driver training program under KRS 186.410(4).

➔Section 7. Section 1 of this Act shall be known and may be cited as, "The Kentucky Adult Protection Act" in honor of the disabled veterans who revealed the need for this legislation.

Signed by Governor April 12, 2010.

CHAPTER 111

(HB 447)

AN ACT relating to private, parochial, and church schools.

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

➔Section 1. KRS 160.151 is amended to read as follows:

- (1) (a) ~~{Beginning with the 2002-2003 school year,}~~ A private, parochial, or church school that has voluntarily been certified by the Kentucky Board of Education in accordance with the provisions of KRS 156.160(3) may require a national and state criminal background check on all new certified hires in the school and student teachers assigned to the school ***and may require a new national and state criminal background check on each certified teacher once every five (5) years of employment.*** Certified individuals who were employed in another certified position in a Kentucky school within six (6) months of the date of the hire and who had previously submitted to a national and state criminal background check for previous employment may be excluded from ~~the initial~~ ~~further~~ national or state criminal background checks.
- (b) The national criminal history background check shall be conducted by the Federal Bureau of Investigation. The state criminal history background check shall be conducted by the Department of Kentucky State Police or the Administrative Office of the Courts.

- (c) All fingerprints requested under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The fingerprint cards shall be forwarded to the Federal Bureau of Investigation by the Department of Kentucky State Police after a state criminal background check has been conducted. Any fee charged by the Department of Kentucky State Police, the Administrative Office of the Courts, or the Federal Bureau of Investigation shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (2) If a school requires a criminal background check for a new hire, the school shall conspicuously include the following disclosure statement on each application or renewal form provided by the employer to an applicant for a certified position: "STATE LAW AUTHORIZES THIS SCHOOL TO REQUIRE A CRIMINAL HISTORY BACKGROUND CHECK AS A CONDITION OF EMPLOYMENT FOR THIS TYPE OF POSITION."
 - (a) For purposes of this subsection, "contractor" means an adult who is permitted access to school grounds pursuant to a current or prospective contractual agreement with the school, school board, school district, or school-affiliated entity, at times when students are present. The term "contractor" includes an employee of a contractor.
 - (b) The school or school board may require a contractor, volunteer, or visitor to submit to a national criminal history check by the Federal Bureau of Investigation and state criminal history background check by the Department of Kentucky State Police or Administrative Office of the Courts. Any request for records under this section shall be on an applicant fingerprint card provided by the Department of Kentucky State Police. The results of the state criminal background check and the results of the national criminal history background check, if requested, shall be sent to the hiring superintendent. Any fee charged by the Department of Kentucky State Police shall be an amount no greater than the actual cost of processing the request and conducting the search.
- (3)
 - (a) A nonpublic school voluntarily implementing the provisions of this chapter may choose not to employ any person who is a violent offender as defined by KRS 17.165(2), has been convicted of a sex crime which is classified as a felony as defined by KRS 17.165(1), or has committed a violent crime as defined in KRS 17.165(3). A nonpublic school may employ, at its discretion, persons convicted of sex crimes classified as a misdemeanor.
 - (b) If a school term has begun and a certified position remains unfilled or if a vacancy occurs during a school term, a nonpublic school implementing the provisions of this chapter may employ an individual who will have supervisory or disciplinary authority over minors on probationary status pending receipt of a criminal history background check.
 - (c) Employment at a nonpublic school implementing the provisions of this chapter may be contingent on the receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.
 - (d) Nonpublic schools implementing the provisions of this chapter may terminate probationary employment under this section upon receipt of a criminal history background check documenting a record as a violent offender, of a sex crime, or of a violent crime as defined in KRS 17.165.

Signed by Governor April 12, 2010.

CHAPTER 112

(HB 180)

AN ACT relating to massage therapy.

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

➔Section 1. KRS 309.350 is amended to read as follows:

As used in KRS 309.350 to 309.364 unless the context otherwise requires:

- (1) "Board" means the Kentucky Board of Licensure for Massage Therapy;
- (2) "Board-approved massage program" means one which meets minimum standards for training and curriculum as determined by the board;

- (3) **"Compensation" means the direct or indirect payment, loan, advance, donation, contribution, deposit, barter, gratuity, or gift of money or anything of value;**
- (4) "Feldenkrais Method" means a system of somatic education in which touch and words are used to eliminate faulty habits, learn new patterns of self-organization and action, and improve a person's own functional movement patterns. The method is based on principles of physics, biomechanics and an understanding of, or learning about, human development. The practice is federally trademarked and requires permission from the Feldenkrais Guild to use the term and methodology;
- (5){(4)} "Massage therapist" means a person who is licensed by the board to administer massage or massage therapy to the public for compensation;
- (6){(5)} "Polarity therapy" means diverse applications affecting the human energy system. These applications include energetic approaches to somatic contact, verbal facilitation, nutrition, exercise, and health education. Polarity therapy does not make medical claims, diagnose physical ailments, or allow prescription of medications. Standards for schools, education, and practice, the administration of a code of ethics, and a registration process are provided by the American Polarity Therapy Association;
- (7){(6)} "Practice of massage therapy" means the application, by a massage therapist licensed by the board, of a system of structured touch, pressure, movement, and holding to the soft tissues of the human body with the intent to enhance or restore the health and well-being of the client. The practice includes the external application of water, heat, cold, lubricants, salt scrubs, or other topical preparations; use of electromechanical devices that mimic or enhance the actions of the hands; and determination of whether massage therapy is appropriate or contraindicated, or whether referral to another health care practitioner is appropriate; and
- (8){(7)} "Trager Approach" means a form of movement education that uses subtle directed movements and the skilled touch of a practitioner. The Trager Approach combines physical movement with sensory awareness and internal imagery designed to increase the client's self-awareness and generate physiological changes in the body tissues so as to allow the client to experience a new way of moving his or her body. The practice is federally trademarked.

➔Section 2. KRS 309.352 is amended to read as follows:

KRS 309.350 to 309.364 shall not preclude:

- (1) Persons duly licensed, registered, or certified as massage therapists in another state or territory, the District of Columbia, or a foreign country ~~teaching[when invited to this state to teach]~~ a course related to massage therapy or ~~consulting[to consult]~~ with a person licensed under KRS 309.350 to 309.364;
- (2) Students~~[practicing massage therapy while]~~ enrolled in a program recognized by the board and completing a clinical requirement for graduation while under the supervision of a board-licensed massage therapist **or other licensed health-care professional as defined by the board in administrative regulation**;
- (3) A person administering a massage to members of the person's immediate family;
- (4) Persons who restrict manipulation of the soft tissues of the human body to the hands, feet, or ears, and do not hold themselves out to be massage therapists;
- (5) Persons who use procedures within the scope of practice of their profession, which has established standards and ethics, provided that their services use touch, words, and directed movement to deepen awareness of existing patterns of movement in the body as well as to suggest new possibilities of movement while engaged, but who are not designated or implied to administer massage or to be massage therapists. These practices include, but are not limited to, the Feldenkrais Method and the Trager Approach;
- (6) Persons engaged within the scope of practice of a profession with established standards and ethics in which touch is limited to what is essential for palpation and affecting of the human energy system, provided that their services are not designated or implied to be massage or massage therapy. These practices include but are not limited to polarity therapy;
- (7) Persons duly licensed, certified, or registered in another state or territory, the District of Columbia, or a foreign country when incidentally in this state to provide service as a part of an emergency response team working in conjunction with disaster relief officials or as part of a charity event, **athletic event, or artistic performance**;

- (8) Students participating in massage therapy classes or continuing education while in the classroom or practicing on a classmate and not holding themselves out as massage therapists or accepting compensation for the practice; or
- (9) Practitioners of the following occupations and professions regulated by state law while engaging in the practices for which they are duly licensed and while not holding themselves out to be massage therapists:
 - (a) Physicians, osteopaths, podiatrists, and athletic trainers regulated under KRS Chapter 311;
 - (b) Chiropractors regulated under KRS Chapter 312;
 - (c) Registered nurses and practical nurses regulated under KRS Chapter 314;
 - (d) Barbers,~~and~~ cosmetologists, *and estheticians* regulated under KRS Chapters 317,~~and~~ 317A, *and 317B* respectively;
 - (e) Occupational therapists regulated under KRS Chapter 319A; and
 - (f) Physical therapists regulated under KRS Chapter 327.

➔Section 3. KRS 309.354 is amended to read as follows:

- (1) There is created a board to be known as the Kentucky Board of Licensure for Massage Therapy, which shall be an independent agency attached to the Division of Occupations and Professions for administrative and clerical purposes.
- (2) The Governor shall appoint seven (7) members to serve on the board with the following representation:
 - (a) Five (5) members who are massage therapists licensed under KRS 309.350 to 309.364, who have been in the practice of massage therapy for at least five (5) of the last seven (7) years~~prior to June 24, 2003~~, and who *have been*~~are~~ residents of Kentucky *for at least one (1) year*;
 - (b) Of these five (5), at least one (1) but no more than two (2) shall own or direct a board-approved massage therapy training program; and
 - (c) Two (2) members shall be appointed by the Governor and shall serve as members at large who are neither licensed massage therapists nor spouses of persons who are licensed, or have a direct or indirect interest in the profession regulated under KRS 309.350 to 309.364. One (1) of the two (2) may hold a license in another health care profession.
- (3) Appointments shall be for three (3) years with initial appointments as follows: three (3) appointees shall serve three (3) year terms; two (2) shall serve two (2) year terms; and two (2) shall serve one (1) year terms. The Governor shall assign terms to initial members at his or her discretion.
- (4) The board shall elect initially, and annually thereafter, a chair, vice chair, and secretary from its membership and shall meet at least once per year, and more often as deemed necessary, at a time and at a place in Kentucky for the board to fulfill its duties.
- (5) Each member of the board shall receive a per diem not to exceed one hundred dollars (\$100) and other actual and necessary expenses for each day he or she is actually engaged in the discharge of the board's official duties.
- (6) Upon recommendation of the board, the Governor may remove any member of the board for a poor attendance record, neglect of duty, or malfeasance in office.

➔Section 4. KRS 309.355 is amended to read as follows:

- (1) The board shall administer and enforce the provisions of KRS 309.350 to 309.364 and shall have the responsibility to evaluate the qualifications of applicants for licensure and to authorize issuing, renewing, suspending, and revoking licenses.
- (2) The board shall investigate alleged violations brought to its attention, conduct investigations, and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of KRS 309.350 to 309.364 and administrative regulations promulgated pursuant to KRS 309.350 to 309.364. The board shall have the authority to administer oaths, receive evidence, interview persons, and require the production of books, papers, documents, or other evidence. The board may institute civil and criminal proceedings against violators of KRS 309.350 to 309.364. The Attorney General, Commonwealth's attorneys, and county attorneys shall assist the board in prosecuting violations of KRS 309.350 to 309.364.

- (3) The board shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to carry out and enforce provisions of KRS 309.350 to 309.364, including creating a code of ethics, standards of practice, *standards of educational program curriculum and instructor qualification*, and continuing education requirements for licensed massage therapists.
- (4) The board shall keep a record of its proceedings and a register of all persons licensed as massage therapists. The register shall include the name, license number and date of issue, last known place of business, and residence of each licensee. The board shall publish annually a directory of licensed massage therapists and their places of business. The list shall be available to any Kentucky citizen upon request and payment of a fee not to exceed the cost of the publication.
- (5) The board shall make an annual report to the Governor and the General Assembly, which shall contain an account of its duties performed, actions taken, and appropriate recommendations.
- (6) The board may seek an injunction in *the circuit court of the county where the alleged violation occurred* ~~(Franklin Circuit Court)~~ against any individual who practices massage therapy in the Commonwealth without a license.

➔Section 5. KRS 309.357 is amended to read as follows:

The following fees shall be required of licensees and prospective applicants:

- (1) Application fee of fifty dollars (\$50), which shall be credited to the initial license fee for successful applicants;
- (2) Initial, nonrefundable license fee not to exceed one hundred twenty-five dollars (\$125);
- (3) Biennial renewal fees not to exceed one hundred dollars (\$100);
- (4) Late renewal fees not to exceed one hundred fifty dollars (\$150) up to sixty (60) days after expiration of license; ~~and~~
- (5) Sixty (60) *to ninety (90)* days after expiration of license, late renewal fees not to exceed two hundred dollars (\$200); *and*
- (6) *Beyond ninety (90) days after the expiration of a license:*
 - (a) *Late renewal fees not to exceed two hundred dollars (\$200) if the applicant for renewal can demonstrate to the satisfaction of the board that the applicant was unable to renew in a timely manner due to circumstances beyond his or her control; or*
 - (b) *The application and initial, nonrefundable license fees required by subsections (1) and (2) of this section, accompanied by:*
 1. *A new application for licensure; and*
 2. *Proof of compliance with all of the requirements to practice massage therapy specified in Section 6 of this Act.*

If the board determines that the applicant practiced on an expired license, the board may require one (1) continuing education credit per month of expiration, at the discretion of the board.

➔Section 6. KRS 309.358 is amended to read as follows:

- ~~{(1) Between June 24, 2003, and June 24, 2005, the board shall issue an initial license as a massage therapist to an applicant who:~~
- ~~(a) Is eighteen (18) years of age or older;~~
 - ~~(b) Has paid the application fee and other fees required by the board;~~
 - ~~(c) Is a person of good moral character;~~
 - ~~(d) Has successfully completed a course of study consisting of a minimum of five hundred (500) classroom hours of supervised instruction in a massage therapy training program approved by the board; and~~
 - ~~(e) Has successfully passed an examination administered by a certifying agency that has been approved by the National Commission for Certifying Agencies.~~

~~(2) On and after June 24, 2005,~~ The board may issue a license as a massage therapist to an applicant who:

- ~~(1)(a)~~ Is eighteen (18) years of age or older;
- ~~(2)(b)~~ Has paid the application fee and other fees required by the board;
- ~~(3)(c)~~ Is a person of good moral character;
- ~~(4)(d)~~ Has successfully completed a course of study consisting of a minimum of six hundred (600) ~~classroom~~ hours of supervised instruction in a massage therapy training program approved by the board; and
- ~~(5)(e)~~ Has successfully passed an examination administered by the National Certification Board for Therapeutic Massage and Bodywork or a certifying agency that has been approved by the National Commission for Certifying Agencies, **or other examinations approved by the board.**

➔Section 7. KRS 309.363 is amended to read as follows:

- (1) A person, institution, or business entity offering a massage therapy program of instruction shall file a completed application for a certificate of good standing with the board on a form prescribed by the board **and pay a fee as specified in Section 5 of this Act.** The completed application shall provide proof acceptable to the board that the following criteria have been met:
 - (a) The school is licensed to operate by the Kentucky State Board for Proprietary Education, the Council on Postsecondary Education, or their equivalent in another state;
 - (b) A curriculum statement showing clock hours devoted to each subject with the following minimums:
 - 1. One hundred twenty-five (125) hours of anatomy, physiology, or kinesiology;
 - 2. A two hundred (200) hour course to include massage theory, technique, and practice focusing on gliding strokes, kneading, direct pressure, deep friction, joint movement, superficial warming techniques, percussion, compression, vibration, jostling, shaking, and rocking;
 - 3. Two hundred (200) hours of approach to the business of massage, specifically including contraindications, benefits, business, history, ethics, client documentation, legalities of massage, and modality courses designed to meet the school's specific program objectives;
 - 4. Forty (40) hours of pathology; and
 - 5. The school may use its discretion in allotting the additional thirty-five (35) curricular hours that are required under KRS 309.358;
 - (c) A listing of instructional staff and their qualifications as follows:
 - 1. Instructors of the practical courses shall be licensed massage therapists and shall have three (3) years of experience in the practice of massage therapy;~~;~~
 - 2. Instructors of science courses shall be either licensed massage therapists with three (3) years of experience in the practice of massage therapy or have certification or specific higher education in the subject they are teaching; **and**
 - 3. **Instructors in adjunctive courses shall have subject-specific education and experience.**

- (2) The board shall accept National Certification Board for Therapeutic Massage and Bodywork guidelines in approving continuing education.

➔SECTION 8. A NEW SECTION OF KRS 309.350 TO 309.364 IS CREATED TO READ AS FOLLOWS:

- (1) **A person, institution, or business entity offering a massage therapy program of instruction shall renew a certificate of good standing annually.**
- (2) **During the renewal process, the person, institution, or business entity shall submit to the board documentation of program updates, personnel changes, graduation rates, and licensing examination rates.**

➔Section 9. The following KRS section is repealed;

309.360 Qualifications for license issued prior to June 24, 2005.

Signed by Governor April 12, 2010.

CHAPTER 113**(HB 199)**

AN ACT relating to motor vehicle license plates.

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

➔Section 1. KRS 186.041 is amended to read as follows:

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

attach to the special military-related license plate application written evidence from the Kentucky chapter of the Pearl Harbor Survivors Association that the person:

- (a) Was a member of the United States Armed Forces on December 7, 1941;
 - (b) Was on station on December 7, 1941, during the hours of 7:55 a.m. to 9:45 a.m., Hawaii time, at Pearl Harbor, the island of Oahu, or offshore at a distance not to exceed three (3) miles;
 - (c) Was discharged honorably from the United States Armed Forces; and
 - (d) Is certified by the Kentucky chapter of the Pearl Harbor Survivors Association.
- (6) A person who is eligible to receive a Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses license plate under KRS 186.164(15)(a) may receive up to two (2) Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses license plates ***free of charge and may purchase additional license plates by paying the same fee as for special military-related plates issued under subsection (2)(d) of Section 2 of this Act*** annually for vehicles he or she owns or leases.
- (7) The surviving spouse of a Kentucky National Guard member or a retired member, who possessed a vehicle licensed with the Kentucky National Guard special license plate, may retain the license plate for use on the same vehicle or another vehicle that complies with KRS 186.164(7). The surviving spouse may renew the license plate indefinitely, provided the appropriate registration fee is paid annually.

➔Section 2. KRS 186.162 is amended to read as follows:

- (1) As used in this section and in KRS 186.043, 186.164, 186.166, and 186.174:
- (a) "Special license plate" means a unique license plate issued under this chapter to a group or organization that readily identifies the operator of the motor vehicle or motorcycle bearing the plate as a member of a group or organization, or a supporter of the work, goals, or mission of a group or organization. The term shall not include regular license plates issued under KRS 186.240;
 - (b) "Street rod" means a modernized private passenger motor vehicle manufactured prior to the year 1949, or designed or manufactured to resemble a vehicle manufactured prior to 1949;
 - (c) "SF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by the Transportation Cabinet;
 - (d) "CF" means the portion of an initial or renewal fee to obtain a special license plate that is dedicated for use by a county clerk; and
 - (e) "EF" means the portion of an initial or renewal fee to obtain a special license plate that is mandated by this chapter to be dedicated for use by a particular group or organization.
- (2) The initial purchase fee and renewal fee for a special license plate created under this chapter shall be as established in this subsection and includes the name of group or organization and the total initial and renewal fee required for the plate. The amount in parentheses indicates how the total fee is required to be divided:
- (a) Disabled veterans who receive assistance to purchase a vehicle from the United States ***Department of Veterans' Affairs, veterans declared by the United States Department of Veterans' Affairs to be one hundred percent (100%) service-connected disabled,***~~Veterans' Administration~~ and recipients of the Congressional Medal of Honor:
 - 1. Initial Fee: \$0 (\$0 SF/\$0 CF/\$0 EF).
 - 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/\$0 EF).
 - (b) Former prisoners of war and survivors of Pearl Harbor:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 - 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
 - (c) Members of the Kentucky National Guard and recipients of the Purple Heart:
 - 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).

2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (d) Members of the Civil Air Patrol; active, retired, veteran, reserve, or auxiliary members of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard; Merchant Marines who served between December 7, 1941, and August 15, 1945; *persons who wish to receive Gold Star Mothers, Gold Star Fathers, or Gold Star Spouses license plates beyond the two (2) exempted from fees under subsection (6) of Section 1 of this Act*; and disabled veterans who have been declared to be ~~between[at least]~~ fifty percent (50%) *and ninety-nine percent (99%)* service-connected disabled by the United States Department of Veterans' Affairs~~[- or who receive total service connected disability rating for compensation on individual unemployability and have not received assistance from the United States Department of Veterans' Affairs toward the purchase of a motor vehicle]~~:
 1. Initial Fee: \$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (e) Recipients of the Distinguished Service Cross, Navy Cross, or Air Force Cross:
 1. Initial Fee: \$3 (\$0 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$3 (\$0 SF/\$3 CF/\$0 EF).
- (f) Disabled license plates:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (g) Historic vehicles:
 1. Initial Fee for two plates: \$53 (\$50 SF/\$3 CF/\$0 EF).
 2. Renewal Fee: Do not renew annually.
- (h) Members of Congress:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (i) Firefighters:
 1. Initial Fee: \$15 (\$12 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (j) Emergency management:
 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (l) Law Enforcement Memorial:
 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).

- (m) Personalized plates:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
 - 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
 - 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
 - 1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).
- (u) Independent Colleges:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Association of Independent Kentucky Colleges and Universities for distribution to the general scholarship funds of the Association's members).
- (v) Child Victims:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the child victims' trust fund established under KRS 41.400).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the child victims' trust fund established under KRS 41.400).
- (w) Kentucky Horse Council:

1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Horse Council).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the Kentucky Horse Council).
- (x) Ducks Unlimited:
1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Ducks Unlimited).
- (y) Spay neuter:
1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to the animal control and care fund established under KRS 258.119).
 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the animal control and care fund established under KRS 258.119).
- (z) Gold Star Mothers, ***Gold Star Fathers***, or Gold Star Spouses:
1. Initial Fee: \$0 (\$0 SF/\$0 CF/ \$0 EF).
 2. Renewal Fee:\$0 (\$0 SF/\$0 CF/ \$0 EF).
 3. ***A person may receive a maximum of two (2) plates under this paragraph free of charge and may purchase additional plates for fees as established in subsection (2)(d) of this section.***
- (3) Any special license plate may be combined with a personalized license plate for a twenty-five dollar (\$25) state fee in addition to all other fees for the particular special license plate established in this section and in KRS 186.164(3). The twenty-five dollar (\$25) fee required under this subsection shall be divided between the cabinet and the county clerk of the county where the applicant is applying for the license plate with the cabinet receiving twenty dollars (\$20) and the county clerk receiving five dollars (\$5).
- (4) Owners and lessees of motorcycles registered under KRS 186.050(2) may be eligible to receive special license plates issued under this section or established under the provisions of KRS 186.164 after the cabinet has received three hundred (300) applications and initial state fees from the sponsoring organization. Applicants for a special license plate for a motorcycle shall be required to pay the fee for a special plate as prescribed in this section or in KRS 186.164. The fee paid for the special plate for a motorcycle shall be in lieu of the registration fee required under KRS 186.050(2).
- ➔Section 3. KRS 186.164 is amended to read as follows:
- (1) The SF portion of the fee required under KRS 186.162 shall include the fee to reflectorize all license plates under KRS 186.240. All EF fees required under KRS 186.162 shall be collected at the time of an initial or renewal application by the county clerk who shall forward the EF fee to the cabinet. The cabinet shall remit EF fees to the group or organization identified in KRS 186.162 on a quarterly basis. The cabinet may retain any investment income earned from holding EF fees designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of EF fees.
 - (2) A special license plate shall be the color and design selected by the group or organization identified in subsection (13) of this section, contingent upon the approval of the Transportation Cabinet. In addition to the design selected for a special license plate, the name "Kentucky," an annual renewal decal, and any combination of letters or numerals required by the cabinet in the design shall also appear on the plate.
 - (3) Except as provided in KRS 186.162, the total initial fee for a special license plate created under this chapter shall be twenty-eight dollars (\$28), of which the Transportation Cabinet shall receive twenty-five dollars (\$25) and the county clerk shall receive three dollars (\$3), and the total renewal fee shall be fifteen dollars (\$15), of which the Transportation Cabinet shall receive twelve dollars (\$12) and the county clerk shall receive three dollars (\$3). The twenty-five dollar (\$25) initial fee and twelve dollar (\$12) renewal fee received by the Transportation Cabinet under this subsection shall include an applicant's registration fee required under KRS 186.050.
 - (4) An actual metal special license plate shall be issued on the same schedule as regular license plates are issued under KRS 186.240. The cabinet shall have the discretion to extend the time period that will exist between the date a metal special license plate is issued and the date that regular plates are issued under KRS 186.240. A renewal registration decal shall be issued all other years during the owner's or lessee's birth month, except as

provided in KRS 186.041(2), 186.042(5), and 186.174(2). A person seeking a special license plate for a vehicle provided as part of the person's occupation shall conform to the requirements of KRS 186.050(14).

- (5) (a) If a special license plate issued under this chapter deteriorates to the point that the lettering, numbering, or images on the face of the plate are not legible, the plate shall be replaced free of charge, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
 - (b) If a special license plate issued under this chapter is lost, stolen, or damaged in an accident, the county clerk shall issue a new plate upon payment of a three dollar (\$3) county clerk fee, if the owner or lessee has not transferred the vehicle to which the plate was issued during the current licensing period.
- (6) Upon the sale, transfer, or termination of a lease of a vehicle with any special license plate issued under this chapter, the owner or lessee shall remove the special plate and return it and the certificate of registration to the county clerk. The county clerk shall reissue the owner or lessee a regular license plate and a certificate of registration upon payment of a three dollar (\$3) county clerk fee. If the owner or lessee requests, the county clerk shall reissue the special plate upon payment of a three dollar (\$3) county clerk fee for use on any other vehicle of the same classification and category owned, leased, or acquired by the person during the current licensing period. If the owner or lessee has the special plate reissued to a vehicle which has been previously registered in this state, the regular license plate that is being replaced shall be returned to the county clerk who shall forward the plate to the Transportation Cabinet.
- (7) A special license plate may be issued to the owner or lessee of a motor vehicle that is required to be registered under KRS 186.050(1), (3)(a), or (4)(a), except a special license plate shall not be issued to a taxicab, airport limousine, or U-Drive-It registered and licensed under this chapter or KRS Chapter 281. A person applying for a special license plate shall apply in the office of the county clerk in the county of the person's residence, except as provided in KRS 186.168(3). All special license plates issued under this chapter may be combined with a personalized license plate under the provisions of KRS 186.174. The fee to combine a special license plate with a personalized license plate shall be as established in KRS 186.162(3).
- (8) Within thirty (30) days of termination from election to, appointment to, or membership with any group or organization, an applicant to whom a special license plate was issued under this chapter shall return the special license plate to the county clerk of the county of his or her residence, unless the person is merely changing his or her status with the group or organization to retired.
- (9) A group wanting to create a special license plate that is not authorized under this chapter on June 20, 2005, shall comply with the following conditions before being eligible to apply for a special license plate:
 - (a) The group shall be nonprofit and based, headquartered, or have a chapter in Kentucky;
 - (b) The group may be organized for, but shall not be restricted to, social, civic, or entertainment purposes;
 - (c) The group, or the group's lettering, logo, image, or message to be placed on the license plate, if created, shall not discriminate against any race, color, religion, sex, or national origin, and shall not be construed, as determined by the cabinet, as an attempt to victimize or intimidate any person due to the person's race, color, religion, sex, or national origin;
 - (d) The group shall not be a political party and shall not have been created primarily to promote a specific political belief;
 - (e) The group shall not have as its primary purpose the promotion of any specific faith, religion, or antireligion;
 - (f) The name of the group shall not be the name of a special product or brand name, and shall not be construed, as determined by the cabinet, as promoting a product or brand name; and
 - (g) The group's lettering, logo, image, or message to be placed on the license plate, if created, shall not be obscene, as determined by the cabinet.
- (10) If the cabinet denies to issue a group a special license plate based upon the conditions specified in subsection (9) of this section, the group may appeal the denial to the next regularly scheduled session of the General Assembly for review of the denial and action on the group's request for a special license plate. The cabinet shall, immediately upon denying to issue a group a special license plate, notify in writing the chairperson of both the House and Senate Transportation Committees of the denial and the reasons upon which the cabinet based the denial. The House and Senate chairpersons shall be required to present the

information to his or her respective committee for consideration within the first ten (10) days of the next regularly scheduled session of the General Assembly, if requested to do so in writing by the group who was denied a special license plate. A person seeking a personalized license plate under KRS 186.174 shall be subject to the conditions specified in subsection (9)(c) to (g) of this section.

- (11) If the cabinet approves a request for a special license plate, the cabinet shall begin designing and printing the plate after the group collects a minimum of nine hundred (900) applications with each application being accompanied by a twenty-five dollar (\$25) state fee. The applications and accompanying fee shall be submitted to the cabinet at one (1) time as a whole and shall not be submitted individually or intermittently.
- (12) An initial applicant for, or an applicant renewing, his or her registration for a special license plate may, at the time of application, make a voluntary contribution that the county clerk shall forward to the cabinet. The entity that sponsors a special plate established by the process outlined in this section may set a requested donation amount, not to exceed ten dollars (\$10), that will automatically be added to the cost of registration or renewal, unless the individual registering or renewing the vehicle registration opts out of contributing that recommended amount. The cabinet shall, on an annual basis, remit the voluntary contributions to the appropriate group identified to be used for the declared purpose stated under subsection (13) of this section. The cabinet may retain any investment income earned from holding voluntary contributions designated to be remitted under this subsection to offset administrative costs incurred by the cabinet in the administration of the contributions. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall submit the information required under subsection (13)(a) and (c) of this section to the Transportation Cabinet within thirty (30) days of June 20, 2005.
- (13) If a group wants to receive a donation when the group or organization's special license plate is initially purchased or renewed under subsection (12) of this section, the group shall, at the time the nine hundred (900) applications are submitted to the Transportation Cabinet, also submit a notarized affidavit to the cabinet attesting to:
 - (a) The name, address, and telephone number for the group or organization. If the group or organization does not have its headquarters in the Commonwealth, then the name, address, and telephone number for the group or organization's Kentucky state chapter shall be required. The names of the officers of the group or organization shall also be required. If the entity receiving funds under subsection (12) of this section is not a state governmental agency, a program unit within a state governmental agency, or is a group or organization that does not have a statewide chapter, then an extra donation for use by the group or organization shall be prohibited;
 - (b) The amount of the monetary donation the group wants to receive when a person purchases the group or organization's special license plate; and
 - (c) The purpose for which the donated funds will be used by the group or organization. Donated funds shall not be limited for use by members of the group or organization, and shall not be used for administrative or personnel costs of the group or organization.
- (14) All funds received by a group or organization under subsection (12) of this section shall be deposited into an account separate from all other accounts the group or organization may have, and the account shall be audited yearly at the expense of the group or organization. The completed audit shall be forwarded to the Transportation Cabinet in Frankfort. One hundred percent (100%) of the funds received by a group or organization under subsection (12) of this section shall be used for the express purpose identified by the group in subsection (13) of this section. Any group or organization that receives a mandatory EF fee under KRS 186.162 shall comply with the provisions of this subsection.
- (15) The secretary of the Transportation Cabinet shall promulgate administrative regulations under KRS Chapter 13A to establish additional rules to implement the issuance of special license plates issued under this chapter, including but not limited to:
 - (a) Documentation that will be required to accompany an application for a special license plate to provide proof of election to the United States Congress or the Kentucky General Assembly; election or appointment to the Kentucky Court of Justice; membership in a Masonic Order, Fraternal Order of Police, or emergency management organization; eligibility for membership in the Gold Star Mothers of America; *eligibility as a father for associate membership in the Gold Star Mothers of America;*

- eligibility for membership in the Gold Star Wives of America; or ownership of an amateur radio operator license;
- (b) The time schedule permissible for a group or organization to request a design change for the special license plate; and
 - (c) The procedures for review of proposed license plates and the standards by which proposed special license plates are approved or rejected in accordance with subsection (9) of this section.
- (16) Any individual, group, or organization that fails to audit any funds received under this chapter, or that intentionally uses any funds received in any way other than attested to under subsection (13) of this section or for administrative or personnel costs in violation of subsection (13) of this section, shall be guilty of a Class D felony and upon conviction shall, in addition to being subject to criminal penalties, be assessed a mandatory five thousand dollar (\$5,000) fine.

Signed by Governor April 12, 2010.

CHAPTER 114

(HB 215)

AN ACT relating to natural resources.

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

➔Section 1. KRS 146.415 is amended to read as follows:

As used in KRS 146.410 to 146.530:

- (1) "Natural area" means any area of land or water, or of both land and water, in public or private ownership, which either retains, or has reestablished to some degree in the judgment of the commission its natural character, though it need not be completely natural and undisturbed, or which has natural flora, fauna, biological, ecological, geological, scenic or archaeological features of scientific, aesthetic, cultural or educational interest;
- (2) "~~Nature~~~~Natural~~ preserve" means a natural area, and land necessary for its protection, any estate, interest or right in which has been formally dedicated under the provisions of KRS 146.410 to 146.530 to be maintained as nearly as possible in its natural condition and to be used in a manner and under limitations consistent with its continued preservation, without impairment, disturbance or artificial development, for the public purposes of present and future scientific research, education, aesthetic enjoyment and habitat for plant and animal species and other natural objects;
- (3) "Articles of dedication" means the writing by which any estate, interest or right in a natural area is formally dedicated, as provided in KRS 146.410 to 146.530;
- (4) "Commission" means the Kentucky State Nature Preserves Commission;
- (5) "System" means the state system of nature preserves established under KRS 146.410 to 146.530;
- (6) "Cabinet" means the Environmental and Public Protection Cabinet;
- (7) "Director" means the director of the Kentucky State Nature Preserves Commission.

➔Section 2. KRS 350.130 is amended to read as follows:

- (1) When any of the requirements of this chapter or administrative regulations adopted pursuant thereto or the orders of the cabinet have not been complied with, the cabinet shall forthwith cause a notice of noncompliance to be issued upon the permittee, person, or operator. The cabinet shall set forth in its notice a reasonable time period but not more than ninety (90) days for the abatement of the violation. If any permittee, person, or operator has not abated the violation within the time prescribed in the notice of noncompliance, the secretary or other authorized personnel of the cabinet shall issue to the permittee, operator, or person an order for immediate compliance and cessation of any mining activities or operations which are contributing to the violation. The order shall require the permittee, person, or operator to abate the violation in the most expeditious manner possible. The secretary is authorized to promulgate reasonable administrative regulations for the implementation of this section. The notice or order shall be handed to the person in charge of the operation~~[-]~~ and the operator or person engaged in coal exploration operations or sent by certified mail, return

receipt requested, addressed to the permanent address shown on the application for a permit; ***or by electronic mail to the address shown on the permit application or otherwise voluntarily provided to the cabinet by the permittee on a form prepared by the cabinet***; or, if no address is shown on the application, then ***by certified or electronic mail*** to the address known to the cabinet. The notice of noncompliance or order for immediate compliance and cessation shall specify in what respects the permittee, person, or operator has failed to comply with this chapter or the regulations or orders of the cabinet and the remedial action required, the period of time established for abatement, and a reasonable description of the portion of the surface coal mining and reclamation operation to which the notice or order applies. If the permittee, person, or operator has not reached an agreement with the cabinet or has not complied with the requirements set forth in the notice of noncompliance or order for immediate compliance and cessation within time limits set therein, the permit may be revoked or the operation terminated, after an opportunity for a hearing, by order of the cabinet, and the performance bond, if any, shall then be forfeited to the cabinet, provided that failure to attend a hearing shall be excused for good cause shown. Any bonding company or financial institution providing bond to the cabinet shall have the right to perform those measures necessary to secure bond releases if the bonding company or financial institution can demonstrate that it has the ability to perform the measures and will undertake to do so within a reasonable time frame. The bonding company, or financial institution providing the bond, may, at any stage of the reclamation process, pay the remaining encumbered balance of the bond and thereby discharge its obligation under the bond. Neither the surety company nor the financial institution may employ anyone to perform the measures who has been barred from mining pursuant to the provisions of this chapter.

- (2) When a bond is forfeited consistent with the provisions of this chapter, the cabinet shall forfeit the entire amount of the bond for the permit area or increment.
- (3) A permittee, operator, or person whose mining permit or operation has been revoked, suspended, or terminated or is at the time of the application in violation of this chapter or other applicable requirements as set forth in KRS 350.085 shall not be eligible to receive another permit or begin another operation or to have suspended permits or operations reinstated until he shall have complied with all the requirements of this chapter or submitted proof satisfactory to the cabinet under KRS 350.085 that the violation has been corrected or is in the process of being corrected in respect to all permits issued him, provided, further, that no permittee, operator, or person shall be eligible to receive another permit or begin another operation who has forfeited any bond unless the land for which the bond was forfeited has been reclaimed without cost to the state or the permittee, operator, or person has paid such sum as the cabinet finds is adequate to reclaim the lands. The cabinet shall not issue any permits to or allow future operations by any permittee, operator, or person who has demonstrated a pattern of willful violations of this chapter of such nature and duration with such resulting irreparable damage to the environment as to indicate an intent not to comply with the provisions of this chapter, provided that no permit shall be denied on this basis without an opportunity for a hearing. The secretary shall promulgate regulations which implement this section. For the purposes of this section, if a corporate permittee has demonstrated a pattern of willful violations, then any subsequent application for a permit by that corporation, or any person who controls or has controlled that corporation, shall be denied.
- (4) In the exercise of the secretary's enforcement powers and authority under this chapter, the secretary, or an authorized representative of the cabinet, after inspection, shall immediately order the cessation of the condition or operation when he determines that the condition or operation creates an imminent danger to the health or safety of the public or that the condition or operation is causing or can reasonably be expected to cause significant imminent environmental harm in violation of this chapter or the regulations pursuant to this chapter, or any permit condition. For purposes of this subsection, "imminent danger to the health and safety of the public" means the existence of any condition or practice, or any violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation, which condition, practice, or violation could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself or herself to the danger during the time necessary for abatement.
- (5) Each provision of this section shall be interpreted and applied consistently with due process of law.
- (6) The secretary, or authorized representatives of the cabinet, shall have the power to vacate, amend, modify, or terminate notices of noncompliance and cessation orders, pursuant to administrative regulations promulgated by the cabinet.

- (7) *Service of any notice or order by electronic mail shall be effective upon delivery of the notice or the order to the recipient's inbox by electronic mail as electronically communicated to the cabinet by an electronic registered receipt.*

Signed by Governor April 12, 2010

CHAPTER 115

(HB 20)

AN ACT relating to investment of the Local Government Economic Assistance Fund balances.

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

➔Section 1. KRS 42.450 is amended to read as follows:

- (1) There is hereby established in the State Treasury a fund entitled "Local Government Economic Assistance Fund." The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallotted or unencumbered balances in the fund shall be invested *pursuant to KRS 42.500*~~[in United States Government Securities maturing not later than one (1) year from the date of investment]~~ and the income earned from the investment shall be prorated for expenditure in coal producing and coal impact counties according to each county's allocable part in the fund.
- (2) Effective July 1, 1981, an amount equal to one-half (1/2) of the tax collected annually on the sale of minerals, exclusive of coal, shall be transferred from the general fund into this fund. The transfers shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except that the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection.

Signed by Governor April 12, 2010

CHAPTER 116

(HB 220)

AN ACT relating to building safety and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *Only a licensed elevator mechanic working under the general supervision of an elevator contractor may:*
 - (a) *Erect, construct, alter, replace, maintain, remove, or dismantle any elevator or fixed guideway system contained within buildings or structures; or*
 - (b) *Wire any elevator or fixed guideway system from the mainline feeder terminals on the controller.*
- (2) *A licensed elevator contractor is not required for removing or dismantling elevators or fixed guideway systems:*
 - (a) *That are destroyed as a result of a complete demolition of a secured building or structure; or*
 - (b) *Where the hoistway or wellway is demolished back to the basic support structure and does not allow access that could endanger the safety and welfare of a person.*

➔SECTION 2. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *The Elevator Advisory Committee is created within the Office of Housing, Buildings and Construction. The committee shall consist of eight (8) members, one (1) of whom shall be the executive director of the Office of Housing, Buildings and Construction or his or her designee. The Governor shall appoint the remaining seven (7) members of the committee as follows:*

- (a) *One (1) representative from a nationally recognized elevator manufacturing company;*
 - (b) *One (1) representative from an elevator servicing company;*
 - (c) *One (1) representative from the general public who has no financial interest in the elevator or fixed guideway system industry;*
 - (d) *One (1) representative involved in the installation, maintenance, and repair of elevators or fixed guideway systems;*
 - (e) *One (1) representative of an accessibility or residential elevator company;*
 - (f) *One (1) representative of the architectural design, elevator consulting, or engineering profession with experience in elevator design; and*
 - (g) *One (1) representative of organized labor.*
- (2) *The executive director of the Office of Housing, Buildings and Construction shall serve as a member of the committee by virtue of his or her office. The appointed members of the committee shall serve for terms of three (3) years, except that initially two (2) members shall be appointed for a one (1) year term, two (2) members shall be appointed for two (2) year terms, and three (3) members shall be appointed for three (3) year terms. No committee member shall be appointed for more than two (2) successive terms except as provided in subsection (4) of this section. The Governor shall, within the limits of this subsection, set the length of term of each of the initial appointees to the committee.*
 - (3) *Vacancies occurring on the committee among those members appointed by the Governor shall be filled by seeking nominations as in subsection (1) of this section. A replacement for a committee member shall be appointed immediately upon the expiration of the departing committee member's term of service.*
 - (4) *If a committee member vacates his or her position on the committee prior to the expiration of the member's term, a replacement member shall be appointed for the period of the unexpired term. If the unexpired term is less than two (2) years, the person selected to fill the unexpired term may subsequently be appointed to two (2) successive three (3) year terms.*
 - (5) *Members may be removed from the committee by the Governor for unethical conduct, neglect of duty, incompetence, or for failure to attend three (3) or more consecutive meetings of the committee. A dismissed member's remaining term shall be completed by the replacement member appointed by the Governor.*
 - (6) *The committee shall be given the opportunity to review and comment on relevant administrative regulations that are subject to the requirements of KRS 198B.030(9) and (10) and 198B.040(11) and shall make recommendations to and otherwise advise the office on these matters. The committee shall perform any other duties and responsibilities relating to the development of administrative regulations for elevators and fixed guideway systems as assigned by the executive director.*
 - (7) *Those members of the committee who are not salaried governmental employees shall be compensated for their time when attending committee meetings or attending to official duties as directed by the committee at the rate of thirty-five dollars (\$35) per day. All board members shall be compensated for expenses incurred in the conduct of board business.*
 - (8) *The executive director or his or her designee shall serve as chair of the Elevator Advisory Committee. The chair shall only vote in the event of a tie among the appointed advisory committee members.*
 - (9) *No member of the committee shall vote on any matter which will result in his or her direct or indirect financial gain.*

➔SECTION 3. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *The committee shall first meet and organize within ten (10) days after the appointment of its initial members.*
- (2) *The committee shall meet at least quarterly for the purpose of considering matters relating to elevators and fixed guideway systems and when necessary to make recommendations to the office on administrative regulations, appeals, and other relevant business. Special meetings may be called in accordance with KRS 61.823.*

➔SECTION 4. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *A person shall not work as an elevator contractor or elevator mechanic unless licensed by the office. A person may work as an elevator helper or apprentice without a license while under the general supervision of a licensed elevator mechanic.*
- (2) *A person who is a regular and bona fide full-time employee of a public university and who performs only routine maintenance on elevators for the public university shall be licensed as an elevator mechanic. The public university shall not be required to become licensed as an elevator contractor to employ a licensed elevator mechanic performing elevator maintenance for the public university under this subsection. An elevator mechanic who qualifies under this subsection shall only be authorized to conduct routine maintenance on any elevators for the public university, and shall be prohibited from performing any of the other activities authorized by subsection (1) of Section 1 of this Act.*
- (3) *The office may promulgate administrative regulations necessary to implement KRS 198B.400 to 198B.540.*

➔SECTION 5. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *An application for licensure as an elevator contractor shall contain the following:*
 - (a) *For an applicant who is a person or sole proprietor:*
 1. *Name;*
 2. *Residence; and*
 3. *Business address of the applicant;*
 - (b) *For an applicant that is a partnership:*
 1. *Names of the partners;*
 2. *Residential addresses of the partners; and*
 3. *Business address of the partnership;*
 - (c) *For an applicant that is a domestic corporation:*
 1. *Name of the principal corporate officer;*
 2. *Residential address of the principal corporate officer; and*
 3. *Business address of the corporation;*
 - (d) *For an applicant that is a corporation other than a domestic corporation:*
 1. *Name of the corporation's agent who is authorized to accept service of process and official notices on behalf of the corporation in the state; and*
 2. *Physical address of the corporation's authorized agent;*
 - (e) *The number of years the applicant has engaged in the business of installing, maintaining, or servicing elevators or fixed guideway systems;*
 - (f) *The approximate number of persons, if any, to be employed by the elevator contractor applicant;*
 - (g) *Proof that he or she has complied with workers' compensation and unemployment insurance laws;*
 - (h) *Evidence that the applicant is covered by general liability, personal injury, and property damage insurance;*
 - (i) *Criminal record of convictions, if any, as verified through a criminal background check conducted by the Department of Kentucky State Police. The cost of the background check shall be paid by the applicant; and*
 - (j) *Upon request by the office, supplemental documentation of information required by this section.*
- (2) *An applicant for an elevator contractor license shall:*

- (a) *Employ at least one (1) licensed elevator mechanic who performs the work described in Section 1 of this Act; and*
- (b) *Have proof of compliance with insurance requirements of Section 13 of this Act.*

➔SECTION 6. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *An application for licensure as an elevator mechanic shall contain the following:*
 - (a) *Name;*
 - (b) *Residential address;*
 - (c) *Name and address of the applicant's employer, if employed;*
 - (d) *The number of years the applicant has engaged in the business of installing, maintaining, or servicing elevators or fixed guideway systems; and*
 - (e) *Upon request by the office, supplemental documentation of information required by this section.*
- (2) *An applicant for an elevator mechanic license shall demonstrate one (1) or more of the following to be eligible for licensure:*
 - (a)
 - 1. *Proof the applicant has not less than thirty-six (36) months of work experience in the elevator industry, in construction, maintenance, service, repair, or any combination of these activities as verified by current and previous employers or equivalent experience while serving in the United States military services; and*
 - 2. *Passage of a written, oral, or computerized examination administered by the office based upon the most recent referenced codes and standards;*
 - (b)
 - 1. *Proof the applicant has worked without direct and immediate supervision as an elevator constructor, maintenance, or repair person for not less than three (3) years immediately prior to the effective date of this Act; and*
 - 2. *Submission of an application for licensure within one (1) year after the effective date of this Act;*
 - (c) *Certificate of completion from a nationally recognized training program for the elevator industry such as the National Elevator Industry Educational Program, National Association of Elevator Contractors, or an equivalent program approved by the executive director; or*
 - (d)
 - 1. *Certificate of completion of an apprenticeship program for elevator mechanics, having standards substantially equal to those of KRS 198B.400 to 198B.540; and*
 - 2. *Proof of registration with the Bureau of Apprenticeship and Training, United States Department of Labor, or a state apprenticeship council.*

➔SECTION 7. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *An applicant for licensure as an elevator contractor under Section 5 of this Act or as an elevator mechanic under Section 6 of this Act who applies to the office prior to July 1, 2012, shall be licensed by the office without completing the licensure requirements as established in KRS 198B.400 to 198B.540, if the applicant is currently licensed, certified, or registered as an elevator contractor or elevator mechanic in another state whose standards are substantially equal to those in KRS 198B.400 to 198B.540.*
- (2) *Prior to July 1, 2012, an applicant who does not qualify for licensure under subsection (1) of this section or under Section 5 or 6 of this Act shall qualify for licensure by showing a minimum of three (3) years of verifiable experience engaging in business as an elevator contractor or elevator mechanic in this state.*
- (3) *After July 1, 2012, licensure under this section shall cease.*

➔SECTION 8. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

Any person, sole proprietor, partnership, or corporation holding a valid elevator or fixed guideway license from a state that has licensing, educational, and experience requirements substantially equal to or greater than those of KRS 198B.400 to 198B.540, and which grants licensing privileges to persons licensed in this state, may be issued an equivalent license in this state upon terms and conditions determined by the office. The terms and conditions shall be promulgated as an administrative regulation by the office.

➔SECTION 9. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *The office shall issue emergency elevator mechanic licenses whenever an emergency is declared by the Governor due to disaster, act of God, or work stoppage, and the number of persons in the state holding licenses granted by the office is determined by the executive director to be insufficient to cope with the emergency.*
- (2) *Elevator contractors shall respond as necessary to ensure the safety of the public.*
- (3) *Any person confirmed by a licensed elevator contractor to have a combination of documented experience and education to perform elevator work without direct and immediate supervision shall seek an emergency elevator mechanic's license from the office within five (5) business days after commencing work under this emergency provision if the work requires a license under ordinary circumstances. The elevator contractor employing the elevator mechanic shall furnish proof of competency as required by the office.*
- (4) *Each emergency elevator mechanic license shall be valid for a period of forty-five (45) days from the date of issuance and for the particular elevators or geographical areas designated by the office, and otherwise shall entitle the licensee to the rights and privileges of an elevator mechanic licensed under KRS 198B.400 to 198B.540.*
- (5) *The office may renew an emergency elevator mechanic license during the existence of a continuing emergency.*

➔SECTION 10. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *An elevator contractor shall notify the office when the contractor has no licensed personnel available to perform elevator work. The elevator contractor may request that the office issue temporary elevator mechanic licenses to persons confirmed by the licensed elevator contractor to have a combination of documented experience and education to perform elevator work without direct and immediate supervision.*
- (2) *Any person confirmed by an elevator contractor to have a combination of documented experience and education to perform elevator work without direct and immediate supervision shall immediately seek a temporary elevator mechanic license from the office.*
- (3) *Each temporary license shall be valid for a period of one (1) year and only while the licensee is employed by the licensed elevator contractor that confirmed the individual as qualified.*
- (4) *The temporary license shall be renewable for additional terms of one (1) year each until there is no shortage of ordinary license holders.*

➔SECTION 11. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *Each person licensed under the provisions of KRS 198B.400 to 198B.540 shall annually, on or before the last day of the licensee's birth month, renew his or her license.*
- (2) *A sixty (60) day grace period shall be allowed after the anniversary date of the license during which time a licensee may continue to practice and may renew his or her license upon meeting the requirements promulgated through administrative regulations by the office.*
- (3) *A license not renewed before the end of the sixty (60) day grace period shall terminate based on the failure of the licensee to renew in a timely manner. Upon termination, the licensee shall be ineligible to practice in the Commonwealth.*
- (4) *After the sixty (60) day grace period, a former licensee with a terminated license may have the license reinstated upon meeting the requirements promulgated through administrative regulations by the office. An applicant for reinstatement after termination of the license shall not be required to submit to any*

examination as a condition for reinstatement, if the reinstatement application is made within three (3) years from the date of termination.

- (5) *A suspended license is subject to expiration and termination and shall be renewed as provided in this section. Renewal shall not entitle the licensee to engage in the practice until the suspension has ended or is otherwise removed by the office and the right to practice is restored by the office.*
- (6) *A revoked license is subject to reinstatement, expiration, or termination but may not be renewed.*
- (7) *An applicant for renewal or reinstatement of a license shall show evidence of completing at least eight (8) hours of continuing education provided by the National Elevator Industry Educational Program, National Association of Elevator Contractors, or another provider approved by the office. The office shall promulgate administrative regulations establishing the permissible content of continuing education programs and the qualifications of the providers.*
- (8) *When applicable, an applicant for renewal or reinstatement of an elevator contractor license shall submit proof that the applicant has complied with workers' compensation and unemployment insurance laws and administrative regulations and has obtained general liability coverage of at least one million dollars (\$1,000,000) for injury or death of any number of persons in any one (1) occurrence, with coverage of at least five hundred thousand dollars (\$500,000) for property damage in any one (1) occurrence.*
- (9) *The office may, through the promulgation of administrative regulations:*
 - (a) *Establish an inactive license for licensees who are not actively engaging in the elevator or fixed guideway system business but who wish to maintain their license;*
 - (b) *Determine continuing education requirements for reactivation;*
 - (c) *Waive the insurance requirements established in subsection (8) of this section for inactive licensees; and*
 - (d) *Establish reactivation procedures.*

➔SECTION 12. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *The renewal of all elevator contractor and elevator mechanic licenses shall be conditioned upon the submission of a certificate of completion of a continuing education course or courses that instruct licensees on new and existing applicable administrative regulations of the office.*
- (2) *Licensed elevator contractors and licensed elevator mechanics shall complete at least eight (8) hours of continuing education annually. Continuing education for a renewal year shall be attended and completed during that renewal year.*
- (3) *Continuing education courses shall be taught by instructors employed by continuing education providers that may include but shall not be limited to association seminars and labor training programs. Continuing education programs provided by the National Elevator Industry Educational Program or the National Association of Elevator Contractors shall be approved to meet the requirements for continuing education. The office may approve other education programs that meet its requirements established through administrative regulation under subsection (7) of Section 11 of this Act.*
- (4) *A licensee who is unable to complete the continuing education requirements for renewal under this section prior to the expiration of his or her license due to temporary disability may apply for a waiver from the office. The waiver shall be on a form provided by the office, with a notarized signature of the licensee, and accompanied by a certified statement from a physician attesting to the temporary disability. Application for medical waiver must be received by the office prior to the final day of the licensee's birth month. Upon termination of the temporary disability, the licensee shall submit a supplementary certified statement attesting to the termination of the temporary disability and proof of attendance of at least eight (8) hours of continuing education.*
- (5) *Falsifying or knowingly allowing another to falsify continuing education attendance records or certificates of completion shall constitute grounds for revocation of program approval required under this section.*

➔SECTION 13. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

Elevator contractors shall submit proof of insurance to the office for an insurance policy issued by an insurance company or other legal entity permitted to transact insurance business in Kentucky, providing:

- (1) General liability coverage of at least one million dollars (\$1,000,000) for injury or death of any number of persons in any one (1) occurrence;*
- (2) Coverage of at least five hundred thousand dollars (\$500,000) for property damage in any one (1) occurrence; and*
- (3) Statutory workers' compensation insurance coverage.*

➔SECTION 14. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

The provisions of KRS 198B.400 to 198B.540 shall not be construed to relieve or lessen the responsibility or liability of any person, partnership, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, inspecting, testing, or repairing any elevator, fixed guideway system, or other related mechanisms for damages to person or property caused by any specifically related defect.

➔SECTION 15. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) The office shall conduct disciplinary hearings in accordance with KRS Chapter 13B.*
- (2) The executive director may summarily suspend a license for up to ninety (90) days before a final adjudication or during an appeal of the executive director's determination if he or she believes that allowing the licensee to keep an active license would represent a clear and immediate danger to the public's health, safety, or property if the licensee is allowed to continue working.*
- (3) The executive director shall issue a letter to cease and desist with notice of opportunity to be heard in accordance with a KRS Chapter 13B hearing, to any individual if the executive director determines that:*
 - (a) An individual is not licensed under the provisions of this chapter; and*
 - (b) The individual is engaged in, or believed to be engaged in, activities for which an elevator contractor's or elevator mechanic's license is required under KRS 198B.400 to 198B.540.*
- (4) After completion of the KRS Chapter 13B hearing, if it is determined that the individual's activities are subject to licensure under KRS 198B.400 to 198B.540, the executive director shall issue a cease and desist order that identifies the individual and specifically states the activities that are subject to the order.*
- (5) A cease and desist order issued under this section shall be enforceable in the Circuit Court of the county of the licensee's place of business in accordance with KRS Chapter 13B.*

➔SECTION 16. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) Subject to a hearing conducted in accordance with KRS Chapter 13B, the executive director may suspend, revoke, or refuse to renew the license of an elevator contractor or elevator mechanic for any of the following actions by the licensee:*
 - (a) Use of false evidence of misrepresentation in an application for an elevator contractor's or elevator mechanic's license;*
 - (b) Attempting to transfer authority granted to the licensed contractor or mechanic to another individual;*
 - (c) Incompetency or negligence relating to elevator service, installation, repair, or maintenance as determined by the executive director;*
 - (d) Conviction of a felony after the effective date of this Act;*
 - (e) Fraudulent or dishonest practices while engaging in the business of elevator service, installation, repair, or maintenance;*
 - (f) Aiding or abetting any person attempting to evade the provisions of KRS 198B.400 to 198B.540; or*
 - (g) Violating any provision of KRS 198B.400 to 198B.540 or the administrative regulations promulgated under KRS 198B.400 to 198B.540.*

- (2) *Subject to a hearing in accordance with KRS Chapter 13B, the executive director shall revoke the license of an elevator contractor or elevator mechanic who continues to work as if holding a valid license during a suspension imposed by the executive director.*
- (3) *Any licensee who is aggrieved by a final order of the executive director, resulting in the suspension, refusal to renew, or revocation of his or her license may appeal to the Circuit Court of the county of the licensee's place of business in accordance with KRS Chapter 13B.*
- (4) *Any reason for licensee discipline under subsection (1) of this section may also serve as the reason to deny an initial application for licensure as an elevator contractor or elevator mechanic.*

➔SECTION 17. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

If the license of an elevator contractor or elevator mechanic is revoked for any reason, the former licensee may, at the conclusion of the revocation period, reapply for his or her license.

➔SECTION 18. A NEW SECTION OF KRS 198B.400 TO 198B.540 IS CREATED TO READ AS FOLLOWS:

- (1) *The elevator safety program trust fund is created in the State Treasury as a separate revolving fund to be administered by the Office of Housing, Buildings and Construction. The trust fund shall consist of amounts deposited in the fund as provided in Section 29 of this Act and any other proceeds from grants, contributions, appropriations, or other money made available for the purposes of the trust fund.*
- (2) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year to be used for the purposes set forth in this section.*
- (3) *Any interest earnings of the trust fund shall become a part of the trust fund and shall not lapse.*
- (4) *Trust fund moneys shall be used and are hereby appropriated for reasonable administrative expenses associated with the elevator safety program and other purposes as specified in subsection (7) of Section 2 of this Act.*

➔Section 19. KRS 198B.400 is amended to read as follows:

As used in KRS 198B.410 to 198B.540, unless the context otherwise requires:

- (1) "Elevator" means all the machinery, construction, apparatus, and equipment used in raising and lowering a car, cage, or platform vertically between permanent rails or guides, and includes all elevators, power dumbwaiters, escalators, gravity elevators, and other lifting or lowering apparatus permanently installed between rails or guides, but does not include hand operated dumbwaiters, manlifts of the platform type with a platform area not exceeding nine hundred square inches, construction hoists, or other similar temporary lifting or lowering apparatus;{+}
- (2) "Passenger elevator" means an elevator that is designed to carry persons to its contract capacity;{+}
- (3) "Freight elevator" means an elevator used for carrying freight and on which only the operator, by the permission of the employer, is allowed to ride;{+}
- (4) "General inspector" means a state inspector examined and hired to inspect elevators for the Office of Housing, Buildings and Construction;{+}
- (5) "Special inspector" means an inspector examined and certified by the office to inspect elevators in the state;{+}
- (6) "Inspector" means either a general or special inspector;{+}
- (7) "Office" means the Office of Housing, Buildings and Construction;{+}
- (8) "Certificate of operation" is a certificate issued by the office authorizing the operation of an elevator which must be conspicuously posted on the elevator at all times;{+}
- (9) "Escalator" means a moving stairway consisting of steps attached to a continuously circulating belt that is used to move persons from one (1) level to another;{+}
- (10) "Moving sidewalk" means horizontal flat panels attached to a continuously circulating belt used to move people;{+}

- (11) "Fixed guideway system" means any nonrail system, funicular, or automated people mover, either air-suspended or wheeled, that is not regulated by the Federal Transit Administration;{+}
- (12) *"Mine elevator" means an elevator permanently installed in a mine shaft to provide vertical transportation of mine personnel, their tools, equipment, and mine supplies;*
- (13) *"Stage elevator" means a section of a stage arranged to be raised and lowered above and below the stage in a vertical direction;*
- (14) *"Orchestra elevator" means a platform used for raising and lowering musicians in an orchestra in a vertical direction;*
- (15) *"Organ console elevator" means a mechanism used for raising and lowering an organ console, including the organist, in a vertical direction;*
- (16) *"Material lift" means a hoisting and lowering mechanism equipped with a car that moves within a guide system installed at an angle of greater than seventy (70) degrees from the horizontal, serving two (2) or more landings, for the purpose of transporting materials that are manually or automatically loaded or unloaded. A person shall not ride on a material lift;*
- (17) *"Committee" means the Elevator Advisory Committee;*
- (18) *"Elevator contractor" means any sole proprietor, partnership, or corporation possessing an elevator contractor license issued by the office and who is engaged in the business of erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or fixed guideway systems;*
- (19) *"Elevator mechanic" means any person who:*
 - (a) *Possesses an elevator mechanic license issued by the office;*
 - (b) *Is employed by an elevator contractor; and*
 - (c) *Is engaged in erecting, constructing, installing, altering, servicing, repairing, or maintaining elevators or fixed guideway systems;*
- (20) *"Elevator helper" or "elevator apprentice" means any person who works under the general supervision of a licensed elevator mechanic. An elevator helper or elevator apprentice is not subject to licensure;*
- (21) *"Executive director" means the executive director of the Office of Housing, Buildings and Construction;*
- (22) *"Direct and immediate supervision" means that the licensed supervising authority is on-site. The supervisor is not required to have actual or direct sight of the person being directly supervised; and*
- (23) *"General supervision" means that the supervising authority oversees the work performed overall but is not required to be on-site at all times during work relating to elevators or fixed guideway systems.*

➔Section 20. KRS 198B.410 is amended to read as follows:

- (1) No person may act either as a general inspector or as a special inspector of elevators or fixed guideway systems unless he or she holds a certificate of competency from the office.
- (2) Application for examination as an inspector of elevators shall be in writing, accompanied by a fee of ten dollars (\$10), upon a blank to be furnished by the office, stating the school education of the applicant, a list of his or her employers, his or her period of employment, and the position held with each. An applicant shall also submit a letter from one (1) or more of his or her previous employers certifying as to his or her character and experience.
- (3) Applications shall be rejected which contain any willful falsification or untruthful statements. The applicant, if the office deems his or her history and experience sufficient, shall be tested by means of a written examination dealing with the construction, installation, operation, maintenance, and repair of elevators, *fixed guideway systems*, and their appurtenances, and the applicant shall be accepted or rejected on the merits of his or her application and examination.
- (4) The office shall promulgate administrative regulations establishing the training and certification requirements for inspectors of fixed guideway systems.
- (5) The office shall issue a certificate of competency in the inspection of elevators to any applicant found competent upon examination. A rejected applicant shall be entitled, after the expiration of ninety (90) days,

and upon payment of an examination fee of ten dollars (\$10), to another examination. Should an applicant fail to pass the prescribed examination on second trial, he or she will not be permitted to be an applicant for another examination for a period of one (1) year after the second failure.

➔Section 21. KRS 198B.420 is amended to read as follows:

- (1) The office shall administer all aspects of the State Elevator and Fixed Guideway System Inspection Program.
- (2) The program shall be directed by a person with at least five (5) years' experience in the inspection or construction, installation, maintenance, and repair of elevators, *fixed guideway systems*, and their appurtenances.
- (3) The executive director of housing, buildings and construction may appoint and hire, from the holders of certificates of competency, general inspectors of elevators.
- (4) *Any person may request an investigation into an alleged violation of KRS 198B.400 to 198B.540 by giving notice to the office of the violation or danger. This notice shall be:*
 - (a) *In writing;*
 - (b) *Set forth with particularity regarding the grounds for the notice; and*
 - (c) *Signed by the person making the request.*
- (5) *If, upon receipt of the request for investigation, the office determines that there is evidence that a violation or danger exists, the office shall conduct an investigation in accordance with KRS 198B.400 to 198B.540 as soon as practicable. If the office finds no grounds to substantiate that a violation or danger exists, the office shall notify the requesting party in writing of the findings within fourteen (14) calendar days of the determination.*

➔Section 22. KRS 198B.450 is amended to read as follows:

If a certificate *issued under Section 20 of this Act* is lost or destroyed, a new one shall be issued in its place by the office without another examination, upon the payment of a fee of one dollar (\$1).

➔Section 23. KRS 198B.460 is amended to read as follows:

- (1) The owner or user of any elevator or fixed guideway system shall register with the office every elevator or fixed guideway system operated by him or her, giving the type, capacity, description, name of manufacturer, and purpose for which each is used. The registration shall be made on a form to be furnished by the office.
- (2) *If the office has the information required by subsection (1) of this section in its possession, the owner or lessee shall not be required to duplicate the information. Elevators and fixed guideway systems for which construction has begun after the effective date of this Act shall be registered at the time they are completed and placed in service.*

➔Section 24. KRS 198B.470 is amended to read as follows:

- (1) *Except as indicated under subsection (2) of this section*, every passenger elevator, *freight elevator*, moving sidewalk, fixed guideway system, and escalator shall be inspected once every twelve (12) months.
- (2) *The following shall be exempt from the annual inspection requirements of subsection (1) of this section:*
 - (a) *Material lifts;*
 - (b) *Grain elevators;*
 - (c) *Mine elevators;*
 - (d) *Stage elevators;*
 - (e) *Orchestra elevators;*
 - (f) *Organ console elevators;*
 - (g) *Elevators and lifting devices solely in residential buildings used by the occupants of a dwelling unit, except where the lifting device is used or accessible by the occupants of more than one (1) dwelling unit;*

- (h) *Freight elevators on the licensed premises of a distillery licensed under KRS 243.030(1);*
- (i) *Non-federally regulated, funicular fixed guideway systems; and*
- (j) *Passenger elevators, freight elevators, moving sidewalks, fixed guideway systems, and escalators installed in federal properties and projects.*

➔Section 25. KRS 198B.480 is amended to read as follows:

- (1) Every inspector shall forward to the office a full report of each inspection made of any passenger elevator or fixed guideway system, showing the exact condition of the elevator or fixed guideway system, and the inspector shall leave a copy of the report at the elevator or fixed guideway system on the day the inspection is completed.
- (2) If any passenger elevator or fixed guideway system requires certain changes or repairs to make it reasonably safe to operate, recommendations shall be made by the inspector upon his or her report and a copy of the report as approved by the office shall be given to the owner or operator of the elevator or fixed guideway system, and, unless appealed, upon compliance *with the report*~~therewith~~ and upon the payment of the fees required by law, the office shall issue a certificate of operation for a capacity not to exceed that named in the report of inspection. ~~This~~~~[-, which]~~ certificate shall be valid for one (1) year after the date of inspection.
- (3) If construction plans or an application of specifications is not approved, the office shall state in writing the necessary changes to obtain approval and the owner or operator shall be given a copy *of the necessary changes*~~thereof~~, and, unless appealed, upon compliance *by the owner or operator*~~therewith~~, the office shall approve the plans or specifications and issue a permit for construction.
- (4) Any owner or operator, within twenty (20) days from receipt of the copy of the report or statement of changes in plans or specifications, may make written application to the office upon forms to be furnished by the office for a hearing on the report or the statement regarding changes in plans or specifications as to whether the elevator or fixed guideway system in question is reasonably safe, or whether the elevator or fixed guideway system, if constructed in accordance with the plans and specifications, would be reasonably safe. The office shall promptly consider the application and schedule a hearing to be conducted consistent with the provisions of this section and KRS Chapter 13B.
- (5) If it appears from the evidence presented at the hearing that the elevator or fixed guideway system will be reasonably safe to operate without those changes or repairs shown in the report or by making only a part or all *of the changes*~~thereof~~, or if none or only a part of all the changes in the plans or specifications are found necessary to make the elevator reasonably safe, the office shall issue its final order accordingly. If the final order requires changes or repairs to be made in the elevator or fixed guideway system or changes in the plans or specifications of either, the office shall, upon the payment of the required fees, issue a certificate of operation when the order has been executed or issue its approval of the plans or specifications. If the final order of the office has been affirmed or modified by appeal on the grounds of reasonable safety considered by the office, then the office shall, upon compliance with the final order and the payment of required fees, issue the certificate of operation or issue its approval of the plans and specifications; but, if the order of the office has been vacated, the certificate of operation, upon the payment of fees or approval of plans and specifications, shall be issued *immediately*~~forthwith~~. No elevator or fixed guideway system shall be operated after being inspected without *bearing a conspicuously posted*~~having a~~ certificate of operation~~conspicuously posted thereon~~, except pending a hearing on the issuance *of the certificate*~~thereof~~.

➔Section 26. KRS 198B.490 is amended to read as follows:

- (1) The ~~office~~~~executive director of housing, buildings and construction~~ shall make, alter, amend, and repeal rules and *administrative* regulations exclusively for the safety and inspection of passenger elevators and fixed guideway systems. The ~~office~~~~executive director~~ shall have the authority to prescribe, by *administrative* regulation, *a reasonable*~~the~~ fee to be charged for each inspection. All fees established and regulated by this section shall be *paid*~~payable~~ to the office, *made payable to the Kentucky State Treasurer*, except as may be provided in a specific written agreement between the executive director and any agency authorized to inspect elevators or fixed guideway systems by the provisions of this chapter.
- (2) *The office shall consult with the Elevator Advisory Committee, engineering authorities, and organizations concerned with standard safety codes, rules, and administrative regulations governing the operation, maintenance, servicing, construction, alteration, installation, and inspection of elevators and fixed*

guideway systems, and the qualifications that are necessary for an elevator mechanic, contractor, and inspector.

- (3) *The office shall promulgate administrative regulations establishing the approved equipment regulated by KRS 198B.400 to 198B.540. These administrative regulations shall include the following, except as modified under subsection (4) of this section:*
 - (a) *Safety Code for Elevators and Escalators, ASME A17.1/CSA B44;*
 - (b) *Safety Code for Existing Elevators and Escalators, ASME A17.3;*
 - (c) *Performance-Based Safety Code for Elevators and Escalators, ASME 17.7/CSA B44.7;*
 - (d) *Safety Standards for Platform Lifts and Stairway Chairlifts, ASME A18.1;*
 - (e) *Standard for the Qualification of Elevator Inspectors, ASME OEI-1; and*
 - (f) *Automated People Mover Standards, ASCE 21.*
- (4) *The office and the committee shall review the latest editions of any standard listed in subsection (3) of this section within twelve (12) months of that standard's effective date. Upon completion of reviews, the committee shall give the office its recommendations for or against adoption or modification of a standard.*
- (5) *All administrative regulations issued by the office relating to KRS 198B.400 to 198B.540 shall be consistent with the standards of safety as established in 815 KAR 10:060 and the Uniform State Building Code established in KRS 198B.050.*

➔Section 27. KRS 198B.510 is amended to read as follows:

- (1) No certificate of operation for any passenger elevator or fixed guideway system shall be issued until the elevator or fixed guideway system has been inspected and the *inspection* report~~thereof~~ filed with the office. The certificate of operation, when issued, shall bear the date of inspection, and shall be renewed as of the date of the subsequent inspection, provided the inspection is made at least one (1) year after the issuance of ~~this~~^{such} certificate. If the inspection is made during the year the certificate is in force, the renewal date shall be one (1) year from the date of the certificate being renewed and the renewal certificate shall show the date of inspection.
- (2) *All new elevator or fixed guideway system installations shall be performed by a licensed elevator contractor. Subsequent to installation, the elevator contractor shall certify compliance with the applicable sections of KRS 198B.400 to 198B.540. The licensed elevator contractor shall complete and submit the initial registration for each new installation.*
- (3)
 - (a) *A state inspector shall inspect, in accordance with KRS 198B.400 to 198B.540, all newly installed elevators, platform lifts, and stairway chairlifts in private residences.*
 - (b) *A state inspector may inspect, in accordance with KRS 198B.400 to 198B.540, any existing installed elevators, platform lifts, and stairway chairlifts in private residences at the request of the owner of the private residence.*

➔Section 28. KRS 198B.520 is amended to read as follows:

- (1) Before any new installation of an elevator or fixed guideway system of permanent nature shall be erected or before any existing elevator is removed to a different location, an application of specifications in duplicate shall be submitted to the office giving such information concerning the construction, installation, and operation of ~~the~~^{said} elevator or fixed guideway system as the office may require on forms to be furnished by the office, together with complete construction plans in duplicate. In all cases where any changes or repairs are made which alter its construction or classification, grade, or rated lifting capacity, except when made pursuant to a report of an inspector, an application of specifications in duplicate shall be submitted to the office containing such information for approval~~, except for elevators in those municipal corporations which maintain their own elevator inspection departments, in which event the specifications shall be submitted to the elevator department of the municipal corporation for its approval and, if approved, a permit for the erection or repair of the elevator shall be issued by the municipal corporation~~. Upon approval of the application and construction plans, the office shall issue a permit for the erection or repair of the elevator or fixed guideway system. No new elevator or fixed guideway system shall be operated until completion in accordance with the approved plans and specifications, unless a temporary permit is granted by the office.

- (2) *A permit issued under this section may be revoked by the office when:*
- (a) *A false statement or misrepresentation of a material fact in the application, plans, or specifications led to the issuance of the permit;*
 - (b) *The permit was issued in error;*
 - (c) *The work detailed under the permit is not being performed in accordance with the application, plans, or specifications;*
 - (d) *Work is not being performed in accordance with the code or conditions of the permit; or*
 - (e) *The elevator contractor to whom the permit was issued fails or refuses to comply with a lawfully issued stop work order.*
- (3) *A permit issued under this section shall expire if:*
- (a) *The work authorized by permit is not commenced within twenty-four (24) months after the date of issuance, or within a shorter period of time as specified by the office at the time the permit is issued; or*
 - (b) *The work is abandoned for a period of sixty (60) days after work commences, or a shorter period of time as specified by the office at the time the permit is issued.*
- (4) *The office shall allow an extension of the allotted period if proof of good cause is provided with a request for an extension.*

➔Section 29. KRS 198B.530 is amended to read as follows:

~~A [No] person shall not violate any law relative to the operation, construction, maintenance, and repair of passenger elevators or fixed guideway systems. All fines collected for a violation of this section shall be forwarded to the office, which shall pay the same into the State Treasury to the credit of the *elevator safety program trust fund as specified in Section 18 of this Act* [general revenue fund].~~

➔SECTION 30. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *The office shall issue a fire sprinkler inspector certification to an applicant who meets the following requirements:*
- (a) *Is at least eighteen (18) years of age;*
 - (b) *Submits a completed fire sprinkler inspector's written or electronic application form as provided by the office;*
 - (c) *Provides a certificate of insurance that:*
 - 1. *a. Is issued by an insurance company or other legal entity permitted to transact insurance business in Kentucky;*
 - b. Insures for general liability coverage of at least five hundred thousand dollars (\$500,000); and*
 - c. Includes liability insurance that shall cover the legal liability of the certified fire sprinkler inspector as the result of erroneous acts or failure to act in his or her capacity as a fire sprinkler inspector and shall be in the form of a certificate of insurance executed by an insurer permitted to do business in this state or exported by a licensed surplus lines broker to an eligible carrier pursuant to KRS 304.10-020 to 304.10-210; or*
 - 2. *Submits an affidavit completed by a sprinkler contractor that the applicant is and will be an employee of a currently licensed sprinkler contractor in good standing with the office;*
 - (d) *1. Provides proof of passing scores on all portions of a standardized examination approved by the executive director; or*
 - 2. Is a current holder of certification from the National Institute for Certification in Engineering Technologies (NICET) for "Inspection and Testing of Water-Based Systems" Level 2 or higher; and*

(e) *Upon request by the office, supplemental documentation of information as required under this subsection.*

(2) *All certification cards issued by the office shall remain the property of the office.*

➔SECTION 31. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) *An applicant for certification as a fire sprinkler inspector under this chapter making application to the office prior to July 1, 2012, shall be certified by the office without completing the certification requirements as established in this chapter if:*

(a) *The applicant is currently certified by the state of Kentucky, or*

(b) *The applicant is currently licensed, certified, or registered as a fire sprinkler inspector in another state whose standards are substantially equal to those in this chapter.*

(2) *Prior to July 1, 2012, the office may issue a pending certification to an applicant. A pending certification shall allow the applicant to act in the capacity applied for until the applicant's permanent certification is issued or the application is denied.*

(3) *After July 1, 2012, certification under this section shall cease.*

➔SECTION 32. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

(1) *The initial annual certification for a fire sprinkler inspector shall be for not less than seven (7) months nor more than eighteen (18) months.*

(2) *Any certification for a fire sprinkler inspector issued in accordance with this chapter shall expire on the last day of the inspector's birth month in the year following certification.*

(3) *Renewal notices shall be sent to each certified inspector at least sixty (60) days prior to the expiration of his or her certification. The notice shall:*

(a) *Inform the certified inspector of the need to renew the certification; and*

(b) *Describe the materials to be submitted with a request for renewal.*

(4) *An individual who applies to renew a certification as a certified fire sprinkler inspector shall:*

(a) *Complete and submit the fire sprinkler inspector's written or electronic renewal form as provided by the office;*

(b) *Show proof of general liability insurance in the amount required by this chapter; and*

(c) *1. Provide proof of completion of six (6) hours of continuing education prior to certification renewal. The required continuing education shall be received within the twelve (12) months prior to renewal; or*

2. Submit proof that the inspector is a current and valid holder of NICET certification in the testing of water-based systems.

(5) *A thirty (30) day grace period shall be allowed after the renewal deadline of the certification during which time a fire sprinkler inspector may continue to practice and may renew his or her certification upon meeting the requirements promulgated through administrative regulation by the office.*

(6) *Any certification not renewed on or before the last day of the thirty (30) day grace period shall terminate based upon failure to timely renew certification. Upon termination, the individual shall no longer be eligible to inspect within the Commonwealth.*

(7) *After expiration of the thirty (30) day grace period, a formerly certified fire sprinkler inspector with a terminated certification shall have the certification reinstated upon meeting the requirements promulgated through administrative regulation by the office. An applicant for reinstatement after termination of his or her certification shall not be required to submit to any examination as condition for reinstatement, if the reinstatement application is made within two (2) years from the date of certification termination.*

(8) *After termination and two (2) years, the applicant shall retest and comply with application requirements set forth in Section 30 of this Act.*

➔SECTION 33. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *The certification requirements established within this chapter may be waived for a person moving into the Commonwealth from another jurisdiction, and a fire sprinkler inspector's certification granted, if the person meets the following requirements:*
 - (a) *The other jurisdiction grants the same privileges to certified fire sprinkler inspectors of Kentucky as Kentucky grants to certified or licensed fire sprinkler inspectors of that other jurisdiction;*
 - (b) *The individual is certified or licensed in the other jurisdiction;*
 - (c) *The certification or licensing requirements of the other jurisdiction are substantially similar to the requirements in this chapter; and*
 - (d) *The individual submits a notarized letter stating that he or she has read, is familiar with, and will abide by this chapter and the administrative regulations promulgated by the office.*
- (2) *An individual seeking a fire sprinkler inspector's certification under this section shall:*
 - (a) *Submit a completed fire sprinkler inspector's written or electronic application form as provided by the office; and*
 - (b)
 1. *Provide a certificate of insurance that is issued by an insurance company or other legal entity permitted to transact business in Kentucky with a general liability coverage of at least five hundred thousand dollars (\$500,000). Liability insurance shall cover the legal liability of the certified fire sprinkler inspector as the result of erroneous acts or failure to act in his or her capacity as a fire sprinkler inspector and shall be in the form of a certificate of insurance executed by an insurer permitted to do business in this state or exported by a licensed surplus lines broker to an eligible carrier pursuant to KRS 304.10-020 to 304.10-210; or*
 2. *Submit an affidavit from a sprinkler contractor that he or she is covered as an employee of a sprinkler contractor that is in good standing and currently licensed by the office.*

➔SECTION 34. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The executive director shall, through the promulgation of administrative regulations:

- (1) *Establish the procedures necessary to implement Sections 30 to 38 of this Act;*
- (2) *Establish an inactive status of certification for fire sprinkler inspectors who are not actively conducting inspections but wish to maintain their certification;*
- (3) *Establish a waiver of insurance requirements for inactive certifications;*
- (4) *Establish the reactivation procedure for a certification successfully placed into inactive status; and*
- (5) *Establish criteria for approval of continuing education providers and continuing education courses.*

➔SECTION 35. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

The standards to be utilized in the inspection of sprinkler systems shall be the standards set forth in the National Fire Protection Association's Article 25: Standard for the Inspection, Testing and Maintenance of Water-Based Fire Protection Systems and is the edition prescribed by the executive director or other national standard as approved by the executive director.

➔SECTION 36. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *The procedures set forth in KRS Chapter 13B shall govern the office's conduct of disciplinary hearings.*
- (2) *The executive director may summarily suspend a certification for up to ninety (90) days before a final adjudication or during an appeal of the executive director's determination if he or she believes that the certification would represent a clear and immediate danger to the public's health, safety, or property if the inspector is allowed to perform sprinkler system inspections.*
- (3) *The executive director shall issue a letter to cease and desist with notice of opportunity to be heard in accordance with KRS Chapter 13B, to any individual if the executive director:*
 - (a) *Determines that an individual is not certified under the provisions of this chapter; and*

- (b) *Determines that the individual is engaged in, or believed to be engaged in, activities for which a fire sprinkler inspector's certification is required under this chapter.*
- (4) *After completion of the hearing, if it is determined that the activities in which the individual is engaged are subject to certification under this chapter, the executive director shall issue a cease-and-desist order that identifies the individual and specifically states the activities which are subject to the order.*
- (5) *A cease-and-desist order issued under this section shall be enforceable in the Circuit Court of the county of the certified inspector's place of business in accordance with KRS Chapter 13B.*

➔SECTION 37. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to a hearing conducted in accordance with KRS Chapter 13B, the executive director may suspend, revoke, or refuse to renew the certification of a certified fire sprinkler inspector for any of the following actions:*
 - (a) *Use of false evidence or misrepresentation in an application for a fire sprinkler inspector's certification;*
 - (b) *Attempting to transfer authority granted to the certified inspector to another individual;*
 - (c) *Incompetence or negligence in the inspection of fire protection sprinkler systems as determined by the executive director;*
 - (d) *Conviction of a felony or of any crime an element of which is dishonesty or fraud, under the laws of any state or of the United States;*
 - (e) *Fraudulent or dishonest practices while engaging in the business of sprinkler system inspections;*
 - (f) *Aiding or abetting any person attempting to evade the provisions of this chapter; or*
 - (g) *Violating any provision of this chapter or the administrative regulations promulgated thereunder.*
- (2) *The executive director shall revoke, subject to a hearing in accordance with KRS Chapter 13B, the certification of a fire sprinkler inspector who engages in inspection activities during a suspension of his or her certification.*
- (3) *Any certification holder who is aggrieved by a final order of the executive director, resulting in the suspension or revocation of certification, may appeal to the Circuit Court of the county of the certified inspector's place of business in accordance with KRS Chapter 13B.*

➔SECTION 38. A NEW SECTION OF KRS CHAPTER 198B IS CREATED TO READ AS FOLLOWS:

If the certification of a fire sprinkler inspector is revoked for any reason, the inspector may, at the conclusion of the revocation period, reapply for a sprinkler system inspector's certification.

➔Section 39. KRS 198B.400 to 198B.540 shall be known and may be cited as the Kentucky Elevator Safety Act.

➔Section 40. This Act takes effect July 1, 2011.

Signed by Governor April 12, 2010

CHAPTER 117

(HB 204)

AN ACT relating to reorganization.

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

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

Departments, program cabinets and their departments, and the respective major administrative bodies that they include are enumerated in this section. It is not intended that this enumeration of administrative bodies be all-inclusive. Every authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization shall be included in or attached to the department or program cabinet in which they are

included or to which they are attached by statute or statutorily authorized executive order; except in the case of the Personnel Board and where the attached department or administrative body is headed by a constitutionally elected officer, the attachment shall be solely for the purpose of dissemination of information and coordination of activities and shall not include any authority over the functions, personnel, funds, equipment, facilities, or records of the department or administrative body.

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

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

II. Program cabinets headed by appointed officers:

1. Justice and Public Safety Cabinet:
 - (a) Department of Kentucky State Police.
 - (b) Department of Criminal Justice Training.
 - (c) Department of Corrections.
 - (d) Department of Juvenile Justice.
 - (e) Office of the Secretary.
 - (f) Office of Drug Control Policy.
 - (g) Office of Legal Services.
 - (h) Office of the Kentucky State Medical Examiner.
 - (i) Parole Board.
 - (j) Kentucky State Corrections Commission.
 - (k) Office of Legislative and Intergovernmental Services.
 - (l) Office of Management and Administrative Services.
 - (m) Office of Investigations.
 - (n) Department for Public Advocacy.
2. Education and Workforce Development Cabinet:
 - (a) Office of the Secretary.
 - (b) Office of Legal and Legislative Services.
 1. Client Assistance Program.

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

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

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

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

- (c) Office of Administrative Services.
 - (d) Office of Public Information.
 - (e) Office of Policy and Audit.
 - (f) Department for Facilities and Support Services.
 - (g) Department of Revenue.
 - (h) Commonwealth Office of Technology.
 - (i) State Property and Buildings Commission.
 - (j) Office of Equal Employment Opportunity and Contract Compliance.
 - (k) Kentucky Employees Retirement Systems.
 - (l) Commonwealth Credit Union.
 - (m) State Investment Commission.
 - (n) Kentucky Housing Corporation.
 - (o) Kentucky Local Correctional Facilities Construction Authority.
 - (p) Kentucky Turnpike Authority.
 - (q) Historic Properties Advisory Commission.
 - (r) Kentucky Tobacco Settlement Trust Corporation.
 - (s) Kentucky Higher Education Assistance Authority.
 - (t) Kentucky River Authority.
 - (u) Kentucky Teachers' Retirement System Board of Trustees.
 - (v) Executive Branch Ethics Commission.
8. Tourism, Arts and Heritage Cabinet:
- (a) Kentucky Department of Travel.
 - (1) Division of Tourism Services.
 - (2) Division of Marketing and Administration.
 - (3) Division of Communications and Promotions.
 - (b) Kentucky Department of Parks.
 - (1) Division of Information Technology.
 - (2) Division of Human Resources.
 - (3) Division of Financial Operations.
 - (4) Division of Facilities Management.
 - (5) Division of Facilities Maintenance.
 - (6) Division of Customer Services.
 - (7) Division of Recreation.
 - (8) Division of Golf Courses.
 - (9) Division of Food Services.
 - (10) Division of Rangers.
 - (11) Division of Resort Parks.
 - (12) Division of Recreational Parks and Historic Sites.

- (c) Department of Fish and Wildlife Resources.
 - (1) Division of Law Enforcement.
 - (2) Division of Administrative Services.
 - (3) Division of Engineering.
 - (4) Division of Fisheries.
 - (5) Division of Information and Education.
 - (6) Division of Wildlife.
 - (7) Division of Public Affairs.
- (d) Kentucky Horse Park.
 - (1) Division of Support Services.
 - (2) Division of Buildings and Grounds.
 - (3) Division of Operational Services.
- (e) Kentucky State Fair Board.
 - (1) Office of Administrative and Information Technology Services.
 - (2) Office of Human Resources and Access Control.
 - (3) Division of Expositions.
 - (4) Division of Kentucky Exposition Center Operations.
 - (5) Division of Kentucky International Convention Center.
 - (6) Division of Public Relations and Media.
 - (7) Division of Venue Services.
 - (8) Division of Personnel Management and Staff Development.
 - (9) Division of Sales.
 - (10) Division of Security and Traffic Control.
 - (11) Division of Information Technology.
 - (12) Division of the Louisville Arena.
 - (13) Division of Fiscal and Contract Management.
 - (14) Division of Access Control.
- (f) Office of the Secretary.
 - (1) Office of Finance.
 - (2) Office of Research and Administration.
 - (3) Office of Governmental Relations and Tourism Development.
 - (4) Office of the Sports Authority.
 - (5) Kentucky Sports Authority.
- (g) Office of Legal Affairs.
- (h) Office of Human Resources.
- (i) Office of Public Affairs and Constituent Services.
- (j) Office of Creative Services.
- (k) Office of Capital Plaza Operations.

- (l) Office of Arts and Cultural Heritage.
 - (m) Kentucky African-American Heritage Commission.
 - (n) Kentucky Foundation for the Arts.
 - (o) Kentucky Humanities Council.
 - (p) Kentucky Heritage Council.
 - (q) Kentucky Arts Council.
 - (r) Kentucky Historical Society.
 - (1) Division of Museums.
 - (2) Division of Oral History and Educational Outreach.
 - (3) Division of Research and Publications.
 - (4) Division of Administration.
 - (s) Kentucky Center for the Arts.
 - (1) Division of Governor's School for the Arts.
 - (t) Kentucky Artisans Center at Berea.
 - (u) Northern Kentucky Convention Center.
 - (v) Eastern Kentucky Exposition Center.
9. Personnel Cabinet:
- (a) Office of the Secretary.
 - (b) Department for Personnel Administration.
 - (c) Office for Employee Relations.
 - (d) Kentucky Public Employees Deferred Compensation Authority.
 - (e) Office of Administrative Services.
 - (f) Office of Legal Services.
 - (g) Office of Government Training.
 - (h) Department for Employee Insurance.
- III. Other departments headed by appointed officers:
- 1. Department of Military Affairs.
 - 2. ***Department for Local Government***~~[Governor's Office for Local Development]~~.
 - 3. Kentucky Commission on Human Rights.
 - 4. Kentucky Commission on Women.
 - 5. Department of Veterans' Affairs.
 - 6. Kentucky Commission on Military Affairs.
 - 7. Office of Minority Empowerment.
 - 8. Governor's Council on Wellness and Physical Activity.

➔Section 2. KRS 147A.002 is amended to read as follows:

- (1) The ***Department for Local Government***~~[Governor's Office for Local Development]~~ shall be headed by a commissioner and shall consist of the:

- (a) Office of Financial Management and Administration, which shall be headed by an executive director appointed by the commissioner and shall be responsible for duties including but not limited to local government financial assistance; county budget approval; performance of various recordkeeping requirements for the Commonwealth's cities, counties, and special districts; provision of administrative support for the state local debt officer and the state local finance officer; administration of the county officials training incentive program set forth in KRS 64.5275; and provision of financial analysis and guidance related to the internal budgetary processes of the ***Department for Local Government***~~{Governor's Office for Local Development}~~;
 - (b) Office of Federal Grants, which shall be headed by an executive director appointed by the commissioner and shall be responsible for the administration of all federal grant programs;
 - (c) Office of State Grants, which shall be headed by an executive director appointed by the commissioner and shall be responsible for the administration of all state grant programs, including the Renaissance on Main Program, the area development fund, the body armor program set forth in KRS 16.220, the cemetery fund program, single county coal severance grants, and any state grant programs or individually funded projects awarded by statute or budget;
 - (d) Office of Legal Services, which shall be headed by an executive director appointed by the commissioner and shall be responsible for legal services within the ***Department for Local Government***~~{Governor's Office for Local Development}~~ and for its constituencies around the Commonwealth; and
 - (e) Office of Field Services, which shall be headed by an executive director appointed by the commissioner and shall be responsible for duties including but not limited to staffing regional offices to assist local governments.
- (2) The commissioner, with the approval of the Governor, shall appoint necessary deputies, assistants, attorneys, and other employees and shall fix their compensation and authorize payment of their expenses according to law.

➔Section 3. KRS 147A.003 is amended to read as follows:

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

➔Section 4. KRS 147A.004 is amended to read as follows:

- (1) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall administer distribution of state and federal planning funds to area development districts and shall require by administrative regulation financial and operational reports, audits, and other controls as are necessary to assure compliance with state and federal laws relating to funds received by the area development districts.
- (2) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall promulgate administrative regulations as will assure statewide coordination of the planning and assistance operations of the area development districts.

➔Section 5. KRS 147A.020 is amended to read as follows:

- (1) The state local debt officer and the state local finance officer within the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall exercise the following administrative functions of the state:
 - (a) The state local debt officer shall exercise all administrative functions as provided in the county debt act, KRS 66.280 to 66.390, and administrative functions relating to local government bonds as provided in KRS 66.045; and
 - (b) The state local finance officer shall exercise all administrative functions regarding county and local government budgets, as provided in KRS 68.210 to 68.360.
- (2) The state local debt officer shall have the following powers and duties:
 - (a) To require reports from local governments to enable him to adequately provide the technical and advisory assistance authorized by this section. The reports shall provide the necessary information for a complete file on local government debt, which the state local debt officer shall keep open for public inspection at the ***Department for Local Government***~~{Governor's Office for Local Development}~~;

- (b) To conduct studies in debt management, including ways and means of appraising the terms of alternative bids;
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government, to enable the state local debt officer to carry out his duties under this section; and
 - (d) To compile and publish annually a report which shall include detailed information on local government long-term debt issued and retired during the previous year and outstanding, and other available statistical data on local government finances.
- (3) The state local finance officer shall have the following powers and duties:
- (a) To coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, general revenue sharing for local government;
 - (b) To provide technical assistance and information to units of local government on matters including but not limited to fiscal management, purchases, and contracts; and
 - (c) To conduct training programs to instruct county and other local officials respecting their duties and responsibilities in the collection, expenditure, and management of public moneys subject to their control and jurisdiction.

➔Section 6. KRS 147A.021 is amended to read as follows:

- (1) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall have the following powers and duties:
- (a) To require any reports from local governments that will enable it adequately to provide the technical and advisory assistance authorized by this section.
 - (b) To encourage, conduct, or participate in training courses in procedures and practices for the benefit of local officials, and in connection therewith, to cooperate with associations of public officials, business and professional organizations, university faculties, or other specialists.
 - (c) To request assistance and information, which shall be provided by all departments, divisions, boards, bureaus, commissions, and other agencies of state government to enable the ***Department for Local Government***~~{Governor's Office for Local Development}~~ to carry out its duties under this section.
 - (d) At its discretion, to compile and publish annually a report on local government.
- (2) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall coordinate for the Governor the state's responsibility for, and shall be responsible for liaison with the appropriate state and federal agencies with respect to, the following programs:
- (a) Demonstration cities and metropolitan development act as amended with the exception of Title I of the Housing and Community Development Act of 1974 as amended through 1981;
 - (b) Farmers Home Administration;
 - (c) Veterans Administration Act as amended, as it pertains to housing.
- (3) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall provide technical assistance and information to units of local government, including but not limited to:
- (a) Personnel administration;
 - (b) Ordinances and codes;
 - (c) Community development;
 - (d) Appalachian Regional Development Program;
 - (e) Economic Development Administration Program;
 - (f) Intergovernmental Personnel Act Program;
 - (g) Land and Water Conservation Fund Program;

- (h) Area Development Fund Program;
 - (i) Joint Funding Administration Program;
 - (j) State clearinghouse for A-95 review;
 - (k) The memorandums of agreement with the area development districts to provide management assistance to local governments; and
 - (l) The urban development office.
- (4) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall exercise all of the functions of the state local finance officer provided in KRS Chapters 66, 68, and 131 relating to the control of funds of counties, cities, and other units of local government.
 - (5) Upon request of the Administrative Office of the Courts, the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall evaluate the financial condition of any local unit of government selected to participate in a court facilities construction or renovation project under KRS 26A.160 and shall certify to the Administrative Office of the Courts the local unit of government's ability to participate in the project.
 - (6) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall encourage broadband and information technology deployment and adoption throughout Kentucky in accordance with KRS 147A.023.

➔Section 7. KRS 147A.023 is amended to read as follows:

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

➔Section 8. KRS 147A.025 is amended to read as follows:

- (1) Except as provided in subsection (7) of this section, the ***Department for Local Government***~~{Governor's Office for Local Development}~~, with the advice and approval of the state local finance officer, annually shall conduct a program to instruct county clerks, sheriffs, jailers, and county treasurers respecting their duties and responsibilities in the collection and expenditure of public moneys, subject to their control and jurisdiction.

- (2) The ***Department for Local Government***~~{Governor's Office for Local Development}~~, with the advice and approval of the state local finance officer, shall establish the content and publish instructional materials essential to implementing this program. Subsequent to every regular and extraordinary session of the General Assembly, the ***Department for Local Government***~~{Governor's Office for Local Development}~~ with the state local finance officer, shall review and revise, if necessary, the program when it is found not to be consistent with state law.
- (3) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ may assess a charge to any person requesting copies of instructional materials published as provided by this section to cover actual costs of printing and handling these materials, except that no county official shall be charged for instructional materials provided for his use. Funds accruing from the sale of instructional materials shall be paid into the State Treasury, and the State Treasurer shall pay these funds into an account of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ to defray the costs of printing and handling these materials.
- (4) The commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~, with the advice and approval of the state local finance officer, may prescribe completion standards for this program, and may, subject to subsection (6) of this section, establish the number, type, and sequence of instructional sessions to be conducted by the ***Department for Local Government***~~{Governor's Office for Local Development}~~; but the commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall not require the attendance of any county official, nor shall he prescribe any requirement or standard that restricts or impairs a county official or elected candidate in the lawful pursuit or conduct of the office to which he is elected.
- (5) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall notify in advance each county clerk, sheriff, jailer, and county treasurer respecting instructional session pertinent to his office. Notification shall be by mail, and it shall be posted no later than twenty-one (21) days prior to the instructional session. At a minimum, the notice shall give the date, time, place, and title of the instruction session.
- (6) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall conduct this program by providing a one (1) day session at various locations throughout this state in order to minimize the travel expenses of those officials attending, provided that the aggregate number of all sessions shall not exceed five (5) during any calendar year. Except as provided in subsection (7) of this section, the ***Department for Local Government***~~{Governor's Office for Local Development}~~ may commence instruction anytime during a calendar year.
- (7) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall not conduct a program as provided by this section during any calendar year when a general election is held for every constitutional county office. The ***Department for Local Government***~~{Governor's Office for Local Development}~~, however, shall commence instruction for the succeeding year within eighty (80) days following said general election.
- (8) Every county official who attends an instructional session shall be paid his actual and necessary expenses in attending from the operating funds of his office.
- (9) In fulfilling the requirements of this section, the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall confer with and coordinate its duties and responsibilities with the Finance and Administration Cabinet and the Auditor of Public Accounts. The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall also confer with those state universities whose mission statements mandate their participation in the training of public officials, the state associations for those officials listed in subsection (1) of this section, and the Kentucky Association of Counties, respecting the implementation of this section.

➔Section 9. KRS 147A.028 is amended to read as follows:

- (1) In enacting a parks establishment aid law, it is the intention of the General Assembly to supplement local efforts to establish park and recreational facilities. The inadequacy of present facilities and the high cost of acquisition and establishment of park recreational facilities are hereby declared to be matters of public interest and concern vital to the promotion of the health, welfare, and industrial development of the inhabitants of the Commonwealth.

- (2) The commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall cause to be established in the Treasury a special fund to be known as the local government parks and recreational facilities fund, to be administered by the commissioner. The fund shall be comprised of grants, contributions, appropriations, and intergovernmental transfers. Moneys in the fund shall not lapse at the end of the fiscal year.
- (3) The commissioner may, when he determines that a proposed local government plan for a park or other recreational facility would serve the public interest, use moneys from the local government parks and recreational facilities fund to aid local governmental units in their acquisition and establishment of local parks and recreational facilities, provided that local governmental units must provide matching funds for the project. The ***Department for Local Government***~~{Governor's Office for Local Development}~~ may grant an amount up to five hundred thousand dollars (\$500,000) for any one (1) project, which amount shall not exceed fifty percent (50%) of the cost of the entire project. For the purposes of this section, local governmental units shall mean county governments, urban-county government, and governments of cities of any class. Title to parks and recreational facilities acquired by the use of funds authorized by this section shall vest in the local governmental unit which proposed the project and provided the matching funds.
- (4) In September of each year, the commissioner shall determine the amount of funds available for distribution by December 31 of that same year. The commissioner may prescribe standards for determining the amounts to be granted for local projects and any administrative regulations as may be necessary to implement the provisions of this section. Funds granted by the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall be spent by the local governing authorities only for the acquisition and establishment of parks and recreational facilities or major improvements or additions to existing parks and shall not be used for operating or maintenance expenses.

➔Section 10. KRS 147A.029 is amended to read as follows:

- (1) The commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall administer and determine the disbursement of funds for the Local Match Participation Program.
- (2) Funds appropriated for the Local Match Participation Program may be used as matching funds by local governments for flood-related projects and straight sewage pipe removal projects with:
- (a) The United States Army Corps of Engineers;
 - (b) The Federal Emergency Management Agency (FEMA); and
 - (c) Other federal government grant and loan programs requiring local matching funds.
- (3) Any general fund appropriations made for the Local Match Participation Program may be used for flood control planning and mitigation activities and straight sewage pipe removal and mitigation activities.

➔Section 11. KRS 147A.031 is amended to read as follows:

- (1) The ***Department for Local Government***~~{Governor's Office for Local Development}~~, in cooperation with cities, counties, waste management districts, waste industries, the Environmental and Public Protection Cabinet, and the Environmental Quality Commission, shall develop procedures designed to resolve conflicts resulting from municipal solid waste management facility siting and operation. The procedures shall address:
- (a) Resolution of conflicts associated with multijurisdictional municipal solid waste management facilities, including the use of such techniques as negotiation, mediation, or arbitration to address issues, including but not limited to host community compensation and collection and disposal fees; and
 - (b) Resolution of issues, except those relating to permit conditions imposed by the cabinet, resulting from municipal solid waste management facility siting and operation, including the use of such techniques as negotiation, mediation, or arbitration to address concerns of those persons and landowners who are directly affected by the facility's location and operation. Issues which may be addressed include but are not limited to the following:
 - 1. Operational issues, such as hours of operation;
 - 2. Recycling and composting efforts that may be implemented;
 - 3. Protection of property values;
 - 4. Traffic routing and road maintenance; and

5. Establishment of local advisory committees.

- (2) The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall adopt administrative regulations to implement the provisions of subsection (1) of this section.
- (3) Nothing in this section shall be construed to abridge any rights or remedies provided by KRS Chapters 109 and 224, or at common law.

➔Section 12. KRS 147A.060 is amended to read as follows:

There shall be in each area development district a board of directors. The composition of the board and the terms and appointments of its members in each district shall be specified by administrative regulation promulgated by the ***Department for Local Government***~~{Governor's Office for Local Development}~~ in accordance with KRS Chapter 13A. The designee of a mayor or county judge/executive shall be a member of the designator's respective legislative body or their staff. Other persons who are not elected officials or members of their staffs may be designated as representatives with the consent of that body. The ***Department for Local Government***~~{Governor's Office for Local Development}~~, in specifying the composition of the board, shall conform to applicable federal requirements. A person who is a state officer, a deputy state officer, or a member of the General Assembly may serve only in a nonmember advisory capacity to the board of directors of an area development district. An area development district board of directors shall notify legislators of the provisions of this section and of their right to participate in the activities of the area development district. If a legislator chooses to participate in accordance with this section, the area development district shall send meeting notices to that legislator at the same time board members are notified of the meetings.

➔Section 13. KRS 147A.200 is amended to read as follows:

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

➔Section 14. KRS 147A.250 is amended to read as follows:

A Railtrail Development Office is hereby created within the ***Department for Local Government***~~{Governor's Office for Local Development}~~. The ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall ***ensure***~~{insure}~~ that the office has the necessary expertise to carry out the requirements imposed upon it by this section. Among other railtrail functions and duties which may be assigned to it, the Railtrail Development Office shall carry on at least the following responsibilities:

- (1) The office shall monitor the proceedings of the United States Department of Transportation's Surface Transportation Board and shall disseminate to interested entities in Kentucky information regarding those proceedings of interest to railtrail conversion or policy in the Commonwealth. If a railroad applies to the Surface Transportation Board for authority to discontinue service over or abandon a railroad corridor in the Commonwealth, the office shall immediately notify those political subdivisions through which the corridor passes and any interested state agency of the proceedings and the potential for trail development of the corridor. Notice shall also be sent to the county judge/executive of each county through which the proposed abandonment passes, who shall distribute copies of the notice to each member of the chief legislative body of the county government at the next regularly scheduled meeting of that legislative body. The office shall also

send a copy of the notice to each soil and water conservation district through which the abandonment passes. If time is of the essence and it appears that the corridor is a suitable candidate for conversion to a railtrail and that no other railtrail interested entity will be participating in the federal proceeding, the office shall take those steps necessary to cause a railbanking or public use condition to be imposed in the federal proceeding;

- (2) The office shall assist any requesting political subdivision or agency of state government with assistance on any application to the Surface Transportation Board regarding an abandoned or about-to-be-abandoned railroad corridor, including any requests for railbanking or imposition of public use conditions;
- (3) The office shall coordinate and promote railtrail development efforts among the various agencies of state government, including the Department of Parks and the Transportation Cabinet. While this subsection does not confer upon the office any powers beyond those that it may ordinarily possess, every entity of state government shall cooperate with the office to the extent practicable under the circumstances;
- (4) The office shall furnish to requesting political subdivisions assistance in applying to available federal, state, or local funding sources for funds to be used for the process of converting railroad corridors into public use trails; and
- (5) The office may apply for federal, state, or private grants or other forms of financial assistance to carry on its mission.

➔Section 15. KRS 12.023 is amended to read as follows:

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

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

➔Section 16. KRS 15.755 is amended to read as follows:

- (1) The compensation of each Commonwealth's attorney shall be paid out of the State Treasury.
- (2) The compensation of the staff of each Commonwealth's attorney shall be paid out of the State Treasury.
- (3) In each judicial circuit containing a city of the first or second class or an urban-county government, or a city of the third class and a population of sixty-eight thousand (68,000) or more, or which has a full-time Commonwealth's attorney, the Commonwealth's attorney shall not engage in the private practice of law. The population of a judicial circuit shall, for the purpose of this statute, be determined by the most recent federal decennial census enumeration. All other Commonwealth's attorneys shall not be prohibited from engaging in the private practice of law.
- (4) Each Commonwealth's attorney who is prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of twenty-six thousand dollars (\$26,000) per annum.
- (5) Each Commonwealth's attorney who is not prohibited from engaging in the private practice of law shall receive as compensation for his services the sum of fourteen thousand three hundred dollars (\$14,300) per annum.

- (6) Each full-time Commonwealth's attorney of the state shall be paid each month the sum of one thousand dollars (\$1,000) and each part-time Commonwealth's attorney shall be paid each month the sum of five hundred dollars (\$500), which sums are declared to be the equivalent of the minimum sums that each Commonwealth's attorney will expend each month in the performance of his official duties directed to be performed for the Commonwealth. The aforementioned sum shall be paid out of the State Treasury.
- (7) In order to equate the compensation of Commonwealth's attorneys with the purchasing power of the dollar, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum. The ***Department for Local Government***~~Governor's Office for Local Development~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the ***Department for Local Government***~~Governor's Office for Local Development~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the ***Department for Local Government***~~Governor's Office for Local Development~~.

➔Section 17. KRS 15.765 is amended to read as follows:

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

➔Section 18. KRS 26A.160 is amended to read as follows:

- (1) The Chief Justice shall establish rules of procedure or guidelines on matters relating to the design, financing, and construction of court facilities. The rules or guidelines shall encompass:
- (a) The duties and responsibilities of the Administrative Office of the Courts under this section;
 - (b) Criteria for evaluating the feasibility or practicability of various contracting or construction methods;
 - (c) A project management system for managing, monitoring, and reporting on projects through all phases from funding to completion, including change-order procedures;
 - (d) Assistance to counties in evaluating proposals for architectural, construction, or other professional services;

- (e) Methods for financing energy savings projects, Americans with Disabilities Act projects, and other improvement projects;
 - (f) Kentucky standards for court facilities, including detailed requirements for space, construction, interior and exterior finishes, structural and mechanical systems, fixed and moveable furniture and equipment, and maximum unit cost for court facilities throughout the Commonwealth; and
 - (g) The maintenance and operation of court facilities after construction.
- (2) The Administrative Office of the Courts shall oversee the design, financing, and construction of court facilities. The Administrative Office of the Courts shall:
- (a) Assess the need for court facilities construction or renovation throughout the Commonwealth. The assessment shall consider the age, space adequacy, projected needs, structural soundness, mechanical and electrical systems, security needs, and interior and exterior quality of existing court facilities;
 - (b) Develop a project program for the construction or renovation of court facilities that the Administrative Office of the Courts determines to be most in need of construction or renovation, based on the needs assessment required under paragraph (a) of this subsection. The project program shall detail a complete and specifically defined court facilities project that conforms to the Kentucky standards for court facilities established under paragraph (f) of subsection (1) of this section, and shall include itemized space requirements, space relationships, design goals, scope limits, site considerations, cost estimates, and a proposed project budget;
 - (c) Establish the financial condition of any county that contains a court facility for which a project program under paragraph (b) of this subsection has been developed to determine the county's ability to participate in the proposed project. The Administrative Office of the Courts may discharge this responsibility by obtaining certification of the county's financial condition from the ***Department for Local Government***~~Governor's Office for Local Development~~ under KRS 147A.021(5);
 - (d) Develop a prioritized list, with cost estimates, based on land availability and the considerations required by this section, of proposed court facilities projects, and submit the list to the Chief Justice for approval and to the Court Facilities Standards Committee for informational purposes only. Upon approval by the Chief Justice, the Administrative Office of the Courts shall submit the prioritized list to the Capital Planning Advisory Board, by April 15 of each odd-numbered year, in accordance with KRS 7A.120; and
 - (e) Develop and maintain uniform contracts to be used by local units of government when procuring architectural, construction, financial, or other services relating to court facilities projects authorized by the General Assembly.
- (3) Before the Administrative Office of the Courts submits a budget request for court projects under KRS 48.050, each local unit of government that is expected to participate in financing a requested court project shall enter into a written memorandum of agreement with the Administrative Office of the Courts. Each county with a court project authorized by the 2000 General Assembly shall enter into a written memorandum of agreement with the Administrative Office of the Courts. The agreement shall be developed by the Administrative Office of the Courts, shall specify the rights, duties, and obligations of the local unit of government and the Administrative Office of the Courts relating to the project, and shall be contingent upon the project's authorization by the General Assembly.
- (4) No contract and no modification to any contract relating to the design, financing, or construction of court facilities projects authorized by the General Assembly shall be executed unless first reviewed and approved by the Administrative Office of the Courts.
- (5) All court facilities projects, beginning with those authorized by the 2000 General Assembly, shall comply with the Kentucky standards for court facilities established under paragraph (f) of subsection (1) of this section. No other standards shall be used.
- (6) This section shall not affect or apply to any contract executed prior to July 14, 2000.
- (7) All local units of government or any other entity providing space to the Court of Justice under KRS 26A.100 shall, consistent with the law, comply with the rules of procedure and guidelines established by the Chief Justice and administered by the Administrative Office of the Courts under this section.

➔Section 19. KRS 39G.020 is amended to read as follows:

- (1) The Kentucky Office of Homeland Security shall identify and maintain a record of all federal homeland security funding, including grants, received in Kentucky. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.
- (2)
 - (a) Not later than September 15 of each year, each department headed by an elected officer, as identified in KRS 12.020 I., each cabinet headed by an appointed officer, as identified in KRS 12.020 II., and each department headed by an appointed officer, as identified in KRS 12.020 III., shall submit to the Kentucky Office of Homeland Security a record of all federal homeland security funding, including grants, received during the state fiscal year starting with the fiscal year ending June 30, 2005. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.
 - (b) Not later than August 1 of each year, each city, county, urban-county, charter county, consolidated local government, and special taxing district shall submit to its area development district a record of all federal homeland security funding, including grants, received during the state fiscal year by the city, county, urban-county, charter county, consolidated local government, special taxing district, or a public agency thereof, starting with the fiscal year ending June 30, 2005. The record shall identify, at a minimum, the specific federal source, the amount, the specific recipient, the intended use of the funding, the actual use, and any unspent amount.
 - (c) Not later than August 15 of each year, each area development district shall group the records required under paragraph (b) of this subsection by county and submit them to the **Department for Local Government**~~Governor's Office for Local Development~~.
 - (d) Not later than September 20 of each year, the **Department for Local Government**~~Governor's Office for Local Development~~ shall submit the records received under paragraph (c) of this subsection to the Kentucky Office of Homeland Security.
 - (e) Any funds received for the purpose of homeland security shall be monitored by the Kentucky Office of Homeland Security and subject to audit and compliance inspections as directed by the executive director.
- (3) The Kentucky Office of Homeland Security, area development districts, and the **Department for Local Government**~~Governor's Office for Local Development~~ shall educate entities that report under this section about their responsibilities under this section. If an entity is late in reporting under this section, the office, an area development district, or the **Department for Local Government**~~Governor's Office for Local Development~~ shall remind that entity of its reporting requirements under this section.
- (4) The Kentucky Office of Homeland Security shall directly notify the chief executive officer of each city, county, urban-county, charter county, and consolidated local government concerning grants for homeland security projects as the grants become available.

➔Section 20. KRS 42.200 is amended to read as follows:

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

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

- (4) The provisions of this section shall be known and may be cited as the Kentucky Rural Water Act.

➔Section 21. KRS 42.350 is amended to read as follows:

- (1) The area development fund in the State Treasury shall be administered by the ***Department for Local Government***~~Governor's Office for Local Development~~. The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~. Any unallotted or unencumbered balances in the fund shall be invested in United States government securities maturing not later than one (1) year from the date of investment, and the income from the investments shall be prorated for expenditure for capital projects in area development districts according to the formula provided in KRS 42.370.

- (2) Money in the fund shall be used only for capital projects which contribute to community or industrial development in the Commonwealth, KRS 48.300 and 48.500 notwithstanding. Capital projects eligible for financing out of the fund include and shall be limited to:

- (a) The construction, reconstruction, renovation, and maintenance of buildings and other improvements to real estate;
- (b) The acquisition of real property and interests in real property;
- (c) The purchase of major items of equipment;
- (d) Industrial site development projects, including land reclamation, clearing, grading, draining, landscaping, and the construction of walkways and fences;
- (e) The extension and installation of water, gas, sewer, and electrical utilities lines to public facilities and industrial sites;
- (f) The provision of solid waste management or disposal systems bringing counties into compliance with state or federal law. All expenses incurred in connection with or incidental to the construction or acquisition of a capital project under this section, including architectural, engineering, legal, and other expenses required for the projects may be paid out of the fund. Money in the fund may be used to retire a mortgage or other indebtedness encumbering an eligible capital project made within the preceding five (5) calendar years to secure the repayment of moneys loaned or advanced to finance the construction or acquisition of the project and may be used in match or in combination with funds obtained from other sources for an eligible capital project. No money shall be expended out of the fund, directly or indirectly, to pay or reimburse the cost of any feasibility study, master plan for any capital improvement development or redevelopment project, the purchase of consumable supplies or any administrative salary, or other operating or capital expense of any area development district or for the acquisition, construction, reconstruction, renovation, or maintenance of any building or property of schools, state institutions of higher learning, or any road, street, bridge, or highway.

- (3) The board of directors of each area development district shall determine from among the capital project proposals submitted by eligible beneficiary agencies, the capital projects to be proposed to be constructed or acquired out of the fund. The area development districts shall submit to the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~ the capital projects selected for construction or acquisition within the districts. Each project proposal shall include: a detailed description of the project; a statement of the public benefit to be derived from the project; if available, design plans and specifications for the project; an itemized estimate of the cost of the project; a statement of the sources and amounts of funds available from any other source for the construction or acquisition of the project; and other information relating to the proposed capital project as the ***Department for Local Government***~~Governor's Office for Local Development~~ may require.

➔Section 22. KRS 42.355 is amended to read as follows:

- (1) The ***Department for Local Government***~~Governor's Office for Local Development~~ shall examine each capital project selected by the area development districts, and when it finds that a proposed project conforms to the

requirements of KRS 42.350 to 42.370; that the estimated costs of the project are reasonable; that the costs proposed to be paid from the fund are within the amount available; and that the proposed beneficiary agency will be reasonably able to finance the operation and maintain the capital project during its estimated useful life, the commissioner of the **Department for Local Government**~~{Governor's Office for Local Development}~~ shall approve it. If the **Department for Local Government**~~{Governor's Office for Local Development}~~ determines that a capital project proposal does not conform to the requirements of KRS 42.350 to 42.370, that the estimated costs of the project are excessive or unreasonable in light of the public benefit to be derived from the project, or the unencumbered balance in the fund available for expenditure in the area development district is insufficient to pay the costs of the project, or the part thereof proposed to be paid out of the fund, or the beneficiary agency cannot reasonably finance the operation of or maintain the capital project during its estimated useful life, the project proposal shall be disapproved by the **Department for Local Government**~~{Governor's Office for Local Development}~~. The final decision to either approve or disapprove any project proposal shall be made no later than forty-five (45) days following official submittal of a complete proposal by the area development district, and the area development district shall be accordingly notified at that time.

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

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

➔Section 23. KRS 42.360 is amended to read as follows:

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

➔Section 24. KRS 42.455 is amended to read as follows:

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

submit an annual report to the Governor indicating how the grants were used and an evaluation of the program's effectiveness in improving the economy of the units of government receiving assistance.

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

➔Section 25. KRS 42.4588 is amended to read as follows:

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

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

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

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

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

- (d) "Regional industrial park" means an industrial development project authorized for a grant award by the Kentucky Economic Development Finance Authority for a minimum of three (3) counties eligible for grant funds provided for in KRS 42.4592(1)(c), which coalition may include a county as approved under subsection (5) of this section.

- (12) Findings by the secretary of the Cabinet for Economic Development or the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~, provided for in subsections (2)(b), (3), and (5) of this section, shall be made in writing to the affected counties, the Governor, and the Legislative Research Commission.
- (13) By October 1 of each odd-numbered year, the secretary of the Cabinet for Economic Development and the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~ shall each provide, in writing, to the Governor and the Legislative Research Commission a listing of all applications for grants received pursuant to this section subsequent to the last report, indicating which applications were approved or disapproved, with the reason for disapproval when the decision was to disapprove, and a listing of all grants awarded, with the amount of the award, the recipient county, and the related industrial development project.
- (14) (a) Projects specifically authorized by appropriations made by the General Assembly in an enacted budget bill, with the funding source identified as funds allocated to individual counties under KRS 42.4592(1)(a) or (b), shall be deemed approved and shall not be subject to the application process established in this section.
- (b) Projects described in paragraph (a) of this subsection shall be subject to a memorandum of agreement between the entity identified in the appropriation and the ***Department for Local Government***~~Governor's Office for Local Development~~. The memorandum of agreement shall address the legal requirements for the disbursement and accounting of funds.
- (c) Within thirty (30) days of the receipt of a written request from an entity designated in the appropriation for funding related to a project described in paragraph (a) of this subsection, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall prepare and send a memorandum of agreement to the designated entity for review and signature. Upon receipt of the signed memorandum of agreement from the designated entity, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall release the funds for the project for use by the designated entity.
- (d) Funds appropriated for specific projects as described in paragraph (a) of this subsection shall not be expended for any other purpose, provided that the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~ may, upon written request by a designated entity identifying an extraordinary circumstance or emergency situation, approve the reallocation of funds appropriated for a specific project as described in paragraph (a) of this subsection to the extent necessary to address the extraordinary circumstance or emergency situation. Any approval under this paragraph shall be made in writing, and shall be reported to the State Budget Director and the Interim Joint Committee on Appropriations and Revenue within thirty (30) days of the approval being made.

➔Section 26. KRS 42.4592 is amended to read as follows:

- (1) Moneys remaining in the local government economic development fund following the transfer of moneys to the local government economic assistance fund provided for in KRS 42.4585 and following the transfer of moneys to the secondary wood products development fund provided for in KRS 42.4586 shall be allocated as follows:
- (a) Thirty-three and one-third percent (33-1/3%) shall be allocated to each coal producing county on the basis of the ratio of total tax collected in the current and preceding four (4) years on coal severed in each respective county to the total tax collected statewide in the current and four (4) preceding years.
- (b) Thirty-three and one-third percent (33-1/3%) shall be allocated quarterly to each coal-producing county on the basis of the following factors, which shall be computed for the current and four (4) preceding years, and which shall be equally weighted:
1. Percentage of employment in mining in relation to total employment in the respective county;
 2. Percentage of earnings from mining in relation to total earnings in the respective county; and
 3. Surplus labor rate.
- (c) Thirty-three and one-third percent (33-1/3%) shall be reserved for expenditure for industrial development projects benefiting two (2) or more coal-producing counties. For purposes of this paragraph, "coal-producing county" shall mean a county which has produced coal in the current or any one of the four (4) preceding years.

- (2) (a) For purposes of paragraph (b) of subsection (1) of this section, "percentage of employment in mining" and "percentage of earnings from mining" shall be the percentages published for the latest available five (5) year period by the Bureau of Economic Analysis in the United States Department of Commerce; "surplus labor rate" shall be the rate published for the latest available five (5) year period by the Office of Employment and Training of the Department of Workforce Investment in the Education and Workforce Development Cabinet, as provided in paragraph (b) of this subsection.
- (b) 1. Each year the Office of Employment and Training shall estimate surplus labor for each county and for the Commonwealth and shall annually publish an estimate of the surplus labor rate for each county and the Commonwealth.
2. The estimate of surplus labor for each county and for the Commonwealth shall be made using the best practical method available at the time the estimates are made. In determining the method to be adopted, the Office of Employment and Training may consult with knowledgeable individuals, including but not limited to the Office of the United States Bureau of Labor Statistics, state and national researchers, state and local officials, and staff of the Legislative Research Commission. The description of the method used to estimate surplus labor shall be reported in each annual publication provided for in subparagraph 1. of this paragraph.
3. For purposes of this section, "surplus labor" means the total number of residents who can be classified as unemployed or as discouraged workers, and "surplus labor rate" means the percentage of the potential civilian labor force which is surplus labor.
- (3) The funds allocated under the provisions of paragraphs (a) and (b) of subsection (1) of this section shall retain their identity with respect to the county to which they are attributable, and a separate accounting of available moneys within the fund shall be maintained for the respective counties. Accounting for funds allocated under the provisions of this section shall be by the ***Department for Local Government***~~{Governor's Office for Local Development}~~.

➔Section 27. KRS 42.4595 is amended to read as follows:

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

➔Section 28. KRS 42.460 is amended to read as follows:

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

➔Section 29. KRS 42.472 is amended to read as follows:

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

➔Section 30. KRS 42.480 is amended to read as follows:

- (1) On or before July 1, 1992, and each year thereafter, the commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall provide the Cabinet for Economic Development, the Kentucky Economic Development Finance Authority, and the legislative body of each local government eligible for funds under the provisions of KRS 42.450 to 42.495, an estimate of the funds that will be allocated to the local government for fiscal year 1992-93, and each year thereafter.
- (2) On or before the fifteenth of the first month of a quarter, the commissioner of the ***Department for Local Government***~~{Governor's Office for Local Development}~~ shall cause to be remitted to the legislative bodies of

the local governments eligible for funds from the local government economic assistance fund, the funds allocated to the respective local governments for the prior quarter; except that the remittance for the last quarter of a fiscal year shall be made after the close of the fiscal year accounting records and shall be adjusted to provide the balance of the annual allocation due the local government.

➔ Section 31. KRS 42.740 is amended to read as follows:

- (1) There is hereby established a Kentucky Geospatial Board, attached to the Commonwealth Office of Technology for administrative purposes, to advise the executive director of the Commonwealth Office of Technology on issues relating to geographic information and geographic information systems.
- (2) The board shall recommend policies and procedures that assist state and local jurisdictions in developing, deploying, and leveraging geographic information resources and geographic information systems technology for the purpose of improving public administration.
- (3) The board shall closely coordinate with users of geographic information systems to recommend policies and procedures that ensure the maximum use of geographic information by minimizing the redundancy of geographic information and geographic information resources.
- (4) The Kentucky Geospatial Board shall consist of twenty-four (24) members and one (1) legislative liaison. The members shall be knowledgeable in the use and application of geographic information systems technology and shall have sufficient authority within their organizations to influence the implementation of council recommendations.
 - (a) The board shall consist of:
 1. The secretary of the Transportation Cabinet or his designee;
 2. The secretary of the Cabinet for Health and Family Services or his or her designee;
 3. The director of the Kentucky Geological Survey or his designee;
 4. The secretary of the Finance and Administration Cabinet or his designee;
 5. The executive director of the Commonwealth Office of Technology or her or his designee, who shall serve as chair;
 6. The secretary of the Economic Development Cabinet or his designee;
 7. The commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~ or his designee;
 8. The secretary of the Justice and Public Safety Cabinet or his designee;
 9. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council on Postsecondary Education;
 10. The adjutant general of the Department of Military Affairs or his designee;
 11. The commissioner of the Department of Education or his designee;
 12. The secretary of the Environmental and Public Protection Cabinet or his designee;
 13. The Commissioner of the Department of Agriculture or his designee;
 14. The secretary of the Tourism, Arts and Heritage Cabinet or his designee;
 15. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky League of Cities;
 16. Two (2) members appointed by the Governor from a list of six (6) persons submitted by the president of the Kentucky Association of Counties;
 17. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chapter of the American Planning Association;
 18. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Chamber of Commerce;

19. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Association of Land Surveyors;
 20. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Kentucky Society of Professional Engineers;
 21. One (1) member appointed by the Governor from a list of three (3) persons submitted by the chairman of the Kentucky Board of Registered Geologists; and
 22. One (1) member appointed by the Governor from a list of three (3) persons submitted by the president of the Council of Area Development Districts.
- (b) The board shall have one (1) nonvoting legislative liaison, to be appointed by the Legislative Research Commission.
- (5) The board may have committees and subcommittees as determined by the board or an executive committee, if an executive committee exists.
- (6) A member of the board shall not:
- (a) Be an officer, employee, or paid consultant of a business entity that has, or of a trade association for business entities that have, a substantial interest in the geographic information industry and is doing business in the Commonwealth;
 - (b) Own, control, or have, directly or indirectly, more than ten percent (10%) interest in a business entity that has a substantial interest in the geographic information industry;
 - (c) Be in any manner connected with any contract or bid for furnishing any governmental body of the Commonwealth with geographic information systems, the computers on which they are automated, or a service related to geographic information systems;
 - (d) Be a person required to register as a lobbyist because of activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, substantial interest in the geographic information industry;
 - (e) Accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise; or
 - (f) Be liable to civil action or any action performed in good faith in the performance of duties as a board member.
- (7) Those board members specified in subsection (4)(a) of this section who serve by virtue of an office shall serve on the board while they hold that office.
- (8) Appointed members of the board shall serve for a term of four (4) years. Vacancies in the membership of the board shall be filled in the same manner as the original appointments. If a nominating organization changes its name, its successor organization having the same responsibilities and purposes shall be the nominating organization.
- (9) The board shall have no funds of its own, and board members shall not receive compensation of any kind from the board.
- (10) A majority of the members shall constitute a quorum for the transaction of business. Members' designees shall have voting privileges at board meetings.

➔Section 32. KRS 44.020 is amended to read as follows:

- (1) Within three (3) working days after the first and fifteenth of each month, the sheriff, or any other public official with a claim payable from the State Treasury for duties performed in any court of the Court of Justice, shall make out the claim and have it certified by the judge of the court as allowable for payment, and transmit the list to the **Department for Local Government**~~Governor's Office for Local Development~~. The claim approved by the judge of the court shall serve as an order of allowance notwithstanding any statutory provision to the contrary. The **Department for Local Government**~~Governor's Office for Local Development~~ shall keep a separate record of all claims allowed in each county, noting the number and amount of each warrant issued for the payment of the claims.

- (2) The order of any court authorized by law to approve and allow fee bills, settlements, credits, charges, and other claims against the State Treasury shall not be treated as a judgment, or made conclusive against the state, but shall only be regarded as prima facie evidence of the correctness and legality of the fee bill, settlement, credit, charge, or claim. The ***Department for Local Government***~~Governor's Office for Local Development~~, if it believes the fee bill, settlement, credit, charge, or claim to be fraudulent, erroneous, or illegal, may, upon the advice of the Attorney General, refuse to pay and may contest the claim in the Franklin Circuit Court, which shall have exclusive jurisdiction of all actions against the ***Department for Local Government***~~Governor's Office for Local Development~~ to compel the payment of claims against the State Treasury.

➔Section 33. KRS 45.031 is amended to read as follows:

- (1) Any department, board, commission, agency, advisory council, interstate compact, corporate body, or instrumentality of the Commonwealth of Kentucky applying for federal funds, aids, loans, or grants shall file a summary notification of the intended application with the ***Department for Local Government***~~Governor's Office for Local Development~~ in accordance with the existing A-95 procedures.
- (2) When as a condition to receiving federal funds, the Commonwealth of Kentucky is required to match the federal funds, a statement shall be filed with the notice of intent or summary of the application stating:
 - (a) The amount and source of state funds needed for matching purposes;
 - (b) The length of time the matching funds shall be required;
 - (c) The growth of the program;
 - (d) How the program will be evaluated;
 - (e) What action will be necessary should the federal funds be canceled, curtailed, or restricted; and
 - (f) Any other financial and program management data required by the Finance and Administration Cabinet or by law.
- (3) Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, must be approved by the secretary of the Finance and Administration Cabinet, the Legislative Research Commission, and the Chief Justice for their respective branches of government or their designated agents prior to its filing with the appropriate federal agency. Any application for federal funds, aids, loans, or grants which will require state matching or replacement funds at the time of application or at any time in the future, when funds have not been appropriated for that express purpose, must be approved by the General Assembly, if in session. When the General Assembly is not in session, the application shall be reported to and reviewed by the Interim Joint Committee on Appropriations and Revenue, as provided by KRS 48.500(4).
- (4) When any federal funds, aids, loans, or grants are received by any department, board, commission or agency of the Commonwealth of Kentucky, a report of the amount of funds received shall be filed with the Finance and Administration Cabinet; and this report shall specify the amount of funds which would reimburse an agency for indirect costs as provided for under OMB Circular A-87.
- (5) The secretary of the Finance and Administration Cabinet may refuse to issue his warrant for the disbursement of any state or federal funds from the State Treasury as the result of any application which is not approved as provided by this section, or in regard to which the statement or reports required by this section were not filed.
- (6) The secretary of the Finance and Administration Cabinet shall be responsible for the orderly administration of this section and for issuing the appropriate guidelines and regulations from each source of fund used.

➔Section 34. KRS 45A.023 is amended to read as follows:

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

➔Section 35. KRS 45A.050 is amended to read as follows:

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

➔Section 36. KRS 45A.310 is amended to read as follows:

- (1) All payments received by a supplying public purchasing unit from any other public purchasing unit or foreign purchasing activity shall be available or appropriated to the supplying public purchasing unit to defray the cost of the services provided.
- (2) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase complies with the requirements of this code, any public purchasing unit participating in such a purchase shall be deemed to have complied with this code.
- (3) Where the public purchasing unit or foreign purchasing activity administering a cooperative purchase does not follow this code, then the purchasing officer of a state public purchasing unit must determine, in writing, that he has examined the procurement system of the public purchasing unit or foreign purchasing activity administering the purchase, and has found that the proposed method of purchase substantially meets the requirements of this code.
- (4) The **Department for Local Government**~~Governor's Office for Local Development~~ shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, or construction being procured or used by state public purchasing units. The **Department for Local Government**~~Governor's Office for Local Development~~ may also collect this information from local public purchasing units. The **Department for Local Government**~~Governor's Office for Local Development~~ may make available all such information to any public purchasing unit upon request.

- (5) Nothing in KRS 45A.295 to 45A.320 shall be deemed to require a local public purchasing unit to comply with any other provision of KRS Chapter 45A.

➔Section 37. KRS 46.010 is amended to read as follows:

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

➔Section 38. KRS 46.020 is amended to read as follows:

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

➔Section 39. KRS 46.990 is amended to read as follows:

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

➔Section 40. KRS 48.810 is amended to read as follows:

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

- (1) Each strategic plan shall include but not be limited to:
 - (a) A statement of the cabinet or administrative entity's value, vision, and mission;
 - (b) A statement of how the cabinet or administrative entity's strategic plan is aligned with the Governor's goals and linked to the budget request and the six (6) year capital plan of the cabinet or administrative entity;
 - (c) A brief summary of a situation analysis conducted by the program cabinet or administrative entity;

- (d) Identification of measurable goals for the next four (4) years;
 - (e) Specification of objectives to meet the stated goals;
 - (f) Identification of performance indicators to be used to measure progress toward meeting goals and objectives; and
 - (g) A progress report providing data and information on the performance indicators set forth in the program cabinet or administrative entity's most recent strategic plan.
- (2) On or before September 1 of each even-numbered fiscal year, program cabinets and administrative entities which have submitted strategic plans in the previous fiscal year shall submit a progress report to the Office of the State Budget Director, or its designee, which provides data and information regarding the progress the program cabinet or entity has made toward meeting its goals as measured by performance indicators set forth in the cabinet's or entity's most recent strategic plan.
 - (3) The state budget director shall designate an entity to develop and implement a methodology for strategic planning and progress reporting for use by program cabinets and administrative entities submitting strategic plans and progress reports pursuant to this section. The entity designated by the state budget director shall develop and make available a training course in strategic planning that is appropriate for and targeted to state government managers, and shall make that training course available to state managers and their designees who have responsibility for the completion of a strategic plan as required by this section.
 - (4) The Commonwealth Office of Technology shall maintain uniform electronic strategic plan and progress report submission forms and a procedure that allows all plans and progress reports to be entered into an electronic database that is searchable by interested parties. The database shall be developed and maintained in a form that complies with all provisions of KRS 48.950, 48.955, and 48.960. The Commonwealth Office of Technology shall develop and maintain a program to provide public access to submitted plans and progress reports.

➔Section 41. KRS 64.050 is amended to read as follows:

- (1) When the term of any county clerk in counties of seventy-five thousand (75,000) population or over expires, or he dies or resigns, or is removed from office, he or his personal representative, trustee, or committee, as the case may be, shall at once deliver to his successor in office all accounts, claims, and fees due him in his official capacity. The successor shall have the fees, claims, and accounts collected, or the **Department for Local Government**~~Governor's Office for Local Development~~ may, in its discretion, when said accounts, fees, and claims are so delivered to the successor, appoint a person to collect them. If a collector is appointed, the successor shall at once, or when demanded by the collector, deliver to him all accounts, fees, and claims uncollected. The successor or collector, as the case may be, shall, every sixty (60) days after receiving the accounts, fees, and claims, report to the **Department for Local Government**~~Governor's Office for Local Development~~, under oath, the amount collected thereon, and at the same time pay to the **Department for Local Government**~~Governor's Office for Local Development~~ the amount so collected, and shall continue to so report for three (3) years, unless the accounts, fees, and claims are sooner collected.
- (2) The **Department for Local Government**~~Governor's Office for Local Development~~ shall, upon each payment, draw a warrant on the State Treasurer in favor of the person collecting, for an amount equal to twenty percent (20%) of the amount so paid in, which shall be the full compensation allowed for the collection.
- (3) If the amount paid to any clerk during his term or incumbency was not sufficient to pay the salaries and office expenses of the clerk, the **Department for Local Government**~~Governor's Office for Local Development~~ shall, out of the money collected and paid in as provided in subsection (1) of this section, pay to the clerk, or to the person entitled to receive the same, an amount sufficient to supply the deficit due for salaries and expenses, not exceeding seventy-five percent (75%) of the amount of fees accrued during his official term and which have been collected and paid to the **Department for Local Government**~~Governor's Office for Local Development~~.

➔Section 42. KRS 64.480 is amended to read as follows:

- (1) Effective, with respect to the offices of Governor on December 11, 1979, and Lieutenant Governor on the fifth Tuesday following the regular November election in 1975, and with respect to the other offices named in this section on the first Monday in January, 1976, the compensation of the following named officers, payable monthly out of the State Treasury, shall be the sum per annum designated for the respective offices, as follows: Governor, forty-five thousand dollars (\$45,000) until December 11, 1981, then fifty thousand dollars

(\$50,000) until December 13, 1983, and then sixty thousand dollars (\$60,000) until January 1, 1985; Lieutenant Governor, twenty-seven thousand nine hundred dollars (\$27,900) per annum, plus any compensation received while acting in the place of the Governor; Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky elected in November, 1975, as clerk of the Court of Appeals, twenty-seven thousand nine hundred dollars (\$27,900).

- (2) In order to equate or adjust the compensation of the Lieutenant Governor, Attorney General, Commissioner of Agriculture, Secretary of State, State Treasurer, Auditor of Public Accounts, and clerk of the Supreme Court of Kentucky with the purchasing power of the 1949 dollar, the **Department for Local Government**~~Governor's Office for Local Development~~ of Kentucky shall compute by the second Friday in February of every year, beginning in 1977, the maximum permissible compensation of the officials mentioned in this subsection based precisely upon the consumer price index formula approved in *Matthews v. Allen*, Kentucky, 360 S.W.2d 139 (1962). Thus the maximum permissible compensation effective for the entire year of 1977 and subsequent years will be the actual compensation to be paid said officials. The year of adjustment will be the particular full calendar year involved.
- (3) It is the intention of the Legislature that the constitutionally permissible adjustment of salaries of these officials be framed around equating current salaries with the purchasing power of the dollar in 1949 when Section 246 of the Constitution of Kentucky was amended. Section 246 of the Constitution of Kentucky, as amended, established a monetary level of twelve thousand dollars (\$12,000) per annum for said officials. The formula merely effects an adjustment of the constitutional monetary level in terms of the current consumer price index.
- (4) In order to adjust the compensation of the Governor to reflect changes in the purchasing power of the dollar, the **Department for Local Government**~~Governor's Office for Local Development~~ shall compute by the second Friday in February of every year, beginning in 1985, an adjusted salary of the Governor by multiplying sixty thousand dollars (\$60,000) by the increase in the consumer price index during the period from January 1, 1984, to the beginning of the then-current calendar year. The actual compensation paid to the Governor for the entire calendar year of 1985 and subsequent years shall be the adjusted salary.

➔Section 43. KRS 64.527 is amended to read as follows:

In order to equate the compensation of jailers who do not operate full service jails, constables in counties having an urban-county form of government, justices of the peace, county commissioners, and coroners with the purchasing power of the dollar, the **Department for Local Government**~~Governor's Office for Local Development~~ shall compute by the second Friday in February of every year the annual increase or decrease in the consumer price index of the preceding year by using 1949 as the base year in accordance with Section 246 of the Constitution of Kentucky which provides that the above elected officials shall be paid at a rate no greater than seven thousand two hundred dollars (\$7,200) per annum. The **Department for Local Government**~~Governor's Office for Local Development~~ shall notify the appropriate governing bodies charged by law to fix the compensation of the above elected officials of the annual rate of compensation to which the elected officials are entitled in accordance with the increase or decrease in the consumer price index. Upon notification from the **Department for Local Government**~~Governor's Office for Local Development~~, the appropriate governing body may set the annual compensation of the above elected officials at a rate no greater than that stipulated by the **Department for Local Government**~~Governor's Office for Local Development~~.

➔Section 44. KRS 64.5275 is amended to read as follows:

- (1) The General Assembly of the Commonwealth of Kentucky hereby finds and determines that county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties are officers whose duties or jurisdictions are coextensive with that of the Commonwealth within the meaning of Section 246 of the Constitution of Kentucky.
- (2) Effective on the first Monday in January of 1999, the maximum salary of county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall be fixed by the **Department for Local Government**~~Governor's Office for Local Development~~ according to a salary schedule in accordance with Section 246 of the Kentucky Constitution. The salary schedule provides that these officials, as officers whose jurisdiction or duties are coextensive with the Commonwealth, shall be paid at a rate no greater than twelve thousand dollars (\$12,000) per annum as adjusted for any increase or decrease in the consumer price index and as described in subsection (4) of this section.

- (3) The salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs in all counties provides for nine (9) levels of salary based upon the population of the county in the year prior to the election of county officials as determined by the United States Department of Commerce, Bureau of the Census's annual estimates. To implement the salary schedule, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall, by November 1 of each year preceding the election of county officials, certify for each county the population group applicable to each county based on the most recent estimates of the United States Department of Commerce, Bureau of the Census. For the purposes of this section, the salary schedule for county judges/executive, county clerks, jailers who operate a full service jail, and sheriffs shall remain as determined by the ***Department for Local Government***~~Governor's Office for Local Development~~ pursuant to this section, regardless of changes in the population estimates or the actual census count that may occur during the term for which the official has been elected or appointed. The salary schedule provides four (4) steps for yearly increments within each population group. County officers named in this section shall be paid according to the first step within their population group for the first year or portion thereof they serve in office. Thereafter, each officer, on January 1 of each subsequent year, shall be advanced automatically to the next step in the salary schedule until the maximum salary figure for the population group is reached. Prior to assuming office on the first Monday in January, 1999, or thereafter, any person assuming any of the offices for which the salary is determined by this section must certify to the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~ the total number of years, not to exceed four (4) years, that the person has previously served in the office. The ***Department for Local Government***~~Governor's Office for Local Development~~ shall place the officer in the proper step based upon a formula of one (1) incremental step per full calendar year of service:

SALARY SCHEDULE

County Population by Group	Steps and Salary for Affected Officers			
Group I	Step 1	Step 2	Step 3	Step 4
0-4,999	\$ 6,600	\$ 6,800	\$ 7,000	\$ 7,200
Group II				
5,000-9,999	7,200	7,400	7,600	7,800
Group III				
10,000-19,999	7,800	8,000	8,200	8,400
Group IV				
20,000-29,999	8,100	8,400	8,700	9,000
Group V				
30,000-44,999	8,700	9,000	9,300	9,600
Group VI				
45,000-59,999	9,000	9,400	9,800	10,200
Group VII				
60,000-89,999	9,600	10,000	10,400	10,800
Group VIII				
90,000-499,999	9,900	10,400	10,900	11,400
Group IX				
500,000 and up	10,500	11,000	11,500	12,000

- (4) Upon publication of the annual consumer price index by the United States Department of Commerce, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall fix the salary of the county judge/executive, county clerk, jailer who operates a full service jail, and sheriff at an annual rate of salary to which the county official is entitled pursuant to the increase in the Consumer Price Index and the

salary schedule contained in this section. This salary determination shall be retroactive to the preceding January 1.

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

➔Section 45. KRS 64.990 is amended to read as follows:

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

➔Section 46. KRS 65.003 is amended to read as follows:

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

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

- (3) Each code of ethics adopted as provided by subsection (1) or (2) of this section, or amended as provided by subsection (4) of this section, shall include but not be limited to provisions which set forth:
 - (a) Standards of conduct for elected and appointed officials and employees;
 - (b) Requirements for creation of financial disclosure statements, which shall be filed annually by all candidates for the city, county, or consolidated local government elective offices specified in subsection (1) of this section, elected officials of each city, county, or consolidated local government, and other officials or employees of the city, county, or consolidated local government, as specified in the code of ethics, and which shall be filed with the person or group responsible for enforcement of the code of ethics, provided that nonpaid members of jointly created agencies may be exempted from filing financial disclosure statements;
 - (c) A policy on the employment of members of the families of officials or employees of the city, county, or consolidated local government, as specified in the code of ethics;
 - (d) The designation of a person or group who shall be responsible for enforcement of the code of ethics, including maintenance of financial disclosure statements, all of which shall be available for public inspection, receipt of complaints alleging possible violations of the code of ethics, issuance of opinions in response to inquiries relating to the code of ethics, investigation of possible violations of the code of ethics, and imposition of penalties provided in the code of ethics.
- (4) The code of ethics ordinance adopted by a city, county, or consolidated local government may be amended but shall not be repealed.
- (5) (a) Within twenty-one (21) days of the adoption of the code of ethics required by this section, each city, county, or consolidated local government shall deliver a copy of the ordinance by which the code was adopted and proof of publication in accordance with KRS Chapter 424 to the **Department for Local Government**~~Governor's Office for Local Development~~. The **Department for Local Government**~~Governor's Office for Local Development~~ shall maintain the ordinances as public records and shall maintain a list of city, county, or consolidated local governments which have adopted a code of ethics and a list of those which have not adopted a code of ethics.

- (b) Within twenty-one (21) days of the amendment of a code of ethics required by this section, each city, county, or consolidated local government shall deliver a copy of the ordinance by which the code was amended and proof of publication in accordance with KRS Chapter 424 to the **Department for Local Government**~~Governor's Office for Local Development~~, which shall maintain the amendment with the ordinance by which the code was adopted.
 - (c) For ordinances adopting or amending a code of ethics under this section, cities of the first class and consolidated local governments shall comply with the publication requirements of KRS 83A.060(9), notwithstanding the exception contained in that statute.
- (6) If a city, county, or consolidated local government fails to comply with the requirements of this section, the **Department for Local Government**~~Governor's Office for Local Development~~ shall notify all state agencies, including area development districts, which deliver services or payments of money from the Commonwealth to the city, county, or consolidated local government. Those agencies shall suspend delivery of all services or payments to the city, county, or consolidated local government which fails to comply with the requirements of this section. The **Department for Local Government**~~Governor's Office for Local Development~~ shall immediately notify those same agencies when the city, county, or consolidated local government is in compliance with the requirements of this section, and those agencies shall reinstate the delivery of services or payments to the city, county, or consolidated local government.

➔Section 47. KRS 65.005 is amended to read as follows:

- (1) (a) "Special district" means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.
 - (b) "Governing body" means the body possessing legislative authority in a city, county, or special district.
- (2) No special district shall be legally created without sending notification of its existence in writing to the clerk of the county within the jurisdiction of which its principal office shall be located. This requirement for notification is in addition to all other provisions of existing law providing for the creation of special districts. The notification shall contain the names and addresses of the members of the governing body of the district, the name and address of its chief executive officer, a specific reference to the statute or statutes under which it was created, and a brief description of its service area and activities. The clerk shall record the original and forward a copy of the notification to the state local finance officer and the state local debt officer, **Department for Local Government**~~Governor's Office for Local Development~~. The clerk shall be paid a fee of two dollars (\$2) by the district for recording and mailing the notification.
- (3) The governing body of any existing special district shall submit notification as required in subsection (2) of this section within thirty (30) days after June 16, 1966, and the governing body of a newly created special district shall submit the required notification at or before its first meeting.

➔Section 48. KRS 65.065 is amended to read as follows:

- (1) The governing body of each district shall annually prepare a budget and, as appropriate, shall classify budget units in the same fashion as county budgets are classified in accordance with KRS 68.240(2) to (5). The state local finance officer shall prepare standard budget forms for district use and shall furnish them to county clerks for distribution to district officers. No moneys shall be expended from any funds or any sources, except in accordance with the budget which has been filed with the fiscal court to be available for public inspection. No budget of a district shall become effective until filed with the fiscal court of the county in which the district is located for submission to the **Department for Local Government**~~Governor's Office for Local Development~~. For those districts with multicounty jurisdictions, the district shall file a copy with each of the fiscal courts within the jurisdiction of the district for their review. If the budget is not filed with the fiscal court at least thirty (30) days prior to the start of the district fiscal year, the fiscal court shall immediately notify the county attorney. The county attorney shall then notify the governing board of the special district of the noncompliance and then proceed with any steps necessary to prevent the expenditure of funds by the special district until the district is in compliance.
- (2) The governing body of each district which for the year in question receives from all sources or expends for all purposes less than seven hundred fifty thousand dollars (\$750,000) shall annually prepare a financial statement, except that once every four (4) years the district's governing body shall provide for the performance of an audit as provided in subsection (4) of this section.

- (3) The governing body of each district which for the year in question receives from all sources or expends for all purposes seven hundred fifty thousand dollars (\$750,000) or more shall provide for the performance of an annual audit as provided in subsection (4) of this section.
- (4) To provide for the performance of an audit, the governing body of a district shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform an audit of the funds in the district budget. The audit shall conform to:
 - (a) Generally accepted governmental auditing standards, which means those standards for audits of governmental organizations, programs, activities, and functions issued by the Comptroller General of the United States; and
 - (b) Additional procedures and reporting requirements as may be required by the Auditor of Public Accounts. A unit of government furnishing funds directly to a district may require additional audits at its own expense. Upon request, the State Auditor of Public Accounts may review the final report and all related work papers and documents of the independent certified public accountant relating to the audit. If a district is required by law to audit its funds more often than is required by this section, it shall perform those audits and may submit them in lieu of the requirements of this section, if the audits meet the requirements of this subsection.
- (5) The provisions of subsection (2) of this section shall not apply to any district that is required by law to annually submit a financial report to an agency of state government. The districts shall annually submit a copy of their financial report to the county judge/executive and to the state local finance officer and once every four (4) years provide for the performance of an audit as provided in subsection (4) of this section.
- (6) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with the provisions. The Circuit Court, in its discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

➔Section 49. KRS 65.070 is amended to read as follows:

- (1) Within sixty (60) days following the close of the fiscal year, the district shall:
 - (a) File with the county clerk of each county with territory in the district a certification showing any of the following information that has changed since the last filing by the district:
 1. The name of the district;
 2. A map or general description of its service area;
 3. The statutory authority under which it was created; and
 4. The names, addresses, and the date of expiration of the terms of office of the members of its governing body and chief executive officer;
 - (b) Submit for review a copy of the summary financial statement with the fiscal court of each county with territory in the district; and
 - (c) Publish, in lieu of the provisions of KRS 424.220, but in compliance with other applicable provisions of KRS Chapter 424, the names and addresses of the members of its governing body and chief executive officer, and either a summary financial statement, which includes the location of supporting documents, or the location of district financial records which may be examined by the public.
- (2) The district shall submit for review a copy of the audit with the fiscal court of each county with territory in the district. The submission shall be made within thirty (30) days of the district's receipt of the completed audit.
- (3) The ***Department for Local Government***~~Governor's Office for Local Development~~ shall prepare and furnish to county clerks standard reporting forms which districts may use to comply with the provisions of this section.
- (4) Any resident of the district may bring an action in the Circuit Court to enforce the provisions of this section. The Circuit Court shall hear the action and, on a finding that the governing body of the district has violated the provisions of this section, shall order the district to comply with its provisions. The Circuit Court, in its

discretion, may allow the prevailing party, other than the district, a reasonable attorney's fee and court costs, to be paid from the district's treasury.

➔Section 50. KRS 65.117 is amended to read as follows:

- (1) No city, county, urban-county, consolidated local government, charter county, special district, or taxing district shall enter into any financing obligation of any nature, whether evidenced by note pursuant to KRS 65.7701 to 65.7721 or otherwise, by lease pursuant to KRS 65.940 to 65.956, under which the lease price exceeds two hundred thousand dollars (\$200,000), by bond issuance pursuant to KRS Chapter 66, or any long-term debt obligation of any sort without first notifying the state local debt officer in writing. The **Department for Local Government**~~Governor's Office for Local Development~~ may promulgate administrative regulations to develop the forms for the notification that shall contain the relevant financial terms of the obligation, including the interest rates or method of determining rates, the date of issue, the maturity dates, term of obligation, renewal periods, and the trustee or paying agent, if any. No approval of the state local debt officer shall be required, unless otherwise required by law.
- (2) Any financing obligation entered into prior to July 15, 2008, shall be considered in compliance if that notification is provided to the state local debt officer no later than one (1) year after July 15, 2008.

➔Section 51. KRS 65.260 is amended to read as follows:

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

➔Section 52. KRS 65.320 is amended to read as follows:

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

➔Section 53. KRS 65.323 is amended to read as follows:

- (1) The Local Government Training Advisory Council shall:
 - (a) Develop and update on a biennial basis a local government training plan that:
 1. Quantifies the training needs of local governments;
 2. Evaluates the abilities of existing training programs to meet the needs;

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

➔Section 54. KRS 65.327 is amended to read as follows:

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

➔Section 55. KRS 65.905 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, each local government as defined in KRS 65.900 shall annually, after the close of the fiscal year, complete a uniform financial information report. The report shall be submitted to the ***Department for Local Government***~~Governor's Office for Local Development~~ by May 1 immediately following the close of the fiscal year. The ***Department for Local Government***~~Governor's Office for Local Development~~ shall immediately send one (1) copy of the uniform financial information report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.
- (2) The final quarterly report filed by a county within fifteen (15) days after the end of the last quarter of the fiscal year, in accordance with KRS 68.360(2), shall be deemed the uniform financial information report for that county for purposes of compliance with KRS 65.900 to 65.925.
- (3) Each city may have the uniform financial information report completed by its selected auditor as part of the terms and conditions of the written agreement between the city and the auditor in accordance with KRS 91A.040. Each county may have the uniform financial information report completed by its auditor selected in accordance with KRS 43.070 or 64.810. Each special district may have the uniform financial information report completed by its auditor selected in accordance with KRS 65.065. If a city does not use the auditor to complete the uniform financial information report, it shall by order designate an elected or nonelected official to be responsible for annually completing the report and submitting it to the ***Department for Local Government***~~Governor's Office for Local Development~~. If a local government has any agency, board, or commission that receives any funding from the local government, but conducts its operations on an autonomous or semi-autonomous basis, the local government shall note on the uniform financial information report the name of the agency, board, or commission; the mailing address of the agency, board, or commission; and the dollar amount annually appropriated by the local government to the agency, board, or commission.

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

➔Section 56. KRS 65.910 is amended to read as follows:

- (1) The uniform financial information report shall include but not be limited to information relating to demographics, debt service, lease-purchase agreements, tax rates and revenues, licenses, permits, fees, utilities, intergovernmental revenues, miscellaneous revenues and expenses, charges for services, and all expenditures.
- (2) Information on expenditures shall be listed by total only and indicate the fund from which an appropriation was made. The ***Department for Local Government***~~[Governor's Office for Local Development]~~ shall consult with the Kentucky League of Cities, the Kentucky Association of Counties, the Kentucky Municipal Finance Officers' Association, the Kentucky Society of Certified Public Accountants, and other affected interest groups, as well as local officials in the development of information to be included in the expenditure section of the uniform financial information report.

➔Section 57. KRS 65.920 is amended to read as follows:

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

➔Section 58. KRS 65.925 is amended to read as follows:

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

➔Section 59. KRS 66.370 is amended to read as follows:

- (1) A county may, by order of its fiscal court, surrender to the state local debt officer, ***Department for Local Government***~~[Governor's Office for Local Development]~~, all money in hand, notes, bonds, accounts, or other credits representing assets available, and any other sums which may hereafter become available from any and all sources, for paying the principal and interest of any bonded debt of the county; however, if a county

surrenders the sinking fund for any bond issue payable either from the tax levy authorized by Section 157 or by Section 157a of the Constitution of Kentucky or from any special tax levy authorized by law, it shall also surrender the sinking funds for all other bonds payable from the same tax levy as herein defined. The surrender shall be irrevocable on the part of the county. Any county which has a bond issue approved under KRS 66.310 may comply with the provisions of this subsection with respect to the sinking funds for the bonds thus approved and for any other bonds payable from the same tax levy as herein defined.

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

➔Section 60. KRS 67.680 is amended to read as follows:

- (1) A county acting under authority of this section may by ordinance create a county cemetery board that may apply to the ***Department for Local Government***~~Governor's Office for Local Development~~ for grants to restore and maintain nonprofit cemeteries that do not receive perpetual care funds pursuant to KRS 367.952.
- (2) The county cemetery boards shall meet three (3) times annually in space provided by the fiscal court and shall have five (5) volunteer members with no more than three (3) representing the same political party. Members shall be appointed by the county judge/executive with approval of the fiscal court, shall have lived in the county for at least one (1) year prior to appointment, and shall have demonstrated an interest in cemetery preservation, genealogy, local history, or a related area.

➔Section 61. KRS 67.682 is amended to read as follows:

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

➔Section 62. KRS 67C.131 is amended to read as follows:

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

➔Section 63. KRS 68.001 is amended to read as follows:

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

➔Section 64. KRS 81A.470 is amended to read as follows:

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

➔Section 65. KRS 83.580 is amended to read as follows:

- (1) The mayor shall:
 - (a) Cause the ordinances of the city and the laws of the state to be executed and enforced;

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

➔Section 66. KRS 83A.075 is amended to read as follows:

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

➔Section 67. KRS 83A.085 is amended to read as follows:

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

➔Section 68. KRS 91A.040 is amended to read as follows:

- (1) Each city of the first through fifth class shall, after the close of each fiscal year, cause each fund of the city to be audited by the Auditor of Public Accounts or a certified public accountant. The audits shall be completed by February 1 immediately following the fiscal year being audited. Within ten (10) days of the completion of the audit and its presentation to the city legislative body, in accordance with subsection (4)(e) of this section, each city shall forward three (3) copies of the audit report to the ***Department for Local Government***~~{Governor's Office for Local Development}~~.

~~Office for Local Development~~ for information purposes. The **Department for Local Government**~~Governor's Office for Local Development~~ shall forward one (1) copy of the audit report to the Legislative Research Commission to be used for the purposes of KRS 6.955 to 6.975.

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

requirements of the Legislative Research Commission necessary to carry out the purposes of KRS 6.955 to 6.975.

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

➔Section 69. KRS 91A.050 is amended to read as follows:

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

➔Section 70. KRS 96.530 is amended to read as follows:

- (1) Any city acquiring or constructing an electric light, heat, and power plant under the provisions of KRS 96.520 shall, by ordinance, appoint a city utility commission consisting of three (3) commissioners to operate, manage, and control the plant, except that a city of the second class shall appoint five (5) commissioners. The utility commission shall have absolute control of the plant in every respect, including its operation and fiscal management and the regulation of rates, except that in fixing rates the commission shall be governed by the provisions of KRS 96.430, as it is made applicable to those plants by KRS 96.520, and by any ordinance enacted under that section, except that in fixing rates the commission in a city of the second or third class shall be governed by the provisions of KRS 96.535 and any ordinance enacted according to this section. The utility commission, when so appointed, shall be a public body politic and corporate, with perpetual succession; and the body may contract and be contracted with, sue and be sued, in and by its corporate name, and have and use a corporate seal. The utility commission shall provide rules for the management of the plant, and it shall fix the number, qualifications, pay, and terms of employment of all employees needed to operate the plant. In cities of the second or third class providing civil service coverage for city employees, the utility commission appointed under this section may provide civil service coverage for all of its employees, and it shall exercise the powers and functions with respect to their employees which are vested in the city legislative body with respect to the city employees by KRS 90.380. Employees who have been in the employment of the utility commission for one (1) year immediately preceding the adoption of an order by the utility commission placing all of its employees under civil service coverage shall not be required to stand a civil service examination, and they shall be eligible for all the benefits provided by civil service coverage. Out of the revenue of the plant, it shall pay operating expenses, repairs, and necessary additions and provide sufficient reserve fund against any emergency that may arise. The commission shall from time to time pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.430 and 96.440, as they are made applicable to the plants by

KRS 96.520, except that the commission in a city of the second or third class shall pay to the city the surplus revenue derived from the operation of the plant as is provided in KRS 96.535 and any ordinance adopted according to this section. Notwithstanding the foregoing provisions, the utility commission, for the purpose stated in KRS 96.520(1), may enter into an agreement for the operation of any of its plants or other facilities.

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

➔Section 71. KRS 136.658 is amended to read as follows:

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

subdivisions, school districts, special districts, and sheriff departments, and the department regarding the implementation and distribution of funds from the gross revenues and excise tax fund and the state baseline and local growth fund.

- (3) The department shall provide the oversight committee with an annual report reflecting the amounts distributed to each participating political subdivision, school district, special district, or sheriff department.
- (4) Any political subdivision, school district, special district, or sheriff department may file a complaint and request a hearing with the oversight committee on a form prescribed by the committee. The oversight committee shall give notice to any political subdivision, school district, special district, or sheriff department that may be affected by the complaint. Any political subdivision, school district, special district, or sheriff department intending to respond to the complaint shall do so in writing within thirty (30) days of notice of the complaint.
- (5) In conducting its business:
 - (a) The oversight committee shall give due notice of the times and places of its hearings;
 - (b) The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses;
 - (c) The oversight committee shall act by majority vote;
 - (d) The oversight committee shall adopt and publish rules of procedure and practice regarding its hearings; and
 - (e) The oversight committee shall make written findings and recommendations to the commissioner of the department.
- (6) The commissioner of the department shall review the findings and recommendations of the oversight committee and issue a final ruling within sixty (60) days of receipt of the recommendations.
- (7) The parties in the dispute shall have the rights and duties to appeal any final ruling to the Kentucky Board of Tax Appeals under KRS 131.340.
- (8) Nothing contained in this section shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the hearing process.

➔Section 72. KRS 148.022 is amended to read as follows:

- (1) The ***Department for Local Government***~~Governor's Office for Local Development~~ shall administer and operate the outdoor recreation programs of the state and shall be responsible for developmental planning and the administration of United States Bureau of Outdoor Recreation funds.
- (2) All functions of the Commonwealth relating to the Breaks Interstate Park shall be attached to the Tourism, Arts and Heritage Cabinet for administrative purposes.

➔Section 73. KRS 148.690 is amended to read as follows:

- (1) The department shall review all formal declarations of railroad right-of-way abandonments by the Surface Transportation Board or other agency with jurisdiction and may review former railroad corridors for possible inclusion in the state trails system. The commissioner shall, within three (3) years after the route of a trail or trail segment included in the system has been located, determine the boundaries of the right-of-way to be associated with that trail. Such boundaries shall be established in such a manner that they protect the scenic value of the trail.
- (2) The commissioner is authorized to develop effective procedures to assure that, wherever practicable, utility rights-of-way, abandoned railroad corridors, or similar properties having value for trail purposes may be made available for such use; however, the commissioner shall take into consideration the rights of adjacent property owners in the development of any such procedures. Other departments of state government having jurisdiction, control over, or information concerning the use, abandonment, or disposition of rights-of-way, railroad corridors, and similar properties that may be suitable for trail purposes shall cooperate with the commissioner in the transfer of these rights for trail use. These procedures shall include, at a minimum, that, for every railroad corridor that is the subject of a request for federal authority to discontinue service or for federal regulatory abandonment, the commissioner shall evaluate the potential of converting that corridor into a railtrail. The commissioner shall cause a preliminary review to be completed within thirty (30) days of the

publication of the request for federal authority in the Federal Register. The commissioner shall cause a final review to be completed ninety (90) days after the publication of the request for federal authority in the Federal Register. The commissioner shall timely transmit copies of these reviews to the Legislative Research Commission and to the Commonwealth's Railtrail Development Office in the ***Department for Local Government***~~Governor's Office for Local Development~~ as they are completed. If either review indicates the possibility of converting the corridor into a railtrail, the commissioner may participate in the federal proceeding to request that the corridor be railbanked in accordance with federal law or to request the imposition of a public use condition.

➔Section 74. KRS 152.055 is amended to read as follows:

The ***Department for Local Government***~~Governor's Office for Local Development~~ shall have responsibility for the administration and coordination of Appalachian regional development programs and economic development administration programs.

➔Section 75. KRS 164.3571 is amended to read as follows:

- (1) The Governmental Services Center may, upon request of the ***Department for Local Government***~~Governor's Office for Local Development~~, and as financial and staff resources permit, develop, coordinate, implement, assist, and conduct employee and management training programs, seminars, and conferences, for agencies, departments, divisions, boards, and commissions of county and city government, and any other political subdivisions of the state.
- (2) The Governmental Services Center may enter into contractual agreements with county and city governments and other political subdivisions as necessary to allow the Governmental Services Center to properly perform its duties and responsibilities as established by KRS 164.3571 to 164.3573.
- (3) Any agency of a county, city, or other political subdivision whose employees receive the benefit of the Governmental Services Center's services, shall reimburse the Governmental Services Center for those costs and expenses which it incurs as a result of providing these services.

➔Section 76. KRS 171.381 is amended to read as follows:

- (1) The Kentucky Heritage Council shall be dedicated to the preservation and protection of all meaningful vestiges of Kentucky's heritage for succeeding generations, and in pursuit of this dedication it shall engage in and concern itself with worthy projects and other matters related to the conservation and continuing recognition of buildings, structures, sites, and other landmarks associated with the archaeological, cultural, economic, military, natural, political, or social aspects of Kentucky's history.
- (2) The duties and functions of the council shall be to:
 - (a) Review and recommend appropriate projects and programs to insure the proper recognition, preservation, and protection of matters related to Kentucky's heritage, particularly those in the nature of or associated with real property;
 - (b) Advise, consult, and cooperate generally with state, local, and national officials and agencies to accomplish the purposes to which the council is dedicated, and specifically with the Kentucky Department of Parks and Historical Society in matters of common concern;
 - (c) Encourage, promote, and coordinate historic preservation programs being conducted in Kentucky by other agencies or groups, public and private;
 - (d) Prepare and maintain an inventory or survey of Kentucky's resource of historic buildings, sites, structures, and other landmarks, and list in an official roll those landmarks which possess statewide or national significance; and
 - (e) Conduct a survey and maintain a catalog of Kentucky's historic drylaid and historic mortared rock fences as defined in KRS 171.391.
- (3) The council may:
 - (a) Accept grants or other funds or property from any available source, public or private;

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

➔Section 77. KRS 174.130 is amended to read as follows:

- (1) The Transportation Cabinet, including any agency or other unit of government attached to the cabinet, shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the ***Department for Local Government***~~[Governor's Office for Local Development]~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.
- (2) The Transportation Cabinet shall keep a record of railroad lines in the Commonwealth of Kentucky, including both lines that have been abandoned through the federal government's regulatory abandonment process and those where any railroad property interest in the railroad corridor itself has been abandoned under Kentucky law. The cabinet shall annually publish an updated map showing the location and as much information as to the status of these lines as practicable. The record shall include, inasmuch as possible:
 - (a) A description of the line and its location;
 - (b) The current or last railroad owner of the line;
 - (c) The operator of the line;
 - (d) The addresses and phone numbers for the owners and operators of the lines;
 - (e) Whether the owner of the line has received authority from the Federal Government to discontinue service over the line;
 - (f) Whether the owner of the line has received authority from the Federal Government to abandon the line;
 - (g) Whether the owner of the line has consummated any authority granted by the Federal Government to discontinue service over the line or to abandon the line;
 - (h) Whether the line has been railbanked under either federal or state law; and
 - (i) Any other information the cabinet deems pertinent and useful to the public.

➔Section 78. KRS 177.360 is amended to read as follows:

- (1) Except as provided in subsection (5) of this section, the Department of Rural and Municipal Aid shall allocate the funds set apart under KRS 177.320(1) for construction, reconstruction, and maintenance of state-maintained secondary and rural highways as follows:
 - (a) One-fifth (1/5) shall be apportioned equally among the one hundred twenty (120) counties.
 - (b) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the rural population of each county bears to the total rural population of the state. "Rural population" as used here means the population in a county outside cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more as shown by the most recent decennial census of the United States Bureau of the Census, and county population shall be determined by the most recent decennial census of the United States Bureau of the Census.
 - (c) One-fifth (1/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio that the public road mileage outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more bears to the total mileage of such roads for the entire state.
 - (d) Two-fifths (2/5) shall be apportioned among the one hundred twenty (120) counties on the basis of the ratio which the square-mile rural area of the county bears to the total square-mile rural area of the state. "Rural area" as used here means that area of the county outside of cities, towns, and urban areas having a population of twenty-five hundred (2,500) or more and shown by the most recent decennial census of the United States Bureau of the Census.
- (2) A sum not exceeding six percent (6%) of the allocation provided by KRS 177.320(1) to each county shall be deducted at the beginning of each fiscal year and adjusted quarterly to cover the maintenance, administrative, engineering, and other costs of the program.
- (3) Of the total amount apportioned by the provisions of this section, a sum not exceeding six percent (6%) may be deducted and placed by the Department of Rural and Municipal Aid in a special emergency account to be

expended at the direction of the commissioner to meet unforeseen emergencies on rural and secondary roads and bridges.

- (4) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Finance and Administration Cabinet and adjusted quarterly in accordance with the most recent revision of the estimates by the Finance and Administration Cabinet.
- (5) Any county eligible to receive county road aid moneys in accordance with KRS 177.320 and this section shall be required to submit a uniform financial information report to the **Department for Local Government**~~Governor's Office for Local Development~~ in accordance with KRS 65.905 before any payment of county road aid funds shall be made. The **Department for Local Government**~~Governor's Office for Local Development~~ shall notify the Department of Rural and Municipal Aid no later than March 1 annually of any county that has not submitted a uniform financial information report. The Department of Rural and Municipal Aid shall, upon notification by the **Department for Local Government**~~Governor's Office for Local Development~~, immediately suspend all county road aid moneys to the county until the county complies with the provisions of KRS 65.900 to 65.925 and submits the uniform financial information report to the **Department for Local Government**~~Governor's Office for Local Development~~. The **Department for Local Government**~~Governor's Office for Local Development~~ shall immediately notify the Department of Rural and Municipal Aid to reinstate county road aid moneys to any county affected by this subsection as soon as the county submits the uniform financial information report.

➔Section 79. KRS 177.366 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, on and after July 1, 1980, the Finance and Administration Cabinet shall allocate to each incorporated city and "unincorporated urban place" its pro rata share of the funds set apart for construction, reconstruction, and maintenance of urban roads and streets on the basis of the ratio which the population in the incorporated cities and in "unincorporated urban places" bears to the total population in incorporated cities and in "unincorporated urban places" of the state. "Unincorporated urban places" as used here, means an area as defined in KRS 81.015, and any area outside of incorporated cities, which area has a population of 2,500 or more as shown by the most recent decennial census of the United States Bureau of the Census, and all populations shall be determined by the most recent decennial census of the United States.
- (2) Any area which becomes incorporated after December 31, 1970, shall not be eligible to participate in the Municipal Aid Program until the beginning of the second fiscal year following its incorporation and population certification. It shall be the responsibility of the newly incorporated area to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population of the newly incorporated area as it existed at the time of the last decennial census.
- (3) In the event the newly incorporated area cannot obtain a population count from the Bureau of the Census, it shall not be eligible to participate in the Municipal Aid Program until the next decennial census.
- (4) If an incorporated city, whose incorporation took place prior to December 31, 1970, annexes additional area, the population of the annexed area will not be counted in the allocation of municipal aid funds until the beginning of the second fiscal year following annexation and population certification.
- (5) It shall be the responsibility of the incorporated city to provide the Finance and Administration Cabinet with documentation from the United States Bureau of the Census showing the population for the annexed area as it existed at the time of the last decennial census.
- (6) If the incorporated area cannot obtain a population count from the Bureau of the Census, the annexed area's population shall not be eligible to be counted in the distribution of the municipal aid fund. However, the streets included in the annexed areas shall be eligible to receive work through this program.
- (7) Apportionments as required by the provisions of this section shall be made on the basis of revenue estimates supplied by the Office of State Budget Director and shall be adjusted quarterly in accordance with the most recent revision of the estimates by the Office of State Budget Director.
- (8) Any local government eligible to receive municipal road aid moneys pursuant to KRS 177.365 to 177.369 shall be required to submit a uniform financial information report to the **Department for Local Government**~~Governor's Office for Local Development~~ pursuant to KRS 65.905 before any payment of municipal road aid funds shall be made. The **Department for Local Government**~~Governor's Office for Local Development~~ shall notify the Finance and Administration Cabinet no later than March 1 annually of any local

government that has not submitted a uniform financial information report. The Finance and Administration Cabinet shall, upon notification by the ***Department for Local Government***~~Governor's Office for Local Development~~, immediately suspend all municipal road aid moneys to the local government until the local government complies with the provisions of KRS 65.900 to 65.925 and submits the uniform financial information report to the ***Department for Local Government***~~Governor's Office for Local Development~~. The ***Department for Local Government***~~Governor's Office for Local Development~~ shall immediately notify the Finance and Administration Cabinet to reinstate municipal road aid moneys to any local government affected by this subsection as soon as the local government submits the uniform financial information report.

➔Section 80. KRS 179.410 is amended to read as follows:

The ***Department for Local Government***~~Governor's Office for Local Development~~ shall allocate the sum appropriated by the General Assembly from the funds arising under the provisions of KRS 177.320(2), for the construction, reconstruction, improvement, and maintenance of county roads and bridges in accordance with the provisions of KRS 177.360(1).

➔Section 81. KRS 179.415 is amended to read as follows:

- (1) On and after the fiscal year beginning July 1, 1980, and each fiscal year thereafter, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall pay to each county its pro rata share of any funds appropriated and any unexpended balance of funds appropriated for construction, reconstruction, improvement, and maintenance of county roads and bridges. During each fiscal year, the ***Department for Local Government***~~Governor's Office for Local Development~~ shall make quarterly payments to each such county of the funds allocated in accordance with KRS 177.369.
- (2) The expenditure of any money received by the county in accordance with the provisions of subsection (1) of this section shall be made solely for the purpose of construction, reconstruction, improvement, and maintenance of county roads and bridges.
- (3) Any county which has received any money in accordance with the provisions of subsection (1) of this section shall retain all records of the expenditure of the money for a period of five (5) years and said records shall be subject to audit by the ***Department for Local Government***~~Governor's Office for Local Development~~ for said period of time in order to determine the proper expenditure of said money for the purpose required by KRS 179.410.

➔Section 82. KRS 198A.030 is amended to read as follows:

- (1) There is hereby created and established an independent, de jure municipal corporation and political subdivision of the Commonwealth which shall be a public body corporate and politic to be known as the Kentucky Housing Corporation.
- (2) The Kentucky Housing Corporation is created and established as a de jure municipal corporation and political subdivision of the Commonwealth to perform essential governmental and public functions and purposes in improving and otherwise promoting the health and general welfare of the people by the production of residential housing in Kentucky.
- (3) The corporation shall be governed by a board of directors, consisting of fifteen (15) members, five (5) of whom shall be the Lieutenant Governor, the secretary of the Finance and Administration Cabinet, the commissioner of the ***Department for Local Government***~~Governor's Office for Local Development~~, the Attorney General, and the secretary of the Cabinet for Economic Development, or their duly appointed designees, as public directors, and ten (10) private directors who shall be appointed by the Governor, subject to confirmation by the Senate as provided by KRS 11.160, as follows:
 - (a) One (1) private director representing the interests of financial lending institutions located within the Commonwealth;
 - (b) One (1) private director representing the interests of the manufactured housing industry within the Commonwealth;
 - (c) One (1) private director representing the interests of real estate practitioners licensed by the Kentucky Real Estate Commission;

- (d) One (1) private director representing the interests of the homeless population within the Commonwealth;
 - (e) One (1) private director representing the interests of local government;
 - (f) One (1) private director representing the interests of the home construction industry in the Commonwealth;
 - (g) One (1) private director representing the interests of consumers in the Commonwealth;
 - (h) One (1) private director representing the interests of the Kentucky State Building Trades Council;
 - (i) One (1) director representing the interests of nonprofit housing organizations located within the Commonwealth; and
 - (j) One (1) director having significant professional experience in auditing, financial accounting, municipal bond financing, or investment banking.
- (4) Private directors appointed by the Governor may include previous members of the board, and members may be reappointed for successive terms. All appointments shall be for four (4) years, and the appointees shall serve until a qualified successor is appointed.
 - (5) In case of a vacancy, the Governor may appoint a person for the vacancy to hold office during the remainder of the term. A vacancy shall be filled in accordance with the requirement and procedures for appointments.
 - (6) The Governor may remove any private director whom he may appoint in case of incompetency, neglect of duty, gross immorality, or malfeasance in office, and he may declare his office vacant and may appoint a person for the vacancy as provided in this section.
 - (7) The Governor shall designate a director of the corporation to serve as chairman. The term of the chairman shall extend to the earlier of either the date of expiration of his then current term as a director of the corporation or a date six (6) months after the expiration of the then current term of the Governor designating the chairman.
 - (8) The board of directors shall annually elect one (1) of its members as vice chairman. The board of directors shall also elect or appoint, and prescribe the duties of, other officers the board of directors deems necessary or advisable, including an executive director and a secretary, and the board of directors shall fix the compensation of the officers.
 - (9) The executive director shall administer, manage, and direct the affairs and business of the corporation, subject to the policies, control, and direction of the board of directors of the corporation. The secretary of the corporation shall keep a record of the proceedings of the corporation and shall be custodian of all books, documents, and papers filed with the corporation, the minute book or journal of the corporation, and its official seal. The secretary shall have authority to cause copies to be made of all minutes and other records and documents of the corporation and to give certificates under the official seal of the corporation to the effect that copies are true copies, and all persons dealing with the corporation may rely upon the certificates.
 - (10) A majority of the board of directors of the corporation shall constitute a quorum for the purposes of conducting its business and exercising its powers and for all other purposes. A majority shall be determined by excluding any existing vacancies from the total number of directors.
 - (11) Action shall be taken by the corporation upon a vote of a majority of the directors present at a meeting at which a quorum shall exist called upon three (3) days' written notice to each director or upon the concurrence of at least eight (8) directors.
 - (12) Each private director shall be entitled to a fee of one hundred dollars (\$100) for attendance at each meeting of the board of directors or duly called committee meeting of the board.

➔Section 83. KRS 198A.035 is amended to read as follows:

- (1) The Kentucky Housing Corporation shall oversee the development and implementation of the Kentucky housing policy. The corporation shall create an advisory committee on housing policy consisting of the following:
 - (a) The following nine (9) state government members, or their duly appointed designees: the commissioner of education; commissioner of the **Department for Local Government**~~Governor's Office for Local Development~~; executive director of the Office of Housing, Buildings and Construction; secretary of the Environmental and Public Protection Cabinet; secretary of the Cabinet for Health and Family Services;

executive director of the Human Rights Commission; state historic preservation officer; secretary of the Transportation Cabinet; and executive director of the Kentucky Housing Corporation;

- (b) At-large members shall be appointed by the chairman of the board of directors of the Kentucky Housing Corporation. There shall be one (1) at-large representative for each of the following:

1. Public housing authorities;
2. Mortgage banking industry;
3. Manufactured housing industry;
4. Realtors;
5. Homebuilders;
6. Urban nonprofit housing organizations;
7. Rural nonprofit housing organizations;
8. Urban advocates for the homeless;
9. Rural advocates for the homeless;
10. Residents of economically diverse urban neighborhoods;
11. Residents of economically diverse rural neighborhoods;
12. Rental property providers;
13. Advocates for persons with physical disabilities;
14. Advocates for persons with mental disabilities;
15. The Kentucky State Building Trades Council;
16. The Kentucky League of Cities; and
17. The Kentucky Association of Counties; and

- (c) One (1) member of the Senate and one (1) member of the House of Representatives.

- (2) State government members and General Assembly members shall serve on the advisory committee during the term of their elected or appointed state government positions. Members appointed as provided by subsection (1)(b) of this section shall be appointed for four (4) year terms, except that initially five (5) shall be appointed for two (2) year terms, six (6) shall be appointed for three (3) year terms, and six (6) shall be appointed for four (4) year terms.
- (3) The advisory committee shall meet at least quarterly and hold additional meetings as necessary. Eleven (11) members of the committee shall constitute a quorum for the purposes of conducting business and exercising its powers for all purposes.
- (4) Any vacancy shall be filled as provided by the requirements and procedures for the initial appointment and only for the remainder of the term of the initial appointment.
- (5) Any at-large member may be removed at any time, with or without cause, by resolution of a majority of the board of directors of the corporation.
- (6) The advisory committee shall consult with and advise the officers and directors of the corporation concerning matters relating to the Kentucky housing policy.
- (7) The corporation shall annually report its findings and recommendations regarding the Kentucky housing policy to the Governor and the Interim Joint Committee on Local Government of the Legislative Research Commission.
- (8) The advisory committee shall elect a presiding officer from among its members and may establish its own rules of procedure which shall not be inconsistent with the provisions of this chapter.

- (9) Members of the advisory committee shall serve without compensation. Members who are not employees of the Commonwealth shall be entitled to reimbursement for actual expenses incurred in carrying out their duties on the committee.
- (10) The Kentucky Housing Corporation shall provide the staff and funding for the administrative activities of the advisory committee. The Kentucky Housing Corporation shall perform all budgeting, procurement, and other administrative activities necessary to the functioning of the advisory committee. The advisory committee may authorize studies as it deems necessary and utilize Kentucky Housing Corporation funds and other available resources from the public or private sector to provide housing needs data.

➔Section 84. KRS 198B.040 is amended to read as follows:

The Kentucky Board of Housing, Buildings and Construction shall have the following general powers and duties:

- (1) To conduct or cause to be conducted studies to determine the needs of the building industry of Kentucky;
- (2) To conduct or cause to be conducted or participate in studies of the costs of the various factors of building construction and use of buildings and to recommend programs and procedures which will minimize the cost of buildings, including the use of energy, while maintaining safety, durability, and comfort;
- (3) To administer regulatory legislation relating to buildings and construction;
- (4) To assume administrative coordination of the various state construction review programs and to cooperate with various federal, state, and local agencies in the programs as they relate to buildings and construction;
- (5) To assume administration and coordination of various state housing programs to include:
 - (a) Devising and implementing procedures, in conjunction with the *Department for Local Government*~~Governor's Office for Local Development~~, for attaining and maintaining an accurate count of the housing inventory in Kentucky, including information on the age, physical condition, size, facilities, and amenities of this housing, and housing constructed and demolished each year;
 - (b) Designing programs coordinating the elements of housing finance, production, maintenance, and rehabilitation for the purpose of assuring the availability of safe, adequate housing in a healthful environment for all Kentucky citizens;
 - (c) Establishing or causing to be established public information and educational programs relating to housing, to include informing Kentucky citizens about housing and housing related programs that are available on all levels of government;
 - (d) Designing and administering, or participating in the design and administration of educational programs to prepare low income families for home ownership, and counseling them during their early years as homeowners;
 - (e) Promoting educational programs to assist sponsors in the development and management of low and moderate income housing for sale or rental;
 - (f) Cooperating with various federal, state, and local agencies in their programs as they relate to housing; and
 - (g) Conducting or causing to be conducted studies to determine the housing preferences of Kentucky citizens and the present and future housing requirements of the state;
- (6) To recommend state building industry policies and goals to the Kentucky General Assembly;
- (7) To adopt and promulgate a mandatory uniform state building code, and parts thereof, which shall establish standards for the construction of all buildings, as defined in KRS 198B.010, in the state;
- (8) To promulgate administrative regulations providing for the proper construction of public water purification plants, other than the water treatment equipment and systems in such plants; provided, however, that any such regulations must require that applications for permits to build public water purification plants will be submitted by the office to the Environmental and Public Protection Cabinet for that cabinet's comments. Any such regulations shall require the Environmental and Public Protection Cabinet's comments to be completed and submitted to the office within sixty (60) days;
- (9) To promulgate administrative regulations providing for the proper construction of sewage treatment plants, other than the sewage treatment equipment and systems in such plants; provided, however, that any such

regulations must require that applications for permits to build public sewage treatment plants will be submitted by the office to the Environmental and Public Protection Cabinet for that cabinet's comments. Any such regulations shall require the Environmental and Public Protection Cabinet's comments to be completed and submitted to the office within sixty (60) days; and

- (10) To promulgate administrative regulations for the safe installation and operation of plumbing and plumbing fixtures.
- (11) (a) As used in this subsection, "main board" means the Kentucky Board of Housing, Buildings and Construction.
- (b) If the main board has proposed a new or amended administrative regulation that directly and clearly relates to the work of a profession, class of workers, or industry that is under the authority of any board or advisory committee that is created by statute and is controlled, superseded, administratively attached, or affiliated with the main board, the main board shall not promulgate the proposed administrative regulation without first receiving comments from the affected board or advisory committee, subject to the restrictions of paragraph (c) of this subsection.
- (c)
 - 1. If a proposed administrative regulation affects a board or advisory committee that qualifies under paragraph (b) of this subsection, the main board shall distribute the proposed administrative regulation to the board or advisory committee.
 - 2. The affected board or advisory committee shall be granted a maximum of sixty (60) days to submit its comments on the proposed regulatory change. If the administrative regulation is a new emergency regulation, the affected board or advisory committee shall be granted a maximum of thirty (30) days to submit its comments on the proposed regulatory change.
 - 3. The time limits in this paragraph shall begin from the day the main board submits the regulatory change and sets a date for a proposed hearing for the comments of the affected board or advisory committee. If the board or advisory committee is already scheduled to meet at a time that will give it an adequate opportunity to review the regulation and respond, the hearing may be held at that meeting.
 - 4. If a board or advisory committee is not scheduled to meet or meets only at the call of the main board, the main board shall arrange for the board or advisory committee to meet at a time that will allow the board or advisory committee an adequate opportunity to review and comment on the regulation within the time limit. If the affected board or advisory committee fails to comment within the time limit, the main board may proceed with the administrative changes at its discretion.
- (d) To the extent that any other statute relating to the main board's authority to promulgate administrative regulations conflicts with this section, this section shall take precedence.
- (e) If a board or advisory committee chooses to produce written comments, those comments shall be attached to any public submission of the administrative regulation, including any filing under KRS Chapter 13A.
- (12) Any power or limitation relating to administrative regulations promulgated by the Kentucky Board of Housing, Buildings and Construction that are subject to subsection (11) of this section shall also apply to the office and executive director as described in KRS 198B.030(9) and (10).

➔Section 85. KRS 224A.030 is amended to read as follows:

- (1) There is hereby created the Kentucky Infrastructure Authority, which authority shall be a body corporate and politic, constituting a public corporation and a governmental agency and instrumentality of the state. The affairs of the authority shall be managed and carried out by a board consisting of eleven (11) members. The secretaries of the Economic Development, Finance and Administration, and Environmental and Public Protection Cabinets; the executive director of the Public Service Commission; and the commissioner of the **Department for Local Government**~~Governor's Office for Local Development~~ shall serve as ex officio members of the authority. The secretaries, the executive director, and the commissioner may designate alternates. The Governor shall additionally appoint six (6) at-large members. One (1) member shall be selected from a list of three (3) nominees submitted by the Kentucky Association of Counties, one (1) member selected from a list of three (3) nominees submitted by the Kentucky League of Cities, one (1) member selected from a

list of three (3) nominees submitted by the Kentucky Rural Water Association, one (1) member representing for-profit private water companies, one (1) member selected from a list of three (3) nominees submitted by the Kentucky section of the American Water Works Association, and one (1) member selected from a list of three (3) nominees submitted by the Kentucky Municipal Utilities Association. As the terms of the at-large members expire, the Governor shall appoint successors for terms of four (4) years and until their successors are appointed. The members shall constitute the Kentucky Infrastructure Authority, with power in that name to contract and be contracted with, sue and be sued, have and use a corporate seal, and exercise, in addition to the powers and functions specifically stated in this chapter, all of the usual powers of private corporations to the extent that the powers are not inconsistent with specifically enumerated powers of the authority. In the carrying out of its purposes and the exercise by it of the powers conferred by this chapter, the authority is deemed and declared to be performing essential governmental functions and public purposes of the state.

- (2) The members of the authority shall receive no compensation for their services in their official capacity but shall be entitled to reimbursement for all reasonable expenses necessarily incurred in connection with performance of their duties and functions as authority members.
- (3) Six (6) members of the authority shall constitute a quorum for the transaction of business, and in the absence of a quorum, one (1) or more members may adjourn from time to time until a quorum is convened. The members of the authority shall choose from their ranks a chair and a vice chair. The authority shall elect a secretary and a treasurer who shall not be members of the authority, each of whom shall serve at the pleasure of the authority and shall receive compensation as may be determined by the authority.
- (4) (a) The authority shall, for administrative purposes, be attached to the **Department for Local Government**~~Governor's Office for Local Development~~, which shall provide any office space required by the authority.
- (b) The secretary of the authority shall at all times maintain therein complete records of all of the authority's actions and proceedings which shall constitute public records open to inspection at all reasonable times.

➔Section 86. KRS 276.530 is amended to read as follows:

The Railroad Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the **Department for Local Government**~~Governor's Office for Local Development~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

➔Section 87. KRS 277.406 is amended to read as follows:

Each railroad proposing to discontinue service over or to obtain federal authority for regulatory abandonment of a railroad corridor in the Commonwealth of Kentucky shall, in addition to those notification requirements set out in federal law, notify the Commonwealth's Railtrail Development Office in the **Department for Local Government**~~Governor's Office for Local Development~~ and the trails coordinator in the Department of Parks that the railroad is attempting to obtain federal authority to do so.

➔Section 88. KRS 278.457 is amended to read as follows:

The Public Service Commission shall immediately transmit to the Department of Parks and to the Commonwealth's Railtrail Development Office in the **Department for Local Government**~~Governor's Office for Local Development~~ any information received from a railroad or other person having an ownership interest in a railroad corridor pertaining to a proposed or pending action or proceeding to obtain federal authority for the regulatory abandonment of that railroad corridor.

➔Section 89. KRS 424.190 is amended to read as follows:

- (1) If a statute gives discretion to a public officer or agency or governmental body as to the method of making an advertisement required by the statute, and if a statute provides that an advertisement may be made either by posting or by newspaper publication, the advertisement shall be made by newspaper publication in accordance with the provisions of this chapter, except as provided in subsection (2) of this section.
- (2) Any city may, when the cost of the newspaper publication exceeds the cost of postage, supplies, and reproduction for the alternative method of publication, in lieu of newspaper publication of advertisement, substitute delivery of a copy of the advertisement by first class mail to each residence within the publication area. Any city electing to use the alternative publication methods authorized by this section shall forward three

(3) copies of its audit report or one (1) copy of its financial statement, whichever is applicable, to the **Department for Local Government**~~Governor's Office for Local Development~~ in accordance with KRS 91A.040 and 424.220.

➔Section 90. In order to reflect the reorganization effectuated by this Act, the reviser of statutes shall replace references in the Kentucky Revised Statutes to the agencies, subagencies, and officers affected by this Act with references to the appropriate successor agencies, subagencies, and officers established by this Act. The reviser of statutes shall base these actions on the functions assigned to the new entities in this Act and may consult with officers of the affected agencies, or their designees, to receive suggestions.

➔Section 91. The General Assembly confirms the Governor's Executive Order 2009-540, dated June 12, 2009, to the extent it is not otherwise confirmed by this Act.

Signed by Governor April 12, 2010

CHAPTER 118

(HCR 210)

A CONCURRENT RESOLUTION relating to Kentucky's Capitol Centennial.

WHEREAS, 2010 marks the centennial year of Kentucky's Capitol, considered to be one of the most beautiful Capitol buildings in the United States; and

WHEREAS, the Capitol, as designed by Frank Mills Andrews, represents a major contribution to the architectural history of the Beaux Arts movement in this country; and

WHEREAS, the Kentucky Capitol Centennial Commission, as authorized by Kentucky's General Assembly, secured the installation of murals which will be allegorical representations of agriculture, industry, civilization and culture for the rotunda's pendentive areas; and

WHEREAS, a series of commemorative events has been planned by the Commission, providing numerous opportunities for celebrating Kentucky's Capitol Centennial on dates leading up to and including Friday, June 4, 2010, and Saturday, June 5, 2010, and beyond, through the innovations of modern technology;

NOW, THEREFORE,

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

➔Section 1. The General Assembly most heartily recognizes the profound significance of the New State Capitol building to the history, and life, of the Commonwealth of Kentucky.

➔Section 2. The events celebrating the Capitol's Centennial provide extensive opportunities for education and participation in Kentucky's history, culture, and civic life within the coming days and months.

➔Section 3. Through the innovations of today's new technology, citizens are urged to avail themselves of the unique opportunity to share their own stories or submit photos which memorialize their visits, work or life at the Capitol building. Citizens across Kentucky are encouraged to contact their county's Cooperative Extension office, which are serving, until April 4, 2010, as the collection points for these remembrances. Once compiled, these stories, photos, videos, and other media will be posted on a Virtual Time Capsule Web site to be unveiled in conjunction with the Capitol Centennial Celebration on June 4 and 5 in Frankfort, and shall remain available until December 31, 2010.

➔Section 4. To further establish funding and support for Kentucky's magnificent historic capitol buildings, all Kentucky's community leaders, elected officials, business officials, and interested citizens from across the Commonwealth and this nation are encouraged and invited to attend a Capitol Centennial celebration gala on Friday, June 4, 2010, for the Kentucky Executive Mansions Foundation which will benefit the Capitol building.

➔Section 5. Each Kentuckian, living either within and outside the state, is urged to travel to Frankfort on Saturday, June 5, 2010, for an unforgettable public celebration on the Capitol grounds, reminiscent of its dedication held in the past century. During the term of Kentucky Governor Augustus Everett Willson, when the building was completed, and beginning with the boom of cannons on Arsenal Hill at noon on June 2, 1910, nearly 10,000 of Kentucky's sons and daughters gathered from all parts of the state and dedicated a new Capitol to the use of the Commonwealth.

➔Section 6. Just as on June 2, 1910, Kentuckians came together to celebrate the Capitol's dedication, this year, 2010, all citizens, former citizens, and visitors to the Commonwealth are encouraged to participate in the events associated with this historic centennial celebration.

Signed by Governor April 12, 2010

CHAPTER 119

(HCR 207)

A CONCURRENT RESOLUTION urging the United States Department of Agriculture to evaluate the formula used to establish the price of milk paid to farmers, determine if the formula puts Kentucky dairy farmers at a competitive disadvantage, and determine if a more efficient formula could reduce trucking for Kentucky milk processors and provide an incentive to process more Kentucky milk, allowing Kentucky consumers and schools to have access to the milk produced by Kentucky farmers.

WHEREAS, Kentucky consumers have become increasingly aware of where their food comes from, and the growth of the Kentucky Proud state marketing initiative encourages buying local; and

WHEREAS, 950 Kentucky family-run dairy farms maintain stewardship of thousands of acres of land, and are of pivotal importance to the local and state economy; and

WHEREAS, there is incentive to move milk from surplus to deficit areas, yet little or no incentive to keep locally produced milk local and limit food miles in deficit areas; and

WHEREAS, the limited degree of transparency throughout the milk marketing process increases the difficulty in identifying and solving the problem;

NOW, THEREFORE,

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

➔Section 1. The United States Department of Agriculture is urged to evaluate the formula used to establish milk prices paid to farmers, determine if the formula puts Kentucky dairy farmers at a competitive disadvantage, and determine if a more efficient balancing system could be devised that would reduce Kentucky milk processors' trucking expense and provide an incentive for local milk to stay local, allowing Kentucky consumers and schools to access milk produced by Kentucky farmers.

➔Section 2. A copy of this Resolution shall be sent to the Secretary of the United States Department of Agriculture and to the Kentucky Congressional delegation.

Signed by Governor April 12, 2010

CHAPTER 120

(HJR 67)

A JOINT RESOLUTION designating honorary names for various roads and bridges in the Commonwealth.

WHEREAS, from time to time, the General Assembly has seen fit to honor various Kentuckians by naming portions of state highways in their honor; and

WHEREAS, these Kentuckians have come from all walks of life, held a multitude of jobs, and had a variety of reasons that they were deserving of the honor; and

WHEREAS, these individuals have included former Governors, decorated veterans, slain law enforcement officers, local elected officials, astronauts, doctors, educators, distinguished athletes, and civic leaders; and

WHEREAS, every citizen of the Commonwealth owes a great debt of gratitude to the patriotic men and women killed and wounded in service to their country in times of great need; and

WHEREAS, these recipients of the Purple Heart deserve our thanks, recognition, and respect for their devotion and service to our Commonwealth and our nation; and

WHEREAS, the General Assembly has often honored the veterans of this state by naming portions of several roads, from interstates to small two-lane country roads, in their honor; and

WHEREAS, the General Assembly again sees fit to honor a group of individuals who have made the lives of their fellow Kentuckians better and brought honor and respect to the Commonwealth;

NOW, THEREFORE,

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

➔Section 1. The Transportation Cabinet shall honor the accomplishments of Jerry Chesnut by naming the segment of Kentucky Route 840 from United States Route 119 into Loyall the "Jerry Chesnut Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect one sign at the turn off from United States Route 119 onto Kentucky Route 840 at Loyall and another from United States Route 421 onto Kentucky Route 840 at the red light outside of Harlan County that read "Jerry Chesnut Highway."

➔Section 2. The Transportation Cabinet shall designate the section of Kentucky Route 94 from Doran Road to Kentucky Route 1660 the "Stevie McReynolds Way," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs at each end of the route identified in this section.

➔Section 3. The Transportation Cabinet shall honor the memory of Corporal Mayo Blackburn by designating the first bridge off of Kentucky Route 119 onto Kentucky Route 199 going into Stone, Ky., as the "Corporal Mayo Blackburn Memorial Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 4. The Transportation Cabinet is hereby directed to designate Kentucky Route 15 in Perry County from the Breathitt County line to the Knott County line the "Perry County Veterans Highway," and shall, within 30 days of the effective date of this Resolution, erect signs that read "Perry County Veterans Highway" at each end of the route identified in this section, and at appropriate intervals along the route.

➔Section 5. The Transportation Cabinet is hereby directed to designate Kentucky Route 80 in Calloway County from the intersection of Kentucky Route 1836 (milepoint 1.712) to the intersection of Brinn Road (milepoint 9.194) the "Calloway County Veterans Memorial Highway." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect appropriate signs at each end of the route identified in this section.

➔Section 6. The Transportation Cabinet shall designate Kentucky Route 3052 in Hopkins County as the "William M. Cox, Sr. Drive," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 7. The Transportation Cabinet shall designate the segment of Kentucky Route 2759 in Knott County, from Kentucky Route 550 to the Hindman Spur, the "Norman Risner Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs at each end of the roadway identified in this section.

➔Section 8. The Department of Fish and Wildlife Resources shall designate the White City Road within the Joseph Fay Britt White City unit of the Peabody Wildlife Management area as the "Kenneth O. Gibson White City Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs.

➔Section 9. The Transportation Cabinet shall honor the memory of William Russell Barker by designating the bridge on Kentucky Route 302, over the Levisa Fork of the Big Sandy River in Johnson County, bridge number 058B00072N, as the "William Barker Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "William Barker Bridge."

➔Section 10. The Transportation Cabinet shall honor the memory of Forrest Casebolt by designating the bridge on Kentucky Route 2040, over Greasy Creek in Johnson County, bridge number 058B00085N, as the "Forrest Casebolt Bridge." The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Forrest Casebolt Bridge."

➔Section 11. The Transportation Cabinet shall honor the accomplishments of Jim Carigan by designating the mile of United States Route 27 in Jessamine County from the end of the Camp Nelson Bridge to Old Danville Road, mile marker 1.23, as the "Jim Carigan Mile," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 12. The Transportation Cabinet is directed to extend "The Tuskegee Airmen Memorial Trail" to include the entire length of Interstate 75 in the Commonwealth, from the Fayette/Scott County line north to the Ohio

River and from the Fayette/Madison County line south to the Tennessee line. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect appropriate signs along the route specified in this section.

➔Section 13. The Transportation Cabinet is directed to designate the Shawnee Expressway, Interstate 264 from its origin at the junction with Interstate 64 (milepoint 0) to the Dixie Highway interchange (milepoint 7.16) in Jefferson County, the "Georgia Davis Powers Expressway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 14. The Transportation Cabinet shall designate the new bridge on United States Highway 460/Kentucky Route 80 at Shop Branch, which crosses Greasy Creek in Pike County, the "Miles Justice Family Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 15. The Transportation Cabinet shall designate the bridge on Kentucky Route 80 over Beaver Creek in Pike County as the "Phillip K. Epling Memorial Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 16. The Transportation Cabinet shall honor Junior Hager and the Melody Drifters by naming the four ramps on United States Highway 23 at Exit 24, the north end of the interchange in Pikeville, in honor of Junior Hager and the Melody Drifters. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect standard brown signs used for honorees of the Country Music Highway at the locations specified in this section that read "Junior Hager and the Melody Drifters."

➔Section 17. The Transportation Cabinet is directed to designate the new bridge on United States Highway 460 near United States Highway 23 and the mouth of Little Creek that spans Kentucky Route 122, the CSX railroad tracks, and Shelby Creek in Pike County as the "Jasper Justice Memorial Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 18. The Transportation Cabinet is directed to designate the bridge on United States Route 460 over Grassy Creek in Morgan County, bridge number B00081, as the "Glen Wilson Memorial Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 19. The Transportation Cabinet shall designate the bridge on Kentucky Route 296 over Brier Creek in Whitley County, bridge number B11800120N, as the "John W. Towe Bridge," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 20. The Transportation Cabinet shall honor the memory of former Kentucky House of Representative member James C. Justice by naming Kentucky Route 460 in Pike County from Garden Village to Millard, the "Representative James C. Justice Memorial Highway" and shall within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 21. The Transportation Cabinet is requested to designate the following roads and bridges in remembrance of the Battle of Middle Creek and erect appropriate signs:

- (1) The bridge on Kentucky Route 850 approximately 0.5 miles south of Kentucky Route 404 (Bridge ID number 036B00055N) as the "Virginia Gateway Bridge.";
- (2) The bridge on Kentucky Route 550 approximately 0.5 miles from Kentucky Route 850 (Bridge ID number 036B00144N) as the "Joseph Gayheart Bridge."; and
- (3) The designation of the "Floyd County Civil War Highway" should be extended to include the following routes:
 - (a) All of Kentucky Route 850;
 - (b) Kentucky Route 550 from Kentucky Route 850 to Kentucky Route 7; and
 - (c) Kentucky Route 7 from Kentucky Route 550 to the Knott County line.

➔Section 22. The Transportation Cabinet shall honor the memory of Earl Ritz by designating the bridge on Kentucky Route 3 between the Floyd County and Johnson County line as the "Earl (Skip) Ritz Memorial Bridge" and shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Earl (Skip) Ritz Memorial Bridge."

➔Section 23. The Transportation Cabinet shall honor the military service of brothers Anthony, Ivan, Archie, and Orville Beculhimer by naming Kentucky Route 437 in Morgan County the "Beculhimer Brothers Road to

Freedom Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 24. The Transportation Cabinet shall honor P. K. Keen for his proud military service by naming the entire length of KY 257 in Leslie County the "Lieutenant General P. K. Keen Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs denoting this designation.

➔Section 25. The Transportation Cabinet shall honor the memory of Sergeant Justin A. Scott by designating Kentucky Route 8 in the city limits of Bellevue, Kentucky, as "Sergeant Justin A. Scott Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section and at intervals in between, that read "Sergeant Justin A. Scott Memorial Highway."

➔Section 26. The Transportation Cabinet shall honor the memory of Staff Sergeant Nicholas R. Carnes by designating Kentucky Route 8 in the city limits of Dayton, Kentucky, as "Staff Sergeant Nicholas R. Carnes Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section and at intervals in between, that read "Staff Sergeant Nicholas R. Carnes Memorial Highway."

➔Section 27. The Transportation Cabinet shall honor the memory of Josh Moore by designating the portion of Kentucky Route 3519 from the 68/80 Bypass to United States Route 431 North the "Cpl. Josh Moore Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Cpl. Josh Moore Memorial Highway."

➔Section 28. The Transportation Cabinet is hereby directed to name a portion of Kentucky Route 550 in Floyd County, one mile east towards Hueyville from its intersection at Kentucky Route 80 in Garrett and one mile west towards Lackey from its intersection at Kentucky Route 80 in Garrett, in honor and memory of Bill Francis and shall erect signs that read "Bill Francis Memorial Highway" on Kentucky Route 80 at the exits for Kentucky Route 550, and signs on Kentucky Route 550 under the Kentucky Route 80 bridge. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect signs at the locations specified in this section that read "Bill Francis Memorial Highway."

➔Section 29. The Transportation Cabinet shall honor the memory of Timothy Hall by designating the bridge connecting Kentucky Route 122 and Kentucky Route 306, near the community of Wheelwright in Floyd County, with signs at each end that read "Timothy Hall Memorial Bridge" and shall, within 30 days of the effective date of this Resolution, erect signs at both ends of the bridge specified in this section that read "Timothy Hall Memorial Bridge."

➔Section 30. The Transportation Cabinet is hereby directed to honor Kenny Rice by erecting signs on both sides of Kentucky Route 80 entering the town of Eastern in Floyd County that read "Home of Kenny Rice, longtime Sportscaster for WTVQ, ESPN, and NBC" and shall, within 30 days of the effective date of this Resolution, erect signs along the locations specified in this section that read ""Home of Kenny Rice, longtime Sportscaster for WTVQ, ESPN, and NBC."

➔Section 31. The Transportation Cabinet shall honor the memory of Specialist Jay Travis White by designating the segment of Kentucky Route 15C, which connects Kentucky Route 15 at milepoint 1.390 to Kentucky Route 15X in downtown Whitesburg, Letcher County, the "Specialist Jay Travis White Memorial Highway," and shall, within 30 days of the effective date of this Resolution, erect appropriate signs at each end of the roadway identified in this section.

➔Section 32. The Transportation Cabinet shall honor the memory of Firefighter Randy Utley by designating the portion of United States Highway 60 running west from Carol Malone Boulevard to the Grayson city limits, the "Firefighter Randy Utley Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Firefighter Randy Utley Memorial Highway."

➔Section 33. The Transportation Cabinet shall honor the memory of Officer Jack Claywell by designating the portion of United States Highway 60 running east from Carol Malone Boulevard to the Grayson city limits, the "Officer Jack Claywell Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Officer Jack Claywell Memorial Highway."

➔Section 34. The Transportation Cabinet shall honor the memory of Constable Elmer Kiser by designating the portion of United States Highway 60 from milepoint 8.8 to milepoint 12.8, the "Constable Elmer Kiser Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Constable Elmer Kiser Memorial Highway."

➔Section 35. The Transportation Cabinet shall honor the memory of Sheriff Coleman Binion by designating the portion of United States Highway 60 from milepoint 12.8 to milepoint 16.8, the "Sheriff Coleman Binion Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Sheriff Coleman Binion Memorial Highway."

➔Section 36. The Transportation Cabinet shall honor the memory of Deputy Marshall Gus Hall by designating the portion of United States Highway 60 from milepoint 16.8 to milepoint 20.8, the "Deputy Marshall Gus Hall Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Deputy Marshall Gus Hall Memorial Highway."

➔Section 37. The Transportation Cabinet shall honor the memory of Officer Glen A. Stephens by designating the portion of United States Highway 60 from milepoint 20.8 to 24.8, the "Officer Glen A. Stephens Memorial Highway" and shall, within 30 days of the effective date of this Resolution erect appropriate signs identifying this portion of highway as the "Officer Glen A. Stephens Memorial Highway."

➔Section 38. The Transportation Cabinet shall honor the accomplishments of Victor E. Comley by naming United States Highway 169 from the intersection of United States Highway 68 to the intersection of Meadowlark Drive in Nicholasville the "Victor E. Comley Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Victor E. Comley Memorial Highway."

➔Section 39. The Transportation Cabinet shall honor Charles Lee Meyers by naming Kentucky Route 17 from Interstate 275 South to Kentucky Route 16 in Kenton County the "Charles Lee Meyers Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Charles Lee Meyers Highway."

➔Section 40. The Transportation Cabinet shall honor the memory of Adam Hughes by naming the connector bypass from United States Highway 68 to Industrial Drive in the city of Lebanon in Marion County the "Adam Hughes Memorial Highway" and shall, within 30 days of the effective date of this Resolution, erect appropriate signs identifying this portion of highway as the "Adam Hughes Memorial Highway."

➔Section 41. The Transportation Cabinet shall extend "The Purple Heart Trail" by designating the following segments of highways as "The Purple Heart Trail": Interstate 64 from the West Virginia/Kentucky state line to Interstate 265 in Jefferson County; Interstate 265 from Interstate 64 in Jefferson County to United States Highway 31W; United States Highway 31W from Interstate 265 to Wendell H. Ford Western Kentucky Parkway; Wendell H. Ford Western Kentucky Parkway from United States Highway 31W to Pennyrile Parkway; Pennyrile Parkway from Wendell H. Ford Western Kentucky Parkway to United States Highway 41A; and United States Highway 41A from Pennyrile Parkway to the Kentucky/Tennessee state line. The Transportation Cabinet shall, within 30 days of the effective date of this Resolution, erect appropriate highway signs using sheeting signs in lieu of panel signs to designate the routes identified in this section.

➔Section 42. The Transportation Cabinet is hereby to erect signs designating the city of Somerset as the official car cruise capital of Kentucky and to consult with city officials of Somerset regarding the placement of signs.

Signed by Governor April 12, 2010

CHAPTER 121

(HCR 250)

A CONCURRENT RESOLUTION relating to crimes and punishments.

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

➔Section 1. The Penal Code and Controlled Substances Drafting Group is hereby created.

➔Section 2. The Penal Code and Controlled Substances Drafting Group shall consist of:

(1) The Chair of the Senate Judiciary Committee who shall be a co-chair of the drafting group;

(2) The Chair of the House of Representatives Judiciary Committee who shall be a co-chair of the drafting group;

(3) The Chief Justice of the Supreme Court of Kentucky or a person designated by the Chief Justice and approved by the Legislative Research Commission;

(4) The Secretary of the Justice and Public Safety Cabinet or a person designated by the Secretary and approved by the Legislative Research Commission;

(5) A former Commonwealth's attorney designated by the co-chairs and approved by the Legislative Research Commission;

(6) A former Department of Public Advocacy attorney designated by the co-chairs and approved by the Legislative Research Commission; and

(7) A member of the public designated by the co-chairs and approved by the Legislative Research Commission.

➔Section 3. In addition to the persons designated above, the co-chairs may request the Legislative Research Commission to approve the appointment of other persons who shall not be members of the Penal Code and Controlled Substances Drafting Group but who shall be ancillary and supplemental thereto.

➔Section 4. The Penal Code and Controlled Substances Drafting Group shall meet monthly on the day prior to or the day of, or both, the meeting of the Interim Joint Committee on Judiciary.

➔Section 5. (1) The Penal Code and Controlled Substances Drafting Group shall, based on prior research and recommendations and its own new research and recommendations, provide to the Interim Joint Committee on Judiciary and Legislative Research Commission draft changes to the Penal Code, the Controlled Substances Act, and other necessary statutes.

(2) The draft shall, insofar as possible, be based on the principles of "Justice Reinvestment" and shall provide for alternatives to incarceration, use of community treatment, education, and rehabilitation programs which have been proven to reduce recidivism, to monitor defendants where necessary, and to reduce recidivism while protecting and enhancing public safety.

(3) Primary staff for the Penal Code and Controlled Substances Drafting Group shall be the staff of the Interim Joint Committee on Judiciary.

➔Section 6. The co-chairs of the Penal Code and Controlled Substances Drafting Group may request that the Director of the Legislative Research Commission contract with one or more outside organizations to provide research, analysis, drafting support, and advice to the Penal Code and Controlled Substances Drafting Group.

➔Section 7. The co-chairs of the Penal Code and Controlled Substances Drafting Group may request additional research, drafting, and other assistance from the Court of Justice and its agencies and from the executive branch and its agencies.

➔Section 8. The Penal Code and Controlled Substances Drafting Group shall produce a draft of proposed changes to the Penal Code, the Controlled Substances Act, and other necessary statutes for submission to the Interim Joint Committee on Judiciary and to the Legislative Research Commission no later than November 1, 2010.

➔Section 9. Final membership of the Penal Code and Controlled Substances Drafting Group shall be subject to the consideration and approval of the Legislative Research Commission.

➔Section 10. Provisions of Sections 1 to 9 of this Act to the contrary notwithstanding, the Legislative Research Commission shall have the authority to alternatively assign the issues identified herein to an interim joint committee or subcommittee thereof, and to designate a study completion date.

Signed by Governor April 12, 2010

CHAPTER 122

(HB 202)

AN ACT relating to deferred compensation.

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

➔Section 1. KRS 18A.230 is amended to read as follows:

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As used in KRS 18A.230 to 18A.275, unless the context requires otherwise:

- (1) "Employee" means a person holding an office, position or employment in state government and agencies thereof and also includes persons in the public school system.
- (2) "Income" means earnings of a person while an employee of the state and agencies thereof or public school system.
- (3) "Asset" means any owned physical object or right having a monetary value.
- (4) "Trust fund" means a fund consisting of assets received and held by a government unit or its designated custodian to be expended or invested in accordance with conditions of the trust.
- (5) "Deferred compensation" means a method which allows employees to authorize income to be deducted from their current earning and set aside to be paid at a later date.
- (6) "Board" means the board of trustees as established by KRS 18A.245.
- (7) **"Authority" means the Kentucky Public Employees' Deferred Compensation Authority.**

➔Section 2. KRS 18A.250 is amended to read as follows:

- (1) The authority shall establish and maintain a deferred compensation plan for the employees of the State of Kentucky. Participation in such plan shall be by ~~by a specific written~~ agreement between such employees and the authority and shall provide for the deferral of such amount of compensation as requested by the employee. Participating employees must authorize that such deductions be made from their wages for the purpose of participation in such program. Amounts so deducted shall be deposited in the State Treasury to the credit of the trust fund.
- (2) The board is directed to develop and obtain, for the benefit of employees, a qualified employee plan that includes a qualified cash or deferred arrangement as described in Section 401(K)(2) of the Internal Revenue Code. The board is directed to develop a program for participants to borrow from their account or accounts in the plan. The plan shall be in addition to other plans offered by the board, and shall be offered to employees upon receipt of appropriate approval of the Internal Revenue Service or on January 1, 1985, whichever occurs later.
- (3) ***Notwithstanding the provisions of KRS 337.060, agreements to participate and plan elections made by employees pursuant to subsections (1) and (2) of this Section may be made in writing or by electronic record, signature, or contract as determined by the authority and in accordance with the provisions of KRS 369.101 to 369.120. Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plan shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.***

➔Section 3. KRS 18A.255 is amended to read as follows:

- (1) Notwithstanding any other provision of KRS 18A.230 to 18A.275, funds held for the State of Kentucky public employees deferred compensation trust fund pursuant to ~~written deferred compensation~~ agreement between the state and participating employees may be invested in such investments as are deemed appropriate by the trustees, including but not limited to annuity contracts. ***Agreements may be made in writing or by electronic record, signature, or contract as determined by the authority in accordance with the provisions of KRS 369.101 to 369.120 and shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.***
- (2) Funds deposited to the credit of the trust fund from payroll deductions made pursuant to KRS 18A.250 shall be temporarily invested as provided in KRS 42.500 until such funds are invested pursuant to the ~~written~~ deferred compensation agreements between the state and participating employees and actually credited to accounts for plan participants. Notwithstanding KRS 42.500, interest earned from such temporary investments shall be used to defray the expenses of administering the deferred compensation system.
- (3) Neither the authority nor the board shall be liable for any losses or claims due to a participant's actions in connection with the investment advice provided to the participant by operation of KRS 18A.245(7)(f) or otherwise. The authority and board shall have no duty or obligation to monitor, review, or assess the specific investment advice provided to a participant.

➔Section 4. KRS 18A.270 is amended to read as follows:

- (1) Any city, county, or other political subdivision or combination of these entities may establish for its employees a deferred compensation program. *Notwithstanding the provisions of KRS 337.060*, participation shall be by written agreement *or by electronic record, signature, or contract and in accordance with the provisions of KRS 369.101 to 369.120* between such employees and the legislative authority of the city, county, or other political subdivision providing for the deferral of such compensation and the subsequent investment and administration of such funds. *Agreements and elections, including but not limited to hardship withdrawal applications, loan applications, beneficiary designations, and withdrawal requests made by participating employees under the plans shall not be denied legal effect or enforceability if made electronically to the extent permitted by the authority.*
- (2) Such subdivision, acting through its legislative authority, may appoint such agency or department as it deems appropriate to establish and administer a deferred compensation plan pursuant to KRS 18A.230 to 18A.275. For purposes of funding such agreements between the city, county, or other such political subdivision and the participating employees, the agency or department as designated by the legislative authority to establish and administer such plans may invest such funds in such investments deemed appropriate by said agency or department, including, but not limited to annuity contracts.
- (3) In no case shall such investment be other than permitted by KRS 18A.230 to 18A.275 and not prohibited by Section 179 of the Kentucky Constitution and must be offered by such persons or companies authorized and duly licensed by the State of Kentucky and applicable federal regulatory agencies to offer such insurance or investment programs in compliance with all relevant provisions of KRS 18A.230 to 18A.275.
- (4) Such a deferred compensation program is in addition to any retirement or pension system or any other benefit program provided by law for employees of the city, county, or other political subdivision. Any income deferred under such a plan shall continue to be included as regular compensation for the purpose of computing the retirement and pension benefits earned by any employee but any sum so deducted shall not be included in the computation of any income taxes withheld for any such employee.
- (5) This section does not limit the power or authority of any municipal corporation or other political subdivision to provide other such plans or programs for deferring compensation of their officials and employees.

Signed by Governor April 12, 2010

CHAPTER 123

(HB 97)

AN ACT relating to elections.

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

➔Section 1. KRS 118.176 is amended to read as follows:

- (1) A "bona fide" candidate means one who is seeking nomination in a primary or election in a *special or regular*~~general~~ election according to law.
- (2) The bona fides of any candidate seeking nomination or election in a primary, *special*, or *regular*~~general~~ election may be questioned by any qualified voter entitled to vote for ~~the~~~~such~~ candidate or by an opposing candidate by summary proceedings consisting of a motion before the Circuit Court of the judicial circuit in which the candidate whose bona fides is questioned resides. An action regarding the bona fides of any candidate seeking nomination or election in a primary, *special*, or *regular*~~general~~ election may be commenced at any time prior to the *regular*~~general~~ election. The motion shall be tried summarily and without delay. Proof may be heard orally, and upon motion of either party shall be officially reported. If the Circuit Judge of the circuit in which the proceeding is filed is disqualified or absent from the county or is *herself or* himself a candidate, the proceeding may be presented to, heard and determined by the Circuit Judge of any adjoining judicial circuit.
- (3) In any action or proceeding under this section the burden of proof as to the bona fides of a candidate shall be on the person challenging the bona fides of a candidate.
- (4) If the court finds the candidate is not a bona fide candidate it ~~shall~~~~must~~ so order, and certify the fact to the board of elections, and the candidate's name shall be stricken from the written designation of election officers

filed with the board of elections or the court may refuse recognition or relief in a mandatory or injunctive way. The order of the Circuit Court shall be entered on the order book of the court and shall be subject to a motion to set aside in the Court of Appeals. The motion shall be heard by the Court of Appeals or a judge thereof in the manner provided for dissolving or granting injunctions, except that the motion ~~shall must~~ be made before the court or judge within five (5) days after the entry of the order in the Circuit Court, and may be heard and tried upon the original papers, and the order of the Court of Appeals or judge thereof shall be final.

- (5) No person shall approach the Circuit Judge for the purpose or view of influencing his *or her* decision on the motion pending before *the Circuit Judge* ~~him~~ or to be tried by him *or her*.

➔Section 2. KRS 118.315 is amended to read as follows:

- (1) A candidate for any office to be voted for at any regular election may be nominated by a petition of electors qualified to vote for him or her, complying with the provisions of subsection (2) of this section. No person whose registration status is as a registered member of a political party shall be eligible to election as an independent, *or political organization, or political group* candidate, nor shall any person be eligible to election as an independent, *or political organization, or political group* candidate whose registration status was as a registered member of a political party on January 1 immediately preceding the regular election for which the person seeks to be a candidate. This restriction shall not apply to candidates to those offices specified in KRS 118.105(7), for supervisor of a soil and water conservation district, for candidates for mayor or legislative body in cities of the second to sixth class, or to candidates participating in nonpartisan elections.
- (2) The form of the petition shall be prescribed by the State Board of Elections. It shall be signed by the candidate and by registered voters from the district or jurisdiction from which the candidate seeks nomination. The petition shall include a declaration, sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed. Signatures for a petition of nomination for a candidate seeking any office, excluding President of the United States in accordance with KRS 118.591(1), shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot. A petition of nomination for a state officer, or any officer for whom all the electors of the state are entitled to vote, shall contain five thousand (5,000) petitioners; for a representative in Congress from any congressional district, or for any officer from any other district except as herein provided, four hundred (400) petitioners; for a county officer, member of the General Assembly, or Commonwealth's attorney, one hundred (100) petitioners; for a soil and water conservation district supervisor, twenty-five (25) petitioners; for a city officer or board of education member, two (2) petitioners; and for an officer of a division less than a county, except as herein provided, twenty (20) petitioners. It shall not be necessary that the signatures of the petition be appended to one (1) paper. Each petitioner shall include the date he or she affixes the signature, address of residence, and date of birth. Failure of a voter to include the signature affixation date, date of birth, and address of residence shall result in the signature not being counted. If any person joins in nominating, by petition, more than one (1) nominee for any office to be filled, he or she shall be counted as a petitioner for the candidate whose petition is filed first, except a petitioner for the nomination of candidates for soil and water conservation district supervisors may be counted for every petition to which his or her signature is affixed.
- (3) Titles, ranks, or spurious phrases shall not be accepted on the filing papers and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be accepted as the candidate's name.
- (4) The Secretary of State and county clerks shall examine the petitions of all candidates who file with them to determine whether each petition is regular on its face. If there is an error, the Secretary of State or the county clerk shall notify the candidate by certified mail within twenty-four (24) hours of filing.

➔Section 3. KRS 118.365 is amended to read as follows:

- (1) Certificates of nomination issued by the State Board of Elections shall be filed by that board with the Secretary of State immediately. The certificates issued by the county board of elections shall be filed by that board with the county clerk immediately.
- (2) Petitions of nomination for candidates for city offices except as provided in KRS 83A.047, for candidates for members of boards of education, and for candidates for supervisors of soil and water conservation districts shall be filed with the county clerk not earlier than the first Wednesday after the first Monday in November of

the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of regular elections for the offices sought.

- (3) Candidates for an office, the nomination to which is to be made by a convention pursuant to KRS 118.325(1) and (2), except for the office of electors of President and Vice President of the United States, shall file the statements required by KRS 118.325(3), with the official designated in KRS 118.165 with whom notification and declaration are filed for the office, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than the second Tuesday in August preceding the regular election for the office sought.
- (4) Certificates of nomination made by the governing authority of a political party within the meaning of KRS 118.015 or a political organization not constituting a political party within the meaning of KRS 118.015 but whose candidate received two percent (2%) of the vote of the state at the last preceding election for presidential electors to fill vacancies in office, as provided in KRS 118.115 and 118.325, shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the election of the person in nomination.
- (5) Except as otherwise provided in this section, petitions of nomination shall be filed as required with the Secretary of State or county clerk not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of **regular**~~general~~ elections for the offices sought. Certificates of nomination shall be filed with the Secretary of State or county clerk, as required by law, not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the offices will appear on the ballot and not later than the second Tuesday in August preceding the day fixed by law for the holding of **regular**~~general~~ elections for the offices sought. The filing of petitions of nomination for independent, **or political organization, or political group** candidates shall not be accepted by the Secretary of State or the county clerk if the candidate has not filed a statement-of-candidacy form as required by KRS 118.367.
- (6) Petitions and certificates of nomination for electors of President and Vice President of the United States shall be filed with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which there is an election for President and Vice President of the United States and not later than the Friday following the first Tuesday in September preceding the date fixed by law for the election of the electors.
- (7) Petitions for recall elections or elections on public questions shall be filed as required with the county clerk not later than the second Tuesday in August preceding the day fixed by law for holding a **regular**~~general~~ election.
- (8) Petitions of any kind named in this section, statements, and certificates of nomination shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which ~~such~~ papers are permitted to be filed.

➔Section 4. KRS 118.367 is amended to read as follows:

- (1) An independent, **or political organization, or political group** candidate required to file nomination papers pursuant to KRS 118.365(5) shall be required to file a statement-of-candidacy form with the same office at which nomination papers are filed. Candidates for federal office and candidates for mayor or legislative body in cities of the second to sixth class participating in partisan elections shall not be required to file a statement-of-candidacy form. The statement-of-candidacy form shall be filed not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot and not later than April 1 preceding the day fixed by law for holding of **regular**~~general~~ elections for the offices sought. If the office in which the statement-of-candidacy form is to be filed is closed on April 1, the form may be filed on the next business day. The statement-of-candidacy form shall be filed no later than 4 p.m. local time when filed on the last day on which papers are permitted to be filed. No person shall file a statement-of-candidacy form for more than one (1) public office during an election cycle.
- (2) The statement-of-candidacy form shall be prescribed by the State Board of Elections. The statement-of-candidacy form shall be signed by the candidate upon filing. No charge shall be assessed for the filing of a statement-of-candidacy form. The Secretary of State and county clerks shall examine the statement-of-

candidacy form of each candidate who files the form to determine if there is an error. If an error has occurred, the candidate shall be notified by certified mail within twenty-four (24) hours.

➔Section 5. KRS 118.375 is amended to read as follows:

If a vacancy occurs in any elective office less than one hundred thirty-four (134) days before the primary or at any time after the primary, but not less than **three (3) months**~~[one hundred six (106) days]~~ before the **regular**~~[general]~~ election, independent, **or political organization, or political group** candidates may file their petitions at the time and place provided~~[for]~~ in KRS 118.365, subject to the restrictions concerning party registration and candidacy provided in KRS 118.315(1).

➔Section 6. KRS 118.760 is amended to read as follows:

Nominations by political parties, as defined in KRS 118.015, to fill vacancies at special elections shall be made in ~~the[such] manner[as may be]~~ determined by the governing authority of the party in the territory in which the election is to be held. **An independent, or political organization, or political group candidate may be nominated at a special election by a petition of electors qualified to vote for him or her. The independent, or political organization, or political group candidate shall not be a registered member of a political party prior to the filing of the petition as prescribed in KRS 118.770. The form of the petition and the required number of signatures on the petition are set forth in KRS 118.315(2).**

➔Section 7. KRS 118.770 is amended to read as follows:

When a writ of election or proclamation is issued to fill a vacancy as prescribed in KRS 118.710, 118.720, or 118.730, independent, **or political organization, or political group** petitions and certificates of nomination may be filed twenty-eight (28) days before the day of election, and if filed with the Secretary of State shall be immediately certified by him **or her** to the proper county clerks.

➔Section 8. KRS 118.775 is amended to read as follows:

A successful candidate in a special election held for the purpose of filling a vacancy in any elective office shall take office immediately upon certification of the election results by the State Board of Elections **or the county board of elections in which the special election was held**, and administration of the oath of office.

➔Section 9. KRS 118A.100 is amended to read as follows:

- (1) Candidates for an unexpired term of a judicial office to be filled at a regular election shall be nominated at the primary next preceding the regular election in the manner prescribed in KRS 118A.060 if the vacancy occurs not later than the second Tuesday in January preceding the primary. If the vacancy occurs on or after that date, the election to fill the unexpired term shall be held in accordance with the procedures described in this section and Section 152 of the Constitution of Kentucky.
- (2) If in a regular election for judicial office no candidates nominated as provided in KRS 118A.060 are available due to death, incapacity, or withdrawal, and the candidates have not been replaced as provided in KRS 118A.060, the election to fill the regular term shall be conducted in the manner prescribed in subsections (3) through (11) of this section.
- (3) Each candidate shall file a petition for ***nomination***~~[candidacy]~~ with the Secretary of State not earlier than the first Wednesday after the first Monday in November of the year preceding the year in which the election for the unexpired term will be held and not later than the second Tuesday in August preceding the day fixed by law for holding the regular election for the unexpired term. ***The petition shall be sworn to by the candidate and by not less than two (2) registered voters from the district or circuit from which he or she seeks nomination, before an officer authorized to administer an oath. Signatures for nomination papers shall not be affixed on the document to be filed prior to the first Wednesday after the first Monday in November of the year preceding the year in which the office will appear on the ballot.*** The petition shall be filed no later than 4 p.m. local time at the place of filing when filed on the last date on which the papers are permitted to be filed.
- (4) The petition for ***nomination***~~[candidacy]~~ shall be in the form prescribed by the State Board of Elections. ***The petition shall include a declaration sworn to by the candidate, that he or she possesses all the constitutional and statutory requirements of the office for which the candidate has filed.*** Titles, ranks, or spurious phrases shall not be accepted on the petition and shall not be printed on the ballots as part of the candidate's name; however, nicknames, initials, and contractions of given names may be acceptable as the candidate's name.

- (5) The Secretary of State shall examine the petition of each candidate to determine whether it is regular on its face. If there is an error, the Secretary of State shall notify the candidate by certified mail within twenty-four (24) hours of filing.
- (6) The order of names on the ballot for each district or circuit, and numbered division thereof if divisions exist, shall be determined by lot at a public drawing to be held in the office of the Secretary of State at 2 p.m., standard time, on the Thursday following the second Tuesday in August preceding the regular election.
- (7) Not later than the *date set forth in KRS 118.215*~~[second Monday after the filing deadline for the regular election in a year in which there is no election for President and Vice President of the United States, or not later than the Thursday after the first Tuesday in September preceding a regular election in a year in which there is an election for President and Vice President of the United States,]~~ and after the order of names on the ballot has been determined as required in subsection (6) of this section, the Secretary of State shall:
 - (a) Certify to the county clerks of the respective counties entitled to participate in the election of the various candidates, the name and place of residence of each candidate for each office, by district or circuit, and numbered division thereof if divisions exist, as specified in the petitions for ***nomination***~~[candidate]~~ filed with ***the Secretary of State***~~[him]~~; and
 - (b) Designate for the county clerks the office of the Court of Justice with which the names of candidates shall be printed and the order in which they are to appear on the ballot.
- (8) The ballot position of a candidate shall not be changed after the ballot position has been designated by the county clerk.
- (9) The county clerks of each county shall cause to be printed on the ballot labels for the voting machines and on the absentee ballots for the regular election the names of the candidates for offices of the Court of Justice.
- (10) The names of the candidates shall be placed on the voting machine in a separate column or columns or in a separate line or lines and identified by the words "Judicial Ballot," and in~~[such]~~ a manner *so* that the casting of a vote for all of the candidates of a political party will not operate to cast a vote for judicial candidates. The words "Vote for one" or "Vote for one in each division," shall be printed on the appropriate location. The office, numbered division thereof if divisions exist, and the candidates therefor shall be clearly labeled. No party designation or emblem of any kind, nor any sign indicating any candidate's political belief or party affiliation, shall be used on voting machines or special ballots.
- (11) The candidate receiving the highest number of votes cast at the regular election for a district or circuit, or for a numbered division thereof if divisions exist, shall be elected.

➔Section 10. KRS 118A.190 is amended to read as follows:

- (1) The State Board of Elections shall issue certificates of nomination or election for all primary and regular elections as provided in this section.
- (2) Following a primary or regular election, the board of elections of each county shall make out duplicate certificates of the total number of votes received by each candidate, by circuit or district, and numbered division thereof if divisions exist. ***The certificate of the total number of votes shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the primary or regular election***~~[The board shall deliver these certificates to the county clerk]~~. The clerk shall keep one (1) of the certificates in his *or her* office and, within three (3) days of their receipt from the board, shall forward the other certificate by mail to the Secretary of State who shall deliver it to the State Board of Elections.
- (3) ~~[When all the returns are received by]~~The State Board of Elections~~[, the board]~~ shall meet to count and tabulate the votes received by the different candidates as certified to the Secretary of State ***no later than the third Monday after the primary or regular election***. ~~[If all returns have not been received by the third Monday after the primary or regular election, the board shall, nevertheless, proceed with its duties at that time.]~~ When the board certifies the results of a primary or regular election~~[on the basis of incomplete returns]~~, the right to contest the election *or primary* shall not be impaired. A majority of the members of the board shall constitute a quorum and may act. The board shall prepare the certificates of nomination or election in the office of the board, from the returns made. The certificates shall be in writing and in duplicate, and shall be signed by the board members. The board shall forward the original certificate, by mail, to the ***nominated or*** elected

candidate, unless he *or she* has failed to comply with KRS Chapter 121. The duplicate shall be retained in the office of the board.

- (4) Certificates of nomination for a judicial office shall be issued to the two (2) candidates receiving the highest number of votes, except that if more than two (2) candidates are found to have received the highest and an equal number of votes for the same office or if two (2) or more candidates are found to have received the second highest and an equal number of votes for the same office, the election shall be determined by lot in ~~the [such] manner [as]~~ the board directs, in the presence of not less than three (3) other persons.
- (5) The certificate of election for a judicial office shall be issued to the candidate receiving the highest number of votes, except that if two (2) or more candidates are found to have received the highest and an equal number of votes for the same office, the election shall be determined by lot in ~~the [such] manner [as]~~ the board directs, in the presence of not less than three (3) other persons.

Signed by Governor April 12, 2010

CHAPTER 124

(HB 151)

AN ACT relating to campaign finance.

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

➔Section 1. KRS 121.180 is amended to read as follows:

- (1) (a) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any preelection finance reports required by subsection (3) of this section if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that contributions will not be accepted or expended in excess of three thousand dollars (\$3,000) in any one (1) election to further the candidacy or to support or oppose a constitutional amendment or public question which will appear on the ballot. For a candidate for judicial office who desires to be exempt from filing preelection campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (b) Any candidate, slate of candidates, or political issues committee shall be exempt from filing any campaign finance reports required by subsections (3) and (4) of this section if the candidate, slate of candidates, or political issues committee chairman files a form prescribed and furnished by the registry stating that currently no contributions have been received and that contributions will not be accepted or expended in excess of one thousand dollars (\$1,000) in any one (1) election. For a candidate for judicial office who desires to be exempt from filing any campaign finance reports as provided in this paragraph, the request for exemption shall be filed by the campaign treasurer of the candidate's campaign committee, but the candidate shall be personally liable for any violation if the campaign treasurer accepts contributions or makes expenditures in excess of the limit and shall be subject to the same penalties as a candidate as provided in subparagraph (1)1. or 2. of this subsection. A separate form shall be required for each primary, regular, or special election in which the candidate or slate of candidates participates or in which the public question appears on the ballot, unless the candidate, slate of candidates, or political issues committee chairman indicates on a request for exemption that the request will be applicable to more than one (1) election. The form shall be filed with the same office with which a candidate or slate of candidates files nomination papers or, in the case of a political issues committee, with the registry.
- (c) For a primary election, a candidate or slate of candidates shall file a request for exemption not later than the deadline for filing nomination papers and, except as provided in subparagraph 2. of paragraph (d) of

this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. For a regular election, a candidate or slate of candidates shall file or rescind in writing a request for exemption not later than twenty-five (25) days after the date of the preceding primary election, except as provided in subparagraph 2. of paragraph (d) of this subsection. For a special election, a candidate or slate of candidates shall file a request for exemption not later than ten (10) days after the candidate or slate of candidates is nominated for a special election and shall be bound by its terms unless it is rescinded in writing not later than twenty-five (25) days after the date on which the nomination for a special election is made. A political issues committee chairman shall file a request for exemption not later than ten (10) days after the date on which the committee registers with the registry and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the date on which the request for exemption is filed.

- (d) 1. A candidate or slate of candidates that revokes a request for exemption in a timely manner may exercise the remaining option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. If a candidate or slate of candidates elects to exercise a different option, the candidate or slate of candidates shall file the appropriate form with the officer who received the filing papers of the candidate or slate of candidates not later than the deadline for filing a revocation.
- 2. A candidate for any city or county office or for any school board office, who is exempted from some or all campaign finance reporting requirements pursuant to paragraph (a) or (b) of this subsection but who accepts contributions or makes expenditures in excess of the exempted amount in an election, shall file all applicable reports required for the remainder of that election, based upon the amount of contributions or expenditures the candidate accepts or receives in that election. The filing of applicable required reports by a candidate after the exempted amount is exceeded shall serve as notice to the registry that the initial exemption has been rescinded. No further notice to the registry shall be required and no penalty for exceeding the initial exempted amount shall be imposed against the candidate, except for failure to file applicable reports required after the exempted amount is exceeded.
- (e) Any candidate or slate of candidates that is subject to an August filing deadline and that intends to execute a request for exemption shall file the appropriate request for exemption not later than the filing deadline and, except as provided in subparagraph 2. of paragraph (d) of this subsection, shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline. A candidate or slate of candidates that is covered by this paragraph shall have the same reversion rights as those provided in subparagraph 1. of paragraph (d) of this subsection.
- (f) Any candidate or slate of candidates that will appear on the ballot in a regular election that has signed either request for exemption for that election may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection if a candidate or slate of candidates that is subject to an August filing deadline subsequently files in opposition to the candidate or slate of candidates. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate or slate of candidates covered by this paragraph shall comply with the deadline for rescission provided in subparagraph 1. of paragraph (d) of this subsection.
- (g) Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate or slate of candidates that has filed a request for exemption for a regular election that later is opposed by a person who has filed a declaration of intent to receive write-in votes may rescind the request for exemption and exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (h) Any candidate or slate of candidates that has filed a request for exemption may petition the registry to determine whether another person is campaigning as a write-in candidate prior to having filed a declaration of intent to receive write-in votes, and, if the registry determines upon a preponderance of the evidence that a person who may later be a write-in candidate is conducting a campaign, the candidate or slate of candidates, except as provided in subparagraph 2. of paragraph (d) of this subsection, may petition the registry to permit the candidate or slate of candidates to exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection.
- (i) If the opponent of a candidate or slate of candidates is replaced due to his withdrawal because of death, disability, or disqualification, the candidate or slate of candidates, except as provided in subparagraph 2.

of paragraph (d) of this subsection, may exercise the reversion rights provided in subparagraph 1. of paragraph (d) of this subsection not later than fifteen (15) days after the party executive committee nominates a replacement for the withdrawn candidate or slate of candidates.

- (j) A person intending to be a write-in candidate for any office in a regular or special election may execute a request for exemption under paragraph (a) or (b) of this subsection and shall be bound by its terms unless it is rescinded in writing not later than fifteen (15) days after the filing deadline for the regular or special election. A person intending to be a write-in candidate who revokes a request for exemption in a timely manner may exercise the remaining exemption option or may file all reports required of a candidate intending to raise or spend in excess of three thousand dollars (\$3,000) in an election. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a person intending to be a write-in candidate who elects to exercise a different exemption option shall file the appropriate form with the officer who received the initial request for exemption not later than fifteen (15) days after the filing deadline for the regular or special election.
- (k) Except as provided in subparagraph 2. of paragraph (d) of this subsection, the campaign committee of any candidate or slate of candidates that has filed a request for exemption or a political issues committee whose chairman has filed a request for exemption shall be bound by its terms unless it is rescinded in a timely manner and no new request for exemption has been executed.
- (l)
 1. Except as provided in subparagraph 2. of paragraph (d) of this subsection, any candidate, slate of candidates, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that accepts contributions or makes expenditures, or whose campaign treasurer accepts contributions or makes expenditures, in excess of the applicable limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and, in lieu of other penalties prescribed by law, pay a fine of not more than five hundred dollars (\$500) plus the amount by which the spending limit was exceeded.
 2. Except as provided in subparagraph 2. of paragraph (d) of this subsection, a candidate, slate of candidates, campaign committee, or political issues committee that is exempt from filing campaign finance reports pursuant to paragraph (a), (b), (e), or (j) of this subsection that knowingly accepts contributions or makes expenditures in excess of the applicable spending limit in any one (1) election without rescinding the request for exemption in a timely manner shall comply with all applicable reporting requirements and shall be guilty of a Class D felony.
- (2) (a) State and county executive committees, and caucus campaign committees shall make a full report, upon a prescribed form, to the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, or made, since the date of the last report, including:
 1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. For other contributions in excess of one hundred dollars (\$100), the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 3. The total amount of cash contributions received during the reporting period; and
 4. A complete statement of expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name and address of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) This report shall be in the hands of the registry or postmarked within five (5) days after the thirtieth day following the primary and regular elections. If an individual gives a reportable contribution to a caucus campaign committee or to a state or county executive committee with the intention that the contribution or a portion of the contribution go to a candidate or slate of candidates, the name of the contributor and the sum shall be indicated on the committee report. The receipts and expenditures of funds remitted to each political party under KRS 141.071 to 141.073 shall be separately accounted for and reported to the registry in the manner required by KRS 121.230. The separate report may be made a separate section

within the report required, by this subsection, to be in the hands of the registry or postmarked within five (5) days after the thirtieth day following each regular election.

- (3) (a) Except for candidates or slates of candidates, campaign committees, or political issues committees exempted from reporting requirements pursuant to subsection (1) of this section, each campaign treasurer of a candidate, slate of candidates, campaign committee, or political issues committee who accepts contributions or expends, expects to accept contributions or expend, or contracts to expend more than three thousand dollars (\$3,000) in any one (1) election, and each fundraiser who secures contributions in excess of three thousand dollars (\$3,000) in any one (1) election, shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received from any source, and expenditures authorized, incurred, and made, since the date of the last report, including:
1. For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 2. For each contribution in excess of one hundred dollars (\$100) made to a candidate or slate of candidates for a statewide-elected state office, or to a campaign committee for a candidate or slate of candidates for a statewide-elected state office, the date, name, address, occupation, and employer of each contributor and the spouse of the contributor or, if the contributor or spouse of the contributor is self-employed, the name under which he is doing business, and the amount contributed by each contributor; and
 3. For each contribution in excess of one hundred dollars (\$100) made to any candidate or campaign committee other than those specified in subparagraph 2. or a political issues committee, the full name, address, age if less than the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each other contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 4. The total amount of cash contributions received during the reporting period; and
 5. A complete statement of all expenditures authorized, incurred, or made. The complete statement of expenditures shall include the name, address, and occupation of each person to whom an expenditure is made in excess of twenty-five dollars (\$25), and the amount, date, and purpose of each expenditure.
- (b) Reports of all candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall be made as follows:
1. Candidates as defined in KRS 121.015(8), slates of candidates, campaign committees, political issues committees, and fundraisers which register in the year before the year an election in which the candidate, a slate of candidates, or public question shall appear on the ballot, shall file financial reports with the registry at the end of the first calendar quarter after persons become candidates or slates of candidates, or following registration of the committee or fundraiser, and each calendar quarter thereafter, ending with the last calendar quarter of that year. Candidates, slates of candidates, committees, and registered fundraisers shall make all reports required by this section during the year in which the election takes place;
 2. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the thirty-second day preceding an election, including all previous contributions and expenditures;
 3. All candidates, slates of candidates, campaign committees, political issues committees, and registered fundraisers shall make reports on the fifteenth day preceding the date of the election; and
 4. All reports to the registry shall be received by the registry or postmarked within five (5) days after each filing deadline.

- (4) Except for candidates, slates of candidates, and political issues committees, exempted pursuant to subsection (1)(b) of this section, all candidates, regardless of funds received or expended, campaign committees, political issues committees, and registered fundraisers shall make post-election reports within thirty (30) days after the election.
- (5) In making the preceding reports, the total gross receipts from each of the following categories shall be listed: proceeds from the sale of tickets for events such as testimonial affairs, dinners, luncheons, rallies, and similar fundraising events, mass collections made at the events, and sales of items such as campaign pins, buttons, hats, ties, literature, and similar materials. When any individual purchase or the aggregate purchases of any item enumerated above from a candidate or slate of candidates for a statewide-elected state office or a campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age, if less than the legal voting age, occupation, and employer and the employer of the spouse of the purchaser or, if the purchaser or the spouse of the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. When any individual purchase or the aggregate purchases of any item enumerated above from any candidate or campaign committee other than a candidate or slate of candidates for a statewide-elected state office or campaign committee for a candidate or slate of candidates for a statewide-elected state office exceeds one hundred dollars (\$100), the purchaser shall be identified by name, address, age if less than the legal voting age, occupation, and employer, or if the purchaser is self-employed, the name under which he is doing business, and the amount of the purchase. The lists shall be maintained by the campaign treasurer, political issues committee treasurer, registered fundraiser, or other sponsor for inspection by the registry for six (6) years following the date of the election.
- (6) Each permanent committee, except a federally registered out-of-state permanent committee, inaugural committee, or contributing organization shall make a full report to the registry, on a form provided or using a format approved by the registry, of all money, loans, or other things of value, received by it from any source, and all expenditures authorized, incurred, or made, since the date of the last report, including:
 - (a) For each contribution of any amount made by a permanent committee, the name and business address of the permanent committee, the date of the contribution, the amount contributed, and a description of the major business, social, or political interest represented by the permanent committee;
 - (b) For other contributions in excess of one hundred dollars (\$100), the full name, address, age if under the legal voting age, the date of the contribution, the amount of the contribution, and the employer and occupation of each contributor. If the contributor is self-employed, the name under which he is doing business shall be listed;
 - (c) An aggregate amount of cash contributions, the amount contributed by each contributor, and the date of each contribution; and
 - (d) A complete statement of all expenditures authorized, incurred, or made, including independent expenditures. This report shall be made by a permanent committee, inaugural committee, or contributing organization to the registry on the last day of the first calendar quarter following the registration of the committee with the registry and on the last day of each succeeding calendar quarter until such time as the committee terminates. A contributing organization shall file a report of contributions received and expenditures on a form provided or using a format approved by the registry not later than the last day of each calendar quarter in which contributions are received or expenditures are made. All reports to the registry shall be postmarked or received not later than five (5) days after each filing deadline.
- (7) If the final statement of a candidate, campaign committee, or political issues committee shows an unexpended balance of contributions, continuing debts and obligations, or an expenditure deficit, the campaign treasurer shall file with the registry a supplemental statement of contributions and expenditures not more than thirty (30) days after the deadline for filing the final statement. Subsequent supplemental statements shall be filed annually, to be received by the registry or postmarked not later than ten (10) days after November 1 of each year, until the account shows no unexpended balance, continuing debts and obligations, expenditures, or deficit, or until the year before the candidate or a slate of candidates seeks to appear on the ballot for the same office for which the funds in the campaign account were originally contributed, in which case the candidate or a slate of candidates shall file the supplemental annual report not later than ten (10) days after November 1 of that year or at the end of the first calendar quarter of that year after the candidate or slate of candidates files nomination papers for the next year's primary or regular election. All contributions shall be subject to KRS 121.150.

- (8) All reports filed under the provisions of this chapter shall be a matter of public record open to inspection by any member of the public immediately upon receipt of the report by the registry. A duplicate paper copy of each report filed either on paper or electronically with the registry shall be filed by the candidate, slate of candidates, or committee with the county clerk in the county in which the candidate or persons running as a slate of candidates reside at the same time. County clerks shall maintain these reports for public inspection for a period of one (1) year from the date the last report is required to be filed.
- (9) A candidate or slate of candidates is relieved of the duty personally to file reports and keep records of receipts and expenditures if the candidate or slate states in writing or on forms provided by the registry that:
- (a) Within five (5) business days after personally receiving any contributions, the candidate or slate of candidates shall surrender possession of the contributions to the treasurer of their principal campaign committee without expending any of the proceeds thereof. No contributions shall be commingled with the candidate's or slated candidates' personal funds or accounts. Contributions received by check, money order, or other written instrument shall be endorsed directly to the campaign committee and shall not be cashed or redeemed by the candidate;
 - (b) The candidate or slate of candidates shall not make any unreimbursed expenditure for the campaign, except that this paragraph does not preclude a candidate or slate from making an expenditure from personal funds to the designated principal campaign committee, which shall be reported by the committee as a contribution received; and
 - (c) The waiver shall continue in effect as long as the candidate or slate of candidates complies with the conditions under which it was granted.
- (10) No candidate, slate of candidates, campaign committee, political issues committee, or contributing organization shall use or permit the use of contributions or funds solicited or received for the person or in support of or opposition to a public issue which will appear on the ballot to further the candidacy of the person for a different public office, to support or oppose a different public issue, or to further the candidacy of any other person for public office; except that nothing in this subsection shall be deemed to prohibit a candidate or slate of candidates from using funds in the campaign account to purchase admission tickets for any fundraising event or testimonial affair for another candidate or slate of candidates if the amount of the purchase does not exceed one hundred dollars (\$100) per event or affair. Any funds or contributions solicited or received by or on behalf of a candidate, slate of candidates, or any committee, which has been organized in whole or in part to further any candidacy for the same person or to support or oppose the same public issue, shall be deemed to have been solicited or received for the current candidacy or for the election on the public issue if the funds or contributions are solicited or received at any time prior to the regular election for which the candidate, slate of candidates, or public issue is on the ballot. Any unexpended balance of funds not otherwise obligated for the payment of expenses incurred to further a political issue or the candidacy of a person shall, in whole or in part, at the election of the candidate or committee, escheat to the State Treasury, be returned pro rata to all contributors, or, in the case of a partisan candidate, be transferred to a caucus campaign committee, or to the state or county executive committee of the political party of which the candidate is a member except that a candidate, committee, or an official may retain the funds to further the same public issue or to seek election to the same office or may donate the funds to any charitable, nonprofit, or educational institution recognized under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and any successor thereto.
- ~~[(11) (a) Any publisher of newspapers or magazines, owner or lessor of billboards, or any other person, company, corporation, or business organization offering its communications or advertising services for hire to the public who receives funds for the purchase of advertising services or material, shall file with the registry a copy of the material or communication purchased which supports or opposes any slate of candidates or committee; a copy of the receipt for the funds paid; the name and address of each purchaser; and the source of the funds for the purchase if different than the purchaser.~~
- ~~(b) A radio or television station or network that receives funds for the purchase of advertising services or material that supports or opposes a slate of candidates or committee shall file with the registry a copy of the documentation of paid political campaign advertisements that is required to be maintained by the Federal Communications Commission, along with a cover letter from the manager of the station or network or the manager's designee.~~

- ~~(c) All information required to be reported by paragraphs (a) and (b) of this subsection shall be in the hands of the registry or postmarked not later than the thirtieth day following the primary and regular elections that are held subsequent to the date that the broadcasting or printing of the advertisement occurs.~~
- ~~(d) The provisions of this subsection shall apply only to purchases of advertising services or material to support or oppose a slate of candidates for election to the offices of Governor and Lieutenant Governor.~~
- ~~(e) Notwithstanding KRS 121.990, penalties for violation of this subsection shall be assessed in accordance with the provisions of KRS 121.140(2).]~~
- ~~(11)(12)~~ (a) For the purposes of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a candidate for a particular office, means the period of time beginning January 1 following a regular election for the office and ending December 31 following the next regular election for that office.
- (b) For the purpose of this subsection, "election cycle," as applied to contributions, expenditures, or loans to support or oppose a constitutional amendment or public question which appears on the ballot, means the period of time beginning January 1 following a regular election for any state legislative office and ending December 31 following the next regular election for any state legislative office.
- (c) If adequate and appropriate agency funds are available to implement this subsection, beginning on January 1, 2002, the option of electronic reporting shall be made available by the registry for all of the following:
 1. Candidates for statewide office and slates of candidates that during the election cycle receive contributions or loans in the aggregate of twenty-five thousand dollars (\$25,000) or more, or at any time have a balance in a campaign account or accounts in the aggregate of twenty-five thousand dollars (\$25,000) or more;
 2. Candidates for the General Assembly that during the election cycle receive contributions or loans in the aggregate of twelve thousand five hundred dollars (\$12,500), or at any time have a balance in an aggregate of twelve thousand five hundred dollars (\$12,500) or more; and
 3. Campaign committees, political issues committees, permanent committees, registered fundraisers, contributing organizations, and individuals and entities making independent expenditures that during the election cycle receive contributions or loans in an aggregate of twenty-five thousand dollars (\$25,000) or more, make expenditures in an aggregate of twenty-five thousand dollars (\$25,000) or more, or at any time have a balance in an aggregate of twenty-five thousand dollars (\$25,000) or more.
- ~~(12)(13)~~ Filers specified in subsection (12) of this section shall also continue to file required campaign finance reports in paper format until the registry deems it is no longer necessary. The paper copy shall continue to be the official version for audit and other legal purposes.
- ~~(13)(14)~~ Filers not required to file reports electronically, as set forth in this section, are strongly encouraged to do so voluntarily.
- ~~(14)(15)~~ The date that an electronic or on-line report shall be deemed to have been filed with the registry shall be the date on which it is received by the registry.
- ~~(15)(16)~~ All electronic or on-line filers shall affirm, under penalty of perjury, that the report filed with the registry is complete and accurate.
- ~~(16)(17)~~ Filers who submit computer disks which are not readable, cannot be copied, or are not accompanied by any requisite paper copy shall be deemed to not be in compliance with the requirements set forth in this section.
- ~~(17)(18)~~ No candidate is obligated to file any reports electronically.

Signed by Governor April 12, 2010

CHAPTER 125**(HB 170)**

AN ACT relating to the Commission on Fire Protection Personnel Standards and Education and making an appropriation therefor.

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

➔Section 1. KRS 95A.020 is amended to read as follows:

- (1) There is hereby created the Commission on Fire Protection Personnel Standards and Education, hereinafter called "commission," which shall be attached to the Kentucky Community and Technical College System.
- (2) The commission shall be composed of seventeen (17) members, residents of the State of Kentucky, appointed by the Governor. These members should be persons well qualified by experience or education in the field of fire protection or related fields.
- (3) The membership of the commission shall include:
 - (a) Two (2) volunteer firefighters, neither of which is a fire chief or assistant fire chief;
 - (b) Three (3) paid firefighters, at least one (1) of whom shall be a full-time paid county firefighter and none of whom shall be a fire chief or assistant fire chief;
 - (c) One (1) trustee of a volunteer fire department or fire district who is not a volunteer firefighter;
 - (d) Two (2) fire chiefs of paid fire departments;
 - (e) One (1) licensed physician;
 - (f) Two (2) fire chiefs of volunteer fire departments;
 - (g) One (1) representative of the Kentucky Industrial Response Committee;
 - (h) One (1) representative of the Division of Emergency Management of the Department of Military Affairs;
 - (i) One (1) mayor of a Kentucky city;
 - (j) One (1) county judge/executive;
 - (k) One (1) representative of Kentucky industry or business enterprise; and
 - (l) One (1) representative of the general public.

The chancellor for the Technical Institutions' Branch of the Kentucky Community and Technical College System and the state fire marshal, or their designees, shall serve as ex officio members of the commission. Their designees shall have full voting rights. Appointive members shall be appointed for a term of four (4) years. Any member chosen by the Governor to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he is chosen to succeed.

- (4) ***The commission shall:***
 - (a) ***Meet at least six (6) times per year; and***
 - (b) ***Annually elect chairman, vice chairman, and secretary in accordance with section 2 of this Act; and***
 - (c) ***Set a schedule of at least six (6) meetings for the next twelve (12) months.***
- (5) ***A member of the commission who misses three (3) regular meetings, without the approval of the chairman, in one (1) year shall be deemed to have resigned from the commission and his or her position shall be deemed to be vacant. As used in this subsection, a "year" begins when the first meeting is missed and ends three hundred sixty-five (365) days later or when the third meeting is missed, whichever occurs first. The Governor shall appoint a similarly qualified person to fill the vacancy within ninety (90) days of the vacancy occurring. The failure of a commission member to attend a special or emergency meeting shall not result in any penalty. A person removed under this subsection shall not be reappointed to the commission for at least ten (10) years after removal.***

- (6) Members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their functions.
- (7)(5) Members of the commission appointed pursuant to this section shall first be appointed on July 15, 1980. The terms of members appointed earlier shall terminate on July 15, 1980, but the Governor may reappoint those members who qualify under the provisions of this section.

➔Section 2. KRS 95A.030 is amended to read as follows:

At ~~the~~^{its} first meeting *of the commission after January 1 of each year*~~[succeeding new appointments]~~, the commission shall elect a chairman, vice chairman, and secretary from among the appointed members to fill regular terms. A majority of the members shall constitute a quorum.

➔Section 3. KRS 95A.040 is amended to read as follows:

- (1) The commission shall make full and complete studies, recommendations and reports to the Governor, the Kentucky Community and Technical College System, and the Legislature for the purpose of establishing:
- (a) Minimum standards and education of fire protection personnel appointed to positions in municipal fire departments, who are to be engaged in fire protection to include fire suppression, fire prevention, arson investigation, and other allied fields;
 - (b) Basic minimum courses of training for fire protection personnel;
 - (c) Procedure for the certification of fire protection personnel and the certification of fire protection instructors. *The commission may provide financial support for certification, and this support may include the cost of training, training aids, and salaries of instructors;* and
 - (d) Administrative regulations to require that each volunteer firefighter be able to read, write and understand the English language, is a person of sobriety and integrity, is and has been an orderly, law-abiding citizen, is a citizen of the United States, a permanent resident of the United States, or otherwise lawfully present in the United States, and has reached the age of eighteen (18).
- (2) (a) The commission shall establish by administrative regulation a candidate physical agility test to be administered to all candidates for professional firefighter positions. For the provisions of this section, "professional firefighter" shall include any paid firefighter who is a member of a:
- 1. Municipal fire department organized under KRS Chapter 95;
 - 2. Fire protection district organized under KRS Chapter 75;
 - 3. County fire department created pursuant to KRS Chapter 67;
 - 4. Fire department under the jurisdiction of a consolidated local government;
 - 5. Fire department under the jurisdiction of a charter county government;
 - 6. Fire department under the jurisdiction of an urban-county government;
 - 7. Fire department under the jurisdiction of a unified local government; or
 - 8. Fire department created under KRS Chapter 273.
- (b) The candidate physical agility test shall establish uniform standards of the physical abilities required for all firefighter candidates. The candidate physical agility test shall be required for all firefighter candidates hired on or after January 1, 2013.
 - (c) After June 25, 2009, the commission shall establish procedures for individual firefighter candidates to voluntarily take the candidate physical agility test. The commission shall also establish procedures for fire departments listed under paragraph (a) of this subsection to voluntarily require firefighter candidates hired by them to have successfully completed the candidate physical agility test. The procedures in this paragraph shall be established by administrative regulation.
 - (d) The candidate physical agility test shall be designed to assess a candidate's ability to handle the physical demands of fighting fires and shall include exercises that simulate the most common tasks involved in fire suppression. These exercises shall include but are not limited to stair climb, hose drag, equipment carry, ladder raise and extension, forcible entry, search, rescue, ceiling breach, and pull.

- (e) The commission may establish a fee to be charged to candidates participating in the candidate physical agility test. The fee shall be no greater than an amount specified by the commission to cover the costs of implementing and administering the candidate physical agility test.
 - (f) The commission shall promulgate administrative regulations, pursuant to KRS Chapter 13A, to establish and implement the candidate physical agility test and to carry out any other responsibility assigned by this section. The administrative regulations shall be promulgated no later than October 1, 2009.
- (3) The commission shall have the authority to:
- (a) Certify fire protection training and education programs as having attained the minimum required standards suggested by ~~the~~^{such} commission, ***and provide financial support for the provision of training, training aids, and salaries of instructors in order to achieve these minimum standards;***
 - (b) Certify instructors as having qualified as fire protection instructors under such conditions as the commission may prescribe;
 - (c) Direct research in the field of fire protection and accept gifts and grants for such purposes; and
 - (d) Recommend curricula for advanced courses and seminars in fire science training in colleges and institutions of higher education.
- (4) The commission shall have authority to receive and, to the extent required by federal law, to disburse all grants and funds from the federal government for the purpose of fire protection personnel training and education. Except as otherwise provided by law, the commission shall administer all state programs and all state and federally funded grant programs related to fire protection personnel training and education.

Signed by Governor April 12, 2010

CHAPTER 126

(HB 165)

AN ACT relating to health insurance.

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

➔Section 1. KRS 304.17B-015 is amended to read as follows:

- (1) Any individual who is an eligible individual ***and a resident of Kentucky*** is eligible for coverage under Kentucky Access, except as specified in paragraphs (a), (b), (d), and (e) of subsection (4) of this section.
- (2) Any individual who is not an eligible individual who has been a resident of the Commonwealth for at least twelve (12) months immediately preceding the application for Kentucky Access coverage is eligible for coverage under Kentucky Access if one (1) of the following conditions is met:
 - (a) The individual has been rejected by at least one (1) insurer for coverage of a health benefit plan that is substantially similar to Kentucky Access coverage;
 - (b) The individual has been offered coverage substantially similar to Kentucky Access coverage at a premium rate greater than the Kentucky Access premium rate at the time of enrollment or upon renewal; or
 - (c) The individual has a high-cost condition listed in KRS 304.17B-001.
- (3) A Kentucky Access enrollee whose premium rates exceed claims for a three (3) year period shall be issued a notice of insurability. The notice shall indicate that the Kentucky Access enrollee has not had claims exceed premium rates for a three (3) year period and may be used by the enrollee to obtain insurance in the regular individual market.
- (4) An individual shall not be eligible for coverage under Kentucky Access if:
 - (a) ***I.*** The individual has, or is eligible for, on the effective date of coverage under Kentucky Access, substantially similar coverage under another contract or policy, unless the individual was issued coverage from a GAP participating insurer as a GAP qualified individual prior to January 1,

2001. A GAP qualified individual shall be automatically eligible for coverage under Kentucky Access without regard to the requirements of subsection (2) of this section; **or**

2. *For individuals meeting the requirements of KRS 304.17A-005(11), the individual has, or is eligible for, on the effective date of coverage under Kentucky Access, coverage under a group health plan.*

An individual who is ineligible for coverage pursuant to this paragraph shall not preclude the individual's spouse or dependents from being eligible for Kentucky Access coverage. As used in this paragraph, "eligible for" includes any individual ***and an individual's spouse or dependent*** who was eligible for coverage but waived that coverage. That individual ***and the individual's spouse or dependent*** shall be ineligible for Kentucky Access coverage through the period of waived coverage;

- (b) The individual is eligible for coverage under Medicaid or Medicare;
- (c) The individual previously terminated Kentucky Access coverage and twelve (12) months have not elapsed since the coverage was terminated, unless the individual demonstrates a good faith reason for the termination;
- (d) Except for covered benefits paid under the standard health benefit plan as specified in KRS 304.17B-019, Kentucky Access has paid two million dollars (\$2,000,000) in covered benefits per individual. The maximum limit under this paragraph may be increased by the office; ~~or~~
- (e) The individual is confined to a public institution or incarcerated in a federal, state, or local penal institution or in the custody of federal, state, or local law enforcement authorities, including work release programs; **or**
- (f) ***The individual's premium, deductible, coinsurance, or copayment is partially or entirely paid or reimbursed by an individual or entity other than the individual or the individual's parent, grandparent, spouse, child, stepchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, sibling, brother-in-law, sister-in-law, grandchild, guardian, or court-appointed payor.***

- (5) The coverage of any person who ceases to meet the requirements of this section or the requirements of any administrative regulation promulgated under this subtitle may be terminated.

➔Section 2. KRS 304.17B-019 is amended to read as follows:

- (1) Kentucky Access shall offer at least three (3) health benefit plans to enrollees, which shall be similar to the health benefit plans currently being marketed to individuals in the individual market. ~~[One (1) plan shall be the standard health benefit plan set forth in KRS 304.17A-250.]~~
- (2) At least one (1) plan shall be offered in a traditional fee-for-service form. At least one (1) plan may be offered in a managed-care form at such time as the office can establish an appropriate provider network in available service areas.
- (3) The office shall provide for utilization review and case management for all health benefit plans issued under Kentucky Access.
- (4) The office shall review and compare health benefit plans provided under Kentucky Access to health benefit plans provided in the individual market. Based on the review, the office may amend or replace the health benefit plans issued under Kentucky Access ~~[except for the standard health benefit plan as specified in subsection (1) of this section].~~
- (5) Individuals who apply and are determined eligible for health benefit plans issued under Kentucky Access shall have coverage effective the first day of the month after the application month.
- (6) For eligible individuals, health benefit plans issued under Kentucky Access shall not impose any pre-existing condition exclusions. In all other cases, a pre-existing condition exclusion may be imposed in accordance with KRS 304.17A-230.
- (7) Health benefit plans issued under Kentucky Access shall be guaranteed renewable except as otherwise specified in KRS 304.17B-015 and KRS 304.17A-240.
- (8) All health benefit plans issued under Kentucky Access shall provide that, upon the death or divorce of the individual in whose name the contract was issued, every other person covered in the contract may elect within sixty-three (63) days to continue under the same or a different contract.

- (9) Health benefit plans issued under Kentucky Access shall coordinate benefits with other health benefit plans and be the payor of last resort.
- (10) ~~[Except for the standard health benefit plan specified in subsection (1) of this section,]~~ Health benefit plans issued under Kentucky Access shall pay covered benefits up to a lifetime limit of two million dollars (\$2,000,000) per covered individual. The maximum limit under this subsection may be increased by the office.

➔Section 3. KRS 344.040 is amended to read as follows:

- (1) It is an unlawful practice for an employer:

(a)~~[(1)]~~ To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;

(b)~~[(2)]~~ To limit, segregate, or classify employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect status as an employee, because of the individual's race, color, religion, national origin, sex, or age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking; or

(c)~~[(3)]~~ To require as a condition of employment that any employee or applicant for employment abstain from smoking or using tobacco products outside the course of employment, as long as the person complies with any workplace policy concerning smoking.

- (2) (a) *A difference in employee contribution rates for smokers and nonsmokers in relation to an employer-sponsored health plan shall not be deemed to be an unlawful practice in violation of this section.*
- (b) *The offering of incentives or benefits offered by an employer to employees who participate in a smoking cessation program shall not be deemed to be an unlawful practice in violation of this section.*

Signed by Governor April 12, 2010

CHAPTER 127

(HB 146)

AN ACT relating to retirement.

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

➔Section 1. KRS 61.645 is amended to read as follows:

- (1) The County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System shall be administered by the board of trustees of the Kentucky Retirement Systems composed of nine (9) members, who shall be selected as follows:
- (a) The secretary of the Personnel Cabinet shall serve as trustee for as long as he occupies the position of secretary under KRS 18A.015, except as provided under subsections (5) and (6) of this section;
 - (b) Two (2) trustees, who shall be members or retired from the County Employees Retirement System, elected by the members and retired members of the County Employees Retirement System;
 - (c) One (1) trustee, who shall be a member or retired from the State Police Retirement System, elected by the members and retired members of the State Police Retirement System;
 - (d) Two (2) trustees, who shall be members or retired from the Kentucky Employees Retirement System, elected by the members and retired members of the Kentucky Employees Retirement System; and
 - (e) Three (3) trustees, appointed by the Governor of the Commonwealth. Of the three (3) trustees appointed by the Governor:~~;~~

1. One (1) *trustee* shall be knowledgeable about the impact of pension requirements on local governments; *and*
 2. *Two (2) trustees shall have investment experience. For purposes of this subparagraph, a trustee with "investment experience" means an individual who does not have a conflict of interest, as provided by KRS 61.655, and who has at least ten (10) years of experience in one (1) of the following areas of expertise:*
 - a. *A portfolio manager acting in a fiduciary capacity;*
 - b. *A professional securities analyst or investment consultant;*
 - c. *A current or retired employee or principal of a trust institution, investment or finance organization, or endowment fund acting in an investment related capacity;*
 - d. *A chartered financial analyst in good standing as determined by the CFA Institute;*
 - e. *A university professor, teaching economics or investment-related studies; or*
 - f. *Any other professional with exceptional experience in the field of public or private finances.*
- (2) The board is hereby granted the powers and privileges of a corporation, including but not limited to the following powers:
 - (a) To sue and be sued in its corporate name;
 - (b) To make bylaws not inconsistent with the law;
 - (c) To conduct the business and promote the purposes for which it was formed;
 - (d) To contract for investment counseling, actuarial, auditing, medical, and other professional or technical services as required to carry out the obligations of the board without limitation, notwithstanding the provisions of KRS Chapters 45, 45A, 56, and 57;
 - (e) To purchase fiduciary liability insurance;
 - (f) To acquire, hold, sell, dispose of, pledge, lease, or mortgage, the goods or property necessary to exercise the board's powers and perform the board's duties without limitation, notwithstanding the limitations of KRS Chapters 45, 45A, and 56; and
 - (g) The board shall reimburse any trustee, officer, or employee for any legal expense resulting from a civil action arising out of the performance of his official duties.
- (3) Notwithstanding the provisions of subsection (1) of this section, each trustee shall serve a term of four (4) years or until his successor is duly qualified except as otherwise provided in this section. An elected trustee shall not serve more than three (3) consecutive four (4) year terms. An elected trustee who has served three (3) consecutive terms may be elected again after an absence of four (4) years from the board.
- (4)
 - (a) The trustees selected by the membership of each of the various retirement systems shall be elected by ballot. For each trustee to be elected, the board may nominate, not less than six (6) months before a term of office of a trustee is due to expire, three (3) constitutionally eligible individuals.
 - (b) Individuals may be nominated by the retirement system members which are to elect the trustee by presenting to the executive director, not less than four (4) months before a term of office of a trustee is due to expire, a petition, bearing the name, Social Security number, and signature of no less than one-tenth (1/10) of the number voting in the last election by the retirement system members.
 - (c) Within four (4) months of the nominations made in accordance with paragraphs (a) and (b) of this subsection, the executive director shall cause to be prepared an official ballot. The ballot shall carry the name, address, and position title of each individual nominated by the board and by petition. Provisions shall also be made for write-in votes.
 - (d) The ballots shall be distributed to the eligible voters by mail to their last known residence address.
 - (e) The ballots shall be addressed to the Kentucky Retirement Systems in care of a predetermined box number at a United States Post Office located within Kentucky. Access to this post office box shall be

limited to the board's contracted auditing firm. The individual receiving a plurality of votes shall be declared elected.

- (f) The eligible voter shall cast his ballot by checking a square opposite the name of the candidate of his choice. He shall sign and mail the ballot at least thirty (30) days prior to the date the term to be filled is due to expire. The latest mailing date shall be printed on the ballot.
 - (g) The board's contracted auditing firm shall report in writing the outcome to the chair of the board of trustees. Cost of an election shall be payable from the funds of the system for which the trustee is elected.
 - (h) For purposes of this subsection, an eligible voter shall be a person who was a member of the retirement system on December 31 of the year preceding the election year.
- (5) Any vacancy which may occur in an appointed position shall be filled in the same manner which provides for the selection of the particular trustee, and any vacancy which may occur in an elected position shall be filled by appointment by a majority vote of the remaining trustees, and if the secretary of the Personnel Cabinet resigns his position as trustee, it shall be filled by appointment made by the Governor; however, any vacancy shall be filled only for the duration of the unexpired term.
- (6) (a) Membership on the board of trustees shall not be incompatible with any other office unless a constitutional incompatibility exists. No trustee shall serve in more than one (1) position as trustee on the board; and if a trustee holds more than one (1) position as trustee on the board, he shall resign a position.
- (b) A trustee shall be removed from office upon conviction of a felony or for a finding of a violation of any provision of KRS 11A.020 or 11A.040 by a court of competent jurisdiction.
- (c) A current or former employee of Kentucky Retirement Systems shall not be eligible to serve as a member of the board.
- (7) Trustees who do not otherwise receive a salary from the State Treasury shall receive a per diem of eighty dollars (\$80) for each day they are in session or on official duty, and they shall be reimbursed for their actual and necessary expenses in accordance with state administrative regulations and standards.
- (8) The board shall meet at least once in each quarter of the year and may meet in special session upon the call of the chair or the executive director. It shall elect a chair and a vice chair. A majority of the trustees shall constitute a quorum and all actions taken by the board shall be by affirmative vote of a majority of the trustees present.
- (9) (a) The board of trustees shall appoint or contract for the services of an executive director and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A and 45A and KRS 64.640. The executive director shall be the chief administrative officer of the board.
- (b) The board of trustees shall authorize the executive director to appoint the employees deemed necessary to transact the business of the system. For an appointee deemed to be in a policy-making position, the board shall determine the compensation and other terms of employment for the policy-making position without limitation of the provisions of KRS Chapter 18A. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and control of determining and maintaining an adequate complement of employees shall be under the exclusive jurisdiction of the board of trustees.
- (c) Effective December 1, 2002, all employees of the Kentucky Retirement Systems shall be transferred to a personnel system adopted by the board. Employees of Kentucky Retirement Systems covered by the personnel system adopted by the board shall be:
1. Provided the same health insurance coverage as all other state government employees as provided in KRS 18A.225;
 2. Eligible to participate in the deferred compensation system provided for all state government employees as provided in KRS 18A.250 to 18A.265;
 3. Provided the same life insurance coverage provided all state employees as provided in KRS 18A.205 to 18A.215;

4. Reimbursed for all reasonable and necessary travel expenses and disbursements incurred or made in the performance of official duties in accordance with KRS Chapter 45;
 5. Ensured equal employment opportunity regardless of race, color, gender, religion, national origin, disability, sexual orientation, or age;
 6. Given those holidays and rights granted to state employees as provided in KRS 18A.190;
 7. Paid a salary not less than the salary paid as of the date of transfer to the personnel system, unless voluntarily demoted or involuntarily demoted for cause;
 8. Credited with all accumulated sick leave, compensatory time, and annual leave accumulated in accordance with KRS Chapter 18A, and for an employee leaving service, the system shall attest to the employee's accumulated sick leave, compensatory time, and annual leave which shall be credited with other state and county employers to the extent provided for by statute or policy. The Kentucky Retirement Systems may, at the discretion of the board, accept from other state and county employers all accumulated sick leave, compensatory time, and annual leave for an employee leaving a state or county employer and accepting employment with the Kentucky Retirement Systems. The executive branch shall accept from the Kentucky Retirement Systems all accumulated sick leave, compensatory time, and annual leave for an employee leaving the Kentucky Retirement Systems and accepting employment with the executive branch. The Kentucky Retirement Systems shall accept from the executive branch all accumulated sick leave, compensatory time, and annual leave for an employee leaving the executive branch and accepting employment with the Kentucky Retirement Systems;
 9. Classified with status upon transfer to the personnel system on December 1, 2002, if the employee was classified with status as a merit employee under KRS Chapter 18A. Any employee of the Kentucky Retirement Systems transferred on December 1, 2002, during the probationary period before earning classified status as a merit system employee under KRS Chapter 18A shall transfer all accrued probationary time and the time shall be credited to the probationary time required to attain classified status in the personnel system;
 10. Ensured a grievance appeal procedure and the employee's right to have a representative present at each step of the grievance procedure; and
 11. Ensured of the right of appeal in a manner consistent with the provisions of KRS 18A.095 to the Kentucky Personnel Board and employees classified with status in the personnel system shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (d) The board shall adopt by administrative regulation a fair, equitable, and comprehensive personnel policy with a minimum of the following provisions for the personnel system:
1. A code of conduct including provisions describing performance of duties, abuse of position, conflicts of interest, and outside employment;
 2. An appointments plan including provisions describing the appointing authority, appointments, equal employment policy, sexual harassment policy, and drug-free workplace policy;
 3. A classification plan including provisions describing class specifications, position actions, and employee actions;
 4. A compensation plan based on qualifications, experience, and responsibilities and including provisions which describe a salary schedule, salary adjustments, salary advancements, and an employee suggestion program;
 5. Separations, disciplinary actions, and appeal policies including provisions describing classified with status, exemptions from classified with status, layoffs, abolishment of position, dismissals and notification of dismissal, dismissals during probationary period, disciplinary actions, right of appeal, grievance and appeal procedures, and an employee grievance and appeal committee;
 6. Service and benefits regulations including provisions describing hours of work, fringe benefits, workers' compensation, payroll deductions, holidays, inclement weather days, compensatory time, retirement, resignations, employee evaluations, and political activities; and

7. Leave policies including provisions describing special leave, annual leave, court leave and jury duty, military leave, voting leave, educational leave, sick leave, family medical leave, leave without pay, absence without leave, and blood donation leave.
- (e) The board shall require the executive director and the employees as it thinks proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
- (f) The board shall establish a system of accounting.
- (g) The board shall do all things, take all actions, and promulgate all administrative regulations, not inconsistent with the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, necessary or proper in order to carry out the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852. Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 conform with federal statute or regulation and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance. Provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852 which conflict with federal statute or regulation or qualification under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance shall not be available. The board shall have the authority to promulgate administrative regulations to conform with federal statute and regulation and to meet the qualification requirements under 26 U.S.C. sec. 401(a), including an administrative regulation to comply with 26 U.S.C. sec. 401(a)(9). The board shall have the authority to promulgate an administrative regulation to comply with any consent decrees entered into by the board in Civil Action No. 3:99CV500(C) in order to bring the systems into compliance with the Age Discrimination in Employment Act, 29 U.S.C. Section 621, et seq., as amended.
- (10) All employees of the board shall serve during its will and pleasure. Notwithstanding any statute to the contrary, employees shall not be considered legislative agents under KRS 6.611.
- (11) The Attorney General, or an assistant designated by him, may attend each meeting of the board and may receive the agenda, board minutes, and other information distributed to trustees of the board upon request. The Attorney General may act as legal adviser and attorney for the board, and the board may contract for legal services, notwithstanding the limitations of KRS Chapter 12 or 13B.
- (12) The system shall publish an annual financial report showing all receipts, disbursements, assets, and liabilities. The annual report shall include a copy of an audit conducted in accordance with generally accepted auditing standards. The board may select an independent certified public accountant or the Auditor of Public Accounts to perform the audit. If the audit is performed by an independent certified public accountant, the Auditor of Public Accounts shall not be required to perform an audit pursuant to KRS 43.050(2)(a), but may perform an audit at his discretion. All proceedings and records of the board shall be open for inspection by the public. The system shall make copies of the audit required by this subsection available for examination by any member, retiree, or beneficiary in the office of the executive director of the Kentucky Retirement Systems and in other places as necessary to make the audit available to all members, retirees, and beneficiaries. A copy of the annual audit shall be sent to the Legislative Research Commission no later than ten (10) days after receipt by the board.
- (13) All expenses incurred by or on behalf of the system and the board in the administration of the system during a fiscal year shall be paid from the retirement allowance account. Any other statute to the contrary notwithstanding, authorization for all expenditures relating to the administrative operations of the system shall be contained in the biennial budget unit request, branch budget recommendation, and the financial plan adopted by the General Assembly pursuant to KRS Chapter 48.
- (14) Any person adversely affected by a decision of the board, except as provided under subsection (16) of this section or KRS 61.665, involving KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852, may appeal the decision of the board to the Franklin Circuit Court within sixty (60) days of the board action.
- (15) (a) A trustee shall discharge his duties as a trustee, including his duties as a member of a committee:
1. In good faith;
 2. On an informed basis; and
 3. In a manner he honestly believes to be in the best interest of the Kentucky Retirement Systems.

- (b) A trustee discharges his duties on an informed basis if, when he makes an inquiry into the business and affairs of the Kentucky Retirement Systems or into a particular action to be taken or decision to be made, he exercises the care an ordinary prudent person in a like position would exercise under similar circumstances.
 - (c) In discharging his duties, a trustee may rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:
 - 1. One (1) or more officers or employees of the Kentucky Retirement Systems whom the trustee honestly believes to be reliable and competent in the matters presented;
 - 2. Legal counsel, public accountants, actuaries, or other persons as to matters the trustee honestly believes are within the person's professional or expert competence; or
 - 3. A committee of the board of trustees of which he is not a member if the trustee honestly believes the committee merits confidence.
 - (d) A trustee shall not be considered as acting in good faith if he has knowledge concerning the matter in question that makes reliance otherwise permitted by paragraph (c) of this subsection unwarranted.
 - (e) Any action taken as a trustee, or any failure to take any action as a trustee, shall not be the basis for monetary damages or injunctive relief unless:
 - 1. The trustee has breached or failed to perform the duties of the trustee's office in compliance with this section; and
 - 2. In the case of an action for monetary damages, the breach or failure to perform constitutes willful misconduct or wanton or reckless disregard for human rights, safety, or property.
 - (f) A person bringing an action for monetary damages under this section shall have the burden of proving by clear and convincing evidence the provisions of paragraph (e)1. and 2. of this subsection, and the burden of proving that the breach or failure to perform was the legal cause of damages suffered by the Kentucky Retirement Systems.
 - (g) Nothing in this section shall eliminate or limit the liability of any trustee for any act or omission occurring prior to July 15, 1988.
 - (h) In discharging his or her administrative duties under this section, a trustee shall strive to administer the retirement system in an efficient and cost-effective manner for the taxpayers of the Commonwealth of Kentucky.
- (16) When an order by the system substantially impairs the benefits or rights of a member, retired member, or recipient, except action which relates to entitlement to disability benefits, the affected member, retired member, or recipient may request a hearing to be held in accordance with KRS Chapter 13B. The board may establish an appeals committee whose members shall be appointed by the chair and who shall have authority to act upon the recommendations and reports of the hearing officer on behalf of the board. The member, retired member, or recipient aggrieved by a final order of the board following the hearing may appeal the decision to the Franklin Circuit Court, in accordance with KRS Chapter 13B.
- (17) The board shall give the Kentucky Education Support Personnel Association twenty-four (24) hours notice of the board meetings, to the extent possible.
- (18) The board shall establish a formal trustee education program for all trustees of the board. The program shall include but not be limited to the following:
- (a) A required orientation program for all new trustees elected or appointed to the board. The orientation program shall include training on:
 - 1. Benefits and benefits administration;
 - 2. Investment concepts, policies, and current composition and administration of retirement systems investments;
 - 3. Laws, bylaws, and administrative regulations pertaining to the retirement systems and to fiduciaries; and
 - 4. Actuarial and financial concepts pertaining to the retirement systems.

If a trustee fails to complete the orientation program within one (1) year from the beginning of his or her first term on the board, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the trustee has completed the orientation program;

- (b) Annual required training for board members on the administration, benefits, financing, and investing of the retirement systems. If a trustee fails to complete the annual required training during the calendar or fiscal year, the retirement systems shall withhold payment of the per diem and travel expenses due to the board member under this section and KRS 16.640 and 78.780 until the board member has met the annual training requirements; and
 - (c) The retirement systems shall incorporate by reference in an administrative regulation, pursuant to KRS 13A.2251, the trustee education program.
- (19) In order to improve public transparency regarding the administration of the systems, the board of trustees shall adopt a best practices model by posting the following information to the retirement systems' Web site and shall make available to the public:
- (a) Meeting notices and agendas for all meetings of the board. Notices and agendas shall be posted to the retirement systems' Web site at least seventy-two (72) hours in advance of the board or committee meetings, except in the case of special or emergency meetings as provided by KRS 61.823;
 - (b) The Comprehensive Annual Financial Report with the information as follows:
 - 1. A general overview and update on the retirement systems by the executive director;
 - 2. A listing of the board of trustees;
 - 3. A listing of key staff;
 - 4. An organizational chart;
 - 5. Financial information, including a statement of plan net assets, a statement of changes in plan net assets, an actuarial value of assets, a schedule of investments, a statement of funded status and funding progress, and other supporting data;
 - 6. Investment information, including a general overview, a list of the retirement system's professional consultants, a total return on retirement systems investments over a historical period, an investment summary, contracted investment management expenses, transaction commissions, and a schedule of investments;
 - 7. The annual actuarial valuation report on the pension benefit and the medical insurance benefit; and
 - 8. A general statistical section, including information on contributions, benefit payouts, and retirement systems' demographic data;
 - (c) All external audits;
 - (d) All board minutes or other materials that require adoption or ratification by the board of trustees. The items listed in this paragraph shall be posted within seventy-two (72) hours of adoption or ratification of the board;
 - (e) All bylaws, policies, or procedures adopted or ratified by the board of trustees;
 - (f) The retirement systems' summary plan description;
 - (g) A document containing an unofficial copy of the statutes governing the systems administered by Kentucky Retirement Systems;
 - (h) A listing of the members of the board of trustees and membership on each committee established by the board, including any investment committees;
 - (i) All investment holdings and commissions for each fund administered by the board. The board shall update the list of holdings and commissions on a quarterly basis for fiscal years beginning on or after July 1, 2008; and

- (j) An update of investment returns, asset allocations, and the performance of the funds against benchmarks adopted by the board for each fund and for each asset class administered by the board. The update shall be posted on a quarterly basis for fiscal years beginning on or after July 1, 2008.
- (20) Notwithstanding the requirements of subsection (19) of this section, the retirement systems shall not be required to furnish information that is protected under KRS 61.661, exempt under KRS 61.878, or that, if disclosed, would compromise the retirement systems' ability to competitively invest in real estate or other asset classes, or to competitively negotiate vendor fees.

➔Section 2. KRS 61.650 is amended to read as follows:

- (1) (a) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such funds in accordance with federal law.
- (b) *1.* The board ~~shall~~~~may~~ establish an investment committee whose ~~membership~~~~members~~ shall be ***composed of the following:***
 - a. The two (2) trustees appointed by the Governor pursuant to subsection (1)(e)2. of Section 1 of this Act; and*
 - b. Three (3) trustees* appointed by the board chair.
- 2.* The investment committee shall have authority to implement policy and act on behalf of the board on all investment-related matters with full power to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds.
- (c) A trustee, officer, employee, or other fiduciary shall discharge duties with respect to the retirement system:
 - 1. Solely in the interest of the members and beneficiaries;
 - 2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
 - 3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
 - 4. Impartially, taking into account any differing interests of members and beneficiaries;
 - 5. Incurring any costs that are appropriate and reasonable; and
 - 6. In accordance with a good-faith interpretation of the law governing the retirement system.
- (2) All securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems.
- (3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.
- (5) ***Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.***

➔Section 3. KRS 16.642 is amended to read as follows:

- (1) The board shall be the trustee of the several funds created by KRS 16.505 to 16.652 and shall have full power to invest and reinvest such funds, subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law,

permitted for the investment of funds by fiduciaries in this state, except that the board may, at its discretion, purchase common stock in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.

- (2) All securities acquired under authority of KRS 16.505 to 16.652 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225, and every change in registration, by reason of sale or assignment of such securities shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems.
- (3) The board, in keeping with its responsibility as trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) *The investment committee established pursuant to Section 2 of this Act shall serve as the investment committee of the funds established by KRS 16.505 to 16.652.*
- (5) *Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.*

➔Section 4. KRS 78.790 is amended to read as follows:

- (1) The board shall be the trustee of the several funds created by KRS 78.510 to 78.852, and shall have full power to invest and reinvest such funds subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state except that the board may, at its discretion, purchase common stocks in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.
- (2) All securities acquired under the authority of KRS 78.510 to 78.852 shall be registered in the name Kentucky Retirement Systems or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished by the signatures of the chair of the board of trustees or a trustee appointed by the chair and executive director of the systems.
- (3) The board, in keeping with its responsibility as the trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) *The investment committee established pursuant to Section 2 of this Act shall serve as the investment committee of the funds established by KRS 78.510 to 78.852.*
- (5) *Based upon market value at the time of purchase, the board shall limit the amount of assets managed by any one (1) active or passive investment manager to fifteen percent (15%) of the assets in the pension and insurance funds.*

Signed by Governor April 12, 2010

CHAPTER 128

(HB 316)

AN ACT relating to oaths.

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

➔Section 1. KRS 62.020 is amended to read as follows:

- (1) The official oath of any officer may be administered by:

- (a) Any *active, retired, or senior status justice or judge of the Court of Justice*~~[state]~~ or *active, retired, or senior status* federal judge, with Kentucky jurisdiction;
 - (b) Any member of the General Assembly may administer an oath statewide; or
 - (c) Any county judge/executive, notary public, clerk of a court, or justice of the peace, within his district or county.
- (2) For those officers listed in paragraphs (a), (b), (c), (d), and (e) of this subsection, the person administering the oath shall certify in writing that the oath of office was administered and the date of its administration. The person administering the oath shall file a written certification:
- (a) In the Secretary of State's office for:
 - 1. A member of the General Assembly;
 - 2. An officer elected from the state at large;
 - 3. An officer elected from a district greater than one (1) county; or
 - 4. An officer elected from a city whose boundaries extend beyond those of a single county;
 - (b) In the Secretary of State's office for:
 - 1. An officer appointed cabinet secretary; or
 - 2. An officer appointed a deputy or assistant to an elected constitutional officer and who is required by separate statute to take the oath of office;
 - (c) In the Governor's office for the Secretary of State and the assistant Secretary of State;
 - (d) In the office of the county clerk for the county from which an officer is elected to countywide office or office for a district within the county. However, the requirements of this paragraph shall not apply when the requirements of paragraph (a) of this subsection apply; and
 - (e) In the office of a circuit clerk for a county clerk within the jurisdiction of that circuit clerk.

Signed by Governor April 12, 2010

CHAPTER 129

(HB 216)

AN ACT relating to special Fraternal Order of Police license plates.

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

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

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

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

- (j) Emergency management:
 - 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (k) Fraternal Order of Police:
 - 1. Initial Fee: ~~\$45~~~~(\$40)~~ (\$37 SF/\$3 CF/~~\$5 EF to the Kentucky FOP Death Benefit Fund~~~~(\$0 EF)~~).
 - 2. Renewal Fee:~~\$25~~~~(\$15)~~ (\$12 SF/\$3 CF/~~\$10 EF to the Kentucky FOP Death Benefit Fund~~~~(\$0 EF)~~).
- (l) Law Enforcement Memorial:
 - 1. Initial Fee: \$38 (\$25 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to the Kentucky Law Enforcement Memorial Foundation, Inc.).
- (m) Personalized plates:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$40 (\$37 SF/\$3 CF/\$0 EF).
- (n) Street rods:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (o) Nature plates:
 - 1. Initial Fee: \$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
 - 2. Renewal Fee:\$25 (\$12 SF/\$3 CF/\$10 EF to Kentucky Heritage Land Conservation Fund established under KRS 146.570).
- (p) Amateur radio:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (q) Kentucky General Assembly:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$20 (\$12 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (r) Kentucky Court of Justice:
 - 1. Initial Fee: \$40 (\$37 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$8 (\$0 SF/\$3 CF/\$5 EF to the veterans' program trust fund established under KRS 40.460).
- (s) Masons:
 - 1. Initial Fee: \$28 (\$25 SF/\$3 CF/\$0 EF).
 - 2. Renewal Fee:\$15 (\$12 SF/\$3 CF/\$0 EF).
- (t) Collegiate plates:
 - 1. Initial Fee: \$50 (\$37 SF/\$3 CF/\$10 EF to the general scholarship fund of the university whose name will be borne on the plate).

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

Signed by Governor April 12, 2010

CHAPTER 130

(HB 356)

AN ACT relating to real estate brokers and salesmen.

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

➔Section 1. KRS 324.090 is amended to read as follows:

- (1) Licenses shall expire ***annually and shall be renewed each year on the date determined by the commission by administrative regulation***~~on the thirty-first day of March of each year~~. The commission shall renew a license for each ensuing year, in the absence of any reason or condition which might warrant the refusal of the granting of the license, upon receipt of the written request of the applicant and payment of the annual fees required. A new license shall be mailed only if the licensee's name, address, status, or affiliation changes.
- (2) A fine not to exceed two hundred dollars (\$200) shall be assessed for failure to renew on time before a new license is issued. Failure to receive a renewal form shall not constitute an adequate excuse for failure to renew on time nor shall failure of the mail.
- (3) Any license not renewed at the end of the renewal year as prescribed by the commission shall automatically revert to expired status. An expired license may be reactivated before a lapse of one (1) year, if delinquent fees are paid by the licensee.

➔Section 2. KRS 324.112 is amended to read as follows:

- (1) No principal broker shall maintain a branch office outside a ***one hundred (100)***~~fifty (50)~~ mile radius of the main office without having a broker managing the branch office.
- (2) A sales associate with two (2) years experience in the real estate business, averaging at least twenty (20) hours per week for a period of twenty-four (24) months prior, may manage a branch office inside a ***one hundred (100)***~~fifty (50)~~ mile radius of the main office.
- (3) The principal broker shall register any branch office with the commission within ten (10) days of the creation of the branch office.
- (4) The licenses of all licensees shall be kept on file in the office in which they are actively engaged and affiliated.
- (5) A principal broker in the process of closing a real estate brokerage business may affiliate temporarily with another principal broker if:
 - (a) No other licensee is affiliated with the former principal broker;
 - (b) Both the former and the latter principal brokers represent to the commission that the affiliation is for the purpose of closing the former principal broker's business; and
 - (c) Both the former and the latter principal brokers give assurances satisfactory to the commission that no consumer will be adversely affected by the affiliation or the closing of the former principal broker's business.

➔Section 3. KRS 324.330 is amended to read as follows:

- (1) Notice in writing shall be given to the commission by each licensee of any change of principal business location, a change of firm name, sales associate's transfer from one (1) principal broker to another, or a change of surname. The commission shall issue a new license for the unexpired period and shall charge the fee as provided in KRS 324.287(6) for effecting the change on its records. This section shall apply to both brokers and sales associates.
- (2) The commission shall be notified in writing of a change of a residence address within ten (10) days.
- (3) A fee shall be assessed for certification of a licensee's status with the commission.
- (4) ***The commission shall, by the promulgation of administrative regulations, require all licensees to file with the commission, at annual renewal, their telephone numbers and, if applicable, their e-mail addresses.***

➔Section 4. KRS 324.410 is amended to read as follows:

The purposes of the real estate education, research, and recovery fund shall be as follows:

- (1) If a licensee, acting in the capacity of a licensee, has been duly found guilty of fraud in the violation of one (1) or more of the provisions of KRS 324.160, and upon the conclusion of a final order entered by the commission, or by the courts, if appealed, the commission may pay to the aggrieved person or persons an aggregate amount not to exceed twenty thousand dollars (\$20,000) per claimant with combined payments to all claimants against any one (1) licensee not to exceed fifty thousand dollars (\$50,000), if the licensee has refused to pay the claim within a period of twenty (20) days of entry of a final order and if the amount or amounts of money in question are certain and liquidated.
- (2) The commission shall maintain a minimum level of four hundred thousand dollars (\$400,000) for recovery and guaranty purposes. These funds may be invested and reinvested in the same manner as funds of the state employees' retirement system and the interest from the investments shall be deposited to the credit of the real estate education, research, and recovery fund. Sufficient liquidity shall be maintained so that there shall be money available to satisfy any and all claims which may be processed through the commission through the means of formal administrative hearing as outlined in this chapter.
- (3) The commission, in its discretion, may use any and all funds in excess of the four hundred thousand dollars (\$400,000) level, regardless of whether it is from the real estate education, research, and recovery fund fees or accrued interest thereon, for the following purposes:
 - (a) To carry out the advancement of education and research in the field of real estate for the benefit of those licensed under the provisions of this chapter and the improvement and making more efficient the real estate industry;
 - (b) To underwrite educational seminars, caravans, and other forms of educational projects for the use and benefit generally of real estate licensees;
 - (c) To establish a real estate chair or courses at Kentucky state institutions of higher learning for the purpose of making the courses available to licensees and the general public who may seek them on a college or university level;
 - (d) To contract for a particular research project in the field of real estate for the Commonwealth of Kentucky;
 - (e) To sponsor, contract for, and to underwrite other educational and research projects of a similar nature having to do with the advancement of the real estate field in Kentucky; and
 - (f) To receive recommendations and to cooperate and work with the Kentucky Association of Realtors and other real estate groups for the enlightenment and advancement of the real estate licensees of Kentucky.
- (4) Within **one hundred twenty (120)**~~sixty (60)~~ days after the end of each fiscal year, the commission shall **make public, through its Web site or other public media,**~~mail to each licensee~~ a statement of income and expenses of the real estate education, research, and recovery fund, the details of which have been approved by the secretary of the Finance and Administration Cabinet.

Signed by Governor April 12, 2010

CHAPTER 131

(HB 172)

AN ACT changing the classification of the City of Cadiz, in Trigg County.

WHEREAS, satisfactory information has been presented to the General Assembly that the population of the City of Cadiz is such to justify its being classified as a city of the fourth class;

NOW, THEREFORE,

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

➔Section 1. The City of Cadiz, in Trigg county, is transferred from the fifth to the fourth class of cities.

Signed by Governor April 12, 2010

CHAPTER 132

(HB 182)

AN ACT relating to retirement.

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

➔Section 1. KRS 21.540 is amended to read as follows:

- (1) Except as provided in KRS 21.550, ~~and~~ 21.560, **and subsection (2) of this section**, the board of trustees of the Judicial Form Retirement System shall be charged with the administration of that system and of KRS 21.350 to 21.510, and shall have all powers necessary thereto, including the power to promulgate all reasonable **administrative** regulations, pass upon questions of eligibility and disability, make employments for services, and to contract for fiduciary liability insurance, and for investment counseling, actuarial, auditing, and other professional services as required without the limitations of KRS 45A.045. The administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary money, in appropriate ratio, from the funds provided for in KRS 21.550 and 21.560.
- (2) ***Notwithstanding any other evidence of legislative intent, it is hereby declared to be the controlling legislative intent that the provisions of KRS 21.345 to 21.580 and 6.500 to 6.577 shall conform with federal statutes or regulations and meet the qualification requirements under 26 U.S.C. sec. 401(a), applicable federal regulations, and other published guidance, and the board shall have the authority to promulgate administrative regulations, with retroactive effect if required under federal law, to conform the Legislators' Retirement Plan and the Judicial Retirement Plan with federal statutes and regulations and to meet the qualification requirements under 26 U.S.C. sec. 401(a).***

Signed by Governor April 13, 2010.

CHAPTER 133

(SB 150)

AN ACT relating to business entities.

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

➔SECTION 1. A NEW SECTION OF SUBTITLE 1 OF KRS CHAPTER 271B IS CREATED TO READ AS FOLLOWS:

Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.

➔SECTION 2. A NEW SECTION OF SUBTITLE 8 OF KRS CHAPTER 271B IS CREATED TO READ AS FOLLOWS:

The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special meeting of the board of directors on the application of one-third (1/3) or more of the incumbent number of directors. The court may fix the time and place of the meeting, prescribe the form and content of the meeting notice, and enter such other orders as are necessary to accomplish the purpose of the meeting.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 272 IS CREATED TO READ AS FOLLOWS:

- (1) ***A purchaser from an association of its own shares shall not be liable to the association or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued or specified in the subscription agreement.***
- (2) ***Unless otherwise provided in the articles of incorporation, a shareholder or a member of an association shall not be personally liable for the acts or debts of the association, except that he or she may become personally liable by reason of his or her own acts or conduct.***

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

- (1) *A registered limited liability partnership shall not make a distribution to the extent that at the time of the distribution and after giving effect to the distribution, all liabilities for the registered limited liability partnership exceed the fair value of the assets of the registered limited liability partnership, other than liabilities to partners or transferees on account of their transferable interest in liabilities for which the recourse of creditors is limited to specified property. The fair value of property that is subject to a liability for which the recourse of partners is limited shall be included in the assets of the registered limited liability partnership only to the extent that the fair value of that property exceeds that liability.*
- (2) *A partner or transferee of a registered limited liability partnership who receives a distribution in violation of subsection (1) of this section is liable to the partnership for the amount of that distribution. A proceeding under this section shall be barred unless it is commenced within two (2) years after the date on which the distribution is paid to the partner or transferee.*
- (3) *This section does not affect any obligation or liability of a partner or transferee of a registered limited liability partnership under an agreement or other applicable law for the amount of a distribution.*
- (4) *For purposes of this section, the term "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.*

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

- (1) *A limited liability partnership shall not make a distribution to the extent that at the time of and after giving effect to the distribution, all liabilities of the limited liability partnership exceed the fair value of the assets of the limited liability partnership, other than liabilities to partners or transferees on account of their transferable interest in liabilities for which the recourse of creditors is limited to specified property. The fair value of property that is subject to a liability for which the recourse of partners is limited shall be included in the assets of the limited liability partnership only to the extent that the fair value of that property exceeds that liability.*
- (2) *A partner or transferee of a limited liability partnership who receives a distribution in violation of subsection (1) of this section is liable to the partnership for the amount of that distribution. A proceeding under this section shall be barred unless it is commenced within two (2) years of the date on which the distribution is paid to the partner or transferee.*
- (3) *This section does not affect any obligation or liability of a partner or transferee of a limited liability partnership under an agreement or other applicable law for the amount of a distribution.*
- (4) *For purposes of this section, the term "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.*

➔SECTION 6. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 362 IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign limited partnership transacting business in this Commonwealth shall not maintain an action or proceeding in this Commonwealth unless it has applied for and received a certificate of authority.*
- (2) *The successor to a foreign limited partnership that transacted business in this Commonwealth without having applied for and received a certificate of authority and the assignee of a cause of action arising out of that business shall not maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign limited partnership or its successor has applied for and received a certificate of authority.*
- (3) *A court may stay a proceeding commenced by a foreign limited partnership, its successor, or assignee, until it determines whether the foreign limited partnership or its successor is obligated to have received a certificate of authority. If it so determines, then the court may further stay the proceeding until the limited partnership or its successor has applied for and received a certificate of authority.*
- (4) *The failure of a foreign limited partnership to have in effect a certificate of authority does not impair the validity of a contract or act of the foreign limited partnership or preclude it from defending an action or proceeding in this Commonwealth.*

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

➔Section 7. KRS 271B.14-200 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 271B.14-210 to administratively dissolve a corporation if:

- (1) The corporation does not ~~deliver[file]~~ its annual report to the Secretary of State *on or before its due date*~~[within sixty (60) days after it is due];~~
- (2) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;
- (3) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (4) The corporation's period of duration stated in its articles of incorporation expires.

➔Section 8. KRS 271B.14-210 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 271B.14-200 for dissolving a corporation, *the Secretary of State*~~he~~ shall serve the corporation with written notice of ~~the~~~~his~~ determination, by mailing such notice by first-class mail to the corporation at its principal place of business address, *but no such notice shall be necessary upon the expiration of a corporation's period of duration.*
- (2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation by mailing such notice by first-class mail to the corporation at its principal place of business address.
- (3) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.
- (4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

➔Section 9. KRS 271B.14-220 is amended to read as follows:

- (1) A corporation administratively dissolved under KRS 271B.14-210, or revoked under the provisions of KRS 271A.615, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 271B.4-010;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid;

- (e) Contain a certificate from the Division of Unemployment Insurance in the Department for Workforce Investment reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid; and
 - (f) Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report provided for in KRS 271B.1-220.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, ***the Secretary of State*** ~~he~~ shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites ~~the~~ ***his*** determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its ***principal*** ~~registered~~ office.
 - (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.
 - (4) Notwithstanding any other provision to the contrary, any corporation which was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 271B.14-050, and notify claimants under KRS 271B.14-060 and 271B.14-070, shall be prohibited from reinstatement.
 - (5) A corporation ~~administratively~~ dissolved upon the expiration of its period of duration may, in the sixty (60) day period of KRS 271B.14-210(2), amend its articles to extend its period of duration or to delete its period of duration, which amendment will relate back to the day immediately preceding the expiration of the period of duration. A corporation which fails to so amend its articles of incorporation in the sixty (60) day period ***beginning on the date of expiration*** ~~of KRS 271B.14-210(2)~~ may not thereafter be reinstated, and shall liquidate its business and affairs under KRS 271B.14-050 and notify claimants under KRS 271B.14-060 and 271B.14-070.

➔Section 10. KRS 271B.15-300 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 271B.15-310 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not ***deliver*** ~~file~~ its annual report to the Secretary of State ***on or before the due date*** ~~within sixty (60) days after it is due~~;
- (2) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;
- (3) The foreign corporation does not inform the Secretary of State under KRS 271B.15-080 and 271B.15-090 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance;
- (4) An incorporator, director, officer or agent of the foreign corporation signed a document he ***or she*** knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; ***or***
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

➔Section 11. KRS 271B.15-310 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 271B.15-300 for revocation of a certificate of authority, ***the Secretary of State*** ~~he~~ shall serve the foreign corporation with written notice of ~~the~~ ***his*** determination by mailing the notice by first class mail to the corporation at its ***principal*** ~~registered~~ office.
- (2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy

on the foreign corporation by mailing the notice by first class mail to the corporation at its ~~principal~~~~[registered]~~ office.

- (3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.
- (4) The Secretary of State's revocation of a foreign corporation's certificate of authority shall be considered to appoint the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection shall be service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.
- (5) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

➔Section 12. KRS 271B.16-220 is amended to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office;~~and~~
 - (d) The names and business addresses of its directors;
 - (e) ***The name and business address of the secretary; and***
 - (f) ***The names and business addresses of the other***~~and~~ principal officers;
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 271B.1-280(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.
- (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 13. KRS 272.201 is amended to read as follows:

- (1) When a member of an association established without capital stock has paid ~~the~~~~[his]~~ membership fee in full, ~~the member~~~~[he]~~ shall receive notice of such membership whether by a certificate of membership, letter, or otherwise. Such membership shall not be transferable except as may be prescribed in the articles of incorporation and bylaws of the association.
- (2) No association shall issue capital stock until it has been fully paid for. Promissory notes may be accepted by an association as full or partial payment. An association may hold the stock as security for the payment of the note, but retention as security shall not affect a member's right to vote.
- (3)~~No member, or other person, is liable for the debts of the association to an amount exceeding the sum remaining unpaid on his membership fee or his subscription to the capital stock, including any unpaid balance on any promissory notes given in payment thereof.~~

- ~~(4)~~ An association, in its bylaws, may limit the amount of voting stock which one (1) member may own. No member of an association composed solely of producers of agricultural products shall be allowed to control more than forty-nine percent (49%) of such association's voting power.
- ~~(4)~~~~(5)~~ An association, in its bylaws, may provide that no member shall have more than one (1) vote.
- ~~(5)~~~~(6)~~ An association organized under KRS 272.101 to 272.341 whose members are one (1) or more associations may determine by its bylaws the number of votes to which each member-association is entitled and provide for the appointment or election of delegates to cast the votes and to represent the member-associations at all membership meetings.
- ~~(6)~~~~(7)~~ An association organized with stock may issue preferred stock, with or without the right to vote. Such stock may be redeemable or retirable by the association on terms and conditions provided for by the articles of incorporation and printed on the face of the certificate.
- ~~(7)~~~~(8)~~ The voting stock of an association shall be transferable only to persons engaged in the production of agricultural products or to associations of such persons. Such restrictions must be printed upon every certificate of voting stock.
- ~~(8)~~~~(9)~~ Except when its debts exceed fifty percent (50%) of its assets, an association may purchase for cash its capital stock at book value or par value, whichever is less, and may call such stock for redemption on the same basis pursuant to a plan for rotating ownership of such stock set forth in its articles of incorporation or in its bylaws. The determination of book value by the board of directors shall be incontestable except for fraud.

➔Section 14. KRS 272.490 is amended to read as follows:

- (1) No member shall be liable for the debts of the association to an amount exceeding the sum remaining unpaid on *the member's*~~his~~ membership fee, including any unpaid balance on any promissory notes given in payment thereof.
- (2) ***Subsection (1) of this section shall not affect the liability of a member of an association for his or her own negligence, wrongful acts, or misconduct.***

➔Section 15. KRS 273.187 is amended to read as follows:

- (1) A corporation may have one (1) or more classes of members or may have no members. If the corporation has one (1) or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.
- (2) ***Unless otherwise provided in the articles of incorporation, a director, officer, employee, or member of a corporation shall not be personally liable for the acts or debts of the corporation, except that the member may become personally liable by reason of his or her own acts or conduct.***~~The directors, officers, employees and members of the corporation shall not, as such, be liable on its obligations.~~

➔Section 16. KRS 273.223 is amended to read as follows:

- (1) Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except when a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.
- (2) ***The Circuit Court for the county where a corporation's principal office or, if there is none in this state, its registered office is located may order a special meeting of the board of directors on the application of one-third (1/3) or more of the incumbent directors. The court may fix the time and place of the meeting, prescribe the form and content of the meeting notice, and enter such other orders as are necessary to accomplish the purpose of the meeting.***

➔Section 17. KRS 273.233 is amended to read as follows:

Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected **and copied** by any member, or ~~the member's~~ ~~his~~ agent or attorney, for any proper purpose at any reasonable time. ***The member's right of inspection shall not be abolished or limited by the corporation's articles of incorporation or bylaws.***

➔Section 18. KRS 273.318 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 273.3181 to administratively dissolve a corporation if:

- (1) The corporation does not ~~deliver~~ ~~file~~ its annual report to the Secretary of State ***on or before the due date*** ~~[within sixty (60) days after it is due];~~
- (2) The corporation is without a registered agent or registered office in this state for sixty (60) days or more;
- (3) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or
- (4) The corporation's period of duration stated in its articles of incorporation expires.

➔Section 19. KRS 273.3181 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 273.318 for dissolving a corporation, ***the Secretary of State*** ~~he~~ shall serve the corporation with written notice of ~~the~~ ~~his~~ determination, by mailing such notice by first class mail to the corporation at its ~~principal~~ ~~registered~~ office, ***but no such notice shall be necessary upon the expiration of a corporation's period of duration.***
- (2) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, the Secretary of State shall administratively dissolve the corporation by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the corporation by mailing such notice by first class mail to the corporation at its ~~principal~~ ~~registered~~ office.
- (3) A corporation administratively dissolved shall continue its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs.
- (4) The administrative dissolution of a corporation shall not terminate the authority of its registered agent.

➔Section 20. KRS 273.3182 is amended to read as follows:

- (1) A corporation administratively dissolved under KRS 273.318 or revoked under the provisions of KRS 273.367, which was repealed by 1988 Ky. Acts, ch. 23, sec. 248, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution or revocation. The application shall:
 - (a) Recite the name of the corporation and the effective date of its administrative dissolution or revocation;
 - (b) State that the ground or grounds for dissolution or revocation either did not exist or have been eliminated;
 - (c) State that the corporation's name satisfies the requirements of KRS 273.177;
 - (d) Contain a certificate from the Department of Revenue reciting that all taxes owed by the corporation have been paid; and
 - (e) Be accompanied by the fee for filing a statement or report provided for in KRS 273.368(1)(j) and the current fee for filing each delinquent annual report provided for in KRS 273.368.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information is correct, ***the Secretary of State*** ~~he~~ shall cancel the certificate of dissolution or revocation and prepare a certificate of existence that recites ~~the~~ ~~his~~ determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation by mailing the notice by first class mail to the corporation at its ~~principal~~ ~~registered~~ office.

- (3) When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution or revocation and the corporation shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.
- (4) *A corporation administratively dissolved upon the expiration of its period of duration may, in the sixty (60) day period beginning on the date of expiration, amend its articles to extend its period of duration or to delete its period of duration, which amendment will relate back to the day immediately preceding the expiration of the period of duration. A corporation which fails to so amend its articles of incorporation in that sixty (60) day period may not thereafter be reinstated, and shall liquidate its business and affairs as provided in this chapter.*

➔Section 21. KRS 273.3646 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 273.3647 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

- (1) The foreign corporation does not ~~deliver[file]~~ its annual report to the Secretary of State *on or before the due date*~~[within sixty (60) days after it is due]~~;
- (2) The foreign corporation is without a registered agent or registered office in this state for sixty (60) days or more;
- (3) The foreign corporation does not inform the Secretary of State under KRS 273.3642 or 273.3643 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance;
- (4) An incorporator, director, officer or agent of the foreign corporation signed a document he *or she* knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

➔Section 22. KRS 273.3647 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 273.3646 for revocation of a certificate of authority, *the Secretary of State*~~he~~ shall serve the foreign corporation with written notice of ~~the~~*this* determination by mailing the notice by first class mail to the corporation at its *principal*~~registered~~ office.
- (2) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, the Secretary of State may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign corporation by mailing the notice by first class mail to the corporation at its *principal*~~registered~~ office.
- (3) The authority of a foreign corporation to transact business in this state shall cease on the date shown on the certificate revoking its certificate of authority.
- (4) The Secretary of State's revocation of a foreign corporation's certificate of authority shall appoint the Secretary of State the foreign corporation's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign corporation was authorized to transact business in this state. Service of process on the Secretary of State under this subsection shall constitute service on the foreign corporation. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.
- (5) Revocation of a foreign corporation's certificate of authority shall not terminate the authority of the registered agent of the corporation.

➔Section 23. KRS 273.3671 is amended to read as follows:

- (1) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the Secretary of State for filing an annual report that sets forth:
 - (a) The name of the corporation and the state or country under whose law it is incorporated;
 - (b) The address of its registered office and the name of its registered agent at that office in this state;
 - (c) The address of its principal office;~~and~~
 - (d) The names and business addresses of its directors;
 - (e) ***The name and business address of the secretary; and***
 - (f) ***The names and business addresses of the other***~~and~~ principal officers.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the corporation.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. For purposes of KRS 273.2527(2)(d), an annual report returned for correction shall not be deemed to have been delivered until it is returned to and accepted by the Secretary of State.
- (5) A domestic or foreign corporation may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on such form as is provided by the Secretary of State.

➔Section 24. KRS 274.015 is amended to read as follows:

- (1) One (1) or more individuals, each of whom is licensed to render the same professional service or who are licensed to render related professional services such that applicable licensing laws and regulations would not prohibit the practice of such multiple professional services through a single business partnership, may incorporate and form a professional service corporation by filing articles of incorporation in the office of the Secretary of State. Such articles of incorporation shall meet the requirements of KRS Chapter 271B, and in addition to the information required by KRS 271B.2-020, such articles shall contain the following:
 - (a) The designation of the profession or professions to be practiced through the professional service corporation;
 - (b) The names and residence addresses of all the original shareholders of the professional service corporation; and
 - (c) A statement by the incorporator or incorporators that each of the incorporators, shareholders, not less than one-half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person within the meaning of this chapter.
- (2) A professional service corporation formed under the provisions of this chapter, except as this chapter may otherwise provide, shall have the same powers, authority, duties, and liabilities as a corporation formed under, ***and shall be otherwise governed by***, KRS Chapter 271B.
- (3) ***A professional service corporation that has ceased to be utilized for rendering a professional service may by amendment of its articles of incorporation delete those provisions otherwise required by subsection (1) of this section and adopt a name conforming to KRS 271B.4-010, whereupon the corporation shall be governed exclusively by KRS Chapter 271B and not this chapter.***

➔Section 25. KRS 274.017 is amended to read as follows:

- (1) A professional service corporation may issue and a shareholder thereof may transfer or pledge shares, fractional shares, and rights or options to purchase shares only to:
 - (a) A natural ~~person~~~~persons~~ who ~~is~~~~are~~ authorized by law in this state or in any other state or territory of the United States or the District of Columbia to render a professional service permitted by the articles of incorporation of the corporation;

- (b) **A partnership**~~[Partnerships]~~, domestic or foreign, in which all the partners are qualified persons with respect to such professional corporation and in which at least one (1) partner is authorized by the laws of this state to render a professional service permitted by the articles of incorporation of the corporation;
 - (c) A professional limited liability company, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of organization of the limited liability company and the articles of incorporation of the corporation; ~~or [and]~~
 - (d) A professional service **corporation**~~[corporations]~~, domestic or foreign, authorized by law in this state to render a professional service permitted by the articles of incorporation of ~~each [the]~~ corporation.
- (2) Any issuance, ~~or~~ transfer, **or pledge** of shares, **fractional shares, or rights or options to purchase shares** in violation of this section shall be void; however, nothing herein contained shall prohibit the transfer of shares of a professional corporation by operation of law or court decree.

➔Section 26. KRS 274.055 is amended to read as follows:

- (1) ***Except as otherwise provided in this section, KRS 271B.6-220 applies to a corporation governed by this chapter.***
- (2) The provisions of this chapter shall not alter any law applicable to, or otherwise affect the fiducial, confidential or ethical relationship between a person rendering professional services and a person receiving such services. The corporation shall be jointly and severally liable, with the tortfeasor, to the full value of its assets for any negligent or wrongful acts or actionable misconduct committed by any of its officers, shareholders, agents or employees while they are engaged on behalf of the corporation in the rendering of professional service; provided, however, that no shareholder, director, officer or employee of a professional service corporation shall be personally liable for the negligence, wrongful acts, or actionable misconduct of any other shareholder, director, officer, agent or employee nor shall such shareholder, director, officer or employee be personally liable for the contractual obligations of the corporation.
- (3) Notwithstanding any contrary provisions of law, a corporation organized under this chapter may charge and collect fees for the professional services of its officers, directors, agents or employees, and may compensate those who render such professional services.
- ~~(4)(2)~~ ***Notwithstanding KRS 271B.15-050(3), any foreign professional service corporation granted a certificate of authority to conduct business within this state and those persons rendering professional services through it shall be subject to [the liability levels imposed by] this section.***

➔Section 27. KRS 274.245 is amended to read as follows:

~~(1)~~ A foreign professional service corporation shall be entitled to procure a certificate of authority to transact business in this state only if:

- ~~(1)(a)~~ The name of the corporation meets the requirements of this chapter;
- ~~(2)(b)~~ The corporation is organized only for purposes for which a professional service corporation organized under this chapter may be organized; and
- ~~(3)(c)~~ All the shareholders, not less than one half (1/2) of the directors, and all the officers other than the secretary and treasurer of the corporation ~~would be [are]~~ qualified persons with respect to the corporation ***were it incorporated in this state.***

~~(2) No foreign professional service corporation shall be required to obtain a certificate of authority to transact business in this state unless it shall maintain an office in this state for the conduct of business or professional practice.~~

➔Section 28. KRS 275.003 is amended to read as follows:

- (1) It shall be the policy of the General Assembly through this chapter to give maximum effect to the principles of freedom of contract and the enforceability of operating agreements. Unless displaced by particular provisions of this chapter, the principles of law and equity shall supplement this chapter. Although this chapter is in derogation of common law, the rules of construction that require strict construction of statutes which are in derogation of common law shall not apply to its provisions. This chapter shall not be construed to impair the

obligations of any contract existing when this chapter, or any amendment of it, becomes effective, nor to affect any action or proceeding begun or right accrued before the chapter or amendment takes effect.

- (2) *A written operating agreement may provide that the limited liability company interest of any member who fails to make any contribution that the member is obligated to make or who otherwise violates an obligation undertaken in the operating agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting member's proportionate interest in the limited liability company, subordinating the member's interest to that of nondefaulting members, a forced sale of that limited liability company interest, forfeiture of his or her limited liability company interest, the lending by other members of the amount necessary to meet the defaulting member's commitment, a fixing of the value of his or her limited liability company interest by appraisal or by formula and redemption or sale of the limited liability company interest at such value, or other penalty or consequence.*
- (3) *A written operating agreement may provide rights to any person, including a person who is not a member or not otherwise a party to the operating agreement, to the extent set forth therein.*
- (4) *Except to the extent set forth in a written operating agreement, a limited liability company is bound by and a party to the operating agreement.*
- (5) *Action validly taken pursuant to one (1) provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.*
- (6) *No member or other person shall have a vested property right resulting from any provision of the operating agreement which may not be modified by its amendment or as otherwise permitted by law.*
- (7) *Each member and manager and any other party to an operating agreement shall discharge all duties and exercise all rights consistently with the obligation of good faith and fair dealing. The obligation of good faith and fair dealing may not be eliminated in the operating agreement, but it may prescribe the standards by which the performance of the obligation are to be measured provided the standards are not manifestly unreasonable.*

➔Section 29. KRS 275.030 is amended to read as follows:

- (1) A limited liability company shall amend its articles of organization to add or change a provision that is required by this chapter to be included in the articles of organization. A limited liability company may amend its articles of organization to add, change, or delete a provision that is permitted to be or that is not required to be in the articles of organization. The articles of organization shall be amended if:
 - (a) There is a change in the name of the limited liability company;
 - (b) There is a change in the latest date upon which the limited liability company is to dissolve;
 - (c) There is a change in whether the management of the limited liability company is vested in managers or members; or
 - (d) There is a change in any other matter required to be set forth in the articles of organization under KRS 275.025.

Amendment of the articles of organization to change the mailing address of the principal office of the limited liability company shall be done as provided in KRS 275.040, and change the registered office or the registered agent shall be done as provided in KRS 275.120.

- (2) Except as provided in subsection (3) of this section, or unless the articles of organization or the operating agreement provide otherwise, an amendment to the articles of organization of a limited liability company shall be approved by the members in accordance with KRS 275.175.
- (3) Unless the articles of organization or the written operating agreement provide otherwise, a manager or, if there is no manager, any member may amend the articles of organization of the limited liability company without action by the members to delete:
 - (a) The name and address of the initial registered agent or initial registered office if a statement of change pursuant to KRS 275.120 is on file with the Secretary of State; or

- (b) The mailing address of the initial principal office, if a statement of change pursuant to KRS 275.040 is on file with the Secretary of State.
- (4) To amend its articles of organization, a limited liability company shall file with the Secretary of State articles of amendment setting forth:
 - (a) The name of the limited liability company;
 - (b) The text of each amendment adopted;
 - (c) The date of each amendment's adoption; and
 - (d) A statement that the amendment was duly adopted by the managers or the members in accordance with the articles of organization, the operating agreement of the limited liability company, or this chapter.
- (5) The articles of organization may be amended in any respect as may be desired, if the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.
- (6) Unless the articles of organization provide otherwise, no member of a limited liability company shall have the right to dissent from an amendment to the articles of organization.
- (7) ***A professional limited liability company that has ceased to be utilized for rendering a professional service may by amendment of its articles of organization delete the provisions required by KRS 275.025(3) and adopt a name conforming to Section 30 of this Act, whereupon the limited liability company shall no longer be a professional limited liability company.***

➔Section 30. KRS 275.100 is amended to read as follows:

- (1) The name of each limited liability company as set forth in its articles of organization shall contain the words "limited liability company" or "limited company" or the abbreviations "LLC" or "LC." The name of each limited liability company which is a professional limited liability company shall contain the words "professional limited liability company" or "professional limited company" or the abbreviations "PLLC" or "PLC." The word "Limited" may be abbreviated as "Ltd.," and the word "Company" may be abbreviated as "Co."
- (2) Except as authorized by subsections (3) and (4) of this section, the name of a limited liability company shall be distinguishable from any name ~~of~~^{on} record with the Secretary of State.
- (3) A limited liability company may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (2) of this section. The Secretary of State shall authorize use of the name applied for if:
 - (a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or
 - (b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.
- (4) A limited liability company may use the name, including the fictitious name, with any modification required by this section or KRS 275.410 of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the limited liability company:
 - (a) Has merged with the other business entity;
 - (b) Has been formed by reorganization of the other business entity; or
 - (c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- (5) This chapter shall not control the use of assumed names.
- (6) The filing of articles of organization under the particular name of the limited liability company shall not automatically prevent the use of that name or protect that name from use by other persons.

➔Section 31. KRS 275.150 is amended to read as follows:

- (1) Except as provided in subsection (2) of this section or as otherwise specifically set forth in other sections in this chapter, no member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall be personally liable by reason of being a member, manager, employee, or agent of the limited liability company, under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort, or otherwise. The status of a person as a member, manager, employee, or agent of a limited liability company, including a professional limited liability company, shall not subject the person to personal liability for the acts or omissions, including any negligence, wrongful act, or actionable misconduct, of any other member, manager, agent, or employee of the limited liability company.
- (2) Notwithstanding the provisions of subsection (1) of this section, under a written operating agreement or under another written agreement, a member or manager may agree to be obligated personally for any of the debts, obligations, and liabilities of the limited liability company.
- (3) ***Subsection (1) of this section shall not affect the liability of a member, manager, employee, or agent of a limited liability company for his or her own negligence, wrongful acts, or misconduct.***

➔Section 32. KRS 275.170 is amended to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) ***With respect to any claim for breach of the duty of care,*** a member or manager shall not be liable, responsible, or accountable in damages or otherwise to the limited liability company or the members of the limited liability company for any action taken or failure to act on behalf of the limited liability company unless the act or omission constitutes wanton or reckless misconduct.
- (2) ***The duty of loyalty applicable to*** each member and manager shall ***be to*** account to the limited liability company and hold as trustee for it any profit or benefit derived by that person without the consent of more than one-half (1/2) by number of the disinterested managers, or a majority-in-interest of the members from:
 - (a) Any transaction connected with the conduct or winding up of the limited liability company; or
 - (b) Any use by the member or manager of its property, including, but not limited to, confidential or proprietary information of the limited liability company or other matters entrusted to the person as a result of his ***or her*** status as manager or member.
- (3) In determining whether a transaction has received the approval of a majority-in-interest of the members, membership interests owned by or voted under the control of the member or manager whose actions are under review in accordance with subsection (2) of this section, and membership interests owned by an entity owned by or voted under the control of that member or manager, shall not be counted in a vote of the members to determine whether to consent, and the membership interests shall not be counted in determining whether a quorum, if required by a written operating agreement, exists to consider whether to consent.
- (4) A member of a limited liability company in which management is vested in managers under KRS 275.165(2) and who is not a manager shall have no duties to the limited liability company or the other members solely by reason of acting in his or her capacity as a member.

➔Section 33. KRS 275.220 is amended to read as follows:

Unless otherwise provided in a written operating agreement:

- (1) A member, regardless of the nature of the member's contribution, shall not have a right to demand and receive any distribution from the limited liability company in any form other than cash;~~and~~
- (2) A member shall not be compelled to accept from a limited liability company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the member exceeds the percentage that the member would have shared in a cash distribution equal to the value of the property at the time of distribution; ***and***
- (3) ***The property of a limited liability company shall not be subject to KRS 381.135(1)(a)1..***

➔Section 34. KRS 275.225 is amended to read as follows:

- (1) No distribution shall be made if, after giving effect to the distribution:

- (a) The limited liability company would not be able to pay its debts as they become due in the usual course of business;~~[-or]~~
 - (b) The limited liability company's assets would be less than the sum of its liabilities plus, unless otherwise provided in an operating agreement, the amount that would be needed, if the limited liability company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other members upon dissolution which are superior to the rights of the member receiving the distribution; **or**
 - (c) ***The distribution violates the operating agreement.***
- (2) The~~limited liability company may base a~~ determination that a distribution is not prohibited under subsection (1) of this section ***may be based upon***~~either on~~:
- (a) Financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
 - (b) A fair valuation or other method that is reasonable under the circumstances.
- (3) Except as provided in subsection (5) of this section, the effect of a distribution under subsection (1) of this section shall be measured as of:
- (a) The date the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization; or
 - (b) The date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.
- (4) A limited liability company's indebtedness to a member incurred by reason of a distribution made in accordance with this section shall be at parity with the limited liability company's indebtedness to its general unsecured creditors, except to the extent subordinated by agreement.
- (5) If terms of the indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to members could then be made under this section, then indebtedness of a limited liability company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under subsection (1) of this section.
- (6) If the indebtedness is issued as a distribution, then each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.
- (7) For purposes of this section, the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefit program.

➔Section 35. KRS 275.260 is amended to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a member or the assignee of a member may satisfy a judgment out of the judgment debtor's limited liability company interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a member or a member's assignee, a court may charge the judgment debtor's interest in the limited liability company with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of ~~an~~~~a~~ assignee and shall have no right to participate in the management or to cause the dissolution of the limited liability company. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the limited liability company interest and make all other orders, directions, accounts, and inquiries the judgment creditor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's limited liability company interest. A charging order does not of itself constitute an assignment of the limited liability company interest.
- (4) The court may order a foreclosure upon the limited liability company interest subject to the charging order at any time. The purchaser of the **limited** liability company interest at the foreclosure sale has the rights of ~~an~~~~a~~ assignee. At any time before foreclosure, the charged limited liability company interest may be redeemed:

- (a) By the judgment debtor;
 - (b) With property other than limited liability company property, by one (1) or more of the other members; and
 - (c) With limited liability company property, by the limited liability company with the consent of all members whose interest are not so charged.
- (5) This section does not deprive a member or a member's ~~assignee~~~~transferee~~ of the benefit of any exemption laws applicable to the member's or ~~assignee's~~~~transferee's~~ limited liability company interest.
- (6) ***The limited liability company is not a necessary party to an application for a charging order. Service of the charging order on a limited liability company may be made by the court granting the charging order or as the court should otherwise direct.***

➔Section 36. KRS 275.265 is amended to read as follows:

- (1) Unless otherwise provided in a written operating agreement, an assignee of a limited liability company interest shall become a member only if a majority-in-interest of the members consent. The consent of a member may be evidenced in any manner specified in writing in an operating agreement, but in the absence of specification, consent shall be evidenced by one (1) or more written instruments, dated and signed by the requisite members. ***Except as otherwise provided in a written operating agreement, the assignor of a limited liability company interest shall not participate in the vote, approval, or consent of the admission of the assignee as a member.***
- (2) An assignee who becomes a member shall have, to the extent assigned, the rights and powers and shall be subject to the restrictions and liabilities of a member under the articles of organization, any written operating agreement, and this chapter. An assignee who becomes a member also shall be liable for any obligations of his ***or her*** assignor to make contributions under KRS 275.200. However, the assignee shall not be obligated for liabilities of which the assignee had no knowledge at the time he ***or she*** became a member and which could not be ascertained from the articles of organization or any written operating agreement.
- (3) Unless otherwise provided in a written operating agreement, the assignor shall not be released from his ***or her*** liability to the limited liability company under KRS 275.200, whether or not an assignee of a limited liability company interest becomes a member.
- (4) Unless otherwise provided in a written operating agreement, a member who assigns his ***or her*** entire limited liability company interest shall cease to be a member or to have the power to exercise any rights of the member when the assignee becomes a member with respect to the entire assigned interest.
- (5) Unless otherwise set forth in the operating agreement, a successor in interest to a member who is disassociated from the limited liability company shall have the rights and obligations of an assignee with respect to the member's interest.

➔Section 37. KRS 275.280 is amended to read as follows:

- (1) A person shall disassociate from ~~the limited liability company~~ and cease to be a member of a limited liability company upon the occurrence of one (1) or more of the following events:
 - (a) Subject to the provisions of subsection (3) of this section, the member withdraws by voluntary act from the limited liability company;
 - (b) The member ceases to be a member of the limited liability company as provided in KRS 275.265;
 - (c) The member is removed as a member:
 - 1. In accordance with a written operating agreement;~~or~~
 - 2. Unless otherwise provided in a written operating agreement, when the member assigns all of the member's interest in the limited liability company, upon receipt of the written consent of a majority-in-interest of the members who have not assigned their interest; ***or***
 - 3. ***Upon resignation as a member;***
 - (d) Unless otherwise provided in a written operating agreement or by written consent of majority-in-interest of the members, at the time the member:
 - 1. Makes an assignment for the benefit of creditors;

2. Files a voluntary petition in bankruptcy;
 3. Is adjudicated bankrupt or insolvent;
 4. Files a petition or answer seeking for the member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation;
 5. Files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the member in any proceeding of this nature; or
 6. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the member or of all or any substantial part of the member's property;
- (e) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, if within one hundred twenty (120) days after the commencement of any proceeding against the member seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the appointment without the member's consent or acquiescence of a trustee, receiver, or liquidator of the member, or of all or any substantial part of the member's properties, the appointment is not vacated or stayed or within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated;
- (f) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is an individual:
1. The member's death; or
 2. The entry of an order by a court of competent jurisdiction adjudicating the member incompetent to manage his or her person or estate;
- (g) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a trust or is acting as a member by virtue of being a trustee of a trust, the termination of the trust, but not merely the substitution of a new trustee;
- (h) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of a member that is a separate limited liability company, the dissolution and commencement of winding up of the separate limited liability company;
- (i) Unless otherwise provided in a written operating agreement or by written consent of the majority-in-interest of the members remaining at the time, in the case of a member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its articles of incorporation and the lapse of ninety (90) days after notice to the corporation of revocation without a reinstatement of its articles of incorporation; or
- (j) Unless otherwise provided in a written operating agreement or by written consent of a majority-in-interest of the members remaining at the time, in the case of an estate, the distribution by the fiduciary of the estate's entire interest in the limited liability company.
- (2) The members may provide in a written operating agreement for other events the occurrence of which shall result in a person ceasing to be a member of the limited liability company.
- (3) Unless otherwise provided in a written operating agreement:
- (a) *In a member-managed limited liability company a member may resign from a limited liability company upon thirty (30) days' prior written notice to the limited liability company; and*
 - (b) *In a manager-managed limited liability company, a member may not resign without the consent of all other members*~~[, a member has no right to withdraw from a limited liability company. If the written operating agreement does not specify a time a member may withdraw, a member shall not withdraw without the consent of all other members remaining at the time].~~

(4) *Upon the effective date of the resignation, the resigning member shall be dissociated from and cease to be a member of the limited liability company and shall be with respect to the resigning member's limited liability company interest an assignee thereof.*

(5) *The successor-in-interest of a disassociated member shall be an assignee.*

➔Section 38. KRS 275.295 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a limited liability company if:
 - (a) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days ~~on or before the due date~~~~after the annual report is due~~;
 - (b) The limited liability company is without a registered agent or registered office in Kentucky for at least sixty (60) days;
 - (c) The limited liability company does not notify the Secretary of State within sixty (60) days after its registered agent or registered office has been changed, its registered agent has resigned, or its registered office has been discontinued; or
 - (d) The limited liability company's term as set forth in its articles of organization expires.
- (2)
 - (a) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for dissolving a limited liability company, the Secretary of State shall serve the limited liability company with written notice of the determination by first-class mail at its principal place of business address, *but no such notice shall be necessary upon the expiration of a limited liability company's term.*
 - (b) If the limited liability company does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which notice was mailed, the Secretary of State shall administratively dissolve the limited liability company by signing a certificate of dissolution that states the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the limited liability company by mailing the notice by first-class mail to the limited liability company at its principal place of business address. If a limited liability company is dissolved for having reached the end of its period of duration, and it does not within sixty (60) days of the end of its duration amend the articles of organization to extend its duration, the certificate of dissolution shall be effective as of the end of the period of duration as set forth in the articles of organization.
- (3)
 - (a) A limited liability company administratively dissolved under subsection (2) of this section, other than for failure to amend the articles of organization to extend the duration of the limited liability company within sixty (60) days of the expiration of its term, may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:
 1. State the name of the limited liability company and the effective date of its administrative dissolution;
 2. State that the ground or grounds for dissolution either did not exist or have been eliminated;
 3. State that the limited liability company's name satisfies the requirements under KRS 275.100;
 4. Contain a certificate from the Kentucky Department of Revenue stating that all taxes owed by the limited liability company have been paid; and
 5. Be accompanied by the reinstatement penalty and the current fee on filing each delinquent report as provided for in KRS 275.055(1).
 - (b) If the Secretary of State determines that the application contains the information required by paragraph (a) of this subsection and that the information is correct, the Secretary of State shall:
 1. Cancel the certificate of dissolution and prepare a certificate of existence that states the determination and the effective date of existence; and
 2. Serve a copy on the limited liability company in the manner provided in subsection (2)(a) of this section.

- (c) When the reinstatement is effective, the reinstatement shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited liability company shall resume carrying on business as if the administrative dissolution had never occurred.
- (4) (a) If the Secretary of State denies a limited liability company's application for reinstatement following administrative dissolution, the Secretary of State shall serve the limited liability company with a written notice that explains the reason or reasons for denial by mailing notice by first-class mail to the limited liability company at its ~~registered office or, if none, to the last~~ principal **place of business address** ~~office identified on the most recent annual report, or, if none, the articles of organization~~.
- (b) The limited liability company may appeal the denial of reinstatement to the Circuit Court of the county where the limited liability company's principal office, or, if there is none in Kentucky, its registered office, is located within thirty (30) days after service of the notice of denial by doing the following:
 1. Filing a petition with the court to set aside the dissolution; and
 2. Attaching to the petition a copy of the Secretary of State's certificate of dissolution, the limited liability company's application for reinstatement, and the Secretary of State's notice of denial.
- (c) The court may order the Secretary of State to reinstate the dissolved limited company or may take other action the court considers appropriate.
- (d) The court's final decision may be appealed as are other civil proceedings.

➔Section 39. KRS 275.300 is amended to read as follows:

- (1) **Except as** ~~Unless~~ otherwise provided in a written operating agreement ~~[-~~
- ~~(4) -~~ the business or affairs of the limited liability company may be wound up:
 - (a) By the members or managers who have authority pursuant to KRS 275.165 to manage the limited liability company prior to dissolution; or
 - (b) If one (1) or more of the members or managers have engaged in wrongful conduct, or upon other cause shown, by the Circuit Court for the county in which the principal office of the limited liability company is located or in which the registered office of the limited liability company is located, on application of any member, any member's legal representative, or assignee.
- (2) A dissolved limited liability company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
 - (a) Collecting its assets;
 - (b) Disposing of its properties that will not be distributed in kind to its members;
 - (c) Discharging or making provision for discharging its liabilities;
 - (d) Distributing its remaining property among its members **and assignees in proportion to their rights to share therein** ~~according to their interests~~; and
 - (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- (3) **Except as otherwise provided in a written operating agreement**, dissolution of a limited liability company shall not:
 - (a) Transfer title to the limited liability company's property;
 - (b) Prevent transfer of a limited liability company interest, although the authorization to dissolve may provide for the limited liability company restricting the transfer of the limited liability company's interest;
 - (c) Subject its members or managers to standards of conduct different from those prescribed herein;
 - (d) **Amend the operating agreement or otherwise** change quorum or voting requirements for its members or managers, ~~[- change]~~ provisions for selection, resignation, or removal of its members or managers, ~~or [- or change]~~ provisions for amending ~~the [its]~~ operating agreement, **or terminate contribution obligations.** ~~[-]~~

(4) Dissolution of a limited liability company shall not:

- (a)**~~(e)~~ Prevent commencement of a proceeding by or against the limited liability company in its name;
- (b)**~~(f)~~ Abate or suspend a proceeding pending by or against the limited liability company on the effective date of dissolution;
- (c)**~~(g)~~ Terminate the authority of the registered agent of the limited liability company;
- (d)**~~(h)~~ Alter the obligations and responsibilities of the limited liability company as prescribed by applicable federal or state law with regard to the filing or examination of all federal and state tax returns or the payment, assessment, or collection of any federal or state tax due with respect to those returns; or
- (e)**~~(i)~~ Abate or suspend KRS 275.150(1).

➔Section 40. KRS 275.310 is amended to read as follows:

Upon the winding up of a limited liability company, the assets shall be distributed as follows:

- (1) **First**, payment~~[-]~~ or adequate provisions for payment~~[-]~~ shall be made to creditors, including, to the extent permitted by law, members who are creditors in satisfaction of liabilities of the limited liability company;
- (2) **Second**, unless otherwise provided in a written operating agreement, to members **and assignees**~~[-or former members]~~ in satisfaction of liabilities for distributions under KRS 275.210; and
- (3) **Third**, unless otherwise provided in a written operating agreement, to members and **assignees**~~[-former members first]~~ for the return of their contributions; and
- (4) **Fourth, unless otherwise provided in a written operating agreement, to members and assignees**~~[-second]~~ in proportion to **their**~~[-the members]~~ respective rights to share in distributions from the limited liability company prior to dissolution.

➔Section 41. KRS 275.360 is amended to read as follows:

- (1) The business entity surviving from the merger shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent business entity setting forth:
 - (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;
 - (b) The plan of merger;
 - (c) The name of the surviving business entity;
 - (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with KRS 275.350; and
 - (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
 - 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and
 - 2. Appoints the Secretary of State as its agent for service of process in any such proceeding. The surviving entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.
- (2) A merger shall take effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the articles of merger.
- (3) The articles of merger shall be executed by a limited liability company that is a party to the merger in the manner provided for in KRS 275.045 and shall be filed with the Secretary of State in the manner provided for in KRS 275.045.
- (4) A plan of merger approved in accordance with KRS 275.350 may effect any amendment to an operating agreement for a limited liability company if it is the surviving company in the merger. An approved plan of merger may also provide that the operating agreement of any constituent limited liability company to the

merger, including a limited liability company formed for the purpose of consummating a merger, shall be the operating agreement of the limited liability company that is the surviving business entity. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the effective time ~~and/or~~ date of the merger. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to in this section by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

➔Section 42. KRS 275.365 is amended to read as follows:

A merger shall have the following effects:

- (1) The constituent business entities that are parties to the merger shall be a single entity, which shall be the entity designated in the plan of merger as the surviving business entity.
- (2) Each party to the merger, except the surviving business entity, shall cease to exist.
- (3) The surviving business entity shall possess all the rights, privileges, immunities, and powers of each constituent business entity and shall be subject to all the restrictions, disabilities, and duties of each of the constituent entities to the extent the rights, privileges, immunities, powers, restrictions, disabilities, and duties are applicable to the type of business entity that is the surviving business entity.
- (4) All property, real, personal, and mixed, and all debts due on whatever account, including promises to make capital contributions and subscriptions for shares, and all other ~~choses~~~~choices~~ in action, and all and every other interest of, belonging to, or due to each of the constituent business entities shall be vested in the surviving business entity without further act or deed.
- (5) The title to all real estate and any interest therein, vested in any constituent business entity shall not revert or be in any way impaired by reason of the merger.
- (6) The surviving entity shall thenceforth be liable for all liabilities and obligations of each of the constituent business entities merged, and any claim existing or action or proceeding pending by or against any constituent business entity may be prosecuted as if the merger had not taken place, or the surviving business entity may be substituted in the action.
- (7) Neither the rights of creditors nor any liens on the property of any constituent business entity shall be impaired by the merger.
- (8) The interests in a limited liability company or other business entities that are to be converted or exchanged into interests, other securities, cash, obligations, or other property under the terms of the plan of merger are so converted and the former holders thereof are entitled only to the rights provided in the plan of merger or the rights otherwise provided by law.
- (9) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a merger, as the case may be, shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the merger takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the merger takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a merger shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the merger takes effect.
- (10) *If the surviving business entity is a limited liability company, such amendments to the articles of organization and the operating agreement thereof set forth in the plan of merger or the articles of merger, subject to KRS 275.200, shall be effective.*
- (11) *If the surviving business entity is a limited liability company, the written operating agreement provided for in the plan of merger, if any, shall be binding upon each member in that limited liability company, but any provision thereof obligating a member to make a contribution to the limited liability company is subject to KRS 275.200.*

➔Section 43. KRS 275.370 is amended to read as follows:

- (1) A partnership or limited partnership may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of a conversion of a partnership or limited partnership to a limited liability company shall, in the case of a partnership, be approved by all the partners or by a number or percentage specified for

conversion in the partnership agreement or, in the case of a limited partnership, by all the partners, notwithstanding any provision to the contrary in the limited partnership agreement.

- (3) After the conversion is approved under subsection (2) of this section, the partnership or limited partnership shall file articles of organization with the office of the Secretary of State which satisfy the requirements of KRS 275.025 and include:
 - (a) A statement that the partnership or limited partnership was converted to a limited liability company from a partnership or limited partnership, as the case may be;
 - (b) Its former name;
 - (c) In the case of a partnership, a statement of the number of votes cast by the partners entitled to vote for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement; and
 - (d) If the **converting** partnership has filed a statement of registration as a limited liability partnership in accordance with KRS 362.555, ~~or~~ a statement of qualification in accordance with KRS 362.1-1001, **or a statement of partnership authority**, each shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020; and
 - (e) In the case of a limited partnership, the **converting** limited partnership's certificate of limited partnership shall be deemed canceled as of the effective date and time of the articles of organization as determined in accordance with KRS 275.020.
- (4) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, as provided in KRS 275.020, at a later date specified in the articles of organization.
- (5) A partner or, in the case of a limited partnership, a general partner who becomes a member of a limited liability company as a result of a conversion shall remain liable as a partner or general partner for an obligation incurred by the partnership or limited partnership before the conversion takes effect. If the other party to a transaction with the limited liability company reasonably believes when entering the transaction that the member undertaking the transaction is a partner in a partnership or a general partner in a limited partnership, the member shall be liable for an obligation incurred by the limited liability company within ninety (90) days after the conversion takes effect. The partner's or general partner's liability for all other obligations of the limited liability company incurred after the conversion takes effect shall be that of a member as provided in this chapter. A limited partner who becomes a member as a result of a conversion shall remain liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect.

➔Section 44. KRS 275.376 is amended to read as follows:

- (1) A corporation may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of the conversion of a corporation to a limited liability company shall be set forth in a written plan of conversion and approved by the board of directors and by the shareholders of the corporation.
- (3) The plan of conversion shall set forth:
 - (a) The name of the corporation planning to convert;
 - (b) The terms and conditions of the conversion, including the articles of organization and the written operating agreement, if any, of the limited liability company into which the corporation will convert; and
 - (c) The manner and basis of converting the shares of the corporation into membership interests, obligations, or other securities of the limited liability company or into cash or other property in whole or part.
- (4) The plan of conversion may set forth any other provision relating to the conversion.
- (5) For a plan of conversion to be approved:
 - (a) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with a plan; and
 - (b) The shareholders entitled to vote shall approve the plan.

- (6) The board of directors may condition its submission of the proposed conversion on any basis.
- (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy or summary of the plan.
- (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors acting pursuant to subsection (6) of this section, require a greater vote or vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
- (9) Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040.
- (10) After a conversion is authorized, and at any time before articles of organization are filed, the planned conversion may be abandoned subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.
- (11) After the conversion is approved, the corporation shall file articles of organization with the office of the Secretary of State that satisfy the requirements of KRS 275.025 and also include:
 - (a) A statement that the corporation was converted to a limited liability company;
 - (b) Its former name; *and*
 - (c) ~~A statement that any assumed name held by the corporation has been canceled; and~~
 - ~~(d)~~ The designation, number of outstanding shares, and number of votes to be cast by each voting group entitled to vote separately on the plan of conversion and either the total number of undisputed votes cast for the plan separately by each voting group or a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (12) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, subject to KRS 275.060, at a later date specified in the articles of organization.

➔Section 45. KRS 275.440 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 275.445 to revoke the certificate of authority of a foreign limited liability company authorized to transact business in this Commonwealth if:

- (1) The foreign limited liability company does not ~~deliver~~~~file~~ its annual report to the Secretary of State *on or before the due date*~~[within sixty (60) days after it is due];~~
- (2) The foreign limited liability company is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign limited liability company does not inform the Secretary of State under KRS 275.420 and 275.425 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;
- (4) A member or manager of the limited liability company or person organizing the foreign limited liability company signed a document the member, manager, or person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or
- (5) The Secretary of State receives a duly-authenticated certificate from the Secretary of State or other official having custody of limited liability company records in the state or country under whose law the foreign limited liability company is organized stating that it has been dissolved or disappeared as the result of a merger or other event.

➔Section 46. KRS 275.445 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist under KRS 275.440 for revocation of a certificate of authority, the Secretary of State shall serve the foreign limited liability company with written

notice of ~~the~~^{its} determination by mailing the notice by first-class mail to the foreign limited liability company at its ~~principal~~^{registered} office.

- (2) If the foreign limited liability company does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, the Secretary of State shall revoke the foreign limited liability company's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy to the foreign limited liability company by mailing notice by first-class mail to the foreign limited liability company at its ~~principal~~^{registered} office.
- (3) The authority of a foreign limited liability company to transact business in this Commonwealth shall cease on the date shown on the certificate of revocation.
- (4) The Secretary of State's revocation of a foreign limited liability company's certificate of authority shall have the effect of appointing the Secretary of State as the foreign limited liability company's agent for service of process in any proceeding based on a cause of action which arose during the time the foreign limited liability company was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign limited liability company. Upon receipt of process, the Secretary of State shall mail a copy of the process to the appropriate representative of the foreign limited liability company at its principal office as shown in its most recent annual report or in any subsequent communication received from the foreign limited liability company stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.
- (5) Revocation of a foreign limited liability company's certificate of authority shall not terminate the authority of the registered agent of the foreign limited liability company.

➔Section 47. KRS 279.090 is amended to read as follows:

- (1) No person may become or remain a member of any corporation formed under this chapter with capital stock except a farmer, a person engaged in the production of agricultural products or livestock, a cooperative association as defined in the Farm Credit Act, or a corporation organized under this chapter.
- (2) No person other than the original incorporators may become or remain a member of any corporation formed under this chapter without capital stock unless, in addition to complying with all membership requirements in the articles of incorporation and bylaws of the corporation, such person uses electric energy supplied by the corporation or by a corporation that is a member of the corporation in question, or such person is a corporation formed under this chapter or is a corporation furnishing electric energy or is a cooperative association as defined in the Farm Credit Act.
- (3) Any corporation formed under this chapter without capital stock may provide in its articles of incorporation that, in addition to the requirements for membership set forth in subsection (2) of this section, no person other than the original incorporators may become or remain a member unless that person is a farmer or is a cooperative association within the meaning of the Farm Credit Act, or that a stated percentage of its members must be and remain farmers or cooperative associations within the meaning of the Farm Credit Act.
- (4) Any corporation formed under this chapter may become a member of any other corporation formed under this chapter and may fully avail itself of the facilities and services of that corporation.
- (5) Each member of a corporation organized under this chapter with or without capital stock shall have only one (1) vote, and memberships shall not be transferable.
- (6) Neither the incorporators nor any member of any corporation formed under this chapter shall be personally responsible for any debt, obligation or liability of the corporation, except for promissory notes given for the purchase of common stock in the corporation *or except as the incorporator or member may become personally liable by reason of his or her own acts or conduct.*

➔Section 48. KRS 279.390 is amended to read as follows:

- (1) Each incorporator of a cooperative shall be a member thereof but no other person may become a member thereof unless such other person agrees to use telephone service furnished by the cooperative when it is made available through its facilities. Membership in a cooperative shall be evidenced by a certificate of membership which shall not be transferable, except as provided in the bylaws. The bylaws may prescribe additional

qualifications and limitations in respect of membership, provided that ownership of shares of stock, if any are authorized, shall not be a condition of membership in the cooperative.

- (2) In case the issuance of shares of stock is provided for in the articles of incorporation, ownership thereof shall be evidenced by share certificates. No share of stock shall be issued except for cash, or for property at its fair value, in an amount equal to the par value of such share of stock.
- (3) Membership and share certificates shall contain such provisions, consistent with KRS 279.310 to 279.600 and the articles of incorporation of the cooperative, as shall be prescribed by its bylaws.
- (4) No member or shareholder shall be liable or responsible for any debts of the cooperative and the property of the members and shareholders shall not be subject to execution therefor *except as the member or shareholder may become personally liable by reason of his or her own acts or conduct.*

➔Section 49. KRS 362.285 is repealed, reenacted, and amended to read as follows:

- (1) *This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.*
- (2) *On application to a court of competent jurisdiction by a judgment creditor of a partner or a partner's transferee, a court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee and shall have no right to participate in the management of or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.*
- (3) *A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.*
- (4) *The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee. A charging order does not of itself constitute an assignment of the transferable interest.*
- (5) *At any time before foreclosure, an interest charged may be redeemed:*
 - (a) *By the judgment debtor;*
 - (b) *With property other than partnership property, by one (1) or more of the other partners; or*
 - (c) *With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.*
- (6) *This section does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.*
- (7) *The partnership is not a necessary party to an application for a charging order. Service of the charging order on a partnership may be made by the court granting the charging order or as the court may otherwise direct.* ~~[On due application to a competent court by any judgment creditor of a partner, the court which entered the judgment, order, or decree, or any other court, may charge the interest of the debtor partner with payment of the unsatisfied amount of such judgment debt with interest thereon; and may then or later appoint a receiver of his share of the profits, and of any other money due or to fall due to him in respect of the partnership, and make all other orders, directions, accounts and inquiries which the debtor partner might have made, or which the circumstances of the case may require.]~~
- ~~(2) The interest charged may be redeemed at any time before foreclosure, or in case of a sale being directed by the court may be purchased without thereby causing a dissolution:~~
 - ~~(a) With separate property, by any one (1) or more of the partners, or~~
 - ~~(b) With partnership property, by any one (1) or more of the partners with the consent of all the partners whose interests are not so charged or sold.~~
- ~~(3) Nothing in KRS 362.150 to 362.360 shall be held to deprive a partner of his right, if any, under the exemption laws, as regards his interest in the partnership.]~~

➔Section 50. KRS 362.481 is repealed, reenacted, and amended to read as follows:

- (1) *This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.*
- (2) *On application to a court of competent jurisdiction by any judgment creditor of a partner or a partner's transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee, and shall have no right to participate in the management or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.*
- (3) *A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest. A charging order does not of itself constitute an assignment of the transferable interest.*
- (4) *The court may order a foreclosure upon the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.*
- (5) *At any time before foreclosure, an interest charged may be redeemed:*
 - (a) *By the judgment debtor;*
 - (b) *With property other than limited partnership property, by one (1) or more of the other partners; or*
 - (c) *With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.*
- (6) *This section does not deprive any partner or a partner's transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.*
- (7) *The partnership is not a necessary party to an application for a charging order. Service of the charging order on a partnership may be made by the court granting the charging order or as the court may otherwise direct.* ~~[On application to a court of competent jurisdiction by any judgment creditor of a partner, the court shall charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor shall have only the rights of an assignee of the partnership interest. KRS 362.403 to 362.525 shall not deprive any partner of the benefit of any exemption laws applicable to his partnership interest.]~~

➔Section 51. KRS 362.1-103 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this subchapter governs relations among the partners and between the partners and the partnership.
- (2) The partnership agreement shall not:
 - (a) Vary the rights and duties under KRS 362.1-105 except to eliminate the duty to provide copies of statements to all of the partners;
 - (b) Unreasonably restrict the right of access to books and records under KRS 362.1-403(2) or unreasonably restrict the right to information KRS 362.1-403(3);
 - (c) Eliminate the duty of loyalty under KRS 362.1-404(2) or 362.1-603(2)(c), but:
 1. The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or
 2. All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - (d) Unreasonably reduce the duty of care under KRS 362.1-404(3) or 362.1-603(2)(c);

- (e) Eliminate the obligation of good faith and fair dealing under KRS 362.1-404, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;
 - (f) Vary the power to dissociate as a partner under KRS 362.1-602(1), except to require the notice under KRS 362.1-601(1) to be in writing;
 - (g) Vary the right of a partner or the partnership to seek a partner's expulsion by judicial determination or vary the right of a court to expel a partner in the events specified in KRS 362.1-601(5);
 - (h) Vary the requirement to wind up the partnership business in cases specified in KRS 362.1-801(4), (5), or (6); or
 - (i) Vary the law applicable to a limited liability partnership under KRS 362.1-106(2); or
 - (j) Vary the liabilities and remedies under KRS 362.1-405 to a greater extent than variations are in fact made under this section in the substantive rights in the partnership agreement giving rise to the partner claims at issue.
- (3) If a written partnership agreement contains a provision to the effect that any amendment to the partnership agreement must be in writing and adopted in accordance with the provisions of the partnership agreement, that provision shall be enforceable in accordance with its terms, and any agreement among the partners concerning the partnership which is not in writing and adopted in accordance with the provisions of the partnership agreement shall not be part of the partnership agreement.
- (4) *A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make or who otherwise violates an obligation undertaken in the partnership agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the partnership, subordinating the partner's interest to that of nondefaulting partners, a forced sale of that interest, forfeiture of his or her interest, the lending by other partners of the amount necessary to meet the defaulting partner's commitment, a fixing of the value of his or her interest by appraisal or by formula and redemption or sale of the interest in the partnership at such value, or other penalty or consequence.*
- (5) *A partnership agreement may provide rights to any person, including a person who is not a partner or not otherwise a party to the partnership agreement, to the extent set forth therein.*
- (6) *No partner or other person shall have a vested property right resulting from any provision of a partnership agreement which may not be modified by its amendment or as otherwise permitted by law.*

➔Section 52. KRS 362.1-104 is amended to read as follows:

- (1) Unless displaced by particular provisions of this subchapter, the principles of law and equity supplement this subchapter.
- (2) If an obligation to pay interest arises under this subchapter and the rate is not specified, then the rate is that specified in KRS 360.010.
- (3) Subject to KRS 362.1-103(2), it shall be the policy of the ~~Commonwealth in General Assembly through~~ this subchapter to give maximum effect to the principles of freedom of contract and the enforceability of partnership agreements. Although this subchapter is in derogation of common law, the rules of construction that require strict construction of statutes that are in derogation of common law shall not apply to its provisions. Except as otherwise expressly provided herein, this subchapter shall not be construed to impair the obligation of any contract existing when this subchapter, or any amendment thereto, becomes effective, nor to affect any action or proceeding begun, or right accrued before this subchapter or any amendment thereto takes effect.
- (4) A professional partnership shall be governed by the laws, whether statutory or common law, applicable to other partnerships. Except for the provisions of this subchapter concerning the personal liability of partners, employees, and agents of a partnership, nothing in this subchapter shall restrict, limit, or expand in any manner the authority and duty of any regulatory board to:
 - (a) License individual persons providing professional services; and

- (b) Regulate the practice of persons providing professional services which are within the jurisdiction of the regulatory board, even though the persons are partners, employees, or agents of a professional partnership, or provide professional services through a professional partnership, including the establishment of regulations concerning:

- 1. The qualifications of partners of a professional partnership;
- 2. The transfer of partnership interests in a professional partnership; or
- 3. The provision of one (1) or more professional services through a professional partnership.

- (5) ***Action validly taken pursuant to a provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.***

➔Section 53. KRS 362.1-121 is amended to read as follows:

- (1) Each limited liability partnership and each foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to KRS 362.1-1101 to 362.1-1104 shall ***deliver to the Secretary of State for filing***~~file~~ an annual report in the office of the Secretary of State on such form as shall be prescribed by the Secretary of State which contains:
 - (a) The name of the partnership and the state or other jurisdiction under whose laws it is formed;
 - (b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any; and
 - (c) The address of its registered office and the name of its registered agent in this Commonwealth.
- (2) Information in the annual report shall be current as of the date the annual report is executed on behalf of the partnership.
- (3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a partnership files a statement of qualification or statement of foreign qualification. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the following calendar years.
- (4) If an annual report does not contain the information required by this section, then the Secretary of State shall promptly notify the reporting partnership in writing and return the report to it for correction.
- (5) A limited liability partnership or foreign limited liability partnership may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on an appropriate form provided by the Secretary of State.

➔Section 54. KRS 362.1-122 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a statement of qualification if:
 - (a) The limited liability partnership does not ***deliver***~~file~~ its annual report with the Secretary of State ***on or before the due date***~~within sixty (60) days after it is due~~;
 - (b) The limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or
 - (c) The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (2) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for the administrative dissolution of a statement of qualification, then ***the Secretary of State***~~he~~ shall serve the partnership with written notice of ***the***~~his~~ determination by mailing such notice by first class mail to the limited liability partnership at the street address of the partnership's chief executive office as set forth in the partnership's most recent annual report filed pursuant to KRS 362.1-121 or, if none, that set forth in the statement of partnership qualification filed pursuant to KRS 362.1-1001 or the statement of foreign qualification filed by a foreign limited liability partnership pursuant to KRS 362.1-1102.
- (3) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist

within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the statement of qualification by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited liability partnership by mailing such certificate by first class mail to the partnership at its **chief executive**~~[registered]~~ office **address**. The administrative dissolution of a statement of qualification shall not terminate the authority of the registered agent of the partnership.

- (4) The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.
- (5) The partnership whose statement of qualification has been administratively dissolved may apply to the Secretary of State for reinstatement of the statement at any time after the effective date of the dissolution by filing an application that:
 - (a) Recites the name of the partnership, identifies the statement that was administratively dissolved and the effective date of that administrative dissolution;
 - (b) States that the ground or grounds for dissolution either did not exist or have been eliminated;
 - (c) States that the name of the partnership satisfies the requirements of KRS 362.1-114; and
 - (d) Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.
- (6) If the Secretary of State determines that the application contains the information required by subsection (5) of this section and that the information provided therein is correct, then the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its **chief executive**~~[registered]~~ office **address**. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.
- (7) If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then ~~the Secretary of State~~~~[he]~~ shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its **chief executive**~~[registered]~~ office **address**. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the partnership's application for reinstatement, and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

➔Section 55. KRS 362.1-123 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding under subsection (2) of this section to revoke the statement of foreign qualification of a foreign limited liability partnership authorized to transact business in this Commonwealth if:
 - (a) The foreign limited liability partnership does not **deliver**~~[file]~~ its annual report to the Secretary of State **on or before its due date**~~[within sixty (60) days after it is due]~~;
 - (b) The foreign limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
 - (c) The foreign limited liability partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation or discontinuance; or
 - (d) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of partnership records in the state or country under whose law the foreign limited liability partnership is formed stating that it has been dissolved or disappeared as the result of a merger, consolidation or conversion.

- (2) If the Secretary of State determines that one (1) or more grounds exist for the revocation of a statement of foreign qualification, then ~~the Secretary of State~~ ~~he~~ shall serve the foreign limited liability partnership with written notice of ~~the~~ ~~his~~ determination by mailing the notice by first class mail to the foreign limited liability partnership at the street address of the partnership's chief executive office as set forth in the most recent annual report filed pursuant to KRS 362.1-121 or, if none, that set forth in the statement of foreign qualification filed pursuant to KRS 362.1-1102.
- (3) If the foreign limited liability partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, then the Secretary of State may revoke the foreign limited liability partnership's statement of foreign qualification by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign partnership by mailing the notice by first class mail to the foreign limited liability partnership at the street address of the partnership's chief executive office as set forth in the most recent annual report filed pursuant to KRS 362.1-121 or, if none, that set forth in the statement of foreign qualification filed pursuant to KRS 362.1-1102.
- (4) The authority of a foreign limited liability partnership to transact business in this Commonwealth shall cease on the date shown on the certificate revoking its statement of foreign qualification.
- (5) The Secretary of State's revocation of a foreign limited liability partnership's statement of foreign qualification shall be considered to appoint the Secretary of State the foreign limited liability partnership's agent for service of process in any proceeding based on the cause of action that arose during the time the foreign limited liability partnership was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign limited liability partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign limited liability partnership at its **chief executive** ~~principal~~ office **address** shown in its most recent annual report or any subsequent communication received from the foreign limited liability partnership stating the current mailing address of its principal office, or, if none are on file, in its statement of foreign qualification.
- (6) Revocation of a foreign limited liability partnership's statement of foreign qualification shall not terminate the authority of the registered agent of the partnership.
- (7) A foreign limited liability partnership may appeal the Secretary of State's revocation of its statement of foreign qualification to the Franklin Circuit Court within thirty (30) days after service of the certificate of revocation. The foreign limited liability partnership may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its statement of foreign qualification and the Secretary of State's certificate of revocation.
- (8) The court may summarily order the Secretary of State to reinstate the statement of foreign qualification or may take any other action the court considers appropriate.
- (9) The court's final decision may be appealed as in other civil proceedings.

➔Section 56. KRS 362.1-504 is amended to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.
- (2) On application to a court of competent jurisdiction by a judgment creditor of a partner or a partner's transferee, a court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee and shall have no right to participate in the management of or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest in the partnership.
- (4) The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee. A charging order does not of itself constitute an assignment of the transferable interest.

- (5) At any time before foreclosure, an interest charged may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than partnership property, by one (1) or more of the other partners; or
 - (c) With partnership property, by one (1) or more of the other partners with the consent of all of the partners whose interests are not so charged.
- (6) This subchapter does not deprive a partner *or a partner's transferee* of a right under exemption laws with respect to the partner's *or transferee's* interest in the partnership.
- (7) ***The partnership is not a necessary party to an application for a charging order. Service of the charging order on a partnership may be made by the court granting the charging order or as the court may otherwise direct.***

➔Section 57. KRS 362.1-906 is amended to read as follows:

- (1) When a merger takes effect:
 - (a) The separate existence of every partnership or limited partnership that is a party to the merger, other than the surviving entity, ceases;
 - (b) All property owned by each of the merged partnerships or limited partnerships vests in the surviving entity;
 - (c) All obligations of every partnership or limited partnership that is a party to the merger become the obligations of the surviving entity; and
 - (d) An action or proceeding pending against a partnership or limited partnership that is a party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted as a party to the action or proceeding.
- (2) The Secretary of State of this Commonwealth is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the surviving foreign partnership or limited partnership.
- (3) A partner of the surviving partnership or limited partnership is liable for:
 - (a) All obligations of a party to the merger for which the partner was personally liable before the merger;
 - (b) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity; and
 - (c) Except as otherwise provided in KRS 362.1-306, all obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner.
- (4) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or limited partnership, then the general partners of that party immediately before the effective date of the merger shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in KRS 362.1-807 or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.
- (5) A partner of a party to a merger who does not become a partner of the surviving partnership or limited partnership is dissociated from the entity, of which that partner was a partner, as of the date the merger takes effect. The surviving entity shall cause the partner's interest in the entity to be purchased under KRS 362.1-701 or another statute specifically applicable to that partner's interest with respect to a merger. The surviving entity is bound under KRS 362.1-702 by an act of a general partner dissociated under this subsection, and the partner is liable under KRS 362.1-703 for transactions entered into by the surviving entity after the merger takes effect.
- (6) Unless otherwise provided in the partnership agreement, a partner has no right to dissent from a merger.

- (7) ***If the surviving business entity is a partnership, the written partnership agreement provided for in the plan of merger, if any, shall be binding upon each partner in that partnership.***

➔Section 58. KRS 362.2-106 is amended to read as follows:

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

- (2) ***A limited partnership governed by this subchapter is subject to any amendment or repeal of this subchapter.***

➔Section 59. KRS 362.2-107 is amended to read as follows:

- (1) Unless displaced by particular provisions of this subchapter, the principles of law and equity supplement this subchapter.
- (2) If an obligation to pay interest arises under this subchapter and the rate is not specified, then the rate is that specified in KRS 360.010.
- (3) Subject to KRS 362.2-110(2), it shall be the public policy of the Commonwealth in this subchapter to give maximum effect to the principles of freedom of contract and the enforceability of partnership agreements. Unless displaced by particular provisions of this subchapter, the principles of law and equity shall supplement this subchapter. Although this subchapter is in derogation of the common law, the rules of construction that require strict construction of statutes that are in derogation of common law shall not apply to its provisions. Except as otherwise expressly provided herein, this subchapter shall not be construed to impair the obligation of any contract existing when this subchapter, or any amendment thereto, becomes effective, nor to affect any action or proceeding begun or right accrued before this subchapter or any amendment thereto takes effect.

- (4) ***Action validly taken pursuant to a provision of this chapter shall not be deemed invalid solely because it is identical or similar in substance to an action that could have been taken pursuant to some other provision of this chapter but fails to satisfy one (1) or more requirements prescribed by such other provision.***

➔Section 60. KRS 362.2-110 is amended to read as follows:

- (1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this subchapter governs relations among the partners and between the partners and the partnership.
- (2) The partnership agreement shall not:
- (a) Vary a limited partnership's power under KRS 362.2-105 to sue, be sued, and defend in its own name;
 - (b) Vary the law applicable to a limited partnership under KRS 362.2-106;
 - (c) Vary the requirements of KRS 362.2-204;
 - (d) Vary the information required under KRS ~~362.2-111~~~~[441.407]~~ or unreasonably restrict the right to information under KRS 362.2-304 and 362.2-407, but the partnership agreement may provide a different location for the maintenance of the books and records, and impose reasonable limitations on the availability and use of information obtained under those sections, and may define appropriate remedies, including liquidated damages, for a breach of any reasonable limitation on use;
 - (e) Eliminate the duty of loyalty under KRS 362.2-408, but the partnership agreement may:
 - 1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - 2. Specify the number or percentage of partners which may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
 - (f) Unreasonably reduce the duty of care under KRS 362.2-408(3);
 - (g) Eliminate the obligation of good faith and fair dealing under KRS 362.2-305(2) and 362.2-408(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

- (h) Vary the power of a person to dissociate as a general partner under KRS 362.2-604(1), except to require that the notice under KRS 362.2-603(1) be in a record;
 - (i) Vary the right of a court to decree dissolution in the circumstances specified in KRS 362.2-802;
 - (j) Vary the requirement to wind up the partnership's business as specified in KRS 362.2-803;
 - (k) Unreasonably restrict the right to bring an action under KRS 362.2-1001 to 362.2-1005; or
 - (l) Restrict the right of a partner under KRS 362.2-1110(1) to consent to a merger or conversion or the right of a general partner under KRS 362.2-1110(2) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership.
- (3) If a written partnership agreement contains a provision to the effect that any amendment to the partnership agreement must be in writing and adopted in accordance with the provisions of the partnership agreement, that provision shall be enforceable in accordance with its terms, and any agreement among the partners concerning the partnership which is not in writing and adopted in accordance with the provisions of the partnership agreement shall not be part of the partnership agreement.
- (4) *A partnership agreement may provide that the interest of any partner who fails to make any contribution that the partner is obligated to make or who otherwise violates an obligation undertaken in the partnership agreement shall be subject to specified penalties for, or specified consequences of, such failure. Such penalty or consequence may take the form of reducing or eliminating the defaulting partner's proportionate interest in the partnership, subordinating the partner's interest to that of nondefaulting partners, a forced sale of that interest, forfeiture of his or her interest, the lending by other partners of the amount necessary to meet the defaulting partner's commitment, a fixing of the value of his or her interest by appraisal or by formula and redemption or sale of the interest in the partnership at such value, or other penalty or consequence.*
- (5) *A partnership agreement may provide rights to any person, including a person who is not a partner or not otherwise a party to the partnership agreement, to the extent set forth therein.*
- (6) *No partner or other person shall have a vested property right resulting from any provision of a certificate of limited partnership or partnership agreement which may not be modified by its amendment or as otherwise permitted by law.*

➔Section 61. KRS 362.2-303 is amended to read as follows:

- (1) An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of any limited partner. A limited partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.
- (2) *Subsection (1) of this section shall not affect the liability of a limited partner for his or her own negligence, wrongful acts, or misconduct.*

➔Section 62. KRS 362.2-404 is amended to read as follows:

- (1) Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.
- (2) A person admitted as a general partner into an existing limited partnership is not personally liable for any limited partnership obligation incurred before the person's admission as a general partner.
- (3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of indemnification, contribution, assessment, or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under KRS 362.2-406(2)(b).

- (4) ***Subsection (3) of this section shall not affect the liability of a general partner for his or her own negligence, wrongful acts, or misconduct.***

➔Section 63. KRS 362.2-703 is amended to read as follows:

- (1) This section provides the exclusive remedy by which the judgment creditor of a partner or the transferee of a partner may satisfy a judgment out of the judgment debtor's transferable interest.
- (2) On application to a court of competent jurisdiction by any judgment creditor of a partner or a partner's transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor has only the rights of a transferee, and shall have no right to participate in the management or to cause the dissolution of the partnership. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
- (3) A charging order constitutes a lien on and the right to receive distributions made with respect to the judgment debtor's transferable interest. A charging order does not of itself constitute an assignment of the transferable interest.
- (4) The court may order a foreclosure upon the transferable interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
- (5) At any time before foreclosure, an interest charged may be redeemed:
 - (a) By the judgment debtor;
 - (b) With property other than limited partnership property, by one (1) or more of the other partners; or
 - (c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.
- (6) This subchapter does not deprive any partner or a partner's transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.
- (7) ***The partnership is not a necessary party to an application for a charging order. Service of the charging order on a partnership may be made by the court granting the charging order or as the court may otherwise direct.***

➔Section 64. KRS 362.2-809 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a domestic limited partnership if:
 - (a) The limited partnership does not ~~deliver~~^{file} its annual report ~~to~~^{with} the Secretary of State ***on or before the due date***~~[within sixty (60) days after it is due];~~
 - (b) The limited partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or
 - (c) The partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (2) If the Secretary of State determines that one (1) or more grounds exist for the administrative dissolution of a limited partnership, then ~~the Secretary of State~~^{he} shall send to the partnership at its ~~designated~~^{registered} office by first class mail a written notice of that determination.
- (3) If the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the limited partnership by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited partnership by mailing such certificate by first class mail to the limited partnership at its registered office.

- (4) A limited partnership administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs as provided in KRS 362.2-803 to 362.2-812.

- (5) The administrative dissolution of a limited partnership shall not terminate the authority of its registered agent.

➔Section 65. KRS 362.2-810 is amended to read as follows:

- (1) A limited partnership administratively dissolved may apply to the Secretary of State for reinstatement at any time after the effective date of the dissolution by filing an application that:
 - (a) Recites the name of the limited partnership and identifies the effective date of that administrative dissolution;
 - (b) States that the ground or grounds for dissolution either did not exist or have been eliminated;
 - (c) States that the name of the limited partnership satisfies the requirements of KRS 362.2-108; and
 - (d) Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.
- (2) If the Secretary of State determines that the application contains the information required by subsection (1) of this section and that the information provided therein is correct, then ***the Secretary of State***~~he~~ shall cancel the certificate of administrative dissolution, prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and send a copy of the certificate to the limited partnership by first class mail at its ***designated***~~registered~~ office.
- (3) When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the limited partnership shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.
- (4) Notwithstanding any other provision to the contrary, any limited partnership that was administratively dissolved or revoked and has taken the action necessary to wind up and liquidate its business and affairs under KRS 362.2-803 and to notify claimants under KRS 362.2-806 and 362.2-807 shall be prohibited from reinstatement.

➔Section 66. KRS 362.2-811 is amended to read as follows:

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

➔Section 67. KRS 362.2-906 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 362.2-907 to revoke the certificate of authority of a foreign partnership authorized to transact business in this Commonwealth if:

- (1) The foreign partnership does not ***deliver***~~file~~ its annual report to the Secretary of State ***on or before the due date***~~within sixty (60) days after it is due~~;
- (2) The foreign partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;

- (3) The foreign partnership does not inform the Secretary of State that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance; or
- (4) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of partnership records in the state or other jurisdiction under whose law the foreign limited partnership is organized stating that it has been dissolved or disappeared as the result of a merger.

➔Section 68. KRS 362.2-907 is amended to read as follows:

- (1) If the Secretary of State determines that one (1) or more grounds exist for the revocation of a certificate of authority, then ~~the Secretary of State~~ ~~he~~ shall serve the foreign limited partnership with written notice of ~~the~~ ~~his~~ determination by mailing the notice by first class mail to the foreign limited partnership at its ~~principal~~ ~~registered~~ office.
- (2) If the foreign **limited** partnership does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days after the mailing of the notice, then the Secretary of State may revoke the foreign **limited** partnership's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign limited partnership by mailing the notice by first class mail to the limited partnership at its ~~principal~~ ~~registered~~ office.
- (3) The authority of a foreign limited partnership to transact business in this Commonwealth shall cease on the date shown on the certificate revoking its certificate of authority.
- (4) The Secretary of State's revocation of a foreign limited partnership's certificate of authority shall be considered to appoint the Secretary of State the foreign **limited** partnership's agent for service of process in any proceeding based on the cause of action which arose during the time the foreign **limited** partnership was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign **limited** partnership. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign **limited** partnership at its principal office shown in its most recent annual report or any subsequent communication received from the **limited** partnership stating the current mailing address of its ~~principal~~ ~~registered~~ office, or, if none are on file, in its certificate of authority.
- (5) Revocation of a foreign **limited** partnership's certificate of authority shall not terminate the authority of the registered agent of the **limited** partnership.
- (6) A foreign limited partnership may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after service of the certificate of revocation. The foreign limited partnership may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.
- (7) The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.
- (8) The court's final decision may be appealed as in other civil proceedings.

➔Section 69. KRS 362.2-1104 is amended to read as follows:

- (1) After a plan of conversion of a limited liability company into a limited partnership is approved, a converting limited liability company shall deliver to the Secretary of State for filing a certificate of limited partnership ~~which~~ ~~satisfies the requirements of KRS 362.2-201 and includes~~ ~~shall include~~:
 - (a) A statement that the limited liability company has been converted into a limited partnership;
 - (b) The name of that limited liability company and its jurisdiction;
 - (c) A statement that the conversion was approved as required by this subchapter;
 - (d) A statement that the conversion was approved as required by the governing statute of the converted limited liability company; and
 - (e) If the converted limited liability company is a foreign limited liability company not authorized to transact business in this Commonwealth, the street and mailing address of an office which the Secretary of State may use for the purposes of KRS 362.2-1105(3).

- (2) A conversion of a limited liability company into a limited partnership becomes effective when the certificate of limited partnership takes effect.

➔Section 70. KRS 362.2-1109 is amended to read as follows:

When a merger takes effect:

- (1) The separate existence of every domestic limited partnership that is a party to the merger except the surviving domestic limited partnership, if any, shall cease;
- (2) The title to all real estate and other property owned by each domestic limited partnership that is a party to the merger shall be vested in the surviving entity without reversion or impairment;
- (3) The surviving entity shall be responsible for all liabilities of each domestic limited partnership that is a party to the merger;
- (4) A proceeding pending by or against any domestic limited partnership party to the merger may be continued as if the merger had not occurred, or the surviving entity may be substituted in the proceeding for the domestic limited partnership whose existence ceased;
- (5) If a domestic limited partnership is the surviving entity of the merger, then the certificate of limited partnership and partnership agreement of that limited partnership shall be amended to the extent provided in the plan of merger; and
- (6) The partnership interests of every domestic limited partnership that is a party to the merger that are to be converted into partnership interests, membership interests, shares, or other securities or obligations of the surviving limited partnership, limited liability company, or corporation or into cash or other property, in whole or in part, shall be so converted and the former holders of such partnership interests shall be entitled only to the rights provided in the plan of merger.
- (7) *If the surviving business entity is a limited partnership, such amendments to the certificate of limited partnership thereof as are set forth in the plan of merger shall be effective.*
- (8) *If the surviving business entity is a limited partnership, the written partnership agreement provided for in the plan of merger, if any, shall be binding upon each partner in that limited partnership.*

➔Section 71. KRS 365.015 is amended to read as follows:

- (1) (a) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman.
- (b) The real name of a domestic:
 1. General partnership that is not a limited liability partnership and that has not filed a statement of partnership authority is that name which includes the real name of each of the partners;
 2. General partnership that is not a limited liability partnership and that has filed a statement of partnership authority is the name set forth on the statement of partnership authority;
 3. General partnership that is a limited liability partnership is the name stated on the statement of qualification filed pursuant to KRS 362.1-1001 or predecessor law;
 4. Limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS 362.2-201 or predecessor law;
 5. Business trust is the name set forth in the declaration of trust;
 6. Corporation is the name set forth in its articles of incorporation; and
 7. Limited liability company is the name set forth in its articles of organization.
- (c) The real name of a foreign:
 1. General partnership is the name recognized by the laws of the jurisdiction under which it is formed as being the real name;
 2. Limited liability partnership is the name stated in its statement of foreign qualification filed pursuant to KRS 362.1-1102 or predecessor law;

3. Limited partnership is the name set forth in its certificate of limited partnership or the fictitious name adopted for use in this Commonwealth under KRS 362.2-905 or predecessor law;
 4. Business trust is the name recognized by the laws of the jurisdiction under which it is formed as being the real name of the business trust *or the fictitious name adopted for use in this Commonwealth under KRS 386.4432*;
 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under KRS 271B.15-060 *or 273.364*; and
 6. Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this Commonwealth under KRS 275.410.
- (2)
 - (a) No individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his, *her*, or its real name, as defined in subsection (1) of this section, unless such individual, *general* partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
 - (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, *general* partnership, limited partnership, business trust, corporation, or limited liability company and his, *or her*, or its address, including street and number, if any;
 - (c) A separate certificate shall be filed for each assumed name;
 - (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
 - (e) The certificate shall be executed for an individual, by the individual; for a general partnership, by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by a trustee; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
 - (3) Each certificate of assumed name for an individual shall be filed with the county clerk where the person maintains his or her principal place of business. Each certificate of assumed name for a general partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity maintains its registered agent for service of process or, if no registered agent for service of process is required, then with the county clerk of the county where the entity maintains its principal office. If the entity does not maintain a registered agent for service of process and does not maintain a principal office in this Commonwealth, then the certificate of assumed name shall be filed only with the Secretary of State.
 - (4) An assumed name shall be effective for a term of five (5) years from the date of filing and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
 - (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party formerly transacting business under the assumed name and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership by at least one (1) partner authorized to act for the partnership, for a limited partnership by a general partner, for a business trust by a trustee, for a corporation by any person authorized to act for the corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.
 - (6) A general partnership, except a limited liability partnership, shall amend an assumed name *certificate* to reflect a change in the identity of partners. The amendment shall set forth:
 - (a) The assumed name and date of original filing;

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

➔Section 72. KRS 382.335 is amended to read as follows:

- (1) No county clerk shall receive or permit the recording of any instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, granted, encumbered, assigned, or otherwise disposed of; nor receive any instrument or permit any instrument, provided by law, to be recorded as evidence of title to real estate~~[-; and shall not receive or permit any instrument, relating to the organization or dissolution of a private corporation]~~, unless the instrument has endorsed on it, a printed, typewritten, or stamped statement showing the name and address of the individual who prepared the instrument, and the statement is signed by the individual. The person who prepared the instrument may execute his *or her* signature by affixing a facsimile of his *or her* signature on the instrument. This subsection shall not apply to any instrument executed or acknowledged prior to July 1, 1962.
- (2) No county clerk shall receive or permit the recording of any instrument by which the title to real estate or any interest therein is conveyed, granted, assigned, or otherwise disposed of unless the instrument contains the mailing address of the grantee or assignee. This subsection shall not apply to any instrument executed or acknowledged prior to July 1, 1970.
- (3) This section shall not apply to wills or to statutory liens in favor of the Commonwealth.
- (4) No county clerk shall receive, or permit the recording of, any instrument by which real estate, or any interest therein, is conveyed, granted, assigned, transferred, or otherwise disposed of unless the instrument complies with the official indexing system of the county. The indexing system shall have been in place for at least twenty-four (24) months prior to July 15, 1994 or shall be implemented for the purpose of allowing computerized searching for the instruments of record of the county clerk. If a county clerk requires a parcel identification number on an instrument before recording, the clerk shall provide a computer terminal, at no charge to the public, for use in finding the parcel identification number. The county clerk may make reasonable rules about the use of the computer terminal, requests for a parcel identification number, or both.
- (5) The receipt for record and recording of any instrument by the county clerk without compliance with the provisions of this section shall not prevent the record of filing of the instrument from becoming notice as otherwise provided by law, nor impair the admissibility of the record as evidence.

➔Section 73. KRS 386.4426 is amended to read as follows:

- (1) A foreign business trust may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:
 - (a) The name of the foreign business trust, or if its name is unavailable for use in this Commonwealth, a name that satisfies the requirements of KRS 386.382;

- (b) The name of the state or country under whose law it is organized;
 - (c) Its date of organization and, if the business trust has a specific date of dissolution, the latest date upon which it is to dissolve;
 - (d) The street address of the office required to be maintained in the state or other jurisdiction of its formation by the laws of that state or jurisdiction or, if not so required, of the principal office of the foreign business trust;
 - (e) The address of its registered office in this Commonwealth and the name of its registered agent at that office;
 - (f) The names and usual business addresses of its current trustees; and
 - (g) A statement that, as of the date of filing, the foreign business trust validly exists as a business trust under the laws of the jurisdiction of its organization.
- (2) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the application for a certificate of authority.
- (3) ***The Secretary of State shall collect a filing fee of one hundred dollars (\$100) for each application for a certificate of authority.***

➔Section 74. KRS 386.4428 is amended to read as follows:

- (1) A foreign business trust authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:
- (a) Its name;
 - (b) The latest date on which it is to dissolve; or
 - (c) The state or country of its organization.
- (2) The requirements of KRS 386.4426 for obtaining an original certificate of authority shall apply to obtaining an amended certificate under this section.
- (3) ***The Secretary of State shall collect a filing fee of one hundred dollars (\$100) for each application for an amended certificate of authority.***

➔Section 75. KRS 386.4444 is amended to read as follows:

The Secretary of State may commence a proceeding under KRS 386.4446 to revoke the certificate of authority of a foreign business trust authorized to transact business in this Commonwealth if:

- (1) The foreign business trust does not ~~deliver~~~~[file]~~ its annual report to the Secretary of State ***on or before its due date***~~[within sixty (60) days after it is due]~~;
- (2) The foreign business trust is without a registered agent or registered office in this Commonwealth for sixty (60) days or more;
- (3) The foreign business trust does not inform the Secretary of State under KRS 386.4434 and 386.4436 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty (60) days of the change, resignation, or discontinuance;
- (4) A trustee of the business trust or person organizing the foreign business trust signed a document the trustee or person knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or
- (5) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of business trust records in the state or country under whose law the foreign business trust is organized stating that it has been dissolved or disappeared as the result of a merger or other event.

➔Section 76. KRS 386.466 is amended to read as follows:

- (1) In this section, "entity" means a corporation, partnership, ***limited partnership***, limited liability company, ***statutory or business trust***, regulated investment company, real estate investment trust, common trust fund, or any other organization in which a trustee has an interest other than a trust or estate to which KRS 386.468 applies.

- (2) Except as otherwise provided in this section, a trustee shall allocate to income money received from an entity.
- (3) A trustee shall allocate the following receipts from an entity to principal:
 - (a) Property other than money;
 - (b) Money received in one (1) distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;
 - (c) Money received in total or partial liquidation of the entity; and
 - (d) Money received from an entity that is a regulated investment company or a real estate investment trust, if the money distributed is a capital gain dividend for federal income tax purposes.
- (4) Money is received in partial liquidation:
 - (a) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or
 - (b) If the total amount of money and property received in a distribution or series of related distributions is greater than twenty percent (20%) of the entity's gross assets, as shown by the entity's year end financial statements immediately preceding the initial receipt.
- (5) Money is not received in partial liquidation, nor may it be taken into account under paragraph (b) of subsection (4) of this section to the extent that it does not exceed the amount of income tax that a trustee or beneficiary shall pay on taxable income of the entity that distributes the money.
- (6) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

➔Section 77. The following KRS section is repealed:

275.340 Effect of determination that member or manager lacks authority to sue on behalf of company.

➔Section 78. During the 2010 legislative interim, the Interim Joint Committee on Judiciary shall study the advisability of recognizing and regulating low-profit limited liability companies in Kentucky's statutory law. In conducting its study, the committee may seek the input and advice of the Attorney General, the Secretary of State, the Business Law section of the Kentucky Bar Association, and other agencies, organizations, and persons. The study may identify those states that have authorized low-profit limited liability companies and the regulatory and operational requirements imposed on low-profit limited liability companies in those states, together with an examination of how state provisions on low-profit limited liability companies would interact with federal law.

Signed by Governor April 13, 2010.

CHAPTER 134

(SB 132)

AN ACT relating to school facilities and making an appropriation therefor.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 157 IS CREATED TO READ AS FOLLOWS:

It is the intent of Sections 1 and 2 of this Act to:

- (1) *Support the construction of new school buildings and the renovation of existing school buildings in a manner that will create a healthy environment for students and teachers while saving energy, resources, and operational expenses; and*
- (2) *Encourage the use of a life-cycle cost, holistic approach to building design that considers school design, construction, operation, and maintenance in the initial decision-making process.*

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

(1) *As used in this section:*

- (a) *"Life-cycle cost analysis" means to calculate and compare different building designs to identify which is the best investment over the long term. Life-cycle costs include design and construction costs, operating costs, maintenance costs, and repair and replacement costs, adjusted for the time value of money;*
- (b) *"Net zero building" means a building in which the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used by the building; and*
- (c) *"Efficient school design" means a school building design:*
 - 1. *That meets, at a minimum, the requirements of the United States Green Building Council's Leadership in Energy and Environmental Design (LEED) for schools at the "Certified" level or certification under a comparable system with equivalent requirements or other building performance certification systems, such as the United States Department of Energy's Energy Star program;*
 - 2. *That ensures energy savings from a building design that equates to or exceeds ten (10) percent over the American Society of Heating, Refrigerating, and Air Conditioning Engineers energy standard 90.1-2007; and*
 - 3. *For which whole building life-cycle cost analysis illustrates that the design is cost-effective.*

(2) *The General Assembly hereby finds that schools that are constructed or renovated using efficient school design are proven effective vehicles for accomplishing some or all of the following beneficial public purposes:*

- (a) *Lower operating costs and increased asset value;*
- (b) *Reduced waste sent to landfills;*
- (c) *Conservation of energy and water;*
- (d) *Reduced storm drainage runoff;*
- (e) *Healthier, safer environments for occupants;*
- (f) *Reduced emissions of greenhouse gases; and*
- (g) *Improved student attendance and performance by:*
 - 1. *Using the building as a teaching tool;*
 - 2. *Using the local environment as a context for curriculum integration;*
 - 3. *Providing rigorous, highly relevant, and applied learning; and*
 - 4. *Improving productivity by making buildings healthier for occupants, especially through the increased use of natural light.*

(3) *The Kentucky Department of Education and all school districts undertaking the construction of new school buildings or the major renovation of existing school buildings are strongly encouraged to:*

- (a) *Meet or exceed efficient school design standards in planning and designing all new buildings and major renovation projects;*
- (b) *Use life-cycle cost analysis to evaluate different design proposals; and*
- (c) *Consider the possibility that each new school building or major renovation of a building could be a net zero building, either during the construction or renovation, or at a later date as resources become available.*

(4) (a) *The Kentucky efficient school design trust fund is hereby created as a restricted account to be administered by the Department of Education.*

- (b) *The account may receive contributions, gifts, donations, appropriations, and any other moneys made available for the account. Notwithstanding KRS 45.229, any moneys remaining in the account at the close of a fiscal year shall not lapse, but shall be carried forward into the succeeding fiscal year to be*

used for the purposes set forth in this section. Interest on moneys in the account shall accrue to the account.

- (c) *Moneys in the account shall be used to offset the initial additional cost, if any, associated with the construction or renovation of school buildings using efficient school design.*
- (d) *The Kentucky Board of Education shall promulgate administrative regulations pursuant to KRS Chapter 13A to prescribe how a local school district may qualify for and use funds from the account created by this subsection.*
- (5) *The Department of Education shall develop and adopt guidelines for efficient school design, net zero buildings, and life-cycle cost analysis, including the identification of appropriate computer-based simulation programs for use in undertaking life-cycle cost analysis.*
- (6) *The Department of Education and Department for Energy Development and Independence shall assist school districts in:*
 - (a) *Developing methods for measuring ongoing operating savings resulting from the use of efficient school design;*
 - (b) *Identifying sources for training for school staff and students to ensure that efficient school design features and components are fully utilized; and*
 - (c) *Identifying ways that efficient school design and its energy-saving components can be integrated into the school curriculum.*
- (7) *The Department of Education and Department for Energy Development and Independence shall, by November 1, 2010, and each year thereafter, for the fiscal year ending on June 30 of that year, prepare a report that shall be submitted to the Legislative Research Commission and the Governor. The report shall address new school buildings or building renovations and shall include but not be limited to the following:*
 - (a) *An assessment of the implementation of efficient school design within Kentucky's education system;*
 - (b) *Documented energy savings from any buildings built using efficient school design or net zero school buildings in operation;*
 - (c) *A list of the new or renovated school buildings completed or identified for future construction during the prior year using efficient school design, including the name of the school district, name of the school, total project cost, additional cost or savings, if any, associated with efficient school design features, and efficient school design features included in the project;*
 - (d) *A list of all school buildings that operate as a net zero building, and school buildings which school districts plan to convert to net zero. The list shall include the name of the school district, the name of the school, the total cost associated with the school building becoming a net zero building, and the components that will be installed to make the building a net zero building;*
 - (e) *Any recommendations relating to efficient school design; and*
 - (f) *A list of new school buildings completed during the prior year without using efficient school design and an explanation of why efficient school design was not used.*

➔Section 3. KRS 157.420 is amended to read as follows:

Public school funds made available to the credit of each district during any year shall be received, held, and expended by the district board, subject to the provisions of law and administrative regulations of the Kentucky Board of Education. The following restrictions shall govern the expenditure of funds from the public school fund:

- (1) The salary paid any rank of teachers shall be at least equivalent to the amount set forth in the biennial budget schedule for each rank and experience for a term of one hundred eighty-five (185) days for full-time service during the regular school year.
- (2) Beginning with the 2004-2006 biennium, the Kentucky Board of Education shall not approve any working budget or salary schedule for local boards of education for any school year unless the one hundred eighty-five (185) day salary schedule for certified staff has been adjusted over the previous year's salary schedule by a percentage increase at least equal to the cost-of-living adjustment that is provided state government workers under the biennial budget. The base funding level in the program for support education excellence in Kentucky

as defined in KRS 157.320 shall be increased by the statewide dollar value of the annual required cost-of-living percentage adjustment that shall be estimated on the sum of the previous year's statewide teachers' salaries.

- (3) A district that compensates its teachers or employees for unused sick leave at the time of retirement, pursuant to KRS 161.155, may create an escrow account to maintain the amount of funds necessary to pay teachers or employees who qualify for receipt of the benefit. The fund is limited to not more than fifty percent (50%) of the maximum liability for the current year to be determined according to the number of staff employed by the district on September 15. Interest generated by the account shall be calculated as part of the total amount. The funds shall not be used for any purpose other than compensation for unused sick leave at the time of retirement and shall not be considered as part of the general fund balance in determining available local revenue for purposes of KRS 157.620.
- (4)
 - (a) The per pupil capital outlay allotment for each district from the public school fund and from local sources shall be kept in a separate account and may be used by the district only for capital outlay projects approved by the commissioner of education in accordance with requirements of law, and based on a survey made in accordance with administrative regulations of the Kentucky Board of Education. These funds shall be used for the following capital outlay purposes:
 1. For direct payment of construction costs;
 2. For debt service on voted and funding bonds;
 3. For payment or lease-rental agreements under which the board eventually will acquire ownership of a school plant;
 4. For the retirement of any deficit resulting from overexpenditure for capital construction, if such deficit resulted from an emergency declared by the Kentucky Board of Education under KRS 160.550; and
 5. As a reserve fund for the above-named purposes, to be carried forward in ensuing budgets.
 - (b) A district may submit a request to the commissioner of education to use funds from the per pupil capital outlay allotment to purchase land for a new school or to modify an existing school if the project is included on the district facility plan for completion within eight (8) years. The land shall not be included in the calculation of the school district's unmet need. The commissioner may grant or deny the district's request at his or her discretion.
 - (c) A district which has experienced an increase in adjusted average daily attendance, as defined by administrative regulation, of twenty percent (20%) or more over a five (5) year period may submit a request to the commissioner of education to use capital outlay funds for the operation of a new school for the first two (2) years following its opening. The commissioner may grant or deny the district's request at his or her discretion.
 - (d) A local school district may submit a request to the commissioner of education to use capital outlay funds for maintenance expenditures or for the purchase of property insurance without forfeiting the district's participation in the School Facilities Construction Commission program. Maintenance requests may include other priorities that are not considered major renovations, such as repair, renovation, or system upgrades that are necessary to maintain the integrity of an existing school facility.
- (5) The district may contribute capital outlay funds for energy conservation measures under guaranteed energy savings contracts pursuant to KRS 45A.345, 45A.352, and 45A.353. Use of these funds, provided in KRS 45A.353, 56.774, and 58.600, shall be based on the following:
 - (a) The energy conservation measures shall include facility alteration;
 - (b) The energy conservation measures shall be identified in the district's approved facility plan;
 - (c) The current facility systems are consuming excess maintenance and operating costs;
 - (d) The savings generated by the energy conservation measures are guaranteed;
 - (e) The capital outlay funds contributed to the energy conservation measures shall be defined as capital cost avoidance as provided in KRS 45A.345(2) and shall be subject to the restrictions on usage as specified in KRS 45A.352(9); and

- (f) The equipment that is replaced shall have exceeded its useful life as determined by a life-cycle cost analysis.
- (6) If any district has a special levy for capital outlay or debt service that is equal to the capital outlay allotment or a proportionate fraction thereof, and spends the proceeds of that levy for the above-named purposes, the commissioner of education under administrative regulations of the Kentucky Board of Education, may authorize the district to use all or a proportionate fraction of its capital outlay allotment for current expenses. However, a district which uses capital outlay funds for current expenses shall not be eligible to participate in the School Facilities Construction Commission funds, except when the current expenditures are approved by the commissioner of education under subsection (4)(b) or (c) of this section.
- (7) If a survey shows that a school district has no capital outlay needs as shown in subsection (4)(a)1., 2., 3., and 4. of this section, upon approval of the commissioner of education, these funds may be used for school plant maintenance, repair, insurance on buildings, replacement of equipment, purchase of school buses, and the purchase of modern technological equipment, including telecommunications hardware, televisions, computers, and other technological hardware to be utilized for educational purposes only.
- (8) In surveying the schools, the Department of Education shall designate each school facility as a permanent, functional, or transitional center.
- (a) "Permanent center" means a center which meets the program standards approved by the Kentucky Board of Education, is located so that students are not subjected to an excessive amount of time being transported to the site, and has established an attendance area which will maintain enrollment at capacity but will also avoid overcrowding.
- (b) "Functional center" means a center which does not meet all the criteria established for a permanent facility, but is adequate to meet accreditation program standards to insure no substantial academic or building deficiency. The facility plan shall include additions and renovations necessary to meet current accreditation standards for which federal, state, and local funds may be used.
- (c) "Transitional center" means a center which the local board of education has determined shall no longer be designated permanent or functional. The center shall be destined to be closed and shall not be eligible for new construction, additions, or major renovation. However, the board of education shall maintain any operating transitional center to provide a safe and healthy environment for students.
- (9) ***Beginning in fiscal year 2011-2012, the Kentucky Department of Education shall standardize the process for evaluating the overall quality and condition of all school buildings across the state. The evaluation process shall:***
- (a) ***Result in consistent categorization of buildings for local planning purposes and for the distribution of state general fund moneys designated for capital construction;***
- (b) ***Be based on measurable, objective criteria;***
- (c) ***Include numerical scoring with weights to recognize building components and characteristics that address:***
- 1. Life safety issues;***
 - 2. Compliance with state and federal codes;***
 - 3. Compliance with requirements under the Americans with Disabilities Act;***
 - 4. Community spaces;***
 - 5. Instructional areas;***
 - 6. Mechanical, electrical, plumbing, and other technology systems;***
 - 7. Site and exterior building conditions;***
 - 8. Age of the buildings;***
 - 9. Feasibility of building additions or major renovations;***
 - 10. The districts' facility capacities;***

- 11. Current use of temporary facilities; and*
- 12. Projected enrollment growth; and*
- (d) Use of a third-party evaluator that utilizes an already established software based system to perform the first, base-line evaluation.*
- (10) The Kentucky Board of Education shall promulgate an administrative regulation upon recommendation of the Kentucky Department of Education and the School Facilities Construction Commission to implement subsection (9) of this section.**
- (11)** If a local school board authorized elementary, middle, or secondary education classes in a facility of a historical settlement school on January 1, 1994, the board shall continue to use the facilities provided by the settlement school if the facilities meet health and safety standards for education facilities as required by administrative regulations. The local school board and the governing body of the settlement school shall enter into a cooperative agreement that delineates the role, responsibilities, and financial obligations for each party.
- (12)**~~(10)~~ Notwithstanding the provisions of subsections (4) and (6) of this section, a local district that has requested a mid-year adjustment in the support education excellence in Kentucky funding under KRS 157.360(15) may request permission from the commissioner of education to use capital outlay funds for the purchase of school buses or to use the capital outlay funds for increased operational expenses for the first three (3) years following the increased growth in the district without forfeiture of the district's participation in the School Facilities Construction Commission Program. The commissioner may grant or deny the district's request.

➔Section 4. By June 1, 2011, the Department of Education shall determine the estimated amount of money that local school districts are expending for architect and engineering evaluations in preparation of the existing district facility plans and report that amount to the Interim Joint Committee on Education and the Interim Joint Committee on Appropriations and Revenue.

➔Section 5. By January 15, 2011, the Kentucky Department of Education with advice from the School Facilities Construction Commission shall issue a Request for Proposal for contracting with a third party for conducting statewide evaluations required by subsection (9) of Section 3 of this Act.

Signed by Governor April 13, 2010.

CHAPTER 135

(SB 104)

AN ACT relating to agriculture.

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

- ➔Section 1. KRS 150.740 is amended to read as follows:
- (1)** There shall be a ban on the importation of live members of the animal family Cervidae into the Commonwealth that have not been subject to a program of surveillance and identification for cervid chronic wasting disease (CWD) that meets or exceeds:
 - (a)** The requirements of the Kentucky Cervid CWD Surveillance and Identification (CCWDSI) Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
 - (b)** Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.
 - (2)** The Kentucky Department of Agriculture shall be responsible for authorizing importation of the members of the animal family Cervidae into the Commonwealth that have been subject to a program of surveillance and identification for cervid CWD that meets or exceeds:
 - (a)** The requirements of the Kentucky CCWDSI Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
 - (b)** Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.

- (3) Members of the animal family Cervidae shall not be eligible for importation into the Commonwealth unless the program of surveillance and identification for cervid CWD to which they have been subject:
- (a) Has been certified by the exporting state's state veterinarian or agency having jurisdiction over that state's surveillance and identification program;
 - (b) Has been approved by the Kentucky state veterinarian as meeting or exceeding the standards imposed under the Kentucky CCWDSI Program; and
 - (c) Meets, at minimum, the following requirements:
 - 1. The program shall require cervid owners to obtain identification and laboratory diagnosis from brain tissue as directed by the exporting state's state veterinarian or agency with jurisdiction for cervids twelve (12) months of age or greater that:
 - a. Display clinical signs of CWD;
 - b. Die, including deaths by slaughter or by hunting, including hunting on hunting preserves; or
 - c. Are ill or injured regardless of whether the illness or injury results in death; and
 - 2. The program shall require cervid owners to obtain cervids from herds that have been monitored for at least five (5) years and that have complied with the standards contained in the Kentucky CCWDSI Program.
- (4) Cervids originating from a state that has reported a confirmed case of CWD in wild or captive cervids shall not be imported into Kentucky until The United States Department of Agriculture approves:
- (a) Regulations that allow importation from those states; and
 - (b) A live test for CWD that is available for live testing of cervids.
- (5) Importation of members of the animal family Cervidae into the Commonwealth shall be consistent with this section and with administrative regulations promulgated by the Kentucky Department of Agriculture in cooperation with the Kentucky Department of Fish and Wildlife Resources.
- (6) A person shall be guilty of a Class D felony upon conviction for violating this section. Upon conviction of a second violation of this section and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit. On or before November 1 of each year, the Department of Fish and Wildlife Resources and the Department of Agriculture, Office of the State Veterinarian, respectively shall issue reports to the Interim Joint Committee on Agriculture and *the Interim Joint Committee on Natural Resources and Environment* on the status of chronic wasting disease, and the reports may include the status of other animal or wildlife diseases in Kentucky and the United States. The reports shall be used for the purpose of determining the need for modifications to the statutory ban on the importation of cervids into the Commonwealth.
- (7) The Department of Fish and Wildlife Resources shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to this section. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department without compensation to the owner.
- (8) The department shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to this section.

➔Section 2. KRS 151.7282 is amended to read as follows:

By July 1 of each year preceding the convening of the General Assembly in even-numbered-year regular session, the authority shall provide the projected six (6) year construction and preconstruction program to the Interim Joint Committee on ~~Agriculture and~~ Natural Resources *and Environment*, the Capital Planning Advisory Board, and the Interim Joint Committee on Appropriations and Revenue.

➔Section 3. KRS 224.10-660 is amended to read as follows:

- (1) The Kentucky Recycling and Marketing Assistance Program, referred to in this section as the "program," is created to develop a recycling infrastructure within the Commonwealth. The program shall:
 - (a) Encourage the collection, processing, and marketing of recovered materials;
 - (b) Provide assistance for the development of community and regional recycling;
 - (c) Identify resources to help market recyclables; and
 - (d) Promote the development of the market for recyclables.
- (2) The Environmental and Public Protection Cabinet shall administer the program and assist local governments and commercial businesses seeking to recycle materials.
- (3) The secretary of the Environmental and Public Protection Cabinet shall create a Kentucky Recycling and Marketing Assistance Advisory Committee to act in an advisory capacity to the cabinet. In addition to its other duties, this committee shall develop and submit an annual report by October 1 to the Interim *Joint* Committee on ~~Agriculture and~~ Natural Resources *and Environment*.

➔Section 4. KRS 224.43-080 is amended to read as follows:

- (1) On July 15, 1994, and annually thereafter, each publisher shall submit a report to the cabinet. The report shall indicate the amount of newsprint used in the preceding year, its recycled content, along with any other information required by the cabinet.
- (2) The Governor shall appoint a Newsprint Recycling Task Force consisting of the secretary of the Environmental and Public Protection Cabinet or a designee; the chairman of the Kentucky Recycling and Marketing Assistance Advisory Committee or a designee; the executive director of the Kentucky Press Association or a designee; three (3) members from environmental organizations; and five (5) members representing the Kentucky newsprint publishing industry and newsprint manufacturers doing business in Kentucky. A list of names of potential task force members shall be provided by the president of the Kentucky Press Association.
- (3) The task force members shall each serve a two (2) year term. The initial five (5) industry representatives appointments shall consist of two (2) two (2) year terms and three (3) one (1) year terms.
- (4) The Newsprint Recycling Task Force shall meet as necessary to monitor the use of newsprint in the state for the following goals:
 - (a) To increase the demand for recycled newsprint in Kentucky;
 - (b) To increase the availability for the product;
 - (c) To establish Kentucky as a reliable source of old newsprint for recycling; and
 - (d) To identify, develop, and advance initiatives to recycle and reuse discarded newspapers and paper products with an emphasis on recycling these materials instead of diverting them for disposal.
- (5) The Newsprint Recycling Task Force and the Kentucky Press Association shall encourage all Kentucky industries and businesses, their trade or professional organizations, and all public agencies at the state and local level to increase their use of recycled newsprint.
- (6) The Newsprint Recycling Task Force shall take steps to attract a recycled newsprint mill or related facility to Kentucky by identifying potential sites and potential manufacturers. The task force shall also work with the Kentucky Recycling and Marketing Assistance Advisory Committee in recommending appropriate economic and tax incentives to encourage such a project.
- (7) The Newsprint Recycling Task Force shall promote the increased recovery of old newspapers and, with the Commonwealth of Kentucky representatives, work with communities to develop processing and collection programs to provide quality material to the marketplace.
- ~~[(8) The Newsprint Recycling Task Force shall report to the Interim Joint Committee on Agriculture and Natural Resources by October 1, 1995, on the availability and cost of adequate supplies of newsprint which contain a recycled content of fifty percent (50%) or more, or any other information or recommendations deemed appropriate.]~~

➔Section 5. KRS 247.220 is amended to read as follows:

- (1) The Commissioner of Agriculture shall make grants of state funds to qualified local agricultural fairs on a matching basis, to be used by them to pay premium awards for exhibits and displays of domestic livestock, poultry, harness horse racing, other horse events, and agricultural products. The premiums actually awarded shall conform to those appearing on the premium list issued by the fair.
 - (2) The state may provide funds for use in the establishment of new facilities and improvement of existing facilities for use in conducting events at local agricultural fairs as provided by this section. No grant for buildings shall be made until the local fair board has complied with the local fair program and qualified for the state grant as provided in subsection (5) of this section. Grants for facilities shall be made under regulations promulgated by the Fair Council and the Commissioner of Agriculture. In no event shall the allocation for facilities result in a decrease in the number of approved agricultural classes or premiums.
 - (3) There shall be a Fair Council in the Department of Agriculture. The council shall act in an advisory capacity to the Commissioner in all matters pertaining to the administration of the department's fair program. It shall be called into session when there are matters for its consideration. It shall meet at least twice each calendar year at Frankfort or at any other place that may be determined.
 - (4) (a) The council shall be composed of the:
 1. Commissioner as chairman ex officio;
 2. Presidents or their designated representatives of the following state groups:
 - a. Kentucky Livestock Improvement Association;
 - b. Kentucky Farm Bureau Federation;
 - c. Kentucky Association of Fairs and Horse Shows, Inc.;
 - d. Kentucky Harness Horse Association;
 - e. American Saddlebred Horse Association; and
 - f. Kentucky Walking Horse Association;
 3. Director of Vocational Agriculture Education;
 4. Dean of the College of Agriculture of the University of Kentucky; and
 5. ~~Co-chairs~~~~[Chairmen]~~ of the ~~[Senate and House]~~ Interim Joint Committee on Agriculture~~[and Natural Resources]~~.
 - (b) The Commissioner may, with the concurrence of a majority of the members of the council, appoint additional members to the council.
- (5) To qualify for a grant of state funds, a fair shall meet standards set by the Commissioner and his advisory council whose approval may be given only if the fair:
 - (a) Provides in its bylaws for holding an annual fair running for at least three (3) days;
 - (b) Presents, through the medium of youth organizations such as 4-H clubs, Future Farmers of America, and other similar organizations, an educational program concerning the production and marketing of the livestock, poultry, and horse industries;
 - (c) Complies with all administrative regulations which the Department of Agriculture is hereby authorized to promulgate; and
 - (d) Appoints one (1) or more members to its fair board from local livestock associations, horsemen's associations, and county farm bureaus, and selects one (1) or more county extension agents and vocational agriculture teachers for counties served by the fair as members of the board. Wherever local livestock associations, horsemen's associations, and farm bureaus are in existence, appointees are to be nominated to the fair board by these organizations. Where fairs serve an area, appointments may be made from all counties within the particular area. It shall be the responsibility of the appointees to aid in establishing premium lists and planning agricultural exhibits.
- (6) Any fair receiving a grant of state funds shall file with the director of the Division of Show and Fair Promotion in the Department of Agriculture, by December 1 of the year in which the grant is received, satisfactory proof

that all state premium awards have been paid and a certified notarized financial report submitted by the treasurer of the local fair association.

➔Section 6. KRS 248.709 is amended to read as follows:

The board's duties shall include, but not be limited to:

- (1) Administering the agricultural development fund, except as provided in KRS 248.717(2);
- (2) Receiving requests and applications for funds and authorizing the distribution of funds. The board may receive applications from institutions of public postsecondary education for financial and technical assistance in conducting alternative crop development research. The board shall assist the applicants in obtaining any necessary federal permits that may be required to conduct alternative crop research. A recipient institution shall report the status and progress of the alternative crop development research to the board, the Interim Joint Committee on Agriculture~~[-and Natural Resources]~~, and the Tobacco Settlement Agreement Fund Oversight Committee. The board shall promulgate administrative regulations relating to growing and researching alternative crops at the selected postsecondary institution, and shall adopt any applicable federal regulations;
- (3) Developing guidelines and criteria for eligibility for and disbursement of funds, the types of direct and indirect economic assistance to be awarded, and procedures for applying for funds and reviewing applications for assistance;
- (4) Ensuring that each county agricultural development council's plans and county recommendations and applications receive major consideration in decisions on use of a county's funds;
- (5) Completing a comprehensive plan:
 - (a) The comprehensive plan shall propose short-term and long-term goals, strategies, and investments in Kentucky agriculture that will assist farmers in remaining competitive in existing and new enterprises. The comprehensive plan shall identify a diversified mix of enterprises that are profitable to farmers and shall determine the investments necessary to support the viability of those enterprises. The plan shall be reviewed by the General Assembly and the subcommittee created in KRS 248.723. The subcommittee may issue comment on the plan. However, the board may act without General Assembly approval;
 - (b) As soon as possible following enactment of KRS 248.701 to 248.727, a plan of action shall be devised to meet the immediate needs of the Commonwealth's farmers and tobacco impacted communities most adversely affected by tobacco losses. A set of priorities shall be established in the plan of action to implement and fund programs to meet those needs as soon as practical; and
 - (c) Notwithstanding the provisions of 2000 Ky. Acts ch. 546, immediate funding needs may be addressed and funded before a comprehensive or strategic plan is completed. Proposals from an applicant may be approved by the board if they meet the criteria established in KRS 248.713;
- (6) Preparing a biennial budget request in accordance with KRS Chapter 48;
- (7) Working with other governmental agencies to maximize the financial and economic impact that the programs implemented by the board will have and to maximize receipt of federal and other funds to the agriculture community in the Commonwealth;
- (8) Promulgating administrative regulations relating to carrying out the purposes of KRS 248.701 to 248.727;
- (9) Hiring a director to carry out the will of the board;
- (10) Ensuring the necessary mechanisms are in place for the committees created by KRS 248.715 to function effectively;
- (11) Contracting with other persons or entities if necessary to effectuate the board's purposes and functions;
- (12) Enacting bylaws concerning the conduct of the board's business and other administrative procedures as the board deems necessary;
- (13) Developing criteria to evaluate the success of the board's programs and expenditures to applicants. The criteria shall be simple, easily measured, and easily understood. Criteria should include number of families farming, increases in farm income attributable to state programs, the number of diversified operations, and the number of different types of diversified efforts within a county, including the efforts that have failed;

- (14) Providing reports of each meeting, along with expenditures approved or denied, within thirty (30) days of the meeting, to the Tobacco Settlement Agreement Fund Oversight Committee created by KRS 248.723. These reports shall contain detailed information relating to each expenditure by the board and detailed information on each application for funding a project or initiative by the board and decision by the board regarding each proposal, except information that may violate confidentiality. This information shall be provided by electronic format as prescribed by the Legislative Research Commission;
- (15) Submitting an annual written report to the Governor, the Commissioner of Agriculture, the Tobacco Settlement Agreement Fund Oversight Committee, and the Legislative Research Commission regarding the administrative, financial, and programmatic activities of the board; and
- (16) Making recommendations to the General Assembly through the Legislative Research Commission on possible adjustments to the funding formula for county allocations and the percent allocated to counties as provided in KRS 248.703.

➔Section 7. KRS 260.032 is amended to read as follows:

The Commissioner of the Kentucky Department of Agriculture shall submit an annual report to the Interim Joint Committee on Health and Welfare and the Interim Joint Committee on Agriculture ~~and Natural Resources~~, which includes but is not limited to:

- (1) The amount of funding received for the Kentucky Farmers Market Nutrition Program;
- (2) The economic impact of the program;
- (3) Strategies implemented to market the program and improve nutrition; and
- (4) Statistics related to the number of individuals served and farmers' markets participating in the program.

➔Section 8. KRS 260.853 is amended to read as follows:

- (1) The Department of Agriculture shall promote the research and development of markets for Kentucky industrial hemp and hemp products after the selection and establishment of the industrial hemp research program and the Industrial Hemp Commission, and provided that adequate funds are available for these purposes from the industrial hemp program fund. The department shall work cooperatively with selected Kentucky university or universities' agricultural research programs utilizing the expertise of the university or universities in the area of agricultural research.
- (2) The Council on Postsecondary Education shall select a university or universities where the industrial hemp research program is to be established, after proposals are considered from all interested universities with agriculture departments in Kentucky.
- (3) The selected institutions' industrial hemp research program shall undertake research of industrial hemp production in the state. The department shall assist the industrial hemp research program in obtaining the necessary federal permits from the United States Drug Enforcement Agency or appropriate federal agency. In undertaking the industrial hemp research program, the university or universities are authorized to:
 - (a) Grow industrial hemp to conduct agronomy research and analysis of required soils, growing conditions, and harvest methods relating to the production of industrial hemp for commercial products, including but not limited to hemp seed, paper, clothing, and oils;
 - (b) Conduct seed research on various types of industrial hemp that are best suited to be grown in Kentucky, including but not limited to seed availability, creation of Kentucky hybrid types, in-the-ground variety trials and seed production;
 - (c) Study the economic feasibility of developing an industrial hemp market in various types of industrial hemp that can be grown in the Commonwealth;
 - (d) Report on the estimated value-added benefits, including environmental benefits, that Kentucky businesses would reap by having an industrial hemp market of Kentucky-grown industrial hemp varieties in the Commonwealth;
 - (e) Study the agronomy research being conducted worldwide relating to industrial hemp varieties, production, and utilization;

- (f) Research and promote Kentucky industrial hemp and hemp seed on the world market that can be grown on farms in the Commonwealth; and
 - (g) Study the feasibility of attracting private funding for the Kentucky industrial hemp research program.
- (4) The authorization granted in subsection (3) of this section shall not subject the industrial hemp research program or the selected university or universities where it is located to any criminal liability under the controlled substances laws of the Commonwealth. This exemption from criminal liability is a limited exemption that shall be strictly construed and that shall not apply to any activities of the industrial hemp research program or the selected university or universities that are not expressly permitted in the authorization.
 - (5) The authorization granted in subsection (3) of this section shall not alter, amend, or repeal by implication any provision of the Kentucky Revised Statutes relating to controlled substances.
 - (6) The selected university or universities of the industrial hemp research program shall notify the headquarters of the Department of Kentucky State Police, the local barracks of the Department of Kentucky State Police, and all other local law enforcement agencies of the duration, size, and location of all industrial hemp plots.
 - (7) The Commissioner and the university or universities may cooperatively seek funds from both public and private sources to implement this section. The funds shall be deposited into the industrial hemp program fund.
 - (8) By October 1, 2001, and annually thereafter, the university or universities shall report on the status and progress of the industrial hemp research program authorized by this section to the Commissioner, the Industrial Hemp Commission, and the Interim Joint Committee on Agriculture, and *the Interim Joint Committee on Natural Resources and Environment*.

➔Section 9. KRS 260.863 is amended to read as follows:

- (1) The commission shall develop recommendations on industrial hemp legislation by December 15, 2001, and annually thereafter~~+~~ shall report on the recommendations to the Governor, the Interim Joint Committee on Agriculture, *the Interim Joint Committee on*~~and~~ Natural Resources *and Environment*, and to the Legislative Research Commission with respect to industrial hemp policies and practices that will result in the proper legal growing, management, use, and marketing of the state's potential industrial hemp industry. These policies and practices shall, at a minimum, address the following:
 - (a) Federal laws and regulatory constraints;
 - (b) The economic and financial feasibility of an industrial hemp market in Kentucky;
 - (c) Kentucky businesses that utilize industrial hemp;
 - (d) Examination of research on industrial hemp production and utilization;
 - (e) The potential for globally marketing Kentucky industrial hemp;
 - (f) Feasibility study of private funding for the Kentucky industrial hemp research program;
 - (g) Law enforcement concerns;
 - (h) Statutory and regulatory schemes for growing of industrial hemp by private producers; and
 - (i) Technical support and education about industrial hemp.
- (2) The commission shall also continue to monitor the research and development of industrial hemp in the United States and the Kentucky industrial hemp research program.

➔Section 10. KRS 351.1055 is amended to read as follows:

- (1) There is hereby established a Mine Equipment Review Panel attached to the Department for Natural Resources in the Environmental and Public Protection Cabinet.
- (2) The Mine Equipment Review Panel shall be a permanent panel of recognized experts who shall review and make recommendations annually to the executive director of the Office of Mine Safety and Licensing and the Interim Joint Committee on~~Agriculture and~~ Natural Resources *and Environment* regarding best available mine safety technologies, including but not limited to wireless tracking and communications devices for use by miners in underground mines. Subject to budgetary constraints and approval by the United States Mine Safety and Health Administration (MSHA), if there is no existing law to the contrary, the commissioner may implement the recommendations of the panel. Based on the recommendations provided by the panel, the

executive director shall comprise a list of commercially available mine safety equipment, including wireless tracking and communications devices that may be approved for use by coal miners.

- (3) The panel shall meet at the call of the chair. The chair of the panel shall be the executive director of mine safety and licensing. Members of the panel shall serve without pay, but shall be entitled to reimbursement of travel-related expenses.
- (4) The Mine Equipment Review Panel shall be composed of the following members, who shall be appointed by the commissioner not less than thirty (30) days after July 12, 2006:
 - (a) One (1) member shall represent the National Institute of Occupational Safety and Health;
 - (b) One (1) member shall represent the federal Mine Safety and Health Administration;
 - (c) One (1) member shall represent the coal industry;
 - (d) One (1) member shall be appointed from the membership of the United Mine Workers of America and shall represent mine labor, preferably a member of a Kentucky mine rescue team;
 - (e) One (1) member shall represent the Department of Mining Engineering at the University of Kentucky; and
 - (f) One (1) member shall be the executive director of the Office of Mine Safety and Licensing.
- (5) The Mine Equipment Review Panel shall provide initial recommendations to the executive director of the Office of Mine Safety and Licensing not more than one hundred twenty (120) days after the panel members have been appointed and the panel is duly constituted to conduct business. Periodically, the panel shall review and make recommendations to the executive director on changes to or innovations in mine safety equipment that could be deployed in coal mines.

➔Section 11. KRS 363.9055 is amended to read as follows:

- (1) As used in this section, "biodiesel fuel" means a biodegradable, combustible liquid fuel derived from renewable fats and vegetable oils that meets ASTM specification PS 121-99 and is suitable for blending with petroleum-based diesel fuel for use in diesel engines.
- (2) The General Assembly strongly encourages that, beginning on January 1, 2006, all diesel fuel sold or offered for sale in the Commonwealth and reformulated to achieve federally mandated sulfur reduction requirements use biodiesel in a blend not less than two percent (2%) by volume to meet those requirements.
- ~~[(3) By August 31, 2003, and at least annually thereafter until the 2006 Regular Session of the General Assembly, the Interim Joint Committee on Agriculture and Natural Resources shall receive a report on the petroleum refining industry's progress toward achieving the federally mandated diesel fuel sulfur reductions. The report shall include information on the use of biodiesel to help meet the reductions. The committee shall request report information from relevant sources, including but not limited to the American Petroleum Institute and petroleum refiners that produce diesel fuel for state, national, or international sale.]~~

Signed by Governor April 13, 2010.

CHAPTER 136

(SB 65)

AN ACT relating to suicide prevention training.

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

➔Section 1. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.
- (2) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term,

beginning and ending dates of each school month, instructional days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.

- (3) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the commissioner of education, which regulations must be in conformity with the following criteria:
 - (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
 - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
 - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (4) (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.
- (b) ***In addition to the four (4) days required under paragraph (a) of this subsection, a minimum of two (2) hours of self-study review of suicide prevention materials shall be required for all high school and middle school principals, guidance counselors, and teachers each school year.***
- (c) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.
 1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.
 2. No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.
- ~~(d)(e)}~~ The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.
- ~~(e)(d)}~~ Each local board may use two (2) days for planning activities without the presence of pupils.
- ~~(f)(e)}~~ Each local board may use the number of days deemed necessary for:
 1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
 2. Local disaster which would endanger the health or safety of children; and
 3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.
- (5) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (4)~~(f)(e)}~~2. of this section, and regulations setting forth

the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.

- (6) (a) In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit teachers who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence. The commissioner of education shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election and on the day of a primary election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.
- (b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:
 - 1. Designate the day as one (1) of the four (4) holidays permitted under subsection (4)(d)~~(e)~~ of this section; or
 - 2. Not include the day in the minimum school term specified in subsection (1) of this section.
- (7) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
- (8) Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver to use an alternative service delivery option, including providing services during the school day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.
- (9) Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.
- (10) Notwithstanding the provisions of KRS 158.060(3) and the provisions of subsection (1) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the instructional day. In the event of an unforeseen bus delay, the administrator of a school that participates in the Federal School Breakfast Program may authorize up to fifteen (15) minutes of the six (6) hour instructional day if necessary to provide the opportunity for children to eat breakfast not to exceed eight (8) times during the school year within a school building.
- (11) Notwithstanding any other statute to the contrary, the following provisions shall apply to a school district that misses school days due to emergencies, including weather-related emergencies:
 - (a) A certified school employee shall be considered to have fulfilled the minimum one hundred eighty-five (185) day contract with a school district under KRS 157.350 and shall be given credit for the purpose of calculating service credit for retirement under KRS 161.500 for certified school personnel if:

1. State and local requirements under this section are met regarding the equivalent of the number and length of instructional days, professional development days, holidays, and days for planning activities without the presence of pupils; and
 2. The provisions of the district's school calendar to make up school days missed due to any emergency, as approved by the Kentucky Department of Education, including but not limited to a provision for additional instructional time per day, are met.
- (b) Additional time worked by a classified school employee shall be considered as equivalent time to be applied toward the employee's contract and calculation of service credit for classified employees under KRS 78.615 if:
1. The employee works for a school district with a school calendar approved by the Kentucky Department of Education that contains a provision that additional instructional time per day shall be used to make up full days missed due to an emergency;
 2. The employee's contract requires a minimum six (6) hour work day; and
 3. The employee's job responsibilities and work day are extended when the instructional time is extended for the purposes of making up time.
- (c) Classified employees who are regularly scheduled to work less than six (6) hours per day and who do not have additional work responsibilities as a result of lengthened instructional days shall be excluded from the provisions of this subsection. These employees may be assigned additional work responsibilities to make up service credit under KRS 78.615 that would be lost due to lengthened instructional days.

➔Section 2. KRS 161.011 is amended to read as follows:

- (1) (a) "Classified employee" means an employee of a local district who is not required to have certification for his position as provided in KRS 161.020; and
- (b) "Seniority" means total continuous months of service in the local school district, including all approved paid and unpaid leave.
- (2) The commissioner of education shall establish by January, 1992, job classifications and minimum qualifications for local district classified employment positions which shall be effective July 1, 1992. After June 30, 1992, no person shall be eligible to be a classified employee or receive salary for services rendered in that position unless he holds the qualifications for the position as established by the commissioner of education.
- (3) No person who is initially hired after July 13, 1990, shall be eligible to hold the position of a classified employee or receive salary for services rendered in such position, unless he holds at least a high school diploma or high school certificate of completion or GED certificate, or he shows progress toward obtaining a GED. To show progress toward obtaining a GED, a person shall be enrolled in a GED program and be progressing satisfactorily through the program, as defined by administrative regulations promulgated by the Council on Postsecondary Education.
- (4) Local school districts shall encourage classified employees who were initially hired before July 13, 1990, and who do not have a high school diploma or a GED certificate to enroll in a program to obtain a GED.
- (5) Local districts shall enter into written contracts with classified employees. Contracts with classified employees shall be renewed annually except contracts with the following employees:
 - (a) An employee who has not completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract will not be renewed for the subsequent school year. Upon written request by the employee, within ten (10) days of the receipt of the notice of nonrenewal, the superintendent shall provide, in a timely manner, written reasons for the nonrenewal.
 - (b) An employee who has completed four (4) years of continuous active service, upon written notice which is provided or mailed to the employee by the superintendent, no later than May 15, that the contract is not being renewed due to one (1) or more of the reasons described in subsection (7) of this section. Upon written request within ten (10) days of the receipt of the notice of nonrenewal, the employee shall

be provided with a specific and complete written statement of the grounds upon which the nonrenewal is based. The employee shall have ten (10) days to respond in writing to the grounds for nonrenewal.

- (6) Local districts shall provide in contracts with classified employees of family resource and youth services centers the same rate of salary adjustment as provided for other local board of education employees in the same classification.
- (7) Nothing in this section shall prevent a superintendent from terminating a classified employee for incompetency, neglect of duty, insubordination, inefficiency, misconduct, immorality, or other reasonable grounds which are specifically contained in board policy.
- (8) The superintendent shall have full authority to make a reduction in force due to reductions in funding, enrollment, or changes in the district or school boundaries, or other compelling reasons as determined by the superintendent.
 - (a) When a reduction of force is necessary, the superintendent shall, within each job classification affected, reduce classified employees on the basis of seniority and qualifications with those employees who have less than four (4) years of continuous active service being reduced first.
 - (b) If it becomes necessary to reduce employees who have more than four (4) years of continuous active service, the superintendent shall make reductions based upon seniority and qualifications within each job classification affected.
 - (c) Employees with more than four (4) years of continuous active service shall have the right of recall positions if positions become available for which they are qualified. Recall shall be done according to seniority with restoration of primary benefits, including all accumulated sick leave and appropriate rank and step on the current salary schedule based on the total number of years of service in the district.
- (9) Local school boards shall develop and provide to all classified employees written policies which shall include but not be limited to:
 - (a) Terms and conditions of employment;
 - (b) Identification and documentation of fringe benefits, employee rights, and procedures for the reduction or laying off of employees; and
 - (c) Discipline guidelines and procedures that satisfy due process requirements.
- (10) Local school boards shall maintain a registry of all vacant classified employee positions that is available for public inspection in a location determined by the superintendent and make copies available at cost to interested parties. If financially feasible, local school boards may provide training opportunities for classified employees focusing on topics to include but not be limited to suicide prevention, abuse recognition, and cardiopulmonary resuscitation (CPR). *If suicide prevention training is offered it may be accomplished through self-study review of suicide prevention materials.*
- (11) The evaluation of the local board policies required for classified personnel as set out in this section shall be subject to review by the Department of Education while it is conducting district management audits pursuant to KRS 158.785.

➔Section 3. This Act shall be known and may be cited as the "Make a Difference for Kids Act of 2010."

Signed by Governor April 13, 2010.

CHAPTER 137

(SB 62)

AN ACT relating to establishing Mesothelioma Awareness Day.

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

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

- (1) *September 26 of each year is designated "Mesothelioma Awareness Day" throughout the Commonwealth.*

- (2) *The Governor shall proclaim September 26 of each year as "Mesothelioma Awareness Day" and shall encourage Kentuckians to support research into effective treatments and early detection methods.*

Signed by Governor April 13, 2010.

CHAPTER 138

(SB 30)

AN ACT relating to the military family assistance trust fund.

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

➔Section 1. KRS 36.474 is amended to read as follows:

- (1) During active duty of a regular member of the United States Armed Forces deployed outside the United States who names Kentucky as home of record for military purposes, or any federal active duty of a member of a state National Guard or a Reserve component, who names Kentucky as home of record for military purposes, and for ***one hundred eighty (180)***~~ninety (90)~~ days following the end of deployment outside the United States or deactivation, as appropriate, trust fund moneys shall be used to support:
 - (a) The person who names Kentucky as home of record for military purposes;
 - (b) The person's Kentucky resident spouse;~~and~~
 - (c) The person's dependent or dependents; ***or***
 - (d) ***A group of several members of the military or their families as described in paragraphs (a) to (c) of this subsection.***
- (2) An application for a trust fund grant may be filed by the member who names Kentucky as home of record for military purposes or his or her Kentucky resident spouse. The application shall be accompanied by an appropriate authorization to access personnel information contained in the military database Defense Enrollment Reporting System (DEERS) for verification purposes.
- (3) Subject to the availability of trust fund moneys, the adjutant general shall award a grant to an applicant ***described in paragraphs (a) to (c) of subsection (1) of this section*** if that person's application is need-based, and the amount of the grant does not exceed the dollar cap established by the board through the promulgation of administrative regulations. An application shall be need-based if:
 - (a) Funds are requested for necessary expenses incurred, or to be incurred. Necessary expenses shall include but not be limited to:
 1. Housing;
 2. Utilities;
 3. Groceries;
 4. Health insurance copay; and
 5. Child care;
 - (b) The necessary expenses created, or will create, an undue hardship on a person referred to in subsection (1) of this section;
 - (c) The undue hardship is directly related to the member's deployment outside the United States or federal active duty, as appropriate;
 - (d) The applicant does not have reasonable access to any other funding source, whether public or private; and
 - (e) The military family assistance trust fund is the last resort.
- (4) ***Subject to the availability of trust fund moneys, the adjutant general may expend trust fund money, in amounts up to one thousand dollars (\$1,000) per situation and up to ten thousand dollars (\$10,000) per calendar year, to benefit individuals described in paragraph (d) of subsection (1) of this section if:***
 - (a) ***The individuals have a demonstrated need that affects their health, safety, or well-being; and***

- (b) *A majority of the members of the military family assistance trust fund board has approved the expenditure, verbally or in writing.*
- (5) *Subject to the availability of trust fund moneys, the director of the Kentucky National Guard Family Services Program within the Kentucky Department of Military Affairs may expend trust fund money, in amounts up to one thousand dollars (\$1,000) per situation and up to ten thousand dollars (\$10,000) per calendar year, to benefit individuals described in subsection (1) of this section if:*
- (a) *The individuals have a demonstrated need that affects their health, safety, or well-being; and*
- (b) *A majority of the members of the military family assistance trust fund board has approved the expenditure, verbally or in writing.*
- (6)~~(4)~~ (a) The adjutant general shall award or decline to award a grant within sixty (60) days of receiving an application.
- (b) If the adjutant general awards or declines to award a grant, he or she shall state in writing the reason for the decision and keep the writing on file.
- (c) If the adjutant general declines to award a grant, he or she shall provide the applicant with a copy of the writing referred to in paragraph (b) of this subsection. In addition, if the adjutant general declines to award a grant due to the availability of public or private funds, the adjutant general shall identify the source of available funds for the applicant and provide assistance with regard to seeking funds from that source.
- (7)~~(5)~~ No later than August 15, 2006, the military family assistance trust fund board shall promulgate emergency administrative regulations to carry out the provisions of this section. These emergency regulations shall, at a minimum, enhance administrative efficiency and limit the dollar amount that a person may receive in grants per twelve (12) month period.

Signed by Governor April 13, 2010.

CHAPTER 139

(HB 589)

AN ACT relating to tax credits for alternative transportation fuels.

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

➔Section 1. KRS 152.715 is amended to read as follows:

As used in KRS 152.710 to 152.725, unless the context requires otherwise:

- (1) "Alternative transportation fuels" means:
- (a) ***Before August 1, 2010***, crude oil or transportation fuels produced by processes that:
1. Convert coal, waste coal, or biomass resources; or~~that~~
 2. Extract oil from oil shale or tar sands;
- to produce crude oil or fuels for powering vehicles, aircraft, and machinery;
- (b) ***On or after August 1, 2010:***
1. ***Crude oil or transportation fuels produced by processes that:***
 - a. *Convert coal, waste coal, or biomass resources; or*
 - b. *Extract oil from oil shale or tar sands;*
to produce crude oil or fuels for powering vehicles, aircraft, and machinery;
 2. ***Liquefied fuel produced from natural gas; or***
 3. ***Liquefied petroleum gas produced from natural gas or natural gas liquids.***

"Alternative transportation fuels" may include but are not limited to petroleum, jet fuel, gasoline, diesel fuel, hydrogen derived from coal, and diesel fuel and ethanol derived from biomass;

- (2) "Synthetic natural gas" means pipeline quality or industrial quality natural gas produced from coal through gasification processes;
- (3) "Fossil energy resources" means reserves of coal, oil shale, and natural gas; and
- (4) "Biomass resources" means any organic matter that is available on a renewable or recurring basis, including agricultural crops and trees; wood and wood residues; plants, aquatic plants, and plant oils; grasses; animal fats and animal by-products; animal manure; residue materials; and waste products.

➔Section 2. KRS 154.27-010 is amended to read as follows:

As used in this subchapter:

- (1) "Activation date" means the date on which an approved company begins incurring recoverable costs or engaging in recoverable activity pursuant to the tax incentive agreement. The activation date shall be set forth in the tax incentive agreement and shall be a date within five (5) years of the date of final approval of the tax incentive agreement. The authority may extend the five (5) year period to no more than seven (7) years upon written application for an extension by the approved company. To implement the activation date, the approved company shall notify the authority of its intent to activate the tax incentives authorized in the tax incentive agreement. The activation date shall apply to all incentives included in the tax incentive agreement regardless of whether the approved company has met the requirements to receive all incentives at that time. If the approved company does not implement the activation date before the date established in the tax incentive agreement, the activation date shall be the date established in the tax incentive agreement;
- (2) "Affiliate" has the same meaning as in KRS 154.22-010;
- (3)
 - (a) "Alternative fuel facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce alternative transportation fuel for sale.
 - (b) The alternative fuel facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels;
- (4) "Alternative transportation fuels" has the same meaning as in KRS 152.715;
- (5) "Approved company" means a corporation, limited liability company, partnership, registered limited liability partnership, sole proprietorship, business trust, or any other entity approved for incentives for an eligible project;
- (6) "Authority" means the Kentucky Economic Development Finance Authority established by KRS 154.20-010;
- (7) "Base amount" means the tons of coal, ***thousand (1000) cubic foot units (Mcf) of natural gas, or gallons of natural gas liquids*** purchased and used or severed and used by the approved company as feedstock for an eligible project during the twelve (12) months prior to the month in which the approved company first begins receiving incentives under KRS 143.024 ***or Section 5 of this Act***, and 154.27-060, that were subject to the tax imposed by KRS 143.020 ***or 143A.020***;
- (8) "Biomass resources" has the same meaning as in KRS 152.715;
- (9)
 - (a) "Capital investment" means:
 1. Obligations incurred for labor and to contractors, subcontractors, builders, and materialmen in connection with the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 2. The cost of acquiring land or rights in land and any cost incident thereto, including recording fees;
 3. The cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project which is not paid by the contractor or otherwise provided;

4. All costs of architectural and engineering services, including test borings, surveys, estimates, plans, specifications, preliminary investigations, supervision of construction, and the performance of all the duties required by or consequent upon the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project;
 5. All costs required to be paid under the terms of any contract for the acquisition, construction, installation, equipping, upgrading, or retrofitting of an eligible project; and
 6. All other costs of a nature comparable to those described in this subsection.
- (b) "Capital investment" does not include costs described in paragraph (a) of this subsection that are paid for with funds received from the federal government or that are reimbursed by the federal government;
- (10) "Carbon capture ready" means planning for or anticipating capture of carbon dioxide in a manner to facilitate continued operation of the facility in compliance with applicable federal requirements;
- (11) "Center for Applied Energy Research" means the University of Kentucky Center for Applied Energy Research;
- (12) "Commonwealth" means the Commonwealth of Kentucky;
- (13) "Construction period" means the period beginning with the activation date of the eligible project and ending on a date set forth in the tax incentive agreement, which shall be no later than five (5) years from the activation date;
- (14) "Department" means the Department of Revenue;
- (15) "Eligible project" means:
- (a) An alternative fuel facility or a gasification facility meeting the investment requirements of KRS 154.27-020; or
 - (b) A renewable energy facility meeting the investment requirements of KRS 154.27-020;
- (16) "Estimated labor component" means the projected percentage of the total capital investment attributable to labor;
- (17) (a) "Facility" means a single location within the Commonwealth at which machinery and equipment are used in a manufacturing process that transforms raw materials into a product with commercial value.
1. The facility shall include the physical plant structure where the manufacturing process occurs and machinery and equipment within the physical plant structure.
 2. The facility may include:
 - a. On-site machinery and equipment used exclusively for processing coal or other raw materials for use in the manufacturing process at the facility;
 - b. For an alternative fuel facility or gasification facility, on-site power station operations, if those operations are primarily used to produce electricity for the facility;
 - c. On-site refining operations, if those operations are used exclusively to refine and blend fuels produced by the facility; and
 - d. The in-state portion of a pipeline, including appurtenant facilities, property rights, and easements, if the exclusive purpose of the pipeline is to transport carbon dioxide from the facility to a point of sale, storage, or other carbon management applications.
- (b) "Facility" shall not include any mining operations, *or drilling and production operations for natural gas*;
- (18) "Gasification process" means a process that converts any carbon-containing material into a synthesis gas composed primarily of carbon monoxide and hydrogen;
- (19) (a) "Gasification facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 30, 2007, and that, after the new construction, retrofit, or upgrade, primarily produces for sale:
1. Alternative transportation fuels;

2. Synthetic natural gas;
3. Chemicals;
4. Chemical feedstocks; or
5. Liquid fuels;

from coal, waste coal, coal-processing waste, or biomass resources, through a gasification process. For a retrofit of an existing facility, the new modification or addition within the facility shall primarily produce one (1) or more of the products set forth in this paragraph.

- (b) The gasification facility may produce electricity as a by-product if the primary purpose for which the facility is constructed, retrofitted, or upgraded, and the primary function of the facility remains the production and sale of alternative transportation fuels, synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels;
- (20) "Kentucky gross profits" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.0401;
 - (21) "Kentucky gross receipts" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.0401;
 - (22) "Office" means the Governor's Office of Energy Policy created by KRS 152.712;
 - (23) "Post-construction incentives" means the incentives available under KRS 154.27-060 and 154.27-080;
 - (24) "Renewable energy facility" means a facility located in Kentucky that is newly constructed on or after August 30, 2007, or an existing facility located in Kentucky that is retrofitted or upgraded after August 30, 2007, and that, after the new construction, retrofit, or upgrade, utilizes:
 - (a) Wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources to generate electricity in excess of one (1) megawatt for sale to unrelated entities; or
 - (b) Solar power to generate electricity in excess of fifty (50) kilowatts for sale to unrelated entities.

For a retrofit of an existing facility, the modification or addition shall primarily result in the production of electricity as described in paragraph (a) or (b) of this subsection;
 - (25) "Resident" ~~has~~~~[shall have]~~ the same meaning as in KRS 141.010;
 - (26) "Retrofit" means a modification or addition to an existing facility that results in the production of a new and different product or uses a new or different process to produce the same product at the facility. Modifications or additions to a facility that maintain, restore, mend, or repair a facility shall not be considered a retrofit of the facility, and shall not be considered part of the capital investment if undertaken at the same time as a retrofit;
 - (27) "Synthetic natural gas" has the same meaning as in KRS 152.715;
 - (28) "Tax incentive agreement" means an agreement entered into in accordance with KRS 154.27-040;
 - (29) "Termination date" means a date established by the tax incentive agreement that is no more than twenty-five (25) years from the activation date; and
 - (30) "Upgrade" means an investment in an existing facility that results in an increase in the productivity of the facility. Increased productivity shall be measured in relation to the type of products that are required to be produced by that facility to be an eligible project.

➔Section 3. KRS 154.27-020 is amended to read as follows:

- (1) This subchapter shall be known as the "Incentives for Energy Independence Act."
- (2) The General Assembly hereby finds and declares that it is in the best interest of the Commonwealth to induce the location of innovative energy-related businesses in the Commonwealth in order to advance the public purposes of achieving energy independence, creating new jobs and new investment, and creating new sources of tax revenues that but for the inducements to be offered by the authority to approved companies would not exist.
- (3) The purpose of this subchapter is to assist the Commonwealth in moving to the forefront of national efforts to achieve energy independence by reducing the Commonwealth's reliance on imported energy resources. The provisions of this subchapter seek to accomplish this purpose by providing incentives for companies that, in a carbon capture ready manner, construct, retrofit, or upgrade facilities for the purpose of:

- (a) Increasing the production and sale of alternative transportation fuels;
 - (b) Increasing the production and sale of synthetic natural gas, chemicals, chemical feedstocks, or liquid fuels, from coal, biomass resources, or waste coal through a gasification process; or
 - (c) Generating electricity for sale through alternative methods such as solar power, wind power, biomass resources, landfill methane gas, hydropower, or other similar renewable resources.
- (4) To qualify for the incentives provided in this subchapter, the following requirements shall be met:
- (a) For an alternative fuel facility or gasification facility that uses oil shale, tar sands, or coal as the primary feedstock, the minimum capital investment shall be one hundred million dollars (\$100,000,000);
 - (b) For an alternative fuel facility or gasification facility that uses biomass resources as the primary feedstock, the minimum capital investment shall be twenty-five million dollars (\$25,000,000);~~and~~
 - (c) For a renewable energy facility, the minimum capital investment shall be one million dollars (\$1,000,000); *and*
 - (d) *For an alternative fuel facility located in Kentucky that is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010, and that, after the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock, the minimum capital investment shall be one million dollars (\$1,000,000); provided that the authority may approve a maximum of five (5) projects that meet the requirements of this paragraph.*
- (5) The incentives under the Incentives for Energy Independence Act are as follows:
- (a) An advance disbursement of post-construction incentives for which an approved company has been approved, the maximum amount of which is based upon the estimated labor component of the total capital investment of the eligible project, and the utilization of Kentucky residents during the construction period as set forth in KRS 154.27-090;
 - (b) Sales and use tax incentives of up to one hundred percent (100%) of the taxes paid on purchases of tangible personal property made to construct, retrofit, or upgrade an eligible project, as set forth in KRS 139.517 and 154.27-070;
 - (c) Up to eighty percent (80%) of the severance taxes paid on the purchase or severance of:
 - 1. Coal that is subject to the tax imposed under KRS 143.020 and that is specifically used by an alternative fuel facility or a gasification facility as feedstock for an eligible project, as set forth in KRS 143.024 and 154.27-060; *or*
 - 2. *Natural gas or natural gas liquids that are subject to the tax imposed under KRS 143A.020 and that are specifically used in an alternative fuel facility described in subsection (4)(d) of this section as feedstock for an eligible project, as set forth in Sections 4 and 5 of this Act;*
 - (d) Up to one hundred percent (100%) of the Kentucky income tax imposed under KRS 141.040 or 141.020, and the limited liability entity tax imposed under KRS 141.0401 on the income, Kentucky gross profits, or Kentucky gross receipts of the approved company generated by or arising from the eligible project, as set forth in KRS 141.421 and 154.27-080; and
 - (e) Authorization for the approved company to impose a wage assessment of up to four percent (4%) of the gross wages of each employee subject to the Kentucky income tax:
 - 1. Whose job was created as a result of the eligible project;
 - 2. Who is employed by the approved company to work at the facility; and
 - 3. Who is on the payroll of the approved company or an affiliate of the approved company;
 as set forth in KRS 154.27-080.
- (6) The maximum recovery from all incentives approved under this subchapter for an eligible project shall not exceed fifty percent (50%) of the capital investment in the eligible project.
- (7) The incentives available to an approved company shall be negotiated with and approved by the authority.

- (8) If a newly constructed facility that qualifies for incentives under this subchapter is later upgraded or retrofitted in a manner that would qualify for incentives under this subchapter, the retrofit or upgrade shall be a separate eligible project, and the minimum investment requirements and carbon capture readiness requirements, if required, shall be met for the retrofit or upgrade to qualify for incentives under this subchapter.
- (9) The General Assembly finds that the authorities granted by this subchapter are proper governmental and public purposes for which public moneys may be expended.

➔Section 4. KRS 154.27-060 is amended to read as follows:

- (1) (a) Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143, an approved company that purchases or severs coal that:
 - 1. ~~Is subject to the tax imposed under KRS 143.020; and~~
 - 2. ~~Is used by the approved company exclusively as feedstock for an alternative fuel facility or a gasification facility;~~

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020 on coal purchased or severed by the approved company that is above the base amount.
- (b) *Notwithstanding any other provision of KRS 134.580 or KRS Chapter 143A, an approved company that purchases or severs natural gas or natural gas liquids on or after August 1, 2010, that:*
 - 1. *Is subject to the tax imposed under KRS 143A.020; and*
 - 2. *Is used by the approved company exclusively as feedstock for an alternative fuel facility described in subsection (4)(d) of Section 3 of this Act;*

may be eligible for an incentive in an amount up to eighty percent (80%) of the taxes paid pursuant to KRS 143.020A on natural gas or natural gas liquids purchased or severed by the approved company that is above the base amount.
- (2) An approved company that has purchased or severed coal subject to the tax imposed under KRS 143.020 *or purchased or severed natural gas or natural gas liquids subject to the tax imposed under KRS 143A.020* prior to the execution of a tax incentive agreement shall not create an affiliate, subsidiary, corporation, or other related entity that would result in a base amount of zero (0).
- (3) The incentive may be requested beginning in the first calendar year after the construction of a new facility or the upgrade or retrofit of an existing facility is completed.
- (4) Upon completion of the construction of a new alternative fuel facility or gasification facility or the retrofit or upgrade of an existing facility, an approved company shall notify the authority and the department.
- (5) The approved company may obtain the incentive on an annual basis by filing a request for the incentive with the department as provided in KRS 143.024.
- (6) The department shall notify the authority of the incentives requested and the incentives distributed, upon request of the authority.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 143A IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section:*
 - (a) *"Alternative fuel facility" has the same meaning as in KRS 154.27-010;*
 - (b) *"Approved company" has the same meaning as in KRS 154.27-010;*
 - (c) *"Authority" has the same meaning as in KRS 154.27-010;*
 - (d) *"Base amount" has the same meaning as in KRS 154.27-010;*
 - (e) *"Capital investment" has the same meaning as in KRS 154.27-010;*
 - (f) *"Eligible project" has the same meaning as in KRS 154.27-010;*
 - (g) *"Tax incentive agreement" has the same meaning as in KRS 154.27-010.*

- (2) *Notwithstanding any other provision of KRS 134.580 or this chapter, an approved company that purchases or severs natural gas or natural gas liquids that is subject to the tax imposed under KRS 143A.020 and that is specifically used by the approved company as feedstock for an alternative fuel facility described in subsection (4)(d) of Section 3 of this Act may be eligible for an incentive under Section 4 of this Act.*
- (3) *A company approved for incentives under Section 4 of this Act shall file a request for the incentive with the department within sixty (60) days of the completion of the construction, retrofit, or upgrade of the facility. In subsequent years, the approved company shall file a request for the incentive within sixty (60) days following the end of each calendar year. The request for incentives shall be in the form prescribed by the department through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The request for incentives shall include but not be limited to the following information:*
- (a) *Verification of the base amount;*
 - (b) *Verification of the thousand (1000) cubic foot units (Mcf) of natural gas or gallons of natural gas liquids purchased and used or severed and used by the approved company as feedstock for an alternative fuel facility during the calendar year for which the request for incentives is being made;*
 - (c) *Verification that the minimum capital investment as set forth in the tax incentive agreement has been made;*
 - (d) *Verification of the output of natural-gas-derived or natural gas liquids-derived alternative transportation fuel; and*
 - (e) *Any other information that the department may require.*
- (4) (a) *The department and the authority shall review the request for incentives jointly and shall verify that the request for incentives meets all requirements established by statute and administrative regulation.*
- (b) *The department shall verify the tax paid pursuant to KRS 143A.020 on the natural gas and natural gas liquids purchased or severed by the approved company and used as feedstock for an alternative fuel facility during the calendar year for which the application was submitted and shall determine the amount of the tax paid that qualifies for distribution to the approved company pursuant to this section.*
- (c) *The incentive amount shall be distributed to the approved company in quarterly installments beginning on July 1 of the year following the calendar year for which the request for incentives required under this section was submitted.*
- (6) *The approved company seeking incentives shall execute information-sharing agreements prescribed by the department with vendors from which it purchased natural gas and natural gas liquids to verify the value of natural gas and natural gas liquids purchased by the approved company and used as feedstock for an alternative fuel facility and the amount of tax paid under KRS 143A.020 on such natural gas and natural gas liquids.*
- (7) *The department shall notify the authority of the incentive distributed to each approved company upon request.*

➔Section 6. KRS 42.450 is amended to read as follows:

- (1) There is hereby established in the State Treasury a fund entitled "Local Government Economic Assistance Fund." The fund may receive state appropriations, gifts, grants, and federal funds and shall be disbursed by the State Treasurer upon the warrant of the secretary of the Finance and Administration Cabinet. Any unallotted or

unencumbered balances in the fund shall be invested in United States Government Securities maturing not later than one (1) year from the date of investment and the income earned from the investment shall be prorated for expenditure in coal producing and coal impact counties according to each county's allocable part in the fund.

- (2) Effective July 1, 1981, an amount equal to one-half (1/2) of the tax collected annually on the sale of minerals, exclusive of coal, shall be transferred from the general fund into this fund. The transfers shall be made quarterly, based upon the revenue estimates prevailing at the time each quarterly transfer is due, except that the last quarterly transfer shall be made after the close of the fiscal year accounting records, and shall be adjusted to provide the balance of the annual transfer required by this subsection.
- (3) ***Effective October 1, 2010, the quarterly transfer of funds required by subsection (2) of this section shall be made only after the quarterly installment of the annual amount from the prior calendar year allowed as an incentive to an approved company under Sections 4 and 5 of this Act has been made.***

➔Section 7. KRS 154.27-030 is amended to read as follows:

- (1) A company with an eligible project may submit an application for incentives to the authority prior to making any capital investment it will seek to recover.
- (2) The application shall include:
 - (a) The name of the applicant and identification of any affiliates of the applicant;
 - (b) The type of eligible project;
 - (c) A description of the location;
 - (d) A full description of the eligible project scope, including but not limited to:
 1. A list and the status of permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 2. A description of the carbon capture readiness of the facility, if the proposed eligible project is an alternative fuel facility or a gasification facility;
 3. Any feasibility studies, including supporting documents;
 4. Anticipated sources of eligible project funding;
 5. The total anticipated capital investment and the time period over which the capital investment will occur;
 6. The proposed feedstock and the estimated volume of feedstock use per year;
 7. A description of the proposed products to be produced by the facility and the process that will be used to produce the products;
 8. The planned capacity of the facility after construction, retrofit, or upgrade;
 9. The estimated output of the facility upon completion; and
 10. A plan for and description of how the company will employ Kentucky residents at the facility and how the company will ensure, to the extent possible, that workers employed during construction, retrofit, or upgrade of the facility are Kentucky residents. The plan shall include projected numbers;
 - (e) Identification of the specific incentives sought;
 - (f) Payment of any applicable application fees required by the authority to offset reasonable costs of reviewing and processing the application; and
 - (g) Other information as required by the authority.
- (3) The authority shall forward the application to the department and the office for review and comment with a date by which comments shall be provided back to the authority. The authority may forward the application to the Center for Applied Energy Research for review and comment as well.
- (4) (a) The authority shall review the application and shall verify that:

1. The applicant has met all of the statutory and regulatory requirements established by this subchapter and regulations promulgated thereunder;
 2. The applicant has secured or is in the process of securing all necessary permits, certificates, or approvals required by the federal government, the Commonwealth, or any jurisdiction within the Commonwealth;
 3. The proposed facility is carbon capture ready, if the proposed facility is an alternative fuel facility or gasification facility;
 4. The company has a plan that includes a projected number of Kentucky residents that will be employed during the construction, retrofit, or upgrade of the facility and at the facility upon completion; and
 5. Any other requirements established by the authority.
- (b) The department shall review the application and shall verify that the company seeking approval and all affiliate companies are in good standing with the department.
- (c) The authority may engage the services of outside consultants to assist in the review of the application. Costs associated with the engagement of outside consultants shall be borne by the applicant.
- (5) (a) Upon the earlier of:
1. The receipt of comments and recommendations from the office, the department, and the Center for Applied Energy Research, if applicable; or
 2. The expiration of the time period established by the authority for receiving comments pursuant to subsection (3) of this section;
- the authority may, through the adoption of a resolution, preliminarily approve an applicant for incentives under this subchapter.
- (b) Preliminary approval shall be based upon representations of the applicant in the application and attachments as well as other information submitted with the application. The authority shall make a finding that, based upon the applicant's representations, the project appears to be eligible for incentives pursuant to this subchapter.
- (c) Prior to final approval:
1. The applicant shall:
 - a. Provide all supportive data requested by the authority;
 - b. Secure all required permits or take appropriate steps to do so; and
 - c. Cooperate with the authority to obtain opinions or recommendations from any outside consultants; and
 2. The authority shall, in consultation with the office or any other entity, verify the representations of the applicant.
- (d) 1. A preliminarily approved company seeking an advance disbursement employment incentive under KRS 154.27-090 shall, prior to receiving final approval from the authority, provide to the authority a labor market analysis prepared by a public postsecondary education institution in the Commonwealth with knowledge of the labor market in the region in which the eligible project will be located.
2. The labor market analysis shall evaluate the construction market in the region where the proposed project is to be located and the estimated labor component of the proposed project. The public postsecondary education institution may consult with the Center for Applied Energy Research or the office in determining the types of laborers required for the construction, retrofit, or upgrade of the eligible facility.
3. The labor market analysis shall include an estimate of the percentage of the estimated labor component that constitutes wages to be paid to Kentucky residents.

- (e) Based upon all of the information available, the authority may, through adoption of a resolution, give its final approval and authorize the execution of a tax incentive agreement to be negotiated pursuant to KRS 154.27-040.
- (6) The authority may request any materials and make any inquiries concerning an application that the authority deems necessary.
- (7) The actual capital investment that may be recovered and percentages of each incentive that an approved company may receive shall be negotiated between the approved company and the authority and shall not exceed the limitations established by KRS 154.27-020.
- (8) The General Assembly recognizes that the incentives offered under this subchapter include the possibility of the release of incentives to approved companies prior to construction completion, and that the release of these incentives may present more risk for the Commonwealth. The authority is directed to consider the possible increased risk to the Commonwealth when negotiating tax incentive agreements that include incentives prior to construction completion, and to incorporate repayment or similar remedy provisions in the tax incentive agreement to the extent the authority determines such provisions are necessary to protect the investment made by the Commonwealth if the approved company fails to comply with the terms of the tax incentive agreement.
- (9) The authority and the approved company shall enter into a tax incentive agreement in accordance with KRS 154.27-040.
- (10) The authority, with input from the office and the department, shall establish additional standards and requirements for the application process through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The standards shall include but not be limited to the creditworthiness of eligible companies and the likelihood of economic success of the economic development project.
- (11) *Notwithstanding any other provision of this subchapter, the authority may approve a maximum of five (5) projects under this subchapter that involve an alternative fuel facility located in Kentucky that:*
 - (a) *Is newly constructed on or after August 1, 2010, or an existing facility located in Kentucky that is retrofitted or upgraded on or after August 1, 2010;*
 - (b) *After the new construction, retrofit, or upgrade, primarily produces for sale alternative transportation fuels using natural gas or natural gas liquids as the primary feedstock; and*
 - (c) *Has a minimum capital investment of one million dollars (\$1,000,000).*

Signed by Governor April 13, 2010.

CHAPTER 140

(HB 566)

AN ACT relating to milk.

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

➔Section 1. KRS 260.664 is amended to read as follows:

- (1) Subject to the availability of funds, the commission shall:
 - (a) Counsel with the Commissioner of Agriculture on matters pertaining to dairy production and the marketing and distribution of raw milk and Kentucky dairy products;
 - (b) Employ the appropriate experts, professionals, consultants, or others to assist members in carrying out duties of the commission;
 - (c) Undertake the research needed to determine how other states support their dairy farmers and dairy industry;
 - (d) Support investigations, studies, and scientific research to eliminate and alleviate specific problems affecting the dairy industry in the state;
 - (e) Participate in studies and investigations of problems particular to milk producers and milk processors in Kentucky;~~and~~

- (f) Collect information to determine the actual cost of transporting milk used in Kentucky;
 - (g) *Coordinate with the Cabinet for Health and Family Services to increase awareness at the consumer level of where dairy products are produced;*
 - (h) *Coordinate with the Cabinet for Economic Development to explore economic incentives that would help sustain Kentucky's dairy industry; and*
 - (i) *Recommend a program of minimum milk pricing protection for dairy farmers for consideration by the General Assembly, if the federal milk marketing order system is abolished.*
- (2) In addition to the responsibilities set out in subsection (1) of this section, the commission also shall:
- (a) Subject to the availability of funds, create a plan to assist Kentucky dairy farmers that would be equitable to all parties in the state dairy industry. The plan should examine and offer recommendations to improve, streamline, and enhance all aspects of the dairy production and distribution system in Kentucky;
 - (b) Submit the proposed plan to the Governor, the Commissioner of Agriculture, and the Legislative Research Commission for their review;
 - (c) Publicize the plan in a way to allow individuals or entities the opportunity to offer comments;
 - (d) Promulgate administrative regulations necessary to carry out the plan, once reviewed and approved by the Governor and the Commissioner of Agriculture, and finalized by the commission; and
 - (e) Monitor the progress of the plan and report on the progress annually to the Governor, the Commissioner of Agriculture, and the Legislative Research Commission.
- (3) The Kentucky Milk Commission established under KRS 260.662 shall have no authority to promulgate administrative regulations to establish pricing on milk or milk products.

Signed by Governor April 13, 2010.

CHAPTER 141

(HB 558)

AN ACT relating to intellectual disabilities.

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

➔Section 1. The General Assembly recognizes the negative impact that the use of certain words and phrases can have on some of the Commonwealth's most exceptional citizens. The General Assembly states its intention that henceforth it shall attempt to utilize language that references, but does not equate, an individual to a disability. The General Assembly furthermore expresses its intention that the rest of the citizens of the Commonwealth, when referencing intellectual disabilities, will join it in eschewing those words and phrases that can operate to treat a person and an intellectual disability interchangeably.

➔Section 2. KRS 17.150 is amended to read as follows:

- (1) Every sheriff, chief of police, coroner, jailer, prosecuting attorney, probation officer, parole officer; warden or superintendent of a prison, reformatory, correctional school, mental hospital, or institution for the ***intellectually disabled***~~retarded~~; Department of Kentucky State Police; state fire marshal; Board of Alcoholic Beverage Control; Cabinet for Health and Family Services; Transportation Cabinet; Department of Corrections; Department of Juvenile Justice; and every other person or criminal justice agency, except the Court of Justice and the Department for Public Advocacy, public or private, dealing with crimes or criminals or with delinquency or delinquents, when requested by the cabinet, shall:
- (a) Install and maintain records needed for reporting data required by the cabinet;
 - (b) Report to the cabinet as and when the cabinet requests all data demanded by it, except that the reports concerning a juvenile delinquent shall not reveal the juvenile's or the juvenile's parents' identity;
 - (c) Give the cabinet or its accredited agent access for purpose of inspection; and

- (d) Cooperate with the cabinet to the end that its duties may be properly performed.
- (2) Intelligence and investigative reports maintained by criminal justice agencies are subject to public inspection if prosecution is completed or a determination not to prosecute has been made. However, portions of the records may be withheld from inspection if the inspection would disclose:
 - (a) The name or identity of any confidential informant or information which may lead to the identity of any confidential informant;
 - (b) Information of a personal nature, the disclosure of which will not tend to advance a wholesome public interest or a legitimate private interest;
 - (c) Information which may endanger the life or physical safety of law enforcement personnel; or
 - (d) Information contained in the records to be used in a prospective law enforcement action.
- (3) When a demand for the inspection of the records is refused by the custodian of the record, the burden shall be upon the custodian to justify the refusal of inspection with specificity. Exemptions provided by this section shall not be used by the custodian of the records to delay or impede the exercise of rights granted by this section.
- (4) Centralized criminal history records are not subject to public inspection. Centralized history records mean information on individuals collected and compiled by the Justice and Public Safety Cabinet from criminal justice agencies and maintained in a central location consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other formal criminal charges and any disposition arising therefrom, including sentencing, correctional supervision, and release. The information shall be restricted to that recorded as the result of the initiation of criminal proceedings or any proceeding related thereto. Nothing in this subsection shall apply to documents maintained by criminal justice agencies which are the source of information collected by the Justice and Public Safety Cabinet. Criminal justice agencies shall retain the documents and no official thereof shall willfully conceal or destroy any record with intent to violate the provisions of this section.
- (5) The provisions of KRS Chapter 61 dealing with administrative and judicial remedies for inspection of public records and penalties for violations thereof shall be applicable to this section.
- (6) The secretary of justice and public safety shall adopt the administrative regulations necessary to carry out the provisions of the criminal history record information system and to insure the accuracy of the information based upon recommendations submitted by the commissioner, Department of Kentucky State Police.
- (7) The Administrative Office of the Courts may, upon suitable agreement between the Chief Justice and the secretary of justice and public safety, supply criminal justice information and data to the cabinet. No information, other than that required by KRS 27A.350 to 27A.420 and 27A.440, shall be solicited from a circuit clerk, justice or judge, court, or agency of the Court of Justice unless the solicitation or request for information is made pursuant to an agreement which may have been reached between the Chief Justice and the secretary of justice and public safety.

➔Section 3. KRS 43.050 is amended to read as follows:

- (1) The Auditor constitutes an agency independent of the administrative departments enumerated in KRS 12.020, it being the policy of the General Assembly to provide for the independent auditing of the accounts, financial transactions, and performance of all spending agencies of the state through a disinterested auditor, who is entirely independent of the state administration whose affairs he is called upon to audit.
- (2) The Auditor shall:
 - (a) Audit annually, and at such other times as may be deemed expedient, the accounts of all state agencies, all private and semiprivate agencies receiving state aid or having responsibility for the handling of any state funds, the accounts, records, and transactions of the budget units, and the general accounts of the state.
 - (b) Make a complete audit and verification of all moneys handled for the account of the state government by local officials charged with the collection of fees or other money for or on behalf of the state, when an audit is demanded in writing by the Legislative Research Commission, the secretary of the Finance and Administration Cabinet or the Governor, and may make an audit when it is not so demanded.

- (c) Examine periodically the performance, management, conduct, and condition of all asylums, prisons, institutions for the *intellectually disabled*~~(mentally retarded)~~, and eleemosynary institutions; public works owned, operated, or partly owned by the state, or in the conduct or management of which the state has any financial interest or legal power; and state agencies. The examinations shall give special attention to the faithful and economical application of any money appropriated by the state to the institution, public works, or state agency examined, or of any money in which the state has an interest.
 - (d) Examine annually the management and condition of the offices of the Finance and Administration Cabinet, the State Treasurer, and the chief state school officer, to determine whether the laws regulating their duties are being fully complied with, and all money received by them for the state fully accounted for.
 - (e) Examine, at least biennially, the Finance and Administration Cabinet's compliance with this section and KRS 48.111 and 56.800 to 56.823. Within sixty (60) days of the completion of each examination, the Auditor shall report his findings and recommendations to the Capital Projects and Bond Oversight Committee.
 - (f) Audit periodically all state revenue collections, and, if he finds that collections are not being satisfactorily made, report that fact to the authority whose duty it is to make the collections.
 - (g) Make special audits and investigations when required by the Governor.
 - (h) Investigate the means of accounting for, controlling, and insuring the safe custody of all property of the state, and verify the existence and condition of such property charged to, or held in the custody of any state agency.
 - (i) Audit the statements of financial condition and operations of the state government, and certify in writing the results of the audit and examination with the comments he deems necessary for the information of the General Assembly.
 - (j) Report immediately in writing to the Governor, each member of the Legislative Research Commission, and the secretary of the Finance and Administration Cabinet, any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or other improper practice of financial administration, or evidence that any such handling, expenditure, or practice is contemplated, and any obstruction of the Auditor or his agents during the conduct of any audit or investigation of a state agency.
 - (k) Assist the Legislative Research Commission at hearings and investigations conducted by it and cooperate with the Legislative Research Commission in the preparation of its reports to the General Assembly.
 - (l) Keep accounts showing the costs of his own operations and of each separate audit and investigation made by him, and the accounts he deems necessary to provide a record of warrants of the state outstanding as of the end of each calendar month.
- (3) The Auditor may investigate and examine into the conduct of all state and county officers who are authorized to receive, collect, or disburse any money for the state, or who manage or control any property belonging to the state or in which the state is interested, or who make estimates or records that are used as a basis by any state agency in the disbursement of public funds.
 - (4) The Auditor shall not be responsible for the keeping of any accounts of the state, except accounts relating to his own operations, and records of outstanding warrants. He shall not be responsible for the collection of any money due the state, or for the handling or custody of any state funds or property except in the process of counting and verifying the amounts of the funds or property in the course of the audits provided for in this section.
- ➔Section 4. KRS 43.080 is amended to read as follows:
- (1) The Auditor and his authorized agents shall have access to and may examine all books, accounts, reports, vouchers, correspondence files, records, money and property of any state agency. Every officer or employee of any such agency having such records or property in his possession or under his control shall permit access to and examination of them upon the request of the Auditor or any agent authorized by him to make such request.

- (2) The Auditor and his assistants shall have access at all times to the papers, books and records of the asylums, prisons, institutions for the **intellectually disabled**~~(mentally retarded)~~ and eleemosynary institutions, and public works that he is authorized to examine, and of any county officer who receives or disburses county funds.
- (3) The Auditor may require information on oath from any person touching any matters relative to any account that the Auditor is required to state, audit or settle. The Auditor may administer the oath himself, or have it done by any officer authorized to administer an oath.
- (4) The Auditor and his assistants may issue process and compel the attendance of witnesses before them, and administer oaths and compel witnesses to testify in any of the investigations the Auditor is authorized to make.

➔Section 5. KRS 43.990 is amended to read as follows:

- (1) Any officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under the provisions of paragraph (c) of subsection (2) of KRS 43.050, or of subsection (3) of KRS 43.050, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, except when the office constitutes a state agency, is guilty of a high misdemeanor, and, upon conviction on indictment in the Franklin Circuit Court, shall be fined five hundred dollars (\$500) and removed by the Governor. Any person, other than an officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars (\$1,000).
- (2) If the Auditor fails or refuses without good cause to perform the duties imposed upon him by KRS 43.060, he shall be fined not less than two hundred and fifty dollars (\$250) nor more than one thousand dollars (\$1,000) for each offense.
- (3) Any county officer who prevents, attempts to prevent or obstructs an examination by the Auditor, under KRS 43.070, into his official conduct, or the conduct or condition of the office in his charge or with which he is connected, is guilty of a high misdemeanor, and shall, upon indictment and conviction in the Franklin Circuit Court, be fined five hundred dollars (\$500). Any person, other than a county officer, who prevents, attempts to prevent or obstructs such an examination shall be fined one thousand dollars (\$1,000).
- (4) Any officer or other person who fails or refuses to permit the access and examination provided for in subsection (1) of KRS 43.080, or who interferes with such examination, shall be fined not less than one hundred dollars (\$100), or imprisoned in the county jail for not less than one (1) month nor more than twelve (12) months, or both. Each refusal by an officer shall constitute a separate offense.
- (5) Any person who has custody of any papers, books or records of an asylum, prison, institution for the **intellectually disabled**~~(mentally retarded)~~ or eleemosynary institution or public works, other than a state agency, that the Auditor is authorized to examine under paragraph (c) of subsection (2) of KRS 43.050, under subsection (3) of KRS 43.050, and under subsection (2) of KRS 43.080, who fails or refuses, when called upon by the Auditor for that purpose, to permit him to inspect any of such papers, books or records, shall, upon conviction on indictment in the Franklin Circuit Court, be fined not more than five hundred dollars (\$500) and be subject to removal by the Governor.
- (6) Any person who refuses to be sworn when required by the Auditor to be sworn for the purpose mentioned in subsection (3) of KRS 43.080 shall be fined not more than one hundred dollars (\$100).
- (7) Any witness called by the Auditor under subsection (4) of KRS 43.080 who fails, without legal excuse, to attend or testify shall be fined not more than two hundred and fifty dollars (\$250).

➔Section 6. KRS 61.165 is amended to read as follows:

- (1) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, a policy for smoking in governmental office buildings or workplaces shall be adopted by state government. This policy shall apply to all state-owned or state-operated office buildings, workplaces, and facilities, including but not limited to state-operated hospitals and residential facilities for the **intellectually disabled**~~(mentally retarded)~~, state-operated veterans' nursing homes and health facilities, and any correctional facility owned by, operated by, or under the jurisdiction of the state.
- (2) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, any policy relating to smoking in state office buildings or workplaces shall be by executive order of the Governor or action of the General Assembly, and shall:
 - (a) 1. Require the governmental authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and

2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or
 - (b) Prohibit indoor smoking.
- (3) Except as otherwise specified for the Capitol and Capitol Annex in KRS 61.167, a policy for smoking in governmental office buildings or workplaces may be adopted by county, municipal, special district, urban-county, charter county, or consolidated local governments. Any policy adopted under this subsection may apply to any office buildings, workplaces, or facilities that are owned by, operated by, or under the jurisdiction of that government, including but not limited to jails and detention facilities. Any policy relating to smoking in governmental office buildings or workplaces of counties, municipalities, special districts, urban-county governments, charter county governments, or consolidated local governments shall be adopted in writing by the legislative body of the government and shall:
- (a) 1. Require the government authority to provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and
 2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or
 - (b) Prohibit indoor smoking.
- (4) Each board of regents or trustees for each of the state postsecondary education institutions shall adopt a written policy relating to smoking in all buildings owned by, operated by, or under the jurisdiction of the state postsecondary education institutions that shall:
- (a) 1. Provide accessible indoor smoking areas in any buildings where smoking is otherwise restricted; and
 2. Favor allowing smoking in open public areas where ventilation and air exchange are adequate and there are no restrictions otherwise placed on the area by the state fire marshal or other similar authority; or
 - (b) Prohibit indoor smoking.

➔Section 7. KRS 158.135 is amended to read as follows:

- (1) As used in this section, unless the context otherwise requires:
- (a) "State agency children" means:
 1. a. Those children of school age committed to or in custody of the Cabinet for Health and Family Services and placed, or financed by the cabinet, in a Cabinet for Health and Family Services operated or contracted institution, treatment center, facility, including those for therapeutic foster care and excluding those for nontherapeutic foster care; or
 - b. Those children placed or financed by the Cabinet for Health and Family Services in a private facility pursuant to child care agreements including those for therapeutic foster care and excluding those for nontherapeutic foster care;
 2. Those children of school age in home and community-based services provided as an alternative to intermediate care facility services for the *intellectually disabled* ~~mentally retarded~~; and
 3. Those children committed to or in custody of the Department of Juvenile Justice and placed in a department operated or contracted facility or program.
 - (b) "Current costs and expenses" means all expenditures, other than for capital outlay and debt service, which are in excess of the amount generated by state agency children under the Support Education Excellence in Kentucky funding formula pursuant to KRS 157.360. These expenditures are necessary to provide a two hundred thirty (230) day school year, smaller teacher pupil ratio, related services if identified on an individual educational plan, and more intensive educational programming.

- (c) "Therapeutic foster care" means a remedial care program for troubled children and youth that is in the least restrictive environment where the foster parent is trained to implement planned, remedial supervision and care leading to positive changes in the child's behavior. Children served in this placement have serious emotional problems and meet one (1) or more of the following criteria:
 - 1. Imminent release from a treatment facility;
 - 2. Aggressive or destructive behavior;
 - 3. At risk of being placed in more restrictive settings, including institutionalization; or
 - 4. Numerous placement failures.
- (2) (a) Unless otherwise provided by the General Assembly in a budget bill, any county or independent school district that provides elementary or secondary school services to state agency children shall be reimbursed through a contract with the Kentucky Educational Collaborative for State Agency Children. The school services furnished to state agency children shall be equal to those furnished to other school children of the district.
- (b) The Department of Education shall, to the extent possible within existing appropriations, set aside an amount of the state agency children funds designated by the General Assembly in the biennial budget to reimburse a school district for its expenditures exceeding twenty percent (20%) of the total amount received from state and federal sources to serve a state agency child.
- (3) The General Assembly shall, if possible, increase funding for the education programs for state agency children by a percentage increase equal to that provided in the biennial budget for the base funding level for each pupil in the program to support education excellence in Kentucky under KRS 157.360 and, if applicable, by an amount necessary to address increases in the number of state agency children being served.
- (4) The Kentucky Educational Collaborative for State Agency Children shall make to the chief state school officer the reports required concerning school services for state agency children, and shall file with the Cabinet for Health and Family Services unit operating or regulating the institution or day treatment center, or contracting for services, in which the children are located a copy of the annual report made to the chief state school officer.
- (5) The Cabinet for Health and Family Services shall contract with a university-affiliated training resource center utilizing all funds generated by the children in state agency programs, except Oakwood and Hazelwood funds, and the funds in the Kentucky Department of Education budget, pursuant to this section, as well as any other educational funds for which all Kentucky children are entitled. The total of these funds shall be utilized to provide educational services through the Kentucky Educational Collaborative for State Agency Children established in KRS 605.110.
- (6) Notwithstanding the provisions of any other statute, the Kentucky Educational Collaborative for State Agency Children shall operate a two hundred thirty (230) day school program.

➔Section 8. KRS 164.2865 is amended to read as follows:

The General Assembly hereby finds and declares that:

- (1) Meningococcal meningitis disease is a potentially fatal infectious and contagious bacterial disease that can be spread by coughing and sharing drinking glasses;
- (2) Since the disease often presents itself with flu-like symptoms, many victims of the disease die before it is even diagnosed. From 1991 to 1997, the cases of meningococcal meningitis disease in young adults fifteen (15) to twenty-four (24) years of age nearly doubled;
- (3) Survivors of meningococcal meningitis disease may have severe after-effects of the disease, including ***an intellectual disability*** ~~(mental retardation)~~, hearing loss, and loss of limbs;
- (4) College freshmen residing on campus in dormitories or residence halls have a risk of meningococcal meningitis disease over seven (7) times higher than do college students overall;
- (5) The meningococcal meningitis disease vaccine has been shown to be eighty-five percent (85%) to ninety percent (90%) effective in producing antibodies against the most common strains of the disease; and
- (6) The Centers for Disease Control and Prevention (CDC) recommends that college freshmen and their parents be educated about meningococcal meningitis disease and that vaccination should be made easily available to freshmen and undergraduate students who want to reduce their risk of disease.

➔Section 9. KRS 194A.010 is amended to read as follows:

- (1) The cabinet is the primary state agency for operating the public health, Medicaid, certificate of need and licensure, and mental health and *intellectual disability*~~[mental retardation]~~ programs in the Commonwealth. The function of the cabinet is to improve the health of all Kentuckians, including the delivery of population, preventive, reparative, and containment health services in a safe and effective fashion, and to improve the functional capabilities and opportunities of Kentuckians with disabilities. The cabinet is to accomplish its function through direct and contract services for planning and through the state health plan and departmental plans for program operations, for program monitoring and standard setting, and for program evaluation and resource management.
- (2) The cabinet is the primary state agency responsible for leadership in protecting and promoting the well-being of Kentuckians through the delivery of quality human services. Recognizing that children are the Commonwealth's greatest natural resource and that individuals and their families are the most critical component of a strong society, the cabinet shall deliver social services to promote the safety and security of Kentuckians and preserve their dignity. The cabinet shall promote collaboration and accountability among local, public, and private programs to improve the lives of families and children, including collaboration with the Council on Accreditation for Children and Family Services or its equivalent in developing strategies consistent with best practice standards for delivery of services. The cabinet also shall administer income-supplement programs that protect, develop, preserve, and maintain individuals, families, and children in the Commonwealth.

➔Section 10. KRS 194A.735 is amended to read as follows:

- (1) Subject to sufficient funding, the Cabinet for Health and Family Services and the Justice and Public Safety Cabinet, in consultation with any other state agency as appropriate, shall develop and implement a homelessness prevention pilot project that offers institutional discharge planning on a voluntary basis to persons exiting from state-operated or supervised institutions involving mental health and foster care programs, and persons serving out their sentences in any state-operated prison in Oldham County.
- (2) The primary goal of the project shall be to prepare a limited number of persons in a foster home under supervision by the Cabinet for Health and Family Services, state-operated prison in Oldham County under supervision by the Justice and Public Safety Cabinet, and mental health facility under supervision by the Cabinet for Health and Family Services for return or reentry into the community, and to offer information about any necessary linkage of the person to needed community services and supports.
 - (a) The pilot project shall be jointly supported by each of the cabinets. One (1) office for the pilot project shall be located in a family resource center or Department for Community Based Services building in Jefferson County, due to its urban population, and one (1) office shall be located in Clinton, Cumberland, McCreary, or Wayne County, due to its rural population. The pilot project office in Jefferson County shall serve persons intending to locate in Jefferson County who are being released from a mental health facility under supervision by the Cabinet for Health and Family Services and persons intending to locate in Jefferson County who are being released after serving out their sentences from any state-operated prison in Oldham County. The pilot project office in Clinton, Cumberland, McCreary, or Wayne County shall serve persons intending to locate in Clinton, Cumberland, McCreary, or Wayne County who are aging out of the foster care program following placement in Clinton, Cumberland, McCreary, or Wayne County.
 - (b) Within thirty (30) days following July 13, 2004, the cabinets shall supply each pilot project director with the collection of information on available employment, social, housing, educational, medical, mental health, and other community services in the county. The information shall include but not be limited to the service area of each public and private provider of services, the capacity of each provider to render services to persons served by the pilot project, the fees of each provider, contact names and telephone numbers for each provider, and an emergency contact for each provider.
 - (c) Within thirty (30) days following July 13, 2004, the cabinets and directors shall begin a program of education for each of the cabinet and foster home and mental health and appropriate state-operated prison facility staff who will participate in the development of a discharge plan for volunteer participants under this section.

(3) The pilot project shall operate on a voluntary basis. One (1) of each five (5) persons eligible for discharge or completing their sentence shall be offered the opportunity to participate in the pilot program. This offer shall be made at least six (6) months prior to discharge. There shall be a cap on the number of persons served in each office, to be determined by available funding and staffing requirements.

- (a) The staff member designated as the homelessness prevention coordinator for each foster home or mental health facility shall maintain a file for each volunteer participant in the foster home or mental health facility, relating to the participant's employment, social, housing, educational, medical, and mental health needs. This file shall be updated from time to time as appropriate and pursuant to an administrative regulation promulgated by the cabinet in accordance with KRS Chapter 13A that establishes standards for the discharge summary. The staff member designated as the homelessness prevention coordinator for the appropriate state-operated prison participating in the pilot project shall maintain a file containing appropriate forms completed and updated by each person voluntarily participating in the pilot project, relating to the information provided under subsection (6) of this section. All applicable privacy and confidentiality laws shall be followed in assembling and maintaining this file.
- (b) Six (6) months prior to the expected date of discharge, the discharge coordinator for each foster home and mental health and state-operated prison facility shall contact the homelessness prevention director for Jefferson County or the homelessness prevention director for Clinton, Cumberland, McCreary, or Wayne County, as appropriate, about the pending release of the volunteer participant who is eligible for discharge from a foster home or mental health facility or who will have served out his or her sentence in a state-operated prison facility that is participating in the pilot project. The director shall visit the home or facility, as appropriate, to assist with the preparation of the final comprehensive discharge plan.
- (c) The director and the discharge coordinator for each participating foster home and mental health and state-operated prison facility shall work together to develop a final comprehensive discharge plan that addresses the employment, health care, educational, housing, and other needs of the person to be released, subject to the consent of the person and the funding and staffing capabilities of the director. Information provided by the coordinator may include and be limited to, subject to the staffing and funding capabilities of the coordinator, information provided by the person to be released on a form or forms made available by the foster home or mental health or state-operated prison facility. The discharge plan shall contain but not be limited to the following:
 - 1. Estimated discharge date from the foster home, state-operated prison facility, or mental health facility;
 - 2. Educational background of the person to be released, including any classes completed or skills obtained by the person while in the foster home, state-operated prison facility, or mental health facility;
 - 3. The person's medical and mental health needs;
 - 4. Other relevant social or family background information;
 - 5. A listing of previous attempts to arrange for post-release residence, employment, medical and mental health services, housing, education, and other community-based services for the person; and
 - 6. Other available funding and public programs that may reimburse any services obtained from a provider listed in the discharge plan. Every effort shall be made in the discharge plan to refer the person to a provider that has agreed to an arranged public or private funding arrangement.

No discharge plan shall be completed unless the written consent, consistent with state and federal privacy laws, to compile the information and prepare the plan has been given by the person eligible for release who has volunteered to participate in the pilot program.

(4) The director shall assist with the completion of a final comprehensive discharge plan that may include but need not be limited to the following:

- (a) Availability of appropriate housing, including but not limited to a twenty-four (24) month transitional program, supportive housing, or halfway house. Planning discharge to an emergency shelter is not appropriate to meet the housing needs of the person being discharged from foster care, a state-operated prison facility, or a mental health facility;

- (b) Access to appropriate treatment services for participants who require follow-up treatment;
 - (c) Availability of appropriate employment opportunities, including assessment of vocational skills and job training; and
 - (d) Identification of appropriate opportunities to further education.
- (5) Discharge planning shall be individualized, comprehensive, and coordinated with community-based services.
- (a) Each discharge plan shall create a continuous, coordinated, and seamless system that is designed to meet the needs of the person.
 - (b) Staff of the foster home or facility and staff of community-based services providers shall be involved in the planning.
 - (c) Each facility shall utilize, wherever possible, community-based services within the facility to establish familiarity of the person residing in the facility with the community services.
- (6) The Department of Corrections shall, through an administrative regulation promulgated in accordance with KRS Chapter 13A, develop a discharge plan that addresses the education; employment, technical, and vocational skills; and housing, medical, and mental health needs of a person who is to be released after serving out his or her sentence in a state-operated prison facility participating in the pilot project.
- (7) Appropriate data about discharge placements and follow-up measures shall be collected and analyzed. The analysis shall be included in the interim and final reports of the pilot program specified in subsection (8) of this section.
- (8) Each homelessness prevention director shall have regular meetings with appropriate state cabinet and agency staff to review the pilot project and make recommendations for the benefit of the program. Each director shall be assisted by a local advisory council composed of local providers of services and consumer advocates who are familiar with homelessness prevention issues. Priority for membership on the advisory council shall be given to existing resources and regional mental health and substance abuse advisory councils at the discretion of the director.
- (9) Each cabinet shall collect data about the discharge plans, referrals, costs of services, and rate of recidivism related to the homelessness prevention program, and shall submit an annual report to the Governor and the Legislative Research Commission no later than October 1 that summarizes the data and contains recommendations for the improvement of the program. The annual report also shall be forwarded to the Kentucky Commission on Services and Supports for Individuals with *an Intellectual Disability*~~[Mental Retardation]~~ and Other Developmental Disabilities, Kentucky Commission on Services and Supports for Individuals with Mental Illness, Alcohol and Other Drug Abuse Disorders, and Dual Diagnoses, and the Kentucky Housing Corporation Homelessness Policy Council.

➔Section 11. KRS 205.470 is amended to read as follows:

- (1) As used in this section, "aging caregiver" means an individual age sixty (60) or older who provides care for an individual with *an intellectual disability*~~[mental retardation]~~ or other developmental disability.
- (2) If state, federal, or other funds are available, the Kentucky Department for Mental Health and Mental Retardation Services shall, in cooperation with the Department for Aging and Independent Living and the Department for Medicaid Services, establish a centralized resource and referral center designed as a one-stop, seamless system to provide aging caregivers with information and assistance with choices and planning for long-term supports for individuals with *an intellectual disability*~~[mental retardation]~~ or developmental disability.
- (3) The center created in subsection (2) of this section shall provide but not be limited to the following services:
 - (a) Comprehensive information on available programs and services, including but not limited to:
 - 1. Residential services;
 - 2. Employment training;
 - 3. Supported employment;
 - 4. Behavioral support;

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

➔Section 12. KRS 205.560 is amended to read as follows:

- (1) The scope of medical care for which the Cabinet for Health and Family Services undertakes to pay shall be designated and limited by regulations promulgated by the cabinet, pursuant to the provisions in this section. Within the limitations of any appropriation therefor, the provision of complete upper and lower dentures to recipients of Medical Assistance Program benefits who have their teeth removed by a dentist resulting in the total absence of teeth shall be a mandatory class in the scope of medical care. Payment to a dentist of any Medical Assistance Program benefits for complete upper and lower dentures shall only be provided on the condition of a preauthorized agreement between an authorized representative of the Medical Assistance Program and the dentist prior to the removal of the teeth. The selection of another class or other classes of

medical care shall be recommended by the council to the secretary for health and family services after taking into consideration, among other things, the amount of federal and state funds available, the most essential needs of recipients, and the meeting of such need on a basis insuring the greatest amount of medical care as defined in KRS 205.510 consonant with the funds available, including but not limited to the following categories, except where the aid is for the purpose of obtaining an abortion:

- (a) Hospital care, including drugs, and medical supplies and services during any period of actual hospitalization;
- (b) Nursing-home care, including medical supplies and services, and drugs during confinement therein on prescription of a physician, dentist, or podiatrist;
- (c) Drugs, nursing care, medical supplies, and services during the time when a recipient is not in a hospital but is under treatment and on the prescription of a physician, dentist, or podiatrist. For purposes of this paragraph, drugs shall include products for the treatment of inborn errors of metabolism or genetic conditions, consisting of therapeutic food, formulas, supplements, or low-protein modified food products that are medically indicated for therapeutic treatment and are administered under the direction of a physician, and include but are not limited to the following conditions:
 - 1. Phenylketonuria;
 - 2. Hyperphenylalaninemia;
 - 3. Tyrosinemia (types I, II, and III);
 - 4. Maple syrup urine disease;
 - 5. A-ketoacid dehydrogenase deficiency;
 - 6. Isovaleryl-CoA dehydrogenase deficiency;
 - 7. 3-methylcrotonyl-CoA carboxylase deficiency;
 - 8. 3-methylglutaconyl-CoA hydratase deficiency;
 - 9. 3-hydroxy-3-methylglutaryl-CoA lyase deficiency (HMG-CoA lyase deficiency);
 - 10. B-ketothiolase deficiency;
 - 11. Homocystinuria;
 - 12. Glutaric aciduria (types I and II);
 - 13. Lysinuric protein intolerance;
 - 14. Non-ketotic hyperglycinemia;
 - 15. Propionic acidemia;
 - 16. Gyrate atrophy;
 - 17. Hyperornithinemia/hyperammonemia/homocitrullinuria syndrome;
 - 18. Carbamoyl phosphate synthetase deficiency;
 - 19. Ornithine carbamoyl transferase deficiency;
 - 20. Citrullinemia;
 - 21. Arginosuccinic aciduria;
 - 22. Methylmalonic acidemia; and
 - 23. Argininemia;
- (d) Physician, podiatric, and dental services;
- (e) Optometric services for all age groups shall be limited to prescription services, services to frames and lenses, and diagnostic services provided by an optometrist, to the extent the optometrist is licensed to

- perform the services and to the extent the services are covered in the ophthalmologist portion of the physician's program. Eyeglasses shall be provided only to children under age twenty-one (21);
- (f) Drugs on the prescription of a physician used to prevent the rejection of transplanted organs if the patient is indigent;
 - (g) Nonprofit neighborhood health organizations or clinics where some or all of the medical services are provided by licensed registered nurses or by advanced medical students presently enrolled in a medical school accredited by the Association of American Medical Colleges and where the students or licensed registered nurses are under the direct supervision of a licensed physician who rotates his services in this supervisory capacity between two (2) or more of the nonprofit neighborhood health organizations or clinics specified in this paragraph;
 - (h) Services provided by health-care delivery networks as defined in KRS 216.900;
 - (i) Services provided by midlevel health-care practitioners as defined in KRS 216.900; and
 - (j) Smoking cessation treatment interventions or programs prescribed by a physician, advanced registered nurse practitioner, physician assistant, or dentist, including but not limited to counseling, telephone counseling through a quitline, recommendations to the recipient that smoking should be discontinued, and prescription and over-the-counter medications and nicotine replacement therapy approved by the United States Food and Drug Administration for smoking cessation.
- (2) Payments for hospital care, nursing-home care, and drugs or other medical, ophthalmic, podiatric, and dental supplies shall be on bases which relate the amount of the payment to the cost of providing the services or supplies. It shall be one (1) of the functions of the council to make recommendations to the Cabinet for Health and Family Services with respect to the bases for payment. In determining the rates of reimbursement for long-term-care facilities participating in the Medical Assistance Program, the Cabinet for Health and Family Services shall, to the extent permitted by federal law, not allow the following items to be considered as a cost to the facility for purposes of reimbursement:
- (a) Motor vehicles that are not owned by the facility, including motor vehicles that are registered or owned by the facility but used primarily by the owner or family members thereof;
 - (b) The cost of motor vehicles, including vans or trucks, used for facility business shall be allowed up to fifteen thousand dollars (\$15,000) per facility, adjusted annually for inflation according to the increase in the consumer price index-u for the most recent twelve (12) month period, as determined by the United States Department of Labor. Medically equipped motor vehicles, vans, or trucks shall be exempt from the fifteen thousand dollar (\$15,000) limitation. Costs exceeding this limit shall not be reimbursable and shall be borne by the facility. Costs for additional motor vehicles, not to exceed a total of three (3) per facility, may be approved by the Cabinet for Health and Family Services if the facility demonstrates that each additional vehicle is necessary for the operation of the facility as required by regulations of the cabinet;
 - (c) Salaries paid to immediate family members of the owner or administrator, or both, of a facility, to the extent that services are not actually performed and are not a necessary function as required by regulation of the cabinet for the operation of the facility. The facility shall keep a record of all work actually performed by family members;
 - (d) The cost of contracts, loans, or other payments made by the facility to owners, administrators, or both, unless the payments are for services which would otherwise be necessary to the operation of the facility and the services are required by regulations of the Cabinet for Health and Family Services. Any other payments shall be deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services. Interest paid to the facility for loans made to a third party may be used to offset allowable interest claimed by the facility;
 - (e) Private club memberships for owners or administrators, travel expenses for trips outside the state for owners or administrators, and other indirect payments made to the owner, unless the payments are deemed part of the owner's compensation in accordance with maximum limits established by regulations of the Cabinet for Health and Family Services; and
 - (f) Payments made to related organizations supplying the facility with goods or services shall be limited to the actual cost of the goods or services to the related organization, unless it can be demonstrated that no relationship between the facility and the supplier exists. A relationship shall be considered to exist when

an individual, including brothers, sisters, father, mother, aunts, uncles, and in-laws, possesses a total of five percent (5%) or more of ownership equity in the facility and the supplying business. An exception to the relationship shall exist if fifty-one percent (51%) or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

- (3) No vendor payment shall be made unless the class and type of medical care rendered and the cost basis therefor has first been designated by regulation.
- (4) The rules and regulations of the Cabinet for Health and Family Services shall require that a written statement, including the required opinion of a physician, shall accompany any claim for reimbursement for induced premature births. This statement shall indicate the procedures used in providing the medical services.
- (5) The range of medical care benefit standards provided and the quality and quantity standards and the methods for determining cost formulae for vendor payments within each category of public assistance and other recipients shall be uniform for the entire state, and shall be designated by regulation promulgated within the limitations established by the Social Security Act and federal regulations. It shall not be necessary that the amount of payments for units of services be uniform for the entire state but amounts may vary from county to county and from city to city, as well as among hospitals, based on the prevailing cost of medical care in each locale and other local economic and geographic conditions, except that insofar as allowed by applicable federal law and regulation, the maximum amounts reimbursable for similar services rendered by physicians within the same specialty of medical practice shall not vary according to the physician's place of residence or place of practice, as long as the place of practice is within the boundaries of the state.
- (6) Nothing in this section shall be deemed to deprive a woman of all appropriate medical care necessary to prevent her physical death.
- (7) To the extent permitted by federal law, no medical assistance recipient shall be recertified as qualifying for a level of long-term care below the recipient's current level, unless the recertification includes a physical examination conducted by a physician licensed pursuant to KRS Chapter 311 or by an advanced registered nurse practitioner licensed pursuant to KRS Chapter 314 and acting under the physician's supervision.
- (8) If payments made to community mental health centers, established pursuant to KRS Chapter 210, for services provided to the *intellectually disabled*~~[mentally retarded]~~ exceed the actual cost of providing the service, the balance of the payments shall be used solely for the provision of other services to the *intellectually disabled*~~[mentally retarded]~~ through community mental health centers.
- (9) No long-term-care facility, as defined in KRS 216.510, providing inpatient care to recipients of medical assistance under Title XIX of the Social Security Act on July 15, 1986, shall deny admission of a person to a bed certified for reimbursement under the provisions of the Medical Assistance Program solely on the basis of the person's paying status as a Medicaid recipient. No person shall be removed or discharged from any facility solely because they became eligible for participation in the Medical Assistance Program, unless the facility can demonstrate the resident or the resident's responsible party was fully notified in writing that the resident was being admitted to a bed not certified for Medicaid reimbursement. No facility may decertify a bed occupied by a Medicaid recipient or may decertify a bed that is occupied by a resident who has made application for medical assistance.
- (10) Family-practice physicians practicing in geographic areas with no more than one (1) primary-care physician per five thousand (5,000) population, as reported by the United States Department of Health and Human Services, shall be reimbursed one hundred twenty-five percent (125%) of the standard reimbursement rate for physician services.
- (11) The Cabinet for Health and Family Services shall make payments under the Medical Assistance program for services which are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent the Medical Assistance Program pays for the same services provided by a physician.
- (12) The Medical Assistance Program shall use the form and guidelines established pursuant to KRS 304.17A-545(5) for assessing the credentials of those applying for participation in the Medical Assistance Program, including those licensed and regulated under KRS Chapters 311, 312, 314, 315, and 320, any facility required to be licensed pursuant to KRS Chapter 216B, and any other health care practitioner or facility as determined by the Department for Medicaid Services through an administrative regulation promulgated under KRS Chapter 13A.

- (13) Dentists licensed under KRS Chapter 313 shall be excluded from the requirements of subsection (12) of this section. The Department for Medicaid Services shall develop a specific form and establish guidelines for assessing the credentials of dentists applying for participation in the Medical Assistance Program.

➔Section 13. KRS 205.6317 is amended to read as follows:

- (1) As used in this section:
- (a) "Supports for Community Living Waiver Program" means funding from the Department for Medicaid Services to serve individuals with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities who qualify for intermediate care and choose to live in a community-based setting and includes funding for a self-determination model, as recommended by the Commission on Services and Supports for Individuals with *an Intellectual Disability*~~[Mental Retardation]~~ and Other Developmental Disabilities under KRS 210.577(2), that provides the ability for the individual receiving services and supports to personally control, with appropriate assistance, a targeted amount of dollars; and
- (b) "Slots" means the dedication of provider or financial resources for services to persons with mental retardation or other developmental disabilities.
- (2) The Department for Medicaid Services shall develop and implement flexible reimbursement and payment strategies that reflect the individually determined needs for services and supports by persons with *an intellectual disability*~~[mental retardation]~~ and other developmental disabilities participating in the Supports for Community Living Waiver Program.
- (3) The Department for Medicaid Services shall allocate slots to the fourteen (14) community mental health regions based on percentage of total population.
- (4) The Department for Medicaid Services shall reallocate underutilized slots to address statewide needs and shall reallocate slots in emergency situations to address unmet needs for services and supports.
- (5) The Department for Medicaid Services shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the requirements of this section.
- (6) Funds for the Supports for Community Living Waiver Program shall be appropriated only for direct services to qualified individuals and any unexpended funds shall not lapse but shall be carried forward to the next fiscal year and shall be used for the same purpose.

➔Section 14. KRS 210.040 is amended to read as follows:

The Cabinet for Health and Family Services shall:

- (1) Exercise all functions of the state in relation to the administration and operation of the state institutions for the care and treatment of persons with mental illness;
- (2) Establish or acquire, in accordance with the provisions of KRS 56.440 to 56.550, other or additional facilities for psychiatric care and treatment of persons who are or may become state charges;
- (3) Cooperate with other state agencies for the development of a statewide mental health program looking toward the prevention of mental illness and the post-institutional care of persons released from public or private mental hospitals;
- (4) Provide for the custody, maintenance, care, and medical and psychiatric treatment of the patients of the institutions operated by the cabinet;
- (5) Provide psychiatric consultation for the state penal and correctional institutions, and for the state institutions operated for children or for persons with *an intellectual disability*~~[mental retardation]~~;
- (6) Administer and supervise programs for the noninstitutional care of persons with mental illness;
- (7) Administer and supervise programs for the care of persons with chronic mental illness, including but not limited to provision of the following:
- (a) Identification of persons with chronic mental illness residing in the area to be served;
- (b) Assistance to persons with chronic mental illness in gaining access to essential mental health services, medical and rehabilitation services, employment, housing, and other support services designed to enable persons with chronic mental illness to function outside inpatient institutions to the maximum extent of their capabilities;

- (c) Establishment of community-based transitional living facilities with twenty-four (24) hour supervision and community-based cooperative facilities with part-time supervision; provided that, no more than either one (1) transitional facility or one (1) cooperative facility may be established in a county containing a city of the first class or consolidated local government with any funds available to the cabinet;
- (d) Assurance of the availability of a case manager for each person with chronic mental illness to determine what services are needed and to be responsible for their provision; and
- (e) Coordination of the provision of mental health and related support services with the provision of other support services to persons with chronic mental illness;
- (8) Require all providers who receive public funds through state contracts, state grants, or reimbursement for services provided to have formalized quality assurance and quality improvement processes, including but not limited to a grievance procedure; and
- (9) Supervise private mental hospitals receiving patients committed by order of a court.

➔Section 15. KRS 210.045 is amended to read as follows:

- (1) The Cabinet for Health and Family Services shall:
 - (a) Maintain, operate, and assume program responsibility for all state institutions and facilities for **intellectual disability**~~[mentally retarded]~~;
 - (b) Provide rehabilitation services for **individuals with an intellectual disability**~~[mentally retarded persons]~~ through educational and training programs;
 - (c) Provide medical and allied services to **individuals with an intellectual disability**~~[mentally retarded persons]~~ and their families;
 - (d) Encourage and assist communities to develop programs and facilities in the field of **intellectual disability**~~[mental retardation]~~;
 - (e) Sponsor or carry out research, or both, in the field of **intellectual disability**~~[mental retardation]~~;
 - (f) Assist other governmental and private agencies in the development of programs and services for **individuals with an intellectual disability**~~[mentally retarded persons]~~ and their families and for the prevention of **intellectual disability**~~[mental retardation]~~, and coordinate programs and services so developed;
 - (g) Provide written notice to the Legislative Research Commission of its intent to propose legislation to permit immediate or gradual closure of any state-owned or state-operated facility that provides residential services to persons with **an intellectual disability**~~[mental retardation]~~ or other developmental disabilities at least sixty (60) days prior to the next legislative session; and
 - (h)
 - 1. Provide written notice by registered mail to each resident, his or her immediate family, if known, and his or her guardian of its intent to propose legislation to permit immediate or gradual closure of any state-operated facility that provides residential services to persons with **an intellectual disability**~~[mental retardation]~~ or other developmental disabilities at least sixty (60) days prior to the next legislative session; and
 - 2. Include in the written notice provided under this paragraph that the resident, the resident's immediate family, his or her guardian, or any other interested party with standing to act on behalf of the resident has the right to pursue legal action relating to the notice provisions of this paragraph and relating to the closure of the facility.
- (2) Any state-owned or state-operated facility or group home that provides residential services to persons with **an intellectual disability**~~[mental retardation]~~ or other developmental disabilities and that has been funded by the General Assembly in a specific biennium, shall not be closed, nor shall the Cabinet for Health and Family Services announce the pending closure of the facility, during the same biennium except through the provisions specified by subsection (1) of this section.

- (3) The Cabinet for Health and Family Services may close any state-owned or state-operated facility that provides residential services to persons with ***an intellectual disability***~~[mental retardation]~~ or other developmental disabilities upon the effective date of an adopted act of legislation.
- (4) When a demonstrated health or safety emergency exists for a facility or a federal action that requires or necessitates a gradual or immediate closure exists for the facility, the cabinet may seek relief from the requirements of this section in the Circuit Court of the county where the facility is located. In these situations:
 - (a) The cabinet shall provide written notice by registered mail to each resident, the resident's immediate family, if known, and his or her guardian, at least ten (10) days prior to filing an emergency petition in the Circuit Court; and
 - (b) All interested parties, including the cabinet, the resident, his or her immediate family, his or her guardian, or other interested parties with standing to act on behalf of the resident shall have standing in the proceedings under this subsection.
- (5) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident who wishes to challenge the decision or actions of the Cabinet for Health and Family Services regarding the notice requirements of subsection (1) of this section shall have a cause of action in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.
- (6) Any resident, family member or guardian, or other interested parties, as defined by KRS 387.510(12) with standing to act on behalf of the resident may challenge the decision of the state to close a facility in a de novo hearing in the Circuit Court of the county in which the facility is located, or in Franklin Circuit Court. In addition to other relief allowable by law, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident may seek compensatory damages and attorney fees. Punitive damages shall not be allowable under this section.

➔Section 16. KRS 210.047 is amended to read as follows:

A court hearing as provided under KRS 210.045(6) shall consider each of the following items relevant to the closure of the facility:

- (1) Estimated timelines for the implementation of the closure of the facility;
- (2) The types and array of available and accessible community-based services for individuals with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities and their families;
- (3) The rights of individuals with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities;
- (4) The process used to develop a community living plan;
- (5) Individual and community monitoring and safeguards to protect health and safety;
- (6) The responsibilities of state and local governments;
- (7) The process used to transfer ownership or the state's plan to reuse the property; and
- (8) Other issues identified by the cabinet, the resident, family member or guardian, or other interested party with standing to act on behalf of the resident that may affect the residents, their families, employees, and the community.

➔Section 17. KRS 210.055 is amended to read as follows:

The Cabinet for Health and Family Services may:

- (1) Promulgate reasonable rules and regulations for the purposes of carrying out the provisions of KRS 210.045, including regulations establishing the minimum and maximum ages within which ***individuals with an intellectual disability***~~[mentally retarded persons]~~ are eligible:
 - (a) To participate in programs operated by the cabinet;
 - (b) To become patients in institutions operated by the cabinet;

- (2) Participate in the education and training of professional and other persons in the field of mental retardation, and may encourage and assist private and public agencies and institutions to participate in similar education and training;
- (3) Do all other things reasonably necessary to carry out the provisions of KRS 210.045.

➔Section 18. KRS 210.270 is amended to read as follows:

- (1) The secretary of the Cabinet for Health and Family Services is authorized to designate those private homes, private nursing homes, and private institutions that he deems, after a thorough investigation of the personal and financial qualifications of the owners and tenants, the facilities and management, and the desirability of the location of the homes, suitable for the placement of patients, including individuals with mental illness or ***an intellectual disability***~~[mental retardation]~~ of all ages, outside of the state mental hospitals. The secretary of the Cabinet for Health and Family Services may promulgate, by administrative regulation, standards for the selection and operation of private homes, private nursing homes, and private institutions designated for the placement of patients. No home of an officer or employee of the Cabinet for Health and Family Services or of a member of his immediate family shall be designated for the placement of patients.
- (2) Whenever the staff of a state mental hospital has determined that a patient who is not being held on an order arising out of a criminal offense has sufficiently improved and is not dangerous to himself or other persons, and that it would be in the patient's best interest to be placed outside of the hospital in a private home or private nursing home, the hospital shall so certify and authorize the patient to be transferred to a designated private home or private nursing home for care and custody for a length of time that the hospital deems advisable.
- (3) No patient with ***an intellectual disability***~~[mental retardation]~~ lodged in a state institution may have his level of care reclassified nor may he be transferred to a private nursing home or other private institution without first providing ten (10) days' notice by certified mail, return receipt requested, to the patient's parents or guardian that a reclassification of the patient's level of care or a transfer in the place of residence is being considered.
- (4) Any parent or guardian of any patient with ***an intellectual disability***~~[mental retardation]~~ lodged in a state institution may participate in any evaluation procedure which may result in a reclassification of the patient's level of care or in a transfer in the place of residence of the patient. Participation may include the submission by the parents or guardian of medical evidence or any other evidence deemed relevant by the parents or guardian to the possible reclassification or transfer of the patient.
- (5) If the decision to reclassify or transfer any patient with ***an intellectual disability***~~[mental retardation]~~ is adverse to the best interests of the patient as expressed by the parents or guardian, they shall be given notice by certified mail, return receipt requested, that they are entitled to a thirty (30) day period from the receipt of such notice to file with the secretary of the Cabinet for Health and Family Services a notice of appeal and application for a hearing. Upon receipt of an application for a hearing, a hearing shall be conducted in accordance with KRS Chapter 13B.
- (6) The appeal shall be heard by a three (3) member panel composed of a designated representative of the Cabinet for Health and Family Services, a designated representative of the state institution where the patient with ***an intellectual disability***~~[mental retardation]~~ is presently lodged, and a designated neutral representative appointed by the county judge/executive wherein the institution in question is located. The secretary may appoint a hearing officer to preside over the conduct of the hearing.
- (7) Decisions made by the panel may be appealed to the Circuit Court of the county in which the state institution in question is located, to the Circuit Court of the county in which either of the parents or guardians or committee of the patient in question is domiciled at the time of the decision, or to Franklin Circuit Court in accordance with KRS Chapter 13B.
- (8) All parents or guardians or committee of a patient with ***an intellectual disability***~~[mental retardation]~~ lodged in a state institution shall be fully apprised by the Cabinet for Health and Family Services of their rights and duties under the provisions of subsections (3), (4), (5), (6), and (7) of this section.
- (9) The provisions of KRS 210.700 to 210.760 shall apply to patients transferred to designated private homes and private nursing homes as though the patients were residing in a state mental hospital.

➔Section 19. KRS 210.271 is amended to read as follows:

- (1) No patient in an institution for the mentally ill or the ***intellectually disabled***~~[mentally retarded]~~ operated by the Cabinet for Health and Family Services shall be discharged to a boarding home as defined in KRS 216B.300 unless the boarding home is registered pursuant to KRS 216B.305.
- (2) The cabinet shall conduct a quarterly follow-up visit, using cabinet personnel or through contract with the Regional Community Mental Health Centers, of all patients of state mental health or mental retardation facilities that are discharged to boarding homes. Any resident found to have needs that cannot be met by the boarding home shall be referred to the Department for Community Based Services for appropriate placement. Any boarding home suspected of operating as an unlicensed personal care facility or housing residents with needs that cannot be met by the boarding home shall be reported to the Division of Community Health Services for investigation.

➔Section 20. KRS 210.410 is amended to read as follows:

- (1) The secretary of the Cabinet for Health and Family Services is hereby authorized to make state grants and other fund allocations from the Cabinet for Health and Family Services to assist any combination of cities and counties, or nonprofit corporations in the establishment and operation of regional community mental health and ***intellectual disability***~~[mental retardation]~~ programs which shall provide at least the following services:
 - (a) Inpatient services;
 - (b) Outpatient services;
 - (c) Partial hospitalization or psychosocial rehabilitation services;
 - (d) Emergency services;
 - (e) Consultation and education services; and
 - (f) ***Services for individuals with an intellectual disability***~~[Mental retardation services]~~.
- (2) The services required in subsection (1)(a), (b), (c), (d), and (e) of this section shall be available to the mentally ill, drug abusers and alcohol abusers, and all age groups including children and the elderly. The services required in subsection (1)(a), (b), (c), (d), (e), and (f) shall be available to ***individuals with an intellectual disability***~~[the mentally retarded]~~. The services required in subsection (1)(b) of this section shall be available to any child age sixteen (16) or older upon request of such child without the consent of a parent or legal guardian, if the matter for which the services are sought involves alleged physical or sexual abuse by a parent or guardian whose consent would otherwise be required.

➔Section 21. KRS 210.570 is amended to read as follows:

The General Assembly of the Commonwealth of Kentucky hereby finds and declares that:

- (1) Assistance and support to citizens of the Commonwealth with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities are necessary and appropriate roles of state government;
- (2) The current system of services and supports to persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities suffers from a lack of program coordination, funding, controls on quality of care, and review and evaluation;
- (3) As part of the review and evaluation, it is necessary to require:
 - (a) Identification, development, and provision of services and supports for persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities using available institutional care as appropriate and integrated with community-based services designed to be inclusive, responsive to individual needs, and protective of the individual's legal rights to equal opportunity;
 - (b) Review of current funding mechanisms to determine the best method to establish an array of community-based comprehensive services using facility-based outpatient services and supports that are available through public and private sectors, including nonprofit and for-profit service providers, that will allow persons with ***an intellectual disability***~~[mental retardation]~~ and other developmental disabilities the opportunity to participate in community life. The review shall include consideration of the availability of residential alternatives, employment opportunities, and opportunities for participation in community-based social and recreational activities; and
 - (c) Development of funding strategies to promote appropriate use of community-based services and supports that provide:

1. Flexibility for persons with *an intellectual disability*~~[mental retardation]~~ and other developmental disabilities;
 2. Distribution of available funds among all interested service providers, including nonprofit and for-profit service providers, based on the needs of the person with mental retardation and other developmental disabilities; and
 3. Efficiency and accountability to the general public;
- (4) KRS 210.570 to 210.577 shall be construed to protect and to promote the continuing development and maintenance of the physical, mental, and social skills of persons with mental retardation and other developmental disabilities; and
- (5) KRS 210.570 to 210.577 shall not be construed:
- (a) To alter any requirements or responsibilities that are mandated by any state or federal law;
 - (b) To relieve any organizational unit or administrative body of its duties under state or federal law; or
 - (c) To transfer among state organizations or administrative bodies any responsibilities, powers, or duties that are mandated by state or federal law.

➔Section 22. KRS 210.575 is amended to read as follows:

- (1) There is created the Kentucky Commission on Services and Supports for Individuals with *Intellectual Disabilities*~~[Mental Retardation]~~ and Other Developmental Disabilities. The commission shall consist of:
- (a) The secretary of the Cabinet for Health and Family Services;
 - (b) The commissioner of the Department for Mental Health and Mental Retardation Services;
 - (c) The commissioner of the Department for Medicaid Services;
 - (d) The executive director of the Office of Vocational Rehabilitation;
 - (e) The director of the University Affiliated Program at the Interdisciplinary Human Development Institute of the University of Kentucky;
 - (f) The director of the Kentucky Council on Developmental Disabilities;
 - (g) Two (2) members of the House of Representatives, appointed by the Speaker of the House;
 - (h) Two (2) members of the Senate, appointed by the Senate President; and
 - (i) Public members, appointed by the Governor as follows:
 1. Five (5) family members, at least one (1) of whom shall be a member of a family with a child with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities, and one (1) of whom shall be a member of a family with an adult with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities. Of these five (5) family members, at least two (2) shall be members of a family with an individual with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities residing in the home of the family member or in a community-based setting, and at least two (2) shall be members of a family with an individual with *an intellectual disability*~~[mental retardation]~~ or other mental disabilities residing in an institutional residential facility that provides service to individuals with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities;
 2. Three (3) persons with *an intellectual disability*~~[mental retardation]~~ or other developmental disabilities;
 3. Two (2) business leaders;
 4. Three (3) direct service providers representing the Kentucky Association of Regional Programs and the Kentucky Association of Residential Resources; and
 5. One (1) representative of a statewide advocacy group.

The six (6) appointments made under subparagraphs 1. and 2. of this paragraph shall be chosen to reflect representation from each of Kentucky's six (6) congressional districts.

- (2) The secretary of the Cabinet for Health and Family Services shall serve as chair of the commission.
- (3) Members defined in subsection (1)(a) to (h) of this section shall serve during their terms of office. All public members appointed by the Governor shall serve a four (4) year term and may be reappointed for one (1) additional four (4) year term.
- (4) All public members of the commission shall receive twenty-five dollars (\$25) per day for attending each meeting. All commission members shall be reimbursed for necessary travel and other expenses actually incurred in the discharge of duties of the commission.

➔Section 23. KRS 210.577 is amended to read as follows:

- (1) The commission created in KRS 210.575 shall meet at least quarterly or upon the call of the chair, the request of four (4) or more members, or the request of the Governor.
- (2) The commission shall serve in an advisory capacity to accomplish the following:
 - (a) Advise the Governor and the General Assembly concerning the needs of persons with ***an intellectual disability***~~mental retardation~~ and other developmental disabilities;
 - (b) Develop a statewide strategy to increase access to community-based services and supports for persons with ***an intellectual disability***~~mental retardation~~ and other developmental disabilities. The strategy shall include:
 - 1. Identification of funding needs and related fiscal impact; and
 - 2. Criteria that establish priority for services that consider timeliness and service needs;
 - (c) Assess the need and potential utilization of specialized outpatient clinics for medical, dental, and special therapeutic services for persons with ***an intellectual disability***~~mental retardation~~ and other developmental disabilities;
 - (d) Evaluate the effectiveness of state agencies and public and private service providers, including nonprofit and for-profit service providers, in:
 - 1. Dissemination of information and education;
 - 2. Providing outcome-oriented services; and
 - 3. Efficiently utilizing available resources, including blended funding streams;
 - (e) Develop a recommended comprehensive ten (10) year plan for placement of qualified persons in the most integrated setting appropriate to their needs;
 - (f) Recommend an effective quality assurance and consumer satisfaction monitoring program that includes recommendations as to the appropriate role of family members, persons with ***an intellectual disability***~~mental retardation~~ and other developmental disabilities, and advocates in quality assurance efforts;
 - (g) Develop recommendations for the implementation of a self-determination model of funding services and supports as established under KRS 205.6317(1) for persons who are receiving services or supports under the Supports for Community Living Program as of June 24, 2003. The model shall include, but is not limited to, the following:
 - 1. The ability to establish an individual rate or budget for each person;
 - 2. Mechanisms to ensure that each participant has the support and assistance necessary to design and implement a package of services and supports unique to the individual;
 - 3. The ability to arrange services, supports, and resources unique to each person based upon the preferences of the recipient; and
 - 4. The design of a system of accountability for the use of public funds.

The chairperson of the commission shall appoint an ad-hoc committee composed of commission members and other interested parties to develop the recommendations required by this paragraph; and

- (h) Advise the Governor and the General Assembly on whether the recommendations should be implemented by administrative regulations or proposed legislation.
- (3) The commission shall review the plan annually and shall submit annual updates no later than October 1 to the Governor and the Legislative Research Commission.

➔Section 24. KRS 210.580 is amended to read as follows:

- (1) The Kentucky Commission on Services and Supports for Individuals with ***an Intellectual Disability***~~[Mental Retardation]~~ and Other Developmental Disorders established in KRS 210.575, and the Kentucky Commission on Services and Supports to Individuals with Mental Illness, Alcohol and Other Drug Disorders, and Dual Diagnoses established in KRS 210.502 shall, by August 1, 2004, establish a joint ad hoc committee on transitioning from children's services systems to adult services systems for children who will continue to need services or supports after reaching age twenty-one (21).
- (2) The co-chairpersons of each commission shall each designate a joint ad hoc committee chairperson and appoint up to ten (10) members for the joint ad hoc committee. At least seventy-five percent (75%) of the membership shall be composed of family members of consumers of adult or child services, advocates, and nonprofit and community-based providers of adult and child services and supports. Members of the commissions may serve as a chairperson and may be appointed to the ad hoc committee.
- (3) The joint ad hoc committee shall develop recommendations for implementation of specific plans of action to meet the needs of children who transition to adult services systems.
- (4) The joint ad hoc committee shall make a preliminary report by October 30, 2004, and shall make a final report by December 30, 2004, to both commissions and to the Interim Joint Committee on Health and Welfare.

➔Section 25. KRS 216.510 is amended to read as follows:

As used in KRS 216.515 to 216.530:

- (1) "Long-term-care facilities" means those health-care facilities in the Commonwealth which are defined by the Cabinet for Health and Family Services to be family-care homes, personal-care homes, intermediate-care facilities, skilled-nursing facilities, nursing facilities as defined in Pub. L. 100-203, nursing homes, and intermediate-care facilities for the ***intellectually***~~[mentally-retarded]~~ and developmentally disabled.
- (2) "Resident" means any person who is admitted to a long-term-care facility as defined in KRS 216.515 to 216.530 for the purpose of receiving personal care and assistance.
- (3) "Cabinet" means the Cabinet for Health and Family Services.

➔Section 26. KRS 216.535 is amended to read as follows:

As used in KRS 216.537 to 216.590:

- (1) "Long-term care facilities" means those health care facilities in the Commonwealth which are defined by the Cabinet for Health and Family Services to be family care homes, personal care homes, intermediate care facilities, skilled nursing facilities, nursing facilities as defined in Pub. L. 100-203, nursing homes, and intermediate care facilities for the ***intellectually***~~[mentally-retarded]~~ and developmentally disabled.
- (2) "Cabinet" means the Cabinet for Health and Family Services.
- (3) "Resident" means any person admitted to a long-term care facility as defined by this section.
- (4) "Licensee" in the case of a licensee who is an individual means the individual, and in the case of a licensee who is a corporation, partnership, or association means the corporation, partnership, or association.
- (5) "Secretary" means the secretary of the Cabinet for Health and Family Services.
- (6) "Long-term care ombudsman" means the person responsible for the operation of a long-term care ombudsman program which investigates and resolves complaints made by or on behalf of residents of long-term care facilities.
- (7) "Willful interference" means an intentional, knowing, or purposeful act or omission which hinders or impedes the lawful performance of the duties and responsibilities of the ombudsman as set forth in this chapter.

- (8) The following information shall be available upon request of the affected Medicaid recipient or responsible party:
- (a) Business names, business addresses, and business telephone numbers of operators and administrators of the facility; and
 - (b) Business names, business addresses, and business telephone numbers of staff physicians and the directors of nursing.
- (9) The following information shall be provided to the nursing facility patient upon admission:
- (a) Admission and discharge policies of the facility;
 - (b) Payment policies relevant to patients for all payor types; and
 - (c) Information developed and distributed to the nursing facility by the Department for Medicaid Services, including, but not limited to:
 - 1. Procedures for implementation of all peer review organizations' reviews and appeals processes;
 - 2. Eligibility criteria for the state's Medical Assistance Program, including circumstances when eligibility may be denied; and
 - 3. Names and telephone numbers for case managers and all state long term care ombudsmen.

➔Section 27. KRS 304.17-310 is amended to read as follows:

- (1) Family expense health insurance is that provided under a policy issued to one (1) of the family members insured, who shall be deemed the policyholder, covering any two (2) or more eligible members of a family, including husband, wife, unmarried dependent children, to age nineteen (19), unmarried children from nineteen (19) to twenty-five (25) years of age who are full-time students enrolled in and attending an accredited educational institution and who are primarily dependent on the policyholder for maintenance and support, and any other person dependent upon the policyholder. Any authorized health insurer may issue the insurance.
- (2) An individual hospital or medical expense insurance policy or hospital or medical service plan contract delivered or issued for delivery in this state more than 120 days after June 13, 1968, which provides that coverage of a dependent child shall terminate upon attainment of the limiting age for dependent children specified in the policy or contract shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (a) incapable of self-sustaining employment by reason of *an intellectual[mental-retardation]* or physical disability and (b) chiefly dependent upon the policyholder or subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the insurer or corporation by the policyholder or subscriber within thirty-one (31) days of the child's attainment of the limiting age and subsequently as may be required by the insurer or corporation but not more frequently than annually after the two (2) year period following the child's attainment of the limiting age.
- (3) Insurers offering family expense health insurance shall offer the applicant the option to purchase coverage for unmarried dependent children until age twenty-five (25).

➔Section 28. KRS 387.540 is amended to read as follows:

- (1) Prior to a hearing on a petition for a determination of partial disability or disability and the appointment of a limited guardian, guardian, limited conservator, or conservator, an interdisciplinary evaluation report shall be filed with the court. The report may be filed as a single and joint report of the interdisciplinary evaluation team, or it may otherwise be constituted by the separate reports filed by each individual of the team. If the court and all parties to the proceeding and their attorneys agree to the admissibility of the report or reports, the report or reports shall be admitted into evidence and shall be considered by the jury. The report shall be compiled by at least three (3) individuals, including a physician, a psychologist licensed or certified under the provisions of KRS Chapter 319, and a person licensed or certified as a social worker or an employee of the Cabinet for Health and Family Services who meets the qualifications of KRS 335.080(1)(a), (b), and (c) or 335.090(1)(a), (b), and (c). The social worker shall, when possible, be chosen from among employees of the Cabinet for Health and Family Services residing or working in the area, and there shall be no additional compensation for their service on the interdisciplinary evaluation team.

- (2) At least one (1) person participating in the compilation of the report shall have knowledge of the particular disability which the respondent is alleged to have or knowledge of the skills required of the respondent to care for himself and his estate.
- (3) If the respondent is alleged to be partially disabled or disabled due to mental illness, at least one (1) person participating in the compilation of the interdisciplinary evaluation report shall be a qualified mental health professional as defined in KRS 202A.011(12). If the respondent is alleged to be partially disabled or disabled due to *an intellectual disability* ~~mental retardation~~, at least one (1) person participating in the compilation of the evaluation report shall be a qualified mental retardation professional as defined in KRS 202B.010(12).
- (4) The interdisciplinary evaluation report shall contain:
 - (a) A description of the nature and extent of the respondent's disabilities, if any;
 - (b) Current evaluations of the respondent's social, intellectual, physical, and educational condition, adaptive behavior, and social skills. Such evaluations may be based on prior evaluations not more than three (3) months old, except that evaluations of the respondent's intellectual condition may be based on individual intelligence test scores not more than one (1) year old;
 - (c) An opinion as to whether guardianship or conservatorship is needed, the type of guardianship or conservatorship needed, if any, and the reasons therefor;
 - (d) An opinion as to the length of time guardianship or conservatorship will be needed by the respondent, if at all, and the reasons therefor;
 - (e) If limited guardianship or conservatorship is recommended, a further recommendation as to the scope of the guardianship or conservatorship, specifying particularly the rights to be limited and the corresponding powers and duties of the limited guardian or limited conservator;
 - (f) A description of the social, educational, medical, and rehabilitative services currently being utilized by the respondent, if any;
 - (g) A determination whether alternatives to guardianship or conservatorship are available;
 - (h) A recommendation as to the most appropriate treatment or rehabilitation plan and living arrangement for the respondent and the reasons therefor;
 - (i) A listing of all medications the respondent is receiving, the dosage, and a description of the impact of the medication upon the respondent's mental and physical condition and behavior;
 - (j) An opinion whether attending a hearing on a petition filed under KRS 387.530 would subject the respondent to serious risk of harm;
 - (k) The names and addresses of all individuals who examined or interviewed the respondent or otherwise participated in the evaluation; and
 - (l) Any dissenting opinions or other comments by the evaluators.
- (5) The evaluation report may be compiled by a community mental health-mental retardation center, a licensed facility for mentally ill or developmentally disabled persons, if the respondent is a resident of such facility, or a similar agency.
- (6) In all cases where the respondent is a resident of a licensed facility for mentally ill or developmentally disabled persons and the petition is filed by an employee of that facility, the petition shall be accompanied by an interdisciplinary evaluation report prepared by the facility.
- (7) Except as provided in subsection (6) of this section, the court shall order appropriate evaluations to be performed by qualified persons or a qualified agency. The report shall be prepared and filed with the court and copies mailed to the attorneys for both parties at least ten (10) days prior to the hearing. All items specified in subsection (4) of this section shall be included in the report.
- (8) If the person evaluated is a poor person as defined in KRS 453.190, the examiners shall be paid by the county in which the petition is filed upon an order of allowance entered by the court. Payment shall be in an amount which is reasonable as determined by the court, except no payment shall be required of the county for an evaluation performed by a salaried employee of a state agency for an evaluation performed within the course of

his employment. Additionally, no payment shall be required of the county for an evaluation performed by a salaried employee of a community mental health-mental retardation center or private facility or agency where the costs incurred by the center, facility, or agency are reimbursable through third-party payors. Affidavits or other competent evidence shall be admissible to prove the services rendered but not to prove their value.

- (9) The respondent may file a response to the evaluation report no later than five (5) days prior to the hearing.
- (10) The respondent may secure an independent evaluation. If the respondent is unable to pay for the evaluation, compensation for the independent evaluation may be paid by the county in an amount which is reasonable as determined by the court.

Signed by Governor April 13, 2010.

CHAPTER 142

(HB 518)

AN ACT relating to Medicaid.

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

➔Section 1. KRS 205.640 is amended to read as follows:

- (1) The commissioner of Medicaid services shall adopt a disproportionate share program consistent with the requirements of Title XIX of the Social Security Act which shall include to the extent possible, but not limited to, the provisions of this section.
- (2) The "Medical Assistance Revolving Trust Fund" (MART) shall be established in the State Treasury and all provider tax revenues collected pursuant to KRS 142.301 to 142.363 shall be deposited in the State Treasury and transferred on a quarterly basis to the Department for Medicaid Services for use as specified in this section. All investment earnings of the fund shall be credited to the fund. Provider tax revenues collected in accordance with KRS 142.301 to 142.363 ~~may~~~~shall~~ be used to fund the provisions of KRS 216.2920 to 216.2929 and to supplement the medical assistance-related general fund appropriations for fiscal year 1994 and subsequent fiscal years. Notwithstanding the provisions of KRS 48.500 and 48.600, the MART fund shall be exempt from any state budget reduction acts.
- (3) (a) Beginning in state fiscal year 2000-2001 and continuing annually thereafter, provider tax revenues and state and federal matching funds shall be used to fund the disproportionate share program established by ***administrative regulations promulgated by the Cabinet for Health and Family Services***~~the commissioner of Medicaid services~~. Disproportionate share funds shall be divided into three (3) pools for distribution as follows:
 - 1. Forty-three and ninety-two hundredths percent (43.92%) of the total disproportionate share funds shall be allocated to acute care hospitals;
 - 2. Thirty-seven percent (37%) of the total disproportionate share funds shall be allocated to university hospitals;~~and~~
 - 3. ***The percentage allowable by federal law pursuant to 42 U.S.C. sec. 1396r-4(h), up to*** nineteen and eight hundredths percent (19.08%) of the total disproportionate share funds shall be allocated to private psychiatric hospitals and state mental hospitals, with the allocation to each respective group of hospitals established by the biennial budget;~~and~~
 - 4. ***If there are any remaining disproportionate share funds from private psychiatric hospitals and state mental hospitals, fifty-four percent (54%) of those funds shall be distributed to the acute care hospitals and forty-six percent (46%) shall be distributed to the university hospitals; and***
 - 5. If, in any year, one (1) or both university hospitals fail to provide state matching funds necessary to secure federal financial participation for the funds allocated to university hospitals under this subsection, the portion of the funding allocation applicable to the hospital or hospitals that fail to provide state matching funds shall be made available to acute care hospitals.
- (b) The MART fund shall be used to compensate acute care hospitals, private psychiatric hospitals, ***state mental hospitals***, and university hospitals ***participating in***~~qualifying for~~ the disproportionate share program for uncompensated service provided by the hospitals to individuals and families with total

annual incomes and resources up to one hundred percent (100%) of the federal poverty level, as determined by the hospital pursuant to administrative regulations promulgated by the Cabinet for Health and Family Services in accordance with this section.

- (c) An individual hospital shall receive distributions for indigent care provided by that hospital *if the hospital meets the requirements of the disproportionate share program* ~~[that meets the guidelines established in paragraph (a) of this subsection]~~.
- (d) Distributions to acute care and private psychiatric hospitals shall be made as follows:
 - 1. The department shall calculate an indigent care factor for each hospital annually. The indigent care factor shall be determined by calculating the percentage of each hospital's annual indigent care costs toward the sum of the total annual indigent care costs for all hospitals within each respective pool. For purposes of this paragraph, "indigent care costs" means the hospital's inpatient and outpatient care as reported to the department multiplied by the hospital's Medicaid rate, or at a rate determined by the department in administrative regulation that, when multiplied by the hospital's reported indigent care, is equivalent to the amount that would be payable by the department under the fee-for-service Medicaid program for the hospital's total reported indigent care.
 - 2. Each hospital's annual distribution shall be calculated by multiplying the hospital's indigent care factor by the total fund allocated to all hospitals within the respective pool under paragraph (a) of this subsection.
 - a. Hospitals shall report uncompensated care provided to qualified individuals and families with total annual incomes and resources up to one hundred percent (100%) of the federal poverty level, including care rendered to indigent persons age twenty-two (22) to sixty-four (64) in a psychiatric hospital to the Cabinet for Health and Family Services on a quarterly basis. However, all data for care provided during the state fiscal year shall be submitted no later than August 15 of each year.
 - b. ~~[The department shall use indigent care data for services delivered from October 1, 1998, through September 30, 1999, as reported by hospitals to calculate each hospital's indigent care factor for state fiscal year 2000-2001.]~~ For state fiscal year 2001-2002 and each year thereafter, the department shall use data reported by the hospitals for indigent care services rendered for the twelve (12) month period ending June 30 of each year as reported by the hospital to the department by August 15 in calculating each hospital's indigent care factor. The hospital shall, upon request by the Cabinet for Health and Family Services, submit any supporting documentation to verify the indigent care data submitted for the calculation of an indigent care factor and annual payment.
 - c. By September 1 of each year, the department shall calculate a preliminary indigent care factor and preliminary annual payment amount for each hospital, and shall notify each hospital of their calculation. The notice shall contain a listing of each hospital's indigent care costs, their indigent care factor, and the estimated annual payment amount. Hospitals shall notify the department by September 15 of any adjustments in the department's preliminary calculations. The department shall make adjustments identified by hospitals and shall make a final determination of each hospital's indigent care factor and annual payment amount by October 1. *The department shall make a final determination of each hospital's annual payment amount upon notification through the Federal Register of the annual federal disproportionate share hospital allotment for the Commonwealth.*
 - (e) ~~[For fiscal year 2000-2001 and continuing annually thereafter,]~~ The department shall issue to each hospital one (1) lump-sum payment on October 15, or later as soon as federal financial participation becomes available *through notification by publication of the Federal Register*, for the disproportionate share funds available during the corresponding federal fiscal year. *The department may pay a portion of the expected annual payment prior to the publication of the annual federal allotment.*
- (4) Notwithstanding any other provision to contrary, total annual disproportionate share payments made to state mental hospitals, university hospitals, acute care hospitals, and private psychiatric hospitals in each state fiscal

year shall be equal to the maximum amount of disproportionate share payments established under the Federal Balanced Budget Act of 1997 and any amendments thereto. Disproportionate share payments shall be subject to the availability of adequate state matching funds and shall not exceed total uncompensated costs.

- (5) Hospitals receiving reimbursement shall not bill patients for services submitted for reimbursement under this section and KRS 205.641. Services provided to individuals who are eligible for medical assistance or the Kentucky Children's Health Insurance Program do not qualify for reimbursement under this section and KRS 205.641. Hospitals shall make a reasonable determination that an individual does not qualify for these programs and shall request the individual to apply, if appropriate, for medical assistance or Kentucky Children's Health Insurance on forms supplied by and in accordance with procedures established by the Department for Medicaid Services. The hospital shall document any refusal to apply and shall inform the patient that the refusal may result in the patient being billed for any services performed. The hospital shall not be eligible for reimbursement if the patient was eligible for medical assistance or Kentucky Children's Health Insurance and did not apply. Hospitals receiving reimbursement under this section and KRS 205.641 shall not bill patients for services provided to patients not eligible for medical assistance with family incomes up to one hundred percent (100%) of the federal poverty level.
- (6) The secretary of the Cabinet for Health and Family Services shall promulgate administrative regulations~~{necessary}~~, pursuant to KRS Chapter 13A, for the administration and implementation of this section.
- (7) All hospitals receiving reimbursement under this section and KRS 205.641 shall display prominently a sign which reads as follows: "This hospital will accept patients regardless of race, creed, ethnic background, or ability to pay."
- (8) *The hospital shall, upon request by the Cabinet for Health and Family Services, submit any supporting documentation to substantiate compliance with the audit requirements established by 42 C.F.R. sec. 455.*

➔Section 2. KRS 333.150 is amended to read as follows:

- (1) A medical laboratory shall examine human specimens only at the request of a licensed physician, podiatrist, dentist, or other person authorized by law to use the findings of medical laboratory examinations. The results of a test shall be reported ~~{directly}~~ to the licensed **health care provider** ~~{physician, dentist, or other authorized person}~~ who requested it.
- (2) *Medical laboratory results may be transmitted to:*
 - (a) *Any health care provider who is treating the patient;*
 - (b) *An electronic health information exchange or network for the purposes of transmitting medical laboratory results to the ordering provider and to any other provider for the purposes of treatment, payment, or operations if patient consent has been obtained under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191); and*
 - (c) *An electronic health information exchange or network for the purpose of meeting the requirements of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5) and its related federal regulations.*
- (3) *All transactions under subsection (2) of this section shall be in compliance with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).*
- (4) *Laboratory reports* ~~{Such report}~~ shall include the name of the director and the name and address of the medical laboratory in which the test was actually performed. All specimens accepted by a medical laboratory shall be tested on the premises except that specimens for infrequently performed tests may be forwarded for examination to another medical laboratory licensed under this chapter or to a medical laboratory located outside this state if licensed or approved by the appropriate agency of the state concerned.

Signed by Governor April 13, 2010.

CHAPTER 143

(HB 504)

AN ACT relating to wet weather discharges from sanitary sewers.

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

➔SECTION 1. A NEW SECTION OF SUBCHAPTER 16 OF KRS CHAPTER 224 IS CREATED TO READ AS FOLLOWS:

When issuing permits under KRS 224.16-050 for discharges consisting of combined sewer overflows, requiring and approving long-term control plans for wet weather discharges from combined or separate sanitary sewer systems, or enforcing provisions of the Federal Water Pollution Control Act, 33 U.S.C. secs. 1251 et seq., the cabinet shall consider the following, to the extent allowable under this chapter and the Federal Water Pollution Control Act:

- (1) *Limitations on a community's financial capabilities and ability to raise or secure necessary funding;*
- (2) *Affordability of control options;*
- (3) *An evaluation of the effectiveness and affordability of control technologies;*
- (4) *Promotion of green infrastructure;*
- (5) *Reducing economic impacts on regulated entities, other state and local governmental entities, and residents of the Commonwealth;*
- (6) *Allowing for reasonable accommodations for regulated entities and other state and local governmental entities when inflexible standards and fines would impose a disproportionate financial hardship in light of the environmental benefits to be gained;*
- (7) *Giving preference, where proposed by a permittee, to control options that meet presumption approach performance criteria and demonstrate significant pollution reduction rather than mandating specific designs;*
- (8) *Allowing adequate time and flexibility for implementation schedules when justified by a clear environmental benefit, a community's ability to raise or secure adequate funds, an analysis concluding that the costs of a shorter implementation schedule outweigh the benefits of faster implementation, or other factors; and*
- (9) *Factors set forth in the United States Environmental Protection Agency's "Combined Sewer Overflow Control Policy" that may ease the cost burdens of implementing long-term control plans, including but not limited to small system considerations, the attainability of water quality standards, and the development of wet weather standards.*

Signed by Governor April 13, 2010.

CHAPTER 144

(HB 424)

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

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

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

ACS Environmental Services, LLC

20 High Street

Hamilton, Ohio 45011

\$8,400.00

Adecco USA, Inc.

c/o Rhonda Cotton

934 Louisville Road	
Frankfort, Kentucky 40601	\$74,164.01
Agile Access Control, Inc.	
Accounts Receivable	
14101 Willard Road, Suite A	
Chantilly, Virginia 20151	\$88,180.00
Elizabeth Elkins Bond, Attorney-at-Law	
P.O. Box 23	
Winchester, Kentucky 40392	\$2,725.00
College Entrance Examination Board	
General Post Office	
P.O. Box 27392	
New York, New York 10087-7392	\$79,100.00
CSX Transportation	
P.O. Box 116651	
Atlanta, Georgia 30368-6651	\$9,926.52
Dix River Stone	
376 Somerset Street	
Stanford, Kentucky 40484	\$4,473.68
Elmo Greer and Sons, Inc.	
P.O. Box 730	
London, Kentucky 40741	\$1,158.60
Equipment Depot	
P.O. Box 714896	
Columbus, Ohio 43271-4896	\$2,783.00
Donald Hall	
7506 Pleasant Ridge Road	
Sparta, Tennessee 38583	\$2,149.35
Hardin County Fiscal Court	
P.O. Box 568	
Elizabethtown, Kentucky 42702-0568	\$3,320.00
Hurt, Crosbie and May PLLC	
The Equus Building	
127 West Main Street	
Lexington, Kentucky 40507	\$11,544.99
Ikon Office Solutions	
P.O. Box 740541	
Atlanta, Georgia 30374-0541	\$464.04

Ingram and Ball PLLC	
2412 Ring Road	
Elizabethtown, Kentucky 42701	\$88.40
ISS Facility Services - New Castle	
P.O. Box 118	
New Castle, Pennsylvania 16103	\$10,571.35
J.C. Penney, Co., Inc.	
P.O. Box 48458	
Oak Park, Michigan 48237	\$39.99
Lake Cumberland Medical Associates	
350 Hospital Way, Suite 100	
Somerset, Kentucky 42503	\$1,000.00
Lexington Urgent Treatment Associates PLLC	
3174 Custer Drive, Suite 200	
Lexington, Kentucky 40517	\$1,313.00
Marathon Petroleum Company LLC	
14333 Collections Center Drive	
Chicago, Illinois 60693	\$78,581.80
Middlesboro Appalachian Regional Healthcare Hospital	
3600 West Cumberland Avenue	
Middlesboro, Kentucky 40965	\$48.00
Pollard and Sons Excavating, LLC	
276 Lamb Road	
Madisonville, Kentucky 42431	\$46,500.00
Roberts and Kay, Inc.	
250 Campsie Place	
Lexington, Kentucky 40508	\$500.00
SGS North America, Inc.	
P.O. Box 2502	
Carol Stream, Illinois 60132-2502	\$3,332.00
Stamps.com	
Department 892275	
P.O. Box 122275	
Dallas, Texas 75312-2275	\$104.97
Stantec Consulting Services, Inc.	
1901 Nelson Miller Parkway	
Louisville, Kentucky 40223	\$5,550.92
George B. Stone Company, LLC	

P.O. Box 219	
Sharpsburg, Kentucky 40374	\$5,486.00
Gerald Thiesen	
109 Pintail Court	
Georgetown, Kentucky 40324	\$4,513.95
University of Kentucky Research Foundation	
c/o National City Bank	
P.O. Box 931113	
Cleveland, Ohio 44193	\$29,354.40
University of Louisville Research Foundation, Inc.	
Office of the Controller	
223 Service Complex	
Louisville, Kentucky 40292	\$3,594.41
The Urban Institute	
Department 950	
Washington, D.C. 20042-0950	\$3,116.18
Volunteers of America of Kentucky, Inc.	
933 Goss Avenue	
Louisville, Kentucky 40217-9943	\$46,083.33
Joseph Gribbins	
3615 Dell Road	
Louisville, Kentucky 40299	\$6,000.00

(2) The claims listed below are for the payment of State Treasury checks payable to the persons or their personal representatives, and the firms listed, but not presented for payment within a period of five (5) years from the date of issuance of such checks as required by KRS 41.370 and 413.120.

	<u>Payee</u>	<u>Treasury Fee</u>	<u>Total Check</u>
Check #E12029025 dated March 12, 2004			
Gwen Z. Alletag			
2179 Glenview Drive			
Hebron, KY 41048	\$285.83	\$25.00	\$260.83
Check #P1530580 dated March 16, 1994			
Patricia Bacon			
512 Logan Street			
Frankfort, KY 40601	\$255.39	\$25.00	\$230.39
Check #P1530579 dated March 16, 1994			
Patricia Bacon			
512 Logan Street			
Frankfort, KY 40601	\$175.16	\$25.00	\$150.16
Check #T1390030 dated May 19, 1994			

Michael Beyerle			
P.O. Box 279			
Pewee Valley, KY 40056-0279	\$174.26	\$25.00	\$149.26
Check #E12068415 dated June 10, 2004			
Travis A. and J. W. Boyd			
c/o Carrol Rouch, Revenue Accounts			
Frankfort, KY 40601	\$940.00	\$25.00	\$915.00
Check #VY08752133 dated August 23, 2000			
Bundesamt fur Justiz			
Zentrale Behorden			
Adenaueralle 99-103			
53113 Bonn, Germany	\$65.62	\$25.00	\$40.62
Check #VY07904038 dated March 14, 2000			
Bundesamt fur Justiz			
Zentrale Behorden			
Adenaueralle 99-103			
53113 Bonn, Germany	\$109.38	\$25.00	\$84.38
Check #OY01984607 dated March 28, 2002			
Bundesamt fur Justiz			
Zentrale Behorden			
Adenaueralle 99-103			
53113 Bonn, Germany	\$65.62	\$25.00	\$40.62
Check #T1186435 dated March 28, 1983			
Rich and T. J. Cannon			
710 Bethel Church Road			
Mt. Washington, KY 40047	\$43.39	\$25.00	\$18.39
Check #G4160368 dated November 25, 1998			
Clark County HOSA Club			
c/o Clark Co Area Technology Center			
650 Boone Avenue			
Winchester, KY 40391	\$199.50	\$25.00	\$174.50
Check #GT00665414 dated August 24, 1998			
Myrl Dye			
c/o Cathy Sims			
324 Minnie Way			
Bowling Green, KY 42101	\$5,508.56	\$25.00	\$5,483.56
Check #GT00665319 dated August 24, 1998			
Myrl Dye			

c/o Cathy Sims			
324 Minnie Way			
Bowling Green, KY 42101	\$2,958.85	\$25.00	\$2,933.85
Check #G16778889 dated May 24, 2004			
Elizabeth A Fleitz			
1720 Casselberry Road			
Louisville, KY 40205-1630	\$115.97	\$25.00	\$90.97
Check #T102273708 dated February 25, 2004			
Mitchel E. Flood			
121 Villa Way			
Hendersonville, TN 37075	\$47.00	\$25.00	\$22.00
Check #P3677649 dated December 18, 1996			
Dorothy L. Ford			
805 Cooper Drive			
Ferguson, KY 42533	\$1,359.63	\$25.00	\$1,334.63
Check #T11673742 dated April 8, 2003			
David W. Foreman			
167 Foreman Lane			
Narrows, KY 42347-9147	\$516.00	\$25.00	\$491.00
Check #M18160876 dated March 28, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$7,386.93	\$25.00	\$7,361.93
Check #M18147916 dated March 14, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$294.30	\$25.00	\$269.30
Check #M18178643 dated April 11, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$5,185.00	\$25.00	\$5,160.00
Check #M18174554 dated April 6, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			

Frankfort, KY 40602-1515	\$2,383.83	\$25.00	\$2,358.83
Check #M18168062 dated April 4, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$5,267.97	\$25.00	\$5,242.97
Check #M18198067 dated May 2, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$735.75	\$25.00	\$710.75
Check #M18191423 dated April 25, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$5,727.41	\$25.00	\$5,702.41
Check #M18248917 dated June 20, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$4,738.23	\$25.00	\$4,713.23
Check #M18234793 dated June 6, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$148.58	\$25.00	\$123.58
Check #G11178101 dated June 23, 2000			
Frankfort Active Day Center			
c/o Marian Hayden			
P.O. Box 1515			
Frankfort, KY 40602-1515	\$1,178.50	\$25.00	\$1,153.50
Check #E1350056 dated February 24, 1998			
Harold J. & Sara Franko			
229 Madison Street			
Vassar, MI 48768	\$465.80	\$25.00	\$440.80
Check #T101898949 dated May 23, 2003			
Krishna C. Gone			
329 E 22nd Street, Apt #94			

Columbus, NE 68601	\$115.00	\$25.00	\$90.00
Check #P17917718 dated July 5, 2003			
Patricia A. Gregory			
9702 Thor Avenue			
Louisville, KY 40229	\$509.18	\$25.00	\$484.18
Check #E11902921 dated September 16, 2002			
Estate of Paula S. Harding			
c/o John Loeblich			
102 Marshall Way, Apt. B			
Williamsburg, VA 23185	\$141.00	\$25.00	\$116.00
Check #T0115774 dated April 8, 1993			
Gregory G. Hogan			
5633 Blackburg Drive			
Memphis, TN 38135	\$144.00	\$25.00	\$119.00
Check #E11912361 dated December 2, 2002			
Kenneth & D. M. Hopkins			
1114 Meadow Glen Drive			
Frankfort, KY 40601	\$86.00	\$25.00	\$61.00
Check #T10891127 dated May 22, 2002			
John D. & C. C. Humphrey			
1913 Edgeworth Drive			
Lexington, KY 40505-2016	\$302.00	\$25.00	\$277.00
Check #T11636026 dated April 3, 2003			
Andrew D. Karem			
2439 Ransdell Ave			
Louisville, KY 40204-2112	\$155.00	\$25.00	\$130.00
Check #N10038580 dated June 19, 2003			
Kentucky State Treasurer	\$38.68	\$25.00	\$13.68
Check #K11513544 dated July 9, 2003			
Kentucky State Treasurer	\$64.46	\$25.00	\$39.46
Check #K11513820 dated July 18, 2003			
Kentucky State Treasurer	\$48.47	\$25.00	\$23.47
Check #G15368169 dated June 19, 2003			
Kentucky State Treasurer	\$185.66	\$25.00	\$160.66
Check #N10038579 dated June 19, 2003			
Kentucky State Treasurer	\$59.06	\$25.00	\$34.06
Check #N10038578 dated June 19, 2003			
Kentucky State Treasurer	\$134.10	\$25.00	\$109.10

Check #L12492379 dated December 31, 1999

Ruth Martin

1350 State Route 2153

Morganfield, KY 42437	\$562.08	\$25.00	\$537.08
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Check #T101838238 dated May 12, 2003

Eduardo & L. Fueyo Martinez

P.O. Box 347288

Coral Gables, FL 33234	\$2,784.00	\$25.00	\$2,759.00
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Check #T1889932 dated March 20, 1995

Darren B. Mattingly

351 Vittitow Ford Road

Boston, KY 40107	\$155.82	\$25.00	\$130.82
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Check #Y15778103 dated February 10, 2004

Terri Mays

c/o Carolyn Coney

Division of Child Support

730 Schenkel Lane, POB 2150

Frankfort, KY 40601	\$132.00	\$25.00	\$107.00
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Check #Y15704329 dated January 30, 2004

Terri Mays

c/o Carolyn Coney

Division of Child Support

730 Schenkel Lane, POB 2150

Frankfort, KY 40601	\$132.00	\$25.00	\$107.00
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Check #Y15859139 dated February 26, 2004

Terri Mays

c/o Carolyn Coney

Division of Child Support

730 Schenkel Lane, POB 2150

Frankfort, KY 40601	\$132.00	\$25.00	\$107.00
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Check # E11641398 dated March 21, 2000

Bessie L. Newman

411 Doty Br.

McDowell, KY 41647	\$52.00	\$25.00	\$27.00
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Check #T12844497 dated June 16, 2004

Robert A. Nicely, Executor

3078 Winding Trails Drive

Edgewood, KY 41017	\$290.00	\$25.00	\$265.00
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Check #T11876564 dated May 19, 2003

Lawrence R. and M. D. Nolan

9501 Dabney Carr Drive

Louisville, KY 40299-6228	\$766.00	\$25.00	\$741.00
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Check #Y16041073 dated March 30, 2004

Samantha Patton

13620 Springfield Road

Perryville, KY 40468	\$60.00	\$25.00	\$35.00
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Check #T4664976 dated May 19, 1997

Donald J. & P. Pfaadt

832 Melford Avenue

Louisville, KY 40217-2006	\$124.00	\$25.00	\$99.00
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Check #T12711978 dated April 27, 2004

Denzil C. & B. Potter

5912 Highway 460 E

West Liberty, KY 41472-7654	\$115.00	\$25.00	\$90.00
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Check #T102864307 dated August 27, 2004

Donald L. & P. Reinhardt

8252 Alexandria Pike

Alexandria, KY 41001	\$4,288.00	\$25.00	\$4,263.00
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Check #Y16258423 dated May 5, 2004

Sandra Rogers

3306 Bank Street

Louisville, KY 40212	\$350.00	\$25.00	\$325.00
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Check #T10994671 dated November 15, 2002

Lorna Salyer

1979 KY RR 40 E

Paintsville, KY 41240	\$139.00	\$25.00	\$114.00
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Check #B100308748 dated October 28, 2007

Select Specialties Corp.

c/o J. R. Krzynowek

7649 Production Drive

Cincinnati, OH 45237	\$7,548.28	\$25.00	\$7,523.28
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Check #T12499329 dated March 24, 2004

Everice Shewmaker

351 N Main Street

Harrodsburg, KY 40330-1133	\$160.00	\$25.00	\$135.00
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Check #E12089316 dated October 8, 2004

Oliver J. Snyder 7 Court Place Newport, KY 41071	\$123.00	\$25.00	\$98.00
Check #Y14376461 dated June 3, 2003			
Marsha Stoner c/o Carolyn Coney Division of Child Support 730 Schenkel Lane, POB 2150 Frankfort, KY 40601	\$88.85	\$25.00	\$63.85
Check #Y13162273 dated October 24, 2002			
Taharoon Mohamed 175 N. Locust Hill Drive #2714 Lexington, KY 40509-1586	\$300.00	\$25.00	\$275.00
Check #T9428087 dated April 17, 1981			
Carl D. & Cathy Webster 1747 Ghent Eagle South Sanders, KY 41083	\$56.61	\$25.00	\$31.61
Check #T17277761 dated November 12, 1999			
William D. & D. Weir 1525 Anna Lane Louisville, KY 40216-5466	\$303.00	\$25.00	\$278.00
Check #E11998535 dated September 24, 2003			
Barbara H. Woerner 2401 Aintree Way Louisville, KY 40220	\$2,828.77	\$25.00	\$2,803.77
Check #T12562644 dated April 1, 2004			
Ronald R. Yarnall 320 Independence Station Independence, KY 41051	\$410.00	\$25.00	\$385.00
Check #P4621740 dated March 9, 1998			
James R. Zoll 1036 Kiawah Drive Lexington, KY 40515	\$125.40	\$25.00	\$100.40

➔Section 2. Whereas the persons and companies named above have furnished in good faith services, supplies, materials, and the Commonwealth has received the same, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 13, 2010.

CHAPTER 145**(HB 377)**

AN ACT relating to pretrial services.

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

WHEREAS, years of war and multiple deployments have taken their toll on the men and women who serve in the Armed Forces, National Guard, and Reserves, and have led to increased cases of post-traumatic stress disorder and other post-deployment difficulties; and

WHEREAS, combat veterans may not initially seek help to deal with their difficulties and may instead engage in activities that run afoul of the law; and

WHEREAS, providing help to combat veterans when problems first begin to arise can lead to a better future for veterans and their families; and

WHEREAS, the General Assembly of the Commonwealth of Kentucky has been and continues to be committed to assisting our veterans who have protected our nation's freedom by engaging in combat;

NOW, THEREFORE,

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

➔Section 1. KRS 431.515 is amended to read as follows:

- (1) All trial courts in this Commonwealth having jurisdiction of criminal causes shall provide such pretrial release investigation and services as necessary to effectuate the purposes of KRS 431.510 to 431.550, including KRS 431.518, and, where practical, to assist in the earliest possible determination of:
 - (a) Whether a person is a needy person under KRS Chapter 31; *and*
 - (b) *Whether a person has been in combat by asking the question, "Have you served in the National Guard or the United States Armed Forces and been in combat?" during the pretrial release investigation.*
- (2) The Supreme Court may by appropriate rule or order establish and provide for such pretrial investigation and release services including, where practical, the taking of financial statements, and the court's determination of whether a person is a needy person as provided in KRS 31.120.
- (3) *Pretrial officers shall give contact information on the Kentucky National Guard Family Services Program within the Kentucky Department of Military Affairs or similar programs which provide a full range of services for combat veterans to any person who states that they have been in combat, including an opportunity to call the program during the interview.*

Signed by Governor April 13, 2010.

CHAPTER 146**(HB 327)**

AN ACT relating to school athletics and declaring an emergency.

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

➔Section 1. KRS 156.070 is amended to read as follows:

- (1) The Kentucky Board of Education shall have the management and control of the common schools and all programs operated in these schools, including interscholastic athletics, the Kentucky School for the Deaf, the Kentucky School for the Blind, and community education programs and services.
- (2) The Kentucky Board of Education may designate an organization or agency to manage interscholastic athletics in the common schools, provided that the rules, regulations, and bylaws of any organization or agency so designated shall be approved by the board, and provided further that any administrative hearing conducted by the designated managing organization or agency shall be conducted in accordance with KRS Chapter 13B.

- (a) The state board or its designated agency shall assure through promulgation of administrative regulations that if a secondary school sponsors or intends to sponsor an athletic activity or sport that is similar to a sport for which National Collegiate Athletic Association members offer an athletic scholarship, the school shall sponsor the athletic activity or sport for which a scholarship is offered. The administrative regulations shall specify which athletic activities are similar to sports for which National Collegiate Athletic Association members offer scholarships.
- (b) Beginning with the 2003-2004 school year, the state board shall require any agency or organization designated by the state board to manage interscholastic athletics to adopt bylaws that establish as members of the agency's or organization's board of control one (1) representative of nonpublic member schools who is elected by the nonpublic school members of the agency or organization from regions one (1) through eight (8) and one (1) representative of nonpublic member schools who is elected by the nonpublic member schools of the agency or organization from regions nine (9) through sixteen (16). The nonpublic school representatives on the board of control shall not be from classification A1 or D1 schools. Following initial election of these nonpublic school representatives to the agency's or organization's board of control, terms of the nonpublic school representatives shall be staggered so that only one (1) nonpublic school member is elected in each even-numbered year.
- (c) The state board or any agency designated by the state board to manage interscholastic athletics shall not promulgate rules, administrative regulations, or bylaws that prohibit pupils in grades seven (7) to eight (8) from participating in any high school sports except for high school varsity soccer and football, or from participating on more than one (1) school-sponsored team at the same time in the same sport. The Kentucky Board of Education, or an agency designated by the board to manage interscholastic athletics, may promulgate administrative regulations restricting, limiting, or prohibiting participation in high school varsity soccer and football for students who have not successfully completed the eighth grade.
- (d) Every local board of education shall require an annual medical examination performed and signed by a physician, physician assistant, advanced registered nurse practitioner, or chiropractor, if performed within the professional's scope of practice, for each student seeking eligibility to participate in any high school athletic activity or sport. The Kentucky Board of Education or any organization or agency designated by the state board to manage interscholastic athletics shall not promulgate administrative regulations or adopt any policies or bylaws that are contrary to the provisions of this paragraph.
- (e) Any student who turns nineteen (19) years of age prior to August 1 shall not be eligible for high school athletics in Kentucky. Any student who turns nineteen (19) years of age on or after August 1 shall remain eligible for that school year only. An exception to the provisions of this paragraph shall be made, and the student shall be eligible for high school athletics in Kentucky if the student:
 1. Qualified for exceptional children services and had an individual education program developed by an admissions and release committee (ARC) while the student was enrolled in the primary school program;
 2. Was retained in the primary school program because of an ARC committee recommendation; and
 3. Has not completed four (4) consecutive years or eight (8) consecutive semesters of eligibility following initial promotion from grade eight (8) to grade nine (9).
- (f)
 1. ~~If~~ The state board or any agency designated by the state board to manage interscholastic athletics ***shall promulgate*** ~~promulgates~~ administrative regulations that permit a school district to employ or assign nonteaching ***or noncertified*** personnel ***or personnel without postsecondary education credit hours*** to serve in a coaching position ~~those administrative regulations shall apply to all sports and sports activities, including basketball and football~~. The administrative regulations shall give preference to the hiring or assignment of certified personnel ~~over nonteaching personnel~~ in coaching positions.
 2. ***A person employed in a coaching position shall be a high school graduate and at least twenty-one (21) years of age and shall submit to a criminal background check in accordance with KRS 160.380.***
 3. ***The administrative regulations shall specify post-hire requirements for persons employed in coaching positions.***

4. *The regulations shall permit a predetermined number of hours of professional development training approved by the state board or its designated agency to be used in lieu of postsecondary education credit hour requirements.*
 5. *A local school board may specify post-hire requirements for personnel employed in coaching positions in addition to those specified in subparagraph 3. of this paragraph.*
- (3) (a) The Kentucky Board of Education is hereby authorized to lease from the State Property and Buildings Commission, or others, whether public or private, any lands, buildings, structures, installations, and facilities suitable for use in establishing and furthering television and related facilities as an aid or supplement to classroom instruction, throughout the Commonwealth, and for incidental use in any other proper public functions. The lease may be for any initial term commencing with the date of the lease and ending with the next ensuing June 30, which is the close of the then-current fiscal biennium of the Commonwealth, with exclusive options in favor of the board to renew the same for successive ensuing bienniums, July 1 in each even year to June 30 in the next ensuing even year; and the rentals may be fixed at the sums in each biennium, if renewed, sufficient to enable the State Property and Buildings Commission to pay therefrom the maturing principal of and interest on, and provide reserves for, any revenue bonds which the State Property and Buildings Commission may determine to be necessary and sufficient, in agreement with the board, to provide the cost of acquiring the television and related facilities, with appurtenances, and costs as may be incident to the issuance of the bonds.
- (b) Each option of the Kentucky Board of Education to renew the lease for a succeeding biennial term may be exercised at any time after the adjournment of the session of the General Assembly at which appropriations shall have been made for the operation of the state government for such succeeding biennial term, by notifying the State Property and Buildings Commission in writing, signed by the chief state school officer, and delivered to the secretary of the Finance and Administration Cabinet as a member of the commission. The option shall be deemed automatically exercised, and the lease automatically renewed for the succeeding biennium, effective on the first day thereof, unless a written notice of the board's election not to renew shall have been delivered in the office of the secretary of the Finance and Administration Cabinet before the close of business on the last working day in April immediately preceding the beginning of the succeeding biennium.
- (c) The Kentucky Board of Education shall not itself operate leased television facilities, or undertake the preparation of the educational presentations or films to be transmitted thereby, but may enter into one (1) or more contracts to provide therefor, with any public agency and instrumentality of the Commonwealth having, or able to provide, a staff with proper technical qualifications, upon which agency and instrumentality the board, through the chief state school officer and the Department of Education, is represented in such manner as to coordinate matters of curriculum with the curricula prescribed for the public schools of the Commonwealth. Any contract for the operation of the leased television or related facilities may permit limited and special uses of the television or related facilities for other programs in the public interest, subject to the reasonable terms and conditions as the board and the operating agency and instrumentality may agree upon; but any contract shall affirmatively forbid the use of the television or related facilities, at any time or in any manner, in the dissemination of political propaganda or in furtherance of the interest of any political party or candidate for public office, or for commercial advertising. No lease between the board and the State Property and Buildings Commission shall bind the board to pay rentals for more than one (1) fiscal biennium at a time, subject to the aforesaid renewal options. The board may receive and may apply to rental payments under any lease and to the cost of providing for the operation of the television or related facilities not only appropriations which may be made to it from state funds, from time to time, but also contributions, gifts, matching funds, devises, and bequests from any source, whether federal or state, and whether public or private, so long as the same are not conditioned upon any improper use of the television or related facilities in a manner inconsistent with the provisions of this subsection.
- (4) The state board may, on the recommendation and with the advice of the chief state school officer, prescribe, print, publish, and distribute at public expense such administrative regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as each deems necessary for the efficient management, control, and operation of the schools and programs under its jurisdiction. All administrative regulations published or distributed by the board shall be enclosed in a booklet or binder on which the words "informational copy" shall be clearly stamped or printed.

- (5) Upon the recommendation of the chief state school officer or his designee, the state board shall establish policy or act on all matters relating to programs, services, publications, capital construction and facility renovation, equipment, litigation, contracts, budgets, and all other matters which are the administrative responsibility of the Department of Education.

➔Section 2. KRS 158.070 is amended to read as follows:

- (1) The minimum school term shall be one hundred eighty-five (185) days, including no less than the equivalent of one hundred seventy-five (175) six (6) hour instructional days. A board of education may extend its term beyond the minimum term.
- (2) The local board of education, upon recommendation of the local school district superintendent, shall adopt a school calendar for the upcoming school year that establishes the opening and closing dates of the school term, beginning and ending dates of each school month, instructional days, and days on which schools shall be dismissed. The local board may schedule days for breaks in the school calendar that shall not be counted as a part of the minimum school term.
- (3) Any local board of education operating its schools on a year-round school program basis shall conform with administrative regulations promulgated and adopted by the Kentucky Board of Education upon the recommendation of the commissioner of education, which regulations must be in conformity with the following criteria:
 - (a) The year-round school program shall be operated on a fiscal year beginning July 1 and ending June 30;
 - (b) A pupil's required attendance in school shall be for at least the minimum instructional term; and
 - (c) No teacher shall be required to teach more than the minimum term during the school year.
- (4)
 - (a) Each local board of education shall use four (4) days of the minimum school term for professional development and collegial planning activities for the professional staff without the presence of pupils pursuant to the requirements of KRS 156.095. At the discretion of the superintendent, one (1) day of professional development may be used for district-wide activities and for training that is mandated by federal or state law. The use of three (3) days shall be planned by each school council, except that the district is encouraged to provide technical assistance and leadership to school councils to maximize existing resources and to encourage shared planning.
 - (b) A local board may approve a school's flexible professional development plan that permits teachers or other certified personnel within a school to participate in professional development activities outside the days scheduled in the school calendar or the regularly scheduled hours in the school work day and receive credit towards the four (4) day professional development requirement within the minimum one hundred eighty-five (185) days that a teacher shall be employed.
 1. A flexible schedule option shall be reflected in the school's professional development component within the school improvement plan or consolidated plan and approved by the local board. Credit for approved professional development activities may be accumulated in periods of time other than full day segments.
 2. No teacher or administrator shall be permitted to count participation in a professional development activity under the flexible schedule option unless the activity is related to the teacher's classroom assignment and content area, or the administrator's job requirements, or is required by the school improvement or consolidated plan, or is tied to the teacher's or the administrator's individual growth plan. The supervisor shall give prior approval and shall monitor compliance with the requirements of this paragraph. In the case of teachers, a professional development committee or the school council by council policy may be responsible for reviewing requests for approval.
 - (c) The local board of each school district may use up to a maximum of four (4) days of the minimum school term for holidays; provided, however, any holiday which occurs on Saturday may be observed on the preceding Friday.
 - (d) Each local board may use two (2) days for planning activities without the presence of pupils.
 - (e) Each local board may use the number of days deemed necessary for:

1. National or state disaster or mourning when proclaimed by the President of the United States or the Governor of the Commonwealth of Kentucky;
 2. Local disaster which would endanger the health or safety of children; and
 3. Mourning when so designated by the local board of education and approved by the Kentucky Board of Education upon recommendation of the commissioner of education.
- (5) The Kentucky Board of Education, upon recommendation of the commissioner of education, shall adopt administrative regulations governing the use of school days, including days missed from the regular school day as a result of local disaster, as defined in subsection (4)(e)2. of this section, and regulations setting forth the guidelines and procedures to be observed for the approval of the days utilized for the opening and closing of school and the days utilized for professional development and planning activities for the professional staff.
- (6) (a) In setting the school calendar, school may be closed for two (2) consecutive days for the purpose of permitting professional school employees to attend statewide professional meetings. These two (2) days for statewide professional meetings may be scheduled to begin with the first Thursday after Easter, or upon request of the statewide professional education association having the largest paid membership, the commissioner of education may designate alternate dates. If schools are scheduled to operate during days designated for the statewide professional meeting, the school district shall permit teachers who are delegates to attend as compensated professional leave time and shall employ substitute teachers in their absence. The commissioner of education shall designate one (1) additional day during the school year when schools shall be closed to permit professional school employees to participate in regional or district professional meetings. These three (3) days so designated for attendance at professional meetings shall not be counted as a part of the minimum school term. School shall be closed on the day of a regular election and on the day of a primary election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.
- (b) All schools shall be closed on the third Monday of January in observance of the birthday of Martin Luther King, Jr. Districts may:
1. Designate the day as one (1) of the four (4) holidays permitted under subsection (4)(c) of this section; or
 2. Not include the day in the minimum school term specified in subsection (1) of this section.
- (7) (a) ***The Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, shall be encouraged to schedule athletic competitions outside the regularly scheduled school day.***
- (b) ***Beginning with the 2009-2010 school year, any member of a school-sponsored interscholastic athletic team who competes in a regional tournament or state tournament sanctioned by the Kentucky Board of Education, or the organization or agency designated by the board to manage interscholastic athletics, and occurring on a regularly scheduled school day may be counted present at school on the date or dates of the competition, as determined by local board policy, for a maximum of two (2) days per student per year. The student shall be expected to complete any assignments missed on the date or dates of the competition.***
- (c) ***The school attendance record of any student for whom paragraph (b) of this subsection applies shall indicate that the student was in attendance on the date or dates of competition.***
- (8) Students applying for excused absence for attendance at the Kentucky State Fair shall be granted one (1) day of excused absence.
- ~~(9)~~~~(8)~~ Schools shall provide continuing education for those students who are determined to need additional time to achieve the outcomes defined in KRS 158.6451, and schools shall not be limited to the minimum school term in providing this education. Continuing education time may include extended days, extended weeks, or extended years. A local board of education may adopt a policy requiring its students to participate in continuing education. The local policy shall set out the conditions under which attendance will be required and any exceptions which are provided. The Kentucky Board of Education shall promulgate administrative regulations establishing criteria for the allotment of grants to local school districts and shall include criteria by which the commissioner of education may approve a district's request for a waiver to use an alternative service delivery option, including providing services during the school day on a limited basis. These grants shall be allotted to school districts to provide instructional programs for pupils who are identified as needing additional

time to achieve the outcomes defined in KRS 158.6451. A school district that has a school operating a model early reading program under KRS 158.792 may use a portion of its grant money as part of the matching funds to provide individualized or small group reading instruction to qualified students outside of the regular classroom during the school day.

~~(10)(9)~~ Notwithstanding any other statute, each school term shall include no less than the equivalent of the minimum number of instructional days required by this section.

~~(11)(10)~~ Notwithstanding the provisions of KRS 158.060(3) and the provisions of subsection (1) of this section, a school district shall arrange bus schedules so that all buses arrive in sufficient time to provide breakfast prior to the instructional day. In the event of an unforeseen bus delay, the administrator of a school that participates in the Federal School Breakfast Program may authorize up to fifteen (15) minutes of the six (6) hour instructional day if necessary to provide the opportunity for children to eat breakfast not to exceed eight (8) times during the school year within a school building.

~~(12)(11)~~ Notwithstanding any other statute to the contrary, the following provisions shall apply to a school district that misses school days due to emergencies, including weather-related emergencies:

(a) A certified school employee shall be considered to have fulfilled the minimum one hundred eighty-five (185) day contract with a school district under KRS 157.350 and shall be given credit for the purpose of calculating service credit for retirement under KRS 161.500 for certified school personnel if:

1. State and local requirements under this section are met regarding the equivalent of the number and length of instructional days, professional development days, holidays, and days for planning activities without the presence of pupils; and
2. The provisions of the district's school calendar to make up school days missed due to any emergency, as approved by the Kentucky Department of Education, including but not limited to a provision for additional instructional time per day, are met.

(b) Additional time worked by a classified school employee shall be considered as equivalent time to be applied toward the employee's contract and calculation of service credit for classified employees under KRS 78.615 if:

1. The employee works for a school district with a school calendar approved by the Kentucky Department of Education that contains a provision that additional instructional time per day shall be used to make up full days missed due to an emergency;
2. The employee's contract requires a minimum six (6) hour work day; and
3. The employee's job responsibilities and work day are extended when the instructional time is extended for the purposes of making up time.

(c) Classified employees who are regularly scheduled to work less than six (6) hours per day and who do not have additional work responsibilities as a result of lengthened instructional days shall be excluded from the provisions of this subsection. These employees may be assigned additional work responsibilities to make up service credit under KRS 78.615 that would be lost due to lengthened instructional days.

➔Section 3. KRS 158.649 is amended to read as follows:

- (1) "Achievement gap" means a substantive performance difference on each of the tested areas by grade level of the state assessment program between the various groups of students including male and female students, students with and without disabilities, students with and without English proficiency, minority and nonminority students, and students who are eligible for free and reduced lunch and those who are not eligible for free and reduced lunch.
- (2) By November 1 of each year, the Department of Education shall provide each school council, or the principal if a school council does not exist, data on its students' performance as shown by the state assessment program described in KRS 158.6453. The data shall include, but not be limited to, information on performance levels of all students tested, and information on the performance of students disaggregated by race, gender, disability, English proficiency, and participation in the federal free and reduced price lunch program. The information from the department shall include an equity analysis that shall identify the substantive differences among the various groups of students identified in subsection (1) of this section. Beginning with the 2012-2013 school

year, the reporting requirement in this subsection shall be no later than seventy-five (75) days following the first day the assessment can be administered.

- (3) Each local board of education upon the recommendation of the local district superintendent shall adopt a policy for reviewing the academic performance on the state assessments required under KRS 158.6453 for various groups of students, including major racial groups, gender, disability, free and reduced price school lunch eligibility, and limited English proficiency. The local board policy shall be consistent with Kentucky Board of Education administrative regulations. Upon agreement of the school-based decision making council, or the principal if there is not a council, and the superintendent, the local board shall establish a biennial target for each school for reducing identified gaps in achievement as set out in subsection (4) of this section.
- (4) By February 1, 2003, and each February 1 in odd-numbered years thereafter, the school-based decision making council, or the principal if there is not a council, with the involvement of parents, faculty, and staff shall set the school's biennial targets for eliminating any achievement gap and submit them to the superintendent for consideration. The superintendent and the school-based decision making council, or the principal if there is not a council, shall agree on the biennial targets before they are submitted to the local board of education for adoption. Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be October 1 of each year.
- (5) By April 1, 2003, and each April 1 in odd-numbered years thereafter, the school council, or the principal if a school council does not exist, with the involvement of parents, faculty, and staff, shall review the data and revise the consolidated plan to include the biennial targets, strategies, activities, and a time schedule calculated to eliminate the achievement gap among various groups of students to the extent it may exist. The plan shall include but not be limited to activities designed to address the following areas:
 - (a) Curriculum alignment within the school and with schools that send or receive the school's students;
 - (b) Evaluation and assessment strategies to continuously monitor and modify instruction to meet student needs and support proficient student work;
 - (c) Professional development to address the goals of the plan;
 - (d) Parental communication and involvement;
 - (e) Attendance improvement and dropout prevention; and
 - (f) Technical assistance that will be accessed.

Beginning with the 2012-2013 school year, the reporting requirement in this subsection shall be October 1 of each year.

- (6) The principal shall convene a public meeting at the school to present and discuss the plan prior to submitting it to the superintendent and the local board of education for review, in the public meeting required under KRS 160.340.
- (7) Based on the disaggregated assessment results, the local board shall determine if each school achieved its targets for each group of students. Only data for a group of students including ten (10) or more students shall be considered.
- (8) Notwithstanding KRS 160.345(8) and 158.070(9)(8), if a local board determines that a school has not met its target to reduce the identified gap in student achievement for a group of students, the local board shall require the council, or the principal if no council exists, to submit its revisions to the school improvement plan describing the use of professional development funds and funds allocated for continuing education to reduce the school's achievement gap for review and approval by the superintendent. The plan shall address how the school will meet the academic needs of the students in the various groups identified in subsection (1) of this section.
- (9) The superintendent shall report to the commissioner of education if a school fails to meet its targets to reduce the gap in student achievement for any student group for two (2) consecutive years. The school's improvement plan shall be subject to review and approval by the Kentucky Department of Education and the school shall submit an annual status report. The Department of Education may provide assistance to schools as it deems necessary to assist the school in meeting its goals.
- (10) The school-based decision making council, or the principal if there is not a council, shall no longer be required to seek approval of the plan under subsections (8) and (9) of this section when it meets its biennial target for

reducing the gap in student achievement for the various groups of students identified in subsection (1) of this section.

➔Section 4. Whereas, regional and state competitions for some sports occur prior to the effective date of this Act, an emergency is declared to exist and this Act takes effect upon its passage or upon its otherwise becoming a law.

Signed by Governor April 13, 2010.

CHAPTER 147

(HB 319)

AN ACT relating to taxation.

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

➔Section 1. KRS 131.010 is amended to read as follows:

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

- (1) "Commissioner" means the commissioner of revenue;~~[-]~~
- (2) "Department" means the Department of Revenue;~~[-]~~
- (3) "Fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any individual or corporation acting in a fiduciary capacity for any other person;~~[-]~~
- (4) "Taxpayer" means any person required or permitted by law or administrative regulation to perform any act subject to the administrative jurisdiction of the department including the following:
 - (a) File a report, return, statement, certification, claim, estimate, declaration, form, or other document;
 - (b) Furnish any information;
 - (c) Withhold, collect, or pay any tax, installment, estimate, or other funds;
 - (d) Secure any license, permit, or other authorization to conduct a business or exercise any privilege, right, or responsibility;~~[-]~~
- (5) "Adjusted prime rate charged by banks" means the average predominant prime rate quoted by commercial banks to large businesses, as determined by the board of governors of the Federal Reserve System;~~[-]~~
- (6) "Tax interest rate" means the interest rate determined under KRS 131.183;~~[-]~~
- (7) "Tax" includes any assessment or license fee administered by the department; however, it shall not include moneys withheld or collected by the department pursuant to KRS 131.560 or 160.627;~~[-]~~
- (8) "Return" or "report" means any properly completed and, if required, signed form, statement, certification, claim estimate, declaration, or other document permitted or required to be submitted or filed with the department, including returns and reports or composites thereof which are permitted or required to be electronically transmitted;~~[-]~~
- (9) "Reasonable cause" means an event, happening, or circumstance entirely beyond the knowledge or control of a taxpayer who has exercised due care and prudence in the filing of a return or report or the payment of moneys due the department pursuant to law or administrative regulation;~~[-]~~
- (10) "Fraud" means:
 - (a) Intentional or reckless disregard for the law, administrative regulations, or the department's established policies to evade the filing of any return, report, or the payment of any moneys due to the department pursuant to law or administrative regulation; or
 - (b) The deliberate false reporting of returns or reports with the intent to gain a monetary advantage;~~[-]~~
- (11) "Hard copy" means any document, record, report, or other data printed on paper or stored by an imaging system that does not permit additions, deletions, or other changes to the original documents;~~[-]~~

- (12) "Electronic record" means a collection of related information stored as bits of data in a medium that supports electronic extraction of the data at the field level, but does not include electronic imaging systems;~~[-]~~
- (13) "Electronic imaging systems" means a computer-based system used to store reproductions of documents and records through the use of electronic data processing, or computerized, digital, or optical scanning which records and indexes the document, but does not support electronic extraction of the data at the field level;~~[-]~~
- (14) *"Electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made; and*
- (15) *"Specified tax return preparer" means the same as in 26 U.S.C. sec. 6011(e)(3).*

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

- (1) *For the purpose of facilitating the administration of the taxes it administers, the department may require any tax return, report, or statement to be electronically filed.*
- (2) *The following reports, returns, or statements shall be electronically filed:*
 - (a) *The return required by KRS 136.620;*
 - (b) *For tax periods beginning on or after January 1, 2007, the report required by KRS 138.240;*
 - (c) *For tax periods beginning on or after August 1, 2010, the report required by KRS 138.260;*
 - (d) *For taxable years beginning on or after January 1, 2010, the return filed by a specified tax return preparer reporting the annual tax imposed by KRS 141.020, if the specified tax return preparer is required to electronically file the return for federal income tax purposes;*
 - (e) *The annual withholding statement required by KRS 141.335, if the employer issues one hundred (100) or more statements annually; and*
 - (f) *For tax periods beginning on or after July 1, 2005, the return required by KRS 160.615.*
- (3)
 - (a) *A person required to electronically file a return, report, or statement may apply for a waiver from the requirement by submitting the request on a form prescribed by the department.*
 - (b) *The request shall indicate the lack of one (1) or more of the following:*
 - 1. *Compatible computer hardware;*
 - 2. *Internet access; or*
 - 3. *Other technological capabilities determined relevant by the department.*

➔Section 3. KRS 131.155 is amended to read as follows:

- (1) *For the purpose of facilitating the administration, payment, or collection of the taxes, the department may require any tax payment to be made by electronic fund transfer.*~~[As used in this section, the term "electronic fund transfer" means an electronic data processing medium that takes the place of a paper check for debiting or crediting an account and of which a permanent record is made.]~~
- (2) *The following payments shall be made by electronic fund transfer:*
 - (a) *The payment required by KRS 136.620;*
 - (b) *For tax periods beginning on or after January 1, 2007, the payment required by KRS 138.280;*
 - (c) *For collections on or after August 1, 2010, the clerk shall deposit motor vehicle usage tax and sales and use tax collections in the clerk's local depository account not later than the next business day following receipt. The clerk shall cause the funds to be electronically transferred from the clerk's local depository account to the State Treasury in the manner and at the times prescribed by the department;*
 - (d) *For any period beginning after December 31, 2000, any payment required under KRS Chapter 139, if the taxpayer's average payment per reporting period during the lookback period exceeds twenty-five thousand dollars (\$25,000);*

- (e) *For any period beginning after December 31, 2000, any payment required under KRS 141.330, if the taxpayer's average payment per reporting period during the lookback period exceeds twenty-five thousand dollars (\$25,000); and*
- (f) *For tax periods beginning on or after July 1, 2005, the payment required under KRS 160.615*~~[Notwithstanding any statutory provisions to the contrary, the department may require any person who is required to collect or remit taxes and fees administered by the department or any person who acts on the taxpayer's behalf to remit those taxes and fees to the department by electronic fund transfer. The transfer shall be made on or before the date the tax is due using the debit method or other means as prescribed by the department by the promulgation of an administrative regulation. The department may permit the filing of the tax return following the date of the tax payment. Payment by electronic fund transfer may be required if:~~
- ~~(a) The average payment per reporting period is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted;~~
 - ~~(b) The payment for each tax or fee required to be collected or remitted is made on behalf of one hundred (100) or more taxpayers; or~~
 - ~~(c) The aggregate of the funds to be remitted on behalf of others is ten thousand dollars (\$10,000) or more for each tax or fee required to be collected or remitted].~~
- (3) (a) *The electronic fund transfer shall be made on or before the date the tax is due.*
- (b) *The department may permit the filing of the tax return following the date of the tax payment.*
- (c) The department shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes and fees administered by the department.
- (4) The department may waive the requirement that a qualifying taxpayer remit the payment by electronic fund transfer if the taxpayer is unable to remit funds electronically.
- (5) Taxpayers and any other persons who are required to collect or remit taxes administered by the department by electronic fund transfer shall be entitled to receive refunds for any overpayment of taxes or fees, on or after July 1, 2001, by electronic fund transfer.
- ➔Section 4. KRS 131.990 is amended to read as follows:
- (1) Any person who fails or refuses to obey a subpoena or order of the Kentucky Board of Tax Appeals made pursuant to KRS Chapter 13B shall be fined not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500).
 - (2) (a) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(1) shall be fined not more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
 - (b) Any person who violates the provisions of KRS 131.190(1) by divulging confidential taxpayer information shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (c) Any person who violates the intentional unauthorized inspection provisions of KRS 131.190(4) shall be fined not more than one thousand dollars (\$1,000) or imprisoned for not more than one (1) year, or both.
 - (d) Any person who violates the provisions of KRS 131.190(4) by divulging confidential taxpayer information shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not more than five (5) years, or both.
 - (e) Any present secretary or employee of the Finance and Administration Cabinet, commissioner or employee of the department~~[of Revenue]~~, member of a county board of assessment appeals, property valuation administrator or employee, or any other person, who violates the provisions of KRS 131.190(1) or (4) may, in addition to the penalties imposed under this subsection, be disqualified and removed from office or employment.
 - (3) Any person who willfully fails to comply with the rules and regulations promulgated by the department~~[of Revenue]~~ for the administration of delinquent tax collections shall be fined not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000).

- (4) Any person who fails to do any act required or does any act forbidden by KRS 131.210 shall be fined not less than ten dollars (\$10) nor more than five hundred dollars (\$500).
- (5) Any person who fails to comply with the provisions of KRS 131.155 shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a penalty of one-half of one percent (0.5%) of the amount that should have been remitted under the provisions of KRS 131.155 for each failure to comply.
- (6)
 - (a) Any person or financial institution that fails to comply with the provisions of KRS 131.672 and 131.674 within ninety (90) days after notification by the department~~[of Revenue]~~ shall, unless the failure is due to reasonable cause as defined in KRS 131.010, be fined not less than one thousand dollars (\$1,000) and no more than five thousand dollars (\$5,000) for each full month of noncompliance. The fine shall begin on the first day of the month beginning after the expiration of the ninety (90) days.
 - (b) Any financial institution that fails or refuses to comply with the provisions of KRS 131.672 and 131.674 within one hundred twenty (120) days after the notification by the department~~[of Revenue]~~ shall, unless the failure is due to reasonable cause as defined in KRS 131.010, forfeit its right to do business within the Commonwealth, unless and until the financial institution is in compliance. Upon notification by the department~~[of Revenue]~~, the executive director of the Office of Financial Institutions shall, as applicable, revoke the authority of the financial institution or its agents to do business in the Commonwealth.
- (7) *Any taxpayer or tax return preparer who fails or refuses to comply with the provisions of Section 2 of this Act or an administrative regulation promulgated under Section 2 of this Act shall, unless it is shown to the satisfaction of the department that the failure is due to reasonable cause, pay a return processing fee of ten dollars (\$10) for each return not filed as required.*

➔Section 5. KRS 136.620 is amended to read as follows:

- (1) The taxes imposed by KRS 136.604 and 136.616 are due and payable monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.
- (2) On or before the twentieth day of each month, every provider shall file a return for the preceding month with the department in the form prescribed by the department, together with payment of any tax due. The department may allow a provider subject to the taxes imposed under KRS 136.604 and 136.616 to file a single return reporting tax liabilities under both taxes for each reporting period.
- (3) The return shall show the:
 - (a) Gross revenues received subject to the tax imposed under KRS 136.616;
 - (b) Amount billed by the provider for multichannel video programming service subject to the tax imposed under KRS 136.604;
 - (c) Amount of the tax due under KRS 136.604 and 136.616; and
 - (d) Any other information as the department deems necessary for the proper administration of KRS 136.600 to 136.660.
- (4) In the case where the purchaser is liable for the payment of the tax under KRS 136.606(2), the purchaser shall file the return showing the total amount paid for multichannel video programming service that is subject to tax during the reporting period.
- (5) The return shall be signed by the person required to file the return or a duly authorized agent.
- (6) The person required to file the return shall deliver the return, together with a remittance of the amount of tax due, to the department.
- ~~(7) For the purpose of facilitating the administration, payment, or collection of the taxes levied under KRS 136.600 to 136.660, the department may permit or require returns to be filed or tax payments to be made other than as specifically required by the provisions of this section.~~
- ~~(8)~~ For purposes of calculating the excise tax imposed under KRS 136.604, if tangible personal property normally subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, and the tangible personal property is necessary for the provision of the multichannel video programming service, the tax required to be collected by the provider shall be the tax imposed by KRS 136.604.

- (8)(9) For purposes of calculating the excise tax imposed under KRS 136.604, if communications services subject to sales and use tax under KRS Chapter 139 is sold with multichannel video programming service as a single package for one (1) price, the portion of the sales price attributable to the communications services shall be subject to the excise tax unless the provider can identify, by reasonable and verifiable standards, the communications services from its books and records that are kept in the regular course of business for other purposes, including but not limited to nontax purposes.
- (9)(10) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if communications service is sold with multichannel video programming service as a single package for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%).
- (10)(11) For purposes of calculating the gross revenues tax imposed under KRS 136.616, if tangible personal property is sold with:
- (a) Multichannel video programming service for one (1) price, the gross revenues shall be taxed at the rate of two and four-tenths percent (2.4%); and
 - (b) Communications service for one (1) price, the gross revenues shall be taxed at the rate of one and three-tenths percent (1.3%).

➔Section 6. KRS 138.240 is amended to read as follows:

- (1) Every gasoline dealer and every special fuel dealer shall, by the twenty-fifth day of each month, transmit to the department~~of Revenue~~ reports on the forms the department may prescribe, of the total number of gallons of gasoline and special fuel received in this state during the next preceding calendar month.~~For tax periods beginning on or after January 1, 2007, the report shall be submitted electronically in a manner prescribed by the department.~~ This report shall include the following information:
 - (a) An itemized statement of the number of gallons received that have been produced, refined, manufactured, or compounded by the dealer in this state during the next preceding calendar month; and
 - (b) An itemized statement of the number of gallons received by the dealer in this state from any source during the next preceding calendar month, as shown by shippers' invoices, other than the gasoline and special fuel falling within the provisions of paragraph (a) of this subsection, together with a statement showing the date of receipt, the name of the person from whom purchased, the date of receipt of each shipment, the point of origin and the point of destination, the quantity of each purchase or shipment, the name of the carrier, the initials and number of each tank car, the date of receipt, and the number of gallons contained in each car if shipped by rail or the name and owner of the boat, ship, truck, transport, barge, or vessel if shipped by water.
- (2) The reports required by subsection (1) of this section shall also contain an itemized statement of the number of gallons received by the dealer during the preceding calendar month of:
 - (a) Bulk sales of gasoline or bulk sales of special fuels sold to the United States government for use exclusively in equipment or vehicles owned or leased by the United States government;
 - (b) Gasoline and special fuels sold for delivery in this state in transport truck, tank car, or cargo lots to licensed bonded dealers. The statement shall give a record of all such transport truck, tank car, or cargo sales, giving the date of shipment, the number of gallons contained in each shipment, the name of owner and license number of truck if shipped by transport truck, the initials and number of the tank car if shipped by rail, the name and owner of the boat, barge, or vessel, and the number of gallons contained therein if shipped by water, and the name of the person to whom sold, point of shipment, and point of delivery;
 - (c) Gasoline and special fuels lost through accountable losses;
 - (d) Gasoline and special fuel exported from this state to any other state in transport truck, tank car or cargo lots;
 - (e) Gasoline or special fuel delivered upon or immediately adjacent to a river or stream, if:
 - 1. The gasoline or special fuel is or will be delivered into the fuel supply tank of a commercial ship or vessel which has a valid certificate of documentation issued by the United States Coast Guard; and

2. All the fuel will be used exclusively in the operation of a commercial ship or vessel.
- (f) Special fuel delivered to a railroad company principally engaged in the commercial transportation of property for others as a common carrier or in the conveyance of persons for hire, if the railroad company is the holder of a Kentucky motor fuels tax refund permit and certifies that the fuel is to be used exclusively for the purpose of powering locomotives and unlicensed company vehicles or equipment for nonhighway use. Railroad company as used herein shall not include any company described in KRS 136.120(4)(a) in effect on August 1, 1988; and
- (g) Special fuels used in unlicensed vehicles or equipment by licensed special fuels dealers for nonhighway purposes related to the distribution of gasoline or special fuels to others.
- (3) All gasoline and special fuel gallons received or distributed by a dealer from marine terminal, refinery or pipeline terminal storage in this state shall be reported at sixty (60) degrees Fahrenheit.
- ~~{(4) Persons subject to the gasoline and special fuel tax may apply for a waiver from the requirement in subsection (1) of this section that the report be submitted electronically for tax periods beginning on or after January 1, 2007, by submitting a request on a form prescribed by the department. The request shall indicate the lack of one (1) or more of the following:~~
 - ~~(a) Compatible computer hardware;~~
 - ~~(b) Internet access; or~~
 - ~~(c) Other technological capabilities determined relevant by the department.~~
- ~~{(5) If a person qualifies for a waiver under subsection (4) of this section, paper reports including the information required by subsections (1) to (3) of this section shall be submitted.}~~

➔Section 7. KRS 138.280 is amended to read as follows:

 - (1) ~~{(a) }~~For tax periods beginning prior to January 1, 2007, the reports required by KRS 138.240 shall be accompanied by a certified or cashier's check, payable to the State Treasurer, for the amount of tax due for the preceding calendar month, computed as provided in KRS 138.270; except that the department may waive this requirement and accept the dealer's check or allow for remittance of the tax owed to the department by electronic fund transfer where the dealer is of sound financial condition and has established a good record of compliance with the requirements of KRS 138.210 to 138.340.
 - ~~{(b) For tax periods beginning on or after January 1, 2007, the payments computed as provided in KRS 138.270 shall be transmitted electronically in a manner prescribed by the department.}~~
 - (2) By virtue of the allowance provided by KRS 138.270 to dealers for collecting and remitting the tax, every dealer is a trust officer of the state.
 - ~~{(3) Persons subject to the gasoline and special fuel tax may apply for a waiver from the requirements of subsection (1)(b) of this section by submitting a request on a form prescribed by the department. The request shall indicate the lack of one (1) or more of the following:~~
 - ~~(a) Compatible computer hardware;~~
 - ~~(b) Internet access; or~~
 - ~~(c) Other technological capabilities determined relevant by the department.~~
 - ~~{(4) If a person qualifies for a waiver of the electronic payment requirements established by subsection (1)(b) of this section, the reports required by KRS 138.240 shall be accompanied by a certified or cashier's check, payable to the State Treasurer, for the amount of tax due for the preceding calendar month, computed as provided in KRS 138.270.}~~
 - ~~{(5) The department shall promulgate administrative regulations establishing electronic fund transfer requirements for the payment of taxes due for the preceding calendar month and computed as provided by KRS 138.270.}~~

➔Section 8. KRS 138.464 is amended to read as follows:

 - (1) The county clerk shall report each Monday to the department all moneys collected during the previous week, together with a duplicate of all receipts issued by him during the same period.

- (2) (a) ***For collections prior to August 1, 2010***, the clerk shall deposit motor vehicle usage tax and sales and use tax collections not later than the next business day following receipt in a Commonwealth of Kentucky, department account in a bank designated as a depository for state funds. The clerk may be required to then cause the funds to be transferred from the local depository bank to the State Treasury in whatever manner and at times prescribed by the commissioner of the department or his designee.
- (b) ***For collections on or after August 1, 2010, the provisions of Section 3 of this Act shall apply.***
- (3) Failure to forward duplicates of all receipts issued during the reporting period or failure to file the weekly report of moneys collected within seven (7) working days after the report is due shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount of moneys collected during the reporting period for each month or fraction thereof until the documents are filed.
- (4) Failure to deposit or, if required, transfer collections as required above shall subject the clerk to a penalty of two and one-half percent (2.5%) of the amount not deposited or, if required, not transferred for each day until the collections are deposited or transferred as required above. The penalty for failure to deposit or transfer money collected shall not be less than fifty dollars (\$50) nor more than five hundred dollars (\$500) per day.
- (5) The penalties provided in this section shall not apply if the failure of the clerk is due to reasonable cause.
- (6) The department may in its discretion grant a county clerk a reasonable extension of time to file his report or make any transfer of deposits as required above. The extension, however, must be requested prior to the end of the seven (7) day period and shall begin to run at the end of said period.
- (7) All penalties collected under this provision shall be paid into the State Treasury as a part of the revenue collected under KRS 138.450 to 138.729 and 139.778.

➔Section 9. The following KRS section is repealed:

160.6145 Utility gross receipts license tax returns, payments transmitted electronically -- Waiver -- Administrative regulations.

Signed by Governor April 13, 2010.

CHAPTER 148

(HB 289)

AN ACT relating to retirement.

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

➔Section 1. KRS 6.525 is amended to read as follows:

The Legislators' Retirement Plan shall be governed by KRS 21.560 and by provisions identical in terms with those provided in KRS 21.345(1) and (3), 21.360(1), 21.370 to 21.410, 21.420, 21.425, 21.450, 21.460, 21.470, 21.480, 21.525, **21.540**, and 61.552 for the Judicial Retirement Plan, except that:

- (1) Five (5) years of service as a legislator will be sufficient for vesting; and
- (2) (a) A member of the Legislators' Retirement Plan may combine his service credit with his service credit in the Teachers' Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and State Police Retirement System at the time of his retirement, according to the procedure of KRS 61.680(2)(a), except that the salary used to determine final compensation shall be based on the creditable compensation in KRS 61.510(13) for service while a member of the General Assembly whether or not a member of the Legislators' Retirement Plan.
- (b) For members contributing on or after June 20, 2005, upon retirement, a member's accounts under the Legislators' Retirement Plan, State Police Retirement System, Kentucky Employees Retirement System, County Employees Retirement System, and Teachers' Retirement System shall be consolidated for the purpose of determining eligibility and amount of benefits as provided in KRS 61.680(2)(a) and in the same manner as for the other retirement systems using the highest salary regardless of the system in which it was earned. For purposes of this paragraph, "retirement" means the month in which the member elects to begin receiving benefits or benefits become payable due to the member's death.

- (c) A member who has an account in the Legislators' Retirement Plan and the Judicial Retirement Plan may combine his service in both plans for purposes of determining eligibility, the amount of benefits and final compensation.
 - (d) A member of the Legislators' Retirement Plan may retire at the completion of twenty-seven (27) or more years of combined service credit, so long as at least fifteen (15) years of such credit were earned after January 1, 1960, and there shall be no reduction in the retirement allowance because of retirement before the age of sixty-five (65).
 - (e) For the purposes of this section, any reference in the KRS sections listed above to the Judicial Retirement Plan shall also be read as a reference to the Legislators' Retirement Plan, and any reference to the Legislators' Retirement Plan shall also be read as a reference to the Judicial Retirement Plan.
- (3) Any other statute to the contrary notwithstanding, a member of any state-administered retirement system who has ceased to qualify for membership but subsequently returns to a qualified status, shall, for the purposes of determining the date of entry into the state-administered retirement system for the subsequent period or periods of service, be deemed to have never left the retirement system.

➔Section 2. KRS 16.505 is amended to read as follows:

As used in KRS 16.505 to 16.652, unless the context otherwise requires:

- (1) "System" means the State Police Retirement System created by KRS 16.505 to 16.652;
- (2) "Board" means the board of trustees of the Kentucky Retirement Systems;
- (3) "Employer" or "State Police" means the Department of Kentucky State Police, or its successor;
- (4) "Current service" means the number of years and completed months of employment as an employee subsequent to July 1, 1958, for which creditable compensation was paid by the employer and employee contributions deducted except as otherwise provided;
- (5) "Prior service" means the number of years and completed months of employment as an employee prior to July 1, 1958, for which creditable compensation was paid to the employee by the Commonwealth. Twelve (12) months of current service in the system are required to validate prior service;
- (6) "Service" means the total of current service and prior service;
- (7) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the member's contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4), together with interest credited on such amounts as provided in KRS 16.505 to 16.652, and any other amounts the member shall have contributed, including interest credited. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (8) "Creditable compensation" means all salary and wages, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (9) "Final compensation" means:

- (a) For a member who begins participating before September 1, 2008, the creditable compensation of a member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during the three (3) year period, multiplied by twelve (12); the three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used; or
 - (b) For a member who begins participating on or after September 1, 2008, the creditable compensation of the member during the three (3) complete fiscal years he or she was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (10) "Final rate of pay" means the actual rate upon which earnings of a member were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 16.545(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, or one (1) year;
 - (11) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
 - (12) "Retirement allowance" means the retirement payments to which a retired member is entitled;
 - (13) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
 - (14) "Authorized leave of absence" means any time during which a person is absent from employment but retained in the status of an employee in accordance with the personnel policy of the Department of Kentucky State Police;
 - (15) "Normal retirement date" means:
 - (a) For a member who begins participating before September 1, 2008, the first day of the month following a member's fifty-fifth birthday, except that for members over age fifty-five (55) on July 1, 1958, it shall mean January 1, 1959; or
 - (b) For a member who begins participating on or after September 1, 2008, the first day of the month following a member's sixtieth birthday;
 - (16) "Disability retirement date" means the first day of the month following the last day of paid employment;
 - (17) "Dependent child" means a child in the womb and a natural or legally adopted child of the member who has neither attained age eighteen (18) nor married or who is an unmarried full-time student who has not attained age twenty-two (22);
 - (18) "Optional allowance" means an actuarially equivalent benefit elected by the member in lieu of all other benefits provided by KRS 16.505 to 16.652;
 - (19) "Act in line of duty" means an act occurring or a thing done, which, as determined by the board, was required in the performance of the duties specified in KRS 16.060. For employees in hazardous positions under KRS 61.592, an "act in line of duty" shall mean an act occurring which was required in the performance of the principal duties of the position as defined by the job description;
 - (20) "Early retirement date" means:
 - (a) For a member who begins participating before September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service; or

- (b) For a member who begins participating on or after September 1, 2008, the retirement date declared by a member who is not less than fifty (50) years of age and has fifteen (15) years of service credited under KRS 16.543(1), 61.543(1), or 78.615(1) or another state-administered retirement system;
- (21) "Member" means any officer included in the membership of the system as provided under KRS 16.520 whose membership has not been terminated under KRS 61.535;
- (22) "Regular full-time officers" means the occupants of positions as set forth in KRS 16.010;
- (23) "Hazardous disability" as used in KRS 16.505 to 16.652 means a disability which results in an employee's total incapacity to continue as an employee in a hazardous position, but the employee is not necessarily deemed to be totally and permanently disabled to engage in other occupations for remuneration or profit;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall **not** be considered a recipient, ~~except only~~ for purposes of KRS ~~61.623~~~~61.694~~;
- (27) "Person" means a natural person;
- (28) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (29) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member;
- (30) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (31) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;
- (32) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefit limits established by 26 U.S.C. sec. 415;
- (33) "Participating" means an employee is currently earning service credit in the system as provided in KRS 16.543;
- (34) "Month" means a calendar month;~~and~~
- (35) "Membership date" means the date upon which the member began participating in the system as provided by KRS 16.543;
- (36) *"Participant" means a member, as defined by subsection (21) of this section, or a retired member, as defined by subsection (11) of this section;*
- (37) *"Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:*
- (a) *Is issued by a court or administrative agency; and*

(b) *Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and*

(38) *"Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.*

➔Section 3. KRS 16.645 is amended to read as follows:

The following subjects shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, as provided for by KRS 61.535;
- (2) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (3) Actuarial bases, as provided for by KRS 61.670;
- (4) Duties of the employer, as provided for by KRS 61.675;
- (5) Exemption of benefits of the system for taxation *and qualified domestic relations orders*, as provided for by KRS 61.690;
- (6) Retirement allowance increase, as provided for by KRS 61.691;
- (7) Calculation of retirement allowance, as provided for by KRS 61.595(3) and (4);
- (8) Beneficiaries to be designated by member, change, rights, as provided for by KRS 61.542;
- (9) Year of service credit, as provided for by KRS 61.545;
- (10) Refund of contributions, death after retirement, as provided by KRS 61.630;
- (11) Custodian of fund, payments made, when, as provided for by KRS 61.660;
- (12) Credit for service prior to membership date, as provided for by KRS 61.526;
- (13) Member's account, confidential, as provided for by KRS 61.661;
- (14) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (15) Correction of errors in records, as provided for by KRS 61.685;
- (16) Maximum disability benefit, as provided for by KRS 61.607;
- (17) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (18) Employer contributions, as provided for by KRS 61.565;
- (19) Reinstatement of lost service credit, purchase of service credit, interest paid, and delayed contribution and installment payments, as provided for by KRS 61.552;
- (20) Reciprocal arrangement between systems, as provided by KRS 61.680;
- (21) Refund of contributions, conditions, as provided by KRS 61.625;
- (22) Hospital and medical insurance plan, as provided by KRS 61.702;
- (23) Death benefit, as provided by KRS 61.705;
- (24) Disability retirement allowance, reduction, and discontinuance, as provided by KRS 61.615;
- (25) Service credit, Armed Forces, as provided by KRS 61.555;
- (26) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (27) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- (28) Retirement of persons in hazardous positions, as provided for by KRS 61.592;
- (29) Direct deposit of recipient's retirement allowance as provided in KRS 61.623;
- (30) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525;

- (31) Payment of small amounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703;
- (32) Suspension of retirement payments on reemployment, reinstatement, recomputation of allowance, waiver of provisions in certain instances, reemployment in a different position, as provided for by KRS 61.637; and
- (33) Medical examination and financial review after disability retirement, staff review, as provided in KRS 61.610.

➔Section 4. KRS 21.540 is amended to read as follows:

- (1) Except as provided in KRS 21.550 and 21.560, the board of trustees of the Judicial Form Retirement System shall be charged with the administration of that system and of KRS 21.350 to 21.510, and shall have all powers necessary thereto, including the power to promulgate all reasonable *administrative* regulations, pass upon questions of eligibility and disability, make employments for services, and to contract for fiduciary liability insurance, and for investment counseling, actuarial, auditing, and other professional services as required without the limitations of KRS 45A.045. The administrative expenses shall be paid out of an administrative account which shall be funded by transfers of the necessary money, in appropriate ratio, from the funds provided for in KRS 21.550 and 21.560.
- (2)
 - (a) *A qualified domestic relations order issued by a court or administrative agency shall be honored by the Judicial Form Retirement System if the order is in compliance with the requirements established by the retirement system.*
 - (b) *Except in cases involving child support payments, the Judicial Form Retirement System may charge reasonable and necessary fees and expenses to the participant and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by the retirement system. All fees and expenses shall be established by administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:*
 - 1. *Solely by the participant;*
 - 2. *Solely by the alternate payee; or*
 - 3. *Equally shared by the participant and alternate payee.*
 - (c) *For purposes of this subsection, a "qualified domestic relations order" shall mean any judgment, decree, or order, including approval of a property settlement agreement, that:*
 - 1. *Is issued by a court or administrative agency; and*
 - 2. *Relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a member.*

➔Section 5. KRS 61.510 is amended to read as follows:

As used in KRS 61.510 to 61.705, unless the context otherwise requires:

- (1) "System" means the Kentucky Employees Retirement System created by KRS 61.510 to 61.705;
- (2) "Board" means the board of trustees of the system as provided in KRS 61.645;
- (3) "Department" means any state department or board or agency participating in the system in accordance with appropriate executive order, as provided in KRS 61.520. For purposes of KRS 61.510 to 61.705, the members, officers, and employees of the General Assembly and any other body, entity, or instrumentality designated by executive order by the Governor, shall be deemed to be a department, notwithstanding whether said body, entity, or instrumentality is an integral part of state government;
- (4) "Examiner" means the medical examiners as provided in KRS 61.665;
- (5) "Employee" means the members, officers, and employees of the General Assembly and every regular full-time, appointed or elective officer or employee of a participating department, including the Department of Military Affairs. The term does not include persons engaged as independent contractors, seasonal, emergency, temporary, interim, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 61.510 to 61.705;

- (6) "Employer" means a department or any authority of a department having the power to appoint or select an employee in the department, including the Senate and the House of Representatives, or any other entity, the employees of which are eligible for membership in the system pursuant to KRS 61.525;
- (7) "State" means the Commonwealth of Kentucky;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1956, except that for members, officers, and employees of the General Assembly this date shall be January 1, 1960, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided, and each member, officer, and employee of the General Assembly shall be credited with a month of current service for each month he serves in the position;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1956, for which creditable compensation was paid; except that for members, officers, and employees of the General Assembly, this date shall be January 1, 1960. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least one hundred (100) hours of work; provided, however, that each member, officer, and employee of the General Assembly shall be credited with a month of prior service for each month he served in the position prior to January 1, 1960. Twelve (12) months of current service in the system are required to validate prior service;
- (12) "Accumulated contributions" at any time means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4), together with interest credited on such amounts and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, tips to the extent the tips are reported for income tax purposes, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). For members of the General Assembly, it shall mean all amounts which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation," including employee contributions picked up after August 1, 1982, pursuant to KRS 6.505(4) or 61.560(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's total service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). In cases where compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, and other items determined by the board shall be excluded. Creditable compensation shall also include amounts which are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" of a member means:
 - (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional

and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;

- (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) years period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
 - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
 - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or
 - (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, including employee contributions picked up after August 1, 1982, pursuant to KRS 61.560(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, nineteen hundred fifty (1,950) hours for seven and one-half (7-1/2) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
 - (16) "Retirement allowance" means the retirement payments to which a member is entitled;
 - (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables that are adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
 - (18) "Normal retirement date" means the sixty-fifth birthday of a member, unless otherwise provided in KRS 61.510 to 61.705;
 - (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefit limits as established by 26 U.S.C. sec. 415;
 - (20) "Officers and employees of the General Assembly" means the occupants of those positions enumerated in KRS 6.150. The term shall also apply to assistants who were employed by the General Assembly for at least one (1) regular legislative session prior to July 13, 2004, who elect to participate in the retirement system, and who serve for at least six (6) regular legislative sessions. Assistants hired after July 13, 2004, shall be designated as interim employees;
 - (21) "Regular full-time positions," as used in subsection (5) of this section, shall mean all positions that average one hundred (100) or more hours per month determined by using the number of months actually worked within a calendar or fiscal year, including all positions except:

- (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and which may recur regularly from year to year, the period of time shall not exceed nine (9) months;
 - (b) Emergency positions which are positions which do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary positions which are positions of employment with a participating department for a period of time not to exceed nine (9) months;
 - (d) Part-time positions which are positions which may be permanent in duration, but which require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty; and
 - (e) Interim positions which are positions established for a one-time or recurring need not to exceed nine (9) months;
- (22) "Delayed contribution payment" means an amount paid by an employee for purchase of current service. The amount shall be determined using the same formula in KRS 61.5525, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (23) "Parted employer" means a department, portion of a department, board, or agency, such as Outwood Hospital and School, which previously participated in the system, but due to lease or other contractual arrangement is now operated by a publicly held corporation or other similar organization, and therefore is no longer participating in the system;
- (24) "Retired member" means any former member receiving a retirement allowance or any former member who has filed the necessary documents for retirement benefits and is no longer contributing to the retirement system;
- (25) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;
- (26) "Beneficiary" means the person or persons or estate or trust or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, "beneficiary" does not mean an estate, trust, or trustee;
- (27) "Recipient" means the retired member or the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall **not** be considered a recipient, ~~except only~~ for purposes of KRS ~~61.623~~~~61.691~~;
- (28) "Level-percentage-of-payroll amortization method" means a method of determining the annual amortization payment on the unfunded actuarial accrued liability as expressed as a percentage of payroll over a set period of years. Under this method, the percentage of payroll shall be projected to remain constant for all years remaining in the set period and the unfunded actuarially accrued liability shall be projected to be fully amortized at the conclusion of the set period;
- (29) "Increment" means twelve (12) months of service credit which are purchased. The twelve (12) months need not be consecutive. The final increment may be less than twelve (12) months;
- (30) "Person" means a natural person;
- (31) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (32) "Last day of paid employment" means the last date employer and employee contributions are required to be reported in accordance with KRS 16.543, 61.543, or 78.615 to the retirement office in order for the employee to receive current service credit for the month. Last day of paid employment does not mean a date the employee receives payment for accrued leave, whether by lump sum or otherwise, if that date occurs twenty-four (24) or more months after previous contributions;
- (33) "Objective medical evidence" means reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory,

orientation, or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests;

- (34) "Participating" means an employee is currently earning service credit in the system as provided in KRS 61.543;
- (35) "Month" means a calendar month;~~and~~
- (36) "Membership date" means the date upon which the member began participating in the system as provided in KRS 61.543;
- (37) *"Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (24) of this section;*
- (38) *"Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:*
 - (a) *Is issued by a court or administrative agency; and*
 - (b) *Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and*
- (39) *"Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.*

➔Section 6. KRS 61.690 is amended to read as follows:

- (1) *Except as otherwise provided by this section*, all retirement allowances and other benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, and the accumulated contributions and cash securities in the funds created under KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852, are hereby exempt from any state, county, or municipal tax, and shall not be subject to execution, attachment, garnishment, or any other process, and ~~shall not be assigned (an assignment thereof shall not be enforceable in any court).~~
- (2) *Notwithstanding the provisions of subsection (1) of this section*, ~~Except~~ retirement benefits accrued or accruing to any person under the provisions of KRS 61.510 to 61.705, 16.505 to 16.652, and 78.510 to 78.852 on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.
- (3) *Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:*
 - (a) *The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;*
 - (b) *The order meets the requirements established by the retirement system and by subsections (3) to (11) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations orders by promulgation of administrative regulations in accordance with KRS Chapter 13A; and*
 - (c) *The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (3)(b) of this subsection.*
- (4) *A qualified domestic relations order shall not:*
 - (a) *Require the retirement system to take any action not authorized under state or federal law;*
 - (b) *Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;*
 - (c) *Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the retirement system and as provided by subsections (3) to (11) of this section; or*
 - (d) *Grant any separate interest to any person other than the participant.*

- (5) *Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.*
- (6) *If the qualified domestic relations order meets the requirements established by the system and by subsections (3) to (11) of this section, payments to the alternate payee shall begin under the following conditions:*
 - (a) *If the participant is retired and is receiving a monthly benefit, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (3) to (11) of this section; or*
 - (b) *If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of contributions as provided by KRS 61.625.*
- (7) *An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:*
 - (a) *The death of the participant;*
 - (b) *The death of the alternate payee; or*
 - (c) *The termination of the participant's benefits under any of the provisions of KRS 16.505 to 16.652, 61.510 to 61.705, and 78.510 to 78.852.*
- (8) *An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.*
- (9) *The cost of living adjustment provided to the participant pursuant to KRS 61.691 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:*
 - (a) *If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or*
 - (b) *If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:*
 - 1. *The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or*
 - 2. *The alternate payee shall receive no cost of living adjustment.*

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.
- (10) *Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by the retirement system. All fees and expenses shall be established by administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:*
 - (a) *Solely by the participant;*

- (b) *Solely by the alternate payee; or*
- (c) *Equally shared by the participant and alternate payee.*
- (11) *The retirement system shall honor a qualified domestic relations order issued prior to the effective date of this Act if:*
 - (a) *The order was on file and approved by the retirement system prior to the effective date of this Act. All benefits, including cost of living adjustments payable to the alternate payee, for orders that meet the requirements of this paragraph shall not be eliminated or reduced as a result of the provisions of this Act; or*
 - (b) *The order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.*

~~[(2) Child support orders for current, owed, or to be owed child support, issued by a court or administrative agency shall be honored by the retirement systems if the orders are in compliance with the regulation adopted by the board pursuant to KRS 61.645(9)(g).]~~

➔Section 7. KRS 78.510 is amended to read as follows:

As used in KRS 78.510 to 78.852, unless the context otherwise requires:

- (1) "System" means the County Employees Retirement System;
- (2) "Board" means the board of trustees of the system as provided in KRS 78.780;
- (3) "County" means any county, or nonprofit organization created and governed by a county, counties, or elected county officers, sheriff and his employees, county clerk and his employees, circuit clerk and his deputies, former circuit clerks or former circuit clerk deputies, or political subdivision or instrumentality, including school boards, charter county government, or urban-county government participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency, organization, or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (4) "School board" means any board of education participating in the system by order appropriate to its governmental structure, as provided in KRS 78.530, and if the board is willing to accept the agency or corporation, the board being hereby granted the authority to determine the eligibility of the agency to participate;
- (5) "Examiner" means the medical examiners as provided in KRS 61.665;
- (6) "Employee" means every regular full-time appointed or elective officer or employee of a participating county and the coroner of a participating county, whether or not he qualifies as a regular full-time officer. The term shall not include persons engaged as independent contractors, seasonal, emergency, temporary, and part-time workers. In case of any doubt, the board shall determine if a person is an employee within the meaning of KRS 78.510 to 78.852;
- (7) "Employer" means a county, as defined in subsection (3) of this section, the elected officials of a county, or any authority of the county having the power to appoint or elect an employee to office or employment in the county;
- (8) "Member" means any employee who is included in the membership of the system or any former employee whose membership has not been terminated under KRS 61.535;
- (9) "Service" means the total of current service and prior service as defined in this section;
- (10) "Current service" means the number of years and months of employment as an employee, on and after July 1, 1958, for which creditable compensation is paid and employee contributions deducted, except as otherwise provided;
- (11) "Prior service" means the number of years and completed months, expressed as a fraction of a year, of employment as an employee, prior to July 1, 1958, for which creditable compensation was paid. An employee shall be credited with one (1) month of prior service only in those months he received compensation for at least

one hundred (100) hours of work. Twelve (12) months of current service in the system shall be required to validate prior service;

- (12) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4), together with interest credited on the amounts, and any other amounts the member shall have contributed thereto, including interest credited thereon. For members who begin participating on or after September 1, 2008, "accumulated contributions" shall not include employee contributions that are deposited into accounts established pursuant to 26 U.S.C. sec. 401(h) within the funds established in KRS 16.510, 61.515, and 78.520, as prescribed by KRS 61.702(2)(b);
- (13) "Creditable compensation" means all salary, wages, and fees, including payments for compensatory time, paid to the employee as a result of services performed for the employer or for time during which the member is on paid leave, which are includable on the member's federal form W-2 wage and tax statement under the heading "wages, tips, other compensation", including employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). A lump-sum bonus, severance pay, or employer-provided payment for purchase of service credit shall be included as creditable compensation but shall be averaged over the employee's service with the system in which it is recorded if it is equal to or greater than one thousand dollars (\$1,000). If compensation includes maintenance and other perquisites, the board shall fix the value of that part of the compensation not paid in money. Living allowances, expense reimbursements, lump-sum payments for accrued vacation leave, sick leave except as provided in KRS 78.616(5), and other items determined by the board shall be excluded. Creditable compensation shall also include amounts that are not includable in the member's gross income by virtue of the member having taken a voluntary salary reduction provided for under applicable provisions of the Internal Revenue Code. Creditable compensation shall also include elective amounts for qualified transportation fringes paid or made available on or after January 1, 2001, for calendar years on or after January 1, 2001, that are not includable in the gross income of the employee by reason of 26 U.S.C. sec. 132(f)(4). For employees who begin participating on or after September 1, 2008, creditable compensation shall not include payments for compensatory time;
- (14) "Final compensation" means:
 - (a) For a member who begins participating before September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that five (5) year period multiplied by twelve (12). The five (5) years may be fractional and need not be consecutive. If the number of months of service credit during the five (5) year period is less than forty-eight (48), one (1) or more additional fiscal years shall be used;
 - (b) For a member who is not employed in a hazardous position, as provided in KRS 61.592, whose effective retirement date is between August 1, 2001, and January 1, 2009, and whose total service credit is at least twenty-seven (27) years and whose age and years of service total at least seventy-five (75), final compensation means the creditable compensation of the member during the three (3) fiscal years the member was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used. Notwithstanding the provision of KRS 61.565, the funding for this paragraph shall be provided from existing funds of the retirement allowance;
 - (c) For a member who begins participating before September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) fiscal years he was paid at the highest average monthly rate divided by the number of months of service credit during that three (3) year period multiplied by twelve (12). The three (3) years may be fractional and need not be consecutive. If the number of months of service credit during the three (3) year period is less than twenty-four (24), one (1) or more additional fiscal years shall be used;
 - (d) For a member who begins participating on or after September 1, 2008, who is not employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the five (5) complete fiscal years immediately preceding retirement divided by five (5). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit; or

- (e) For a member who begins participating on or after September 1, 2008, who is employed in a hazardous position, as provided in KRS 61.592, the creditable compensation of the member during the three (3) complete fiscal years he was paid at the highest average monthly rate divided by three (3). Each fiscal year used to determine final compensation must contain twelve (12) months of service credit;
- (15) "Final rate of pay" means the actual rate upon which earnings of an employee were calculated during the twelve (12) month period immediately preceding the member's effective retirement date, and shall include employee contributions picked up after August 1, 1982, pursuant to KRS 78.610(4). The rate shall be certified to the system by the employer and the following equivalents shall be used to convert the rate to an annual rate: two thousand eighty (2,080) hours for eight (8) hour workdays, one thousand nine hundred fifty (1,950) hours for seven and one-half (7.5) hour workdays, two hundred sixty (260) days, fifty-two (52) weeks, twelve (12) months, one (1) year;
- (16) "Retirement allowance" means the retirement payments to which a member is entitled;
- (17) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables adopted by the board. In cases of disability retirement, the options authorized by KRS 61.635 shall be computed by adding ten (10) years to the age of the member, unless the member has chosen the Social Security adjustment option as provided for in KRS 61.635(8), in which case the member's actual age shall be used. No disability retirement option shall be less than the same option computed under early retirement;
- (18) "Normal retirement date" means the sixty-fifth birthday of a member unless otherwise provided in KRS 78.510 to 78.852;
- (19) "Fiscal year" of the system means the twelve (12) months from July 1 through the following June 30, which shall also be the plan year. The "fiscal year" shall be the limitation year used to determine contribution and benefits limits as set out in 26 U.S.C. sec. 415;
- (20) "Agency reporting official" means the person designated by the participating agency who shall be responsible for forwarding all employer and employee contributions and a record of the contributions to the system and for performing other administrative duties pursuant to the provisions of KRS 78.510 to 78.852;
- (21) "Regular full-time positions," as used in subsection (6) of this section, shall mean all positions that average one hundred (100) or more hours per month, determined by using the number of hours actually worked in a calendar or fiscal year, or eighty (80) or more hours per month in the case of noncertified employees of school boards, determined by using the number of hours actually worked in a calendar or school year, unless otherwise specified, except:
 - (a) Seasonal positions, which although temporary in duration, are positions which coincide in duration with a particular season or seasons of the year and that may recur regularly from year to year, in which case the period of time shall not exceed nine (9) months, except for employees of school boards, in which case the period of time shall not exceed six (6) months;
 - (b) Emergency positions that are positions that do not exceed thirty (30) working days and are nonrenewable;
 - (c) Temporary, also referred to as probationary, positions that are positions of employment with a participating agency for a period of time not to exceed twelve (12) months and not renewable; or
 - (d) Part-time positions that are positions that may be permanent in duration, but that require less than a calendar or fiscal year average of one hundred (100) hours of work per month, determined by using the number of months actually worked within a calendar or fiscal year, in the performance of duty, except in case of noncertified employees of school boards, the school term average shall be eighty (80) hours of work per month, determined by using the number of months actually worked in a calendar or school year, in the performance of duty;
- (22) "Alternate participation plan" means a method of participation in the system as provided for by KRS 78.530(3);
- (23) "Retired member" means any former member receiving a retirement allowance or any former member who has on file at the retirement office the necessary documents for retirement benefits and is no longer contributing to the system;
- (24) "Current rate of pay" means the member's actual hourly, daily, weekly, biweekly, monthly, or yearly rate of pay converted to an annual rate as defined in final rate of pay. The rate shall be certified by the employer;

- (25) "Beneficiary" means the person, persons, estate, trust, or trustee designated by the member in accordance with KRS 61.542 or 61.705 to receive any available benefits in the event of the member's death. As used in KRS 61.702, beneficiary shall not mean an estate, trust, or trustee;
- (26) "Recipient" means the retired member, the person or persons designated as beneficiary by the member and drawing a retirement allowance as a result of the member's death, or a dependent child drawing a retirement allowance. An alternate payee of a qualified domestic relations order shall **not** be considered a recipient, ~~except only~~ for purposes of KRS ~~61.623~~~~[61.691]~~;
- (27) "Person" means a natural person;
- (28) "School term or year" means the twelve (12) months from July 1 through the following June 30;
- (29) "Retirement office" means the Kentucky Retirement Systems office building in Frankfort;
- (30) "Delayed contribution payment" means an amount paid by an employee for current service obtained under KRS 61.552. The amount shall be determined using the same formula in KRS 61.5525, except the determination of the actuarial cost for classified employees of a school board shall be based on their final compensation, and the payment shall not be picked up by the employer. A delayed contribution payment shall be deposited to the member's contribution account and considered as accumulated contributions of the individual member. In determining payments under this subsection, the formula found in this subsection shall prevail over the one found in KRS 212.434;
- (31) "Participating" means an employee is currently earning service credit in the system as provided in KRS 78.615;
- (32) "Month" means a calendar month;~~[-and]~~
- (33) "Membership date" means the date upon which the member began participating in the system as provided in KRS 78.615;
- (34) *"Participant" means a member, as defined by subsection (8) of this section, or a retired member, as defined by subsection (23) of this section;*
- (35) *"Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:*
 - (a) *Is issued by a court or administrative agency; and*
 - (b) *Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and*
- (36) *"Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.*

➔Section 8. KRS 78.545 is amended to read as follows:

The following matters shall be administered in the same manner subject to the same limitations and requirements as provided for the Kentucky Employees Retirement System as follows:

- (1) Cessation of membership, conditions, as provided for by KRS 61.535;
- (2) Statement of member and employer, as provided for by KRS 61.540;
- (3) Beneficiary to be designated by member, change, rights, as provided for by KRS 61.542;
- (4) Service credit determination, as provided for by KRS 61.545;
- (5) Cessation of membership, loss of benefits, as provided for by KRS 61.550;
- (6) Service credit, Armed Forces, as provided for by KRS 61.555;
- (7) Normal and early retirement eligibility requirements, as provided for by KRS 61.559;
- (8) Retirement allowance increases as provided for by KRS 61.691;
- (9) Retirement application procedure, effective retirement date, as provided for by KRS 61.590;
- (10) Disability retirement, conditions, as provided for by KRS 61.600;

- (11) Disability retirement, allowance, as provided for by KRS 61.605;
- (12) Medical examination after disability retirement, as provided for by KRS 61.610;
- (13) Disability retirement allowance, reduction, as provided for by KRS 61.615;
- (14) Determination of retirement allowance, as provided for by KRS 61.595;
- (15) Refund of contributions, conditions, as provided for by KRS 61.625;
- (16) Refund of contributions, death after retirement, as provided for by KRS 61.630;
- (17) Optional retirement plans, as provided for by KRS 61.635;
- (18) Suspension of retirement payments on reemployment, reinstatement, as provided for by KRS 61.637;
- (19) Death before retirement, beneficiary's options, as provided for by KRS 61.640;
- (20) Board of trustees, conflict of interest, as provided for by KRS 61.655;
- (21) Custodian of funds, payments made, when, as provided for by KRS 61.660;
- (22) Medical examiners and hearing procedures, as provided for by KRS 61.665;
- (23) Actuarial bases, as provided for by KRS 61.670;
- (24) Employer's administrative duties, as provided for by KRS 61.675;
- (25) Correction of errors in records, as provided for by KRS 61.685;
- (26) Exemptions of retirement allowances, *and qualified domestic relations orders*, as provided for by KRS 61.690;
- (27) Credit for service prior to membership date, as provided for by KRS 61.526;
- (28) Creditable compensation of fee officers, as provided for by KRS 61.541;
- (29) Members' account, confidential, as provided for by KRS 61.661;
- (30) Retirement plan for employees determined to be in a hazardous position, as provided for by KRS 61.592;
- (31) Maximum disability benefit, as provided for by KRS 61.607;
- (32) Consent of employees to deductions and reciprocal arrangement between systems, as provided for by KRS 61.680;
- (33) Employer contributions, as provided for by KRS 61.565;
- (34) Recontribution and delayed contribution payments, purchase of service credit, interest, and installment payments, as provided for by KRS 61.552;
- (35) Hospital and medical insurance plan, as provided by KRS 61.702;
- (36) Death benefit, as provided by KRS 61.705;
- (37) Reinstated employee, contributions on creditable compensation, as provided for by KRS 61.569;
- (38) Statement to be made under oath, good faith reliance, as provided for in KRS 61.699;
- (39) Disability procedure for members in hazardous positions as provided for in KRS 16.582;
- (40) Direct deposit of recipient's retirement allowance as provided for in KRS 61.623;
- (41) Death or disability from a duty-related injury as provided in KRS 61.621;
- (42) Purchase of service credit effective July 1, 2001, as provided in KRS 61.5525; and
- (43) Payment of small accounts upon death of member, retiree, or recipient without formal administration of the estate as provided in KRS 61.703.

➔Section 9. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;
- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
 - (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
 - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
 - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
 - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
 - (i) The Office of Vocational Rehabilitation;
 - (j) The Kentucky Educational Collaborative for State Agency Children;
 - (k) The Governor's Scholars Program;
 - (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
 - (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;

- (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;
 - (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000; and
 - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional position as defined by the department.
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
 - (6) "New teacher" means any member not a present teacher;
 - (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
 - (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
 - (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
 - (a) The member's actual salary; or
 - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;
- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;
- (13) "Regular interest" means interest at three percent (3%) per annum, except for an individual who becomes a member on or after July 1, 2008, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400; and

- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation;
- (24) *"Participant" means a member, as defined by subsection (4) of this section, or an annuitant, as defined by subsection (15) of this section;*
- (25) *"Qualified domestic relations order" means any judgment, decree, or order, including approval of a property settlement agreement, that:*
- (a) *Is issued by a court or administrative agency; and*
 - (b) *Relates to the provision of child support, alimony payments, or marital property rights to an alternate payee; and*
- (26) *"Alternate payee" means a spouse, former spouse, child, or other dependent of a participant, who is designated to be paid retirement benefits in a qualified domestic relations order.*

➔Section 10. KRS 161.620 is amended to read as follows:

- (1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:
- (a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are members under the provisions of KRS 161.220(4)(b) or (n) shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section;
 - (b) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;
 - (c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become members before July 1, 2008, except those persons who are members under KRS 161.220(4)(b) or (n), a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;
 - (d) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:
 - 1. a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;

- b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
 - c. Two and three-tenths percent (2.3%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or
 - d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and
- 2. Three percent (3%) of the member's final average salary for each year of service earned in excess of thirty (30) years of service at retirement;
- (e) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, who are members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:
 - 1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
 - 2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
 - 3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or
 - 4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement; and
- (f) The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10).
- (2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars (\$400) effective July 1, 2002, and not less than four hundred forty dollars (\$440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection, ***except the following:*** ~~This subsection and subsection (4) of this section shall not apply to~~
 - (a) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008; ***or***
 - (b) ***Members whose retirement allowance payment is reduced below the minimum allowance as a result of its division in a qualified domestic relations order or any other provision permitted under KRS 161.700.***
- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.

- (5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.
- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

➔Section 11. KRS 161.585 is amended to read as follows:

- (1) ***For purposes of this section, the term "records" shall include retirement estimates, affidavits and other documents prepared by the Kentucky Teachers' Retirement System in response to information requested in a lawful subpoena or order issued by a court of law.***
- (2) Each member's account shall be administered in a confidential manner and specific data regarding a member shall not be released for publication unless authorized by the member; however, the board of trustees may release member account information to the employer or to other state and federal agencies as it deems necessary ***or in response to a lawful subpoena or order issued by a court of law.***
- (3)~~(2)~~ Medical records which are included in a member's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member in writing or as otherwise provided by law ***or in response to a lawful subpoena or order issued by a court of law.***
- (4) (a) ***When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers within five (5) working days by certified mail or by personal delivery to the person specified in the subpoena either of the following:***
 1. ***Legible and durable copies of records certified by the employee or designated staff; or***
 2. ***An affidavit stating the information required by the subpoena.***
- (b) ***The production of records or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of records or affidavit, a***

separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of documents by a specific employee, the system may designate an employee to give testimony or produce documents upon the matter referred to in the subpoena.

- (5) *The certification shall be signed before a notary public by the employee and shall include the full name of the member, the member identification number assigned to the member by the retirement system, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiche, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."*
- (6) *When an affidavit or copies of records are personally delivered, a receipt shall be presented to the person receiving the records for his or her signature and shall be immediately signed and returned to the person delivering the records. When an affidavit or copies of records are sent via certified mail, the receipt used by the postal authorities shall be sufficient to prove receipt of the affidavit or copies of records.*
- (7) *When the affidavit or copies of records are delivered to a party for use in deposition they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.*
- (8) *Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.*
- (9) *Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this section.*
- (10) *The provisions of this section shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.*

➔Section 12. KRS 161.700 is amended to read as follows:

- (1) *Except as otherwise provided by this section, the right of a member to a retirement allowance and to the return of contributions, any benefit or right accrued or accruing to any person under **KRS 161.220 to 161.716**~~[the retirement system]~~, and the money in the various funds *established pursuant to KRS 161.220 to 161.716*~~[of the retirement system]~~ are **hereby** exempt from any state or municipal tax, **and shall**~~are~~ not be subject to execution, garnishment, attachment, or other process, and **shall not be assigned**~~are unassignable except as provided in this chapter, and except for court or administratively ordered current child support, owed child support, or to be owed child support~~.*
- (2) *Notwithstanding subsection (1) of this section, ~~[Except]~~ retirement benefits accrued or accruing to any person under this retirement system on or after January 1, 1998, shall be subject to the tax imposed by KRS 141.020, to the extent provided in KRS 141.010 and 141.0215.*
- (3)~~(2)~~ *Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be classified as marital property pursuant to KRS 403.190(1), **except to the extent permitted under KRS 403.190(4)**. Retirement allowance, disability allowance, accumulated contributions, or any other benefit under the retirement system shall not be considered as an economic circumstance during the division of marital property in an action for dissolution of marriage pursuant to KRS 403.190(1)(d), **except to the extent permitted under KRS 403.190(4)**.*
- (4) *Qualified domestic relations orders issued by a court or administrative agency shall be honored by the retirement system if:*
 - (a) *The benefits payable pursuant to the order meet the requirements of a qualified domestic relations order as provided by 26 U.S.C. sec. 414(p). The retirement system shall follow applicable provisions of 26 U.S.C. sec. 414(p) in administering qualified domestic relations orders;*

- (b) *The order meets the requirements established by the retirement system and by subsections (4) to (12) of this section. The board of trustees of the retirement system shall establish the requirements, procedures, and forms necessary for the administration of qualified domestic relations order by promulgation of administrative regulations in accordance with KRS Chapter 13A; and*
 - (c) *The order is on the form established by the retirement system pursuant to the retirement system's authority provided under paragraph (b) of this subsection.*
- (5) *A qualified domestic relations order shall not:*
 - (a) *Require the retirement system to take any action not authorized under state or federal law;*
 - (b) *Require the retirement system to provide any benefit, allowance, or other payment not authorized under state or federal law;*
 - (c) *Grant or be construed to grant the alternate payee any separate right, title, or interest in or to any retirement benefit other than to receive payments from the participant's account in accordance with the administrative regulations promulgated by the system and as provided by subsections (4) to (12) of this section; or*
 - (d) *Grant any separate interest to any person other than the participant.*
- (6) *Any qualified domestic relations order submitted to the retirement system shall specify the dollar amount or percentage amount of the participant's benefit to be paid to the alternate payee. In calculating the amount to be paid to the alternate payee, the court or administrative agency that is responsible for issuing the order shall follow the requirements set forth in the administrative regulations promulgated by the board of trustees. Notwithstanding any other statute to the contrary, the board shall not be required to honor a qualified domestic relations order that does not follow the requirements set forth in the administrative regulations promulgated by the board of trustees.*
- (7) *If the qualified domestic relations order meets the requirements established by the system and by subsections (4) to (12) of this section, payments to the alternate payee shall be distributed under the following conditions:*
 - (a) *If the participant is retired and is receiving a monthly benefit, the month following the date the retirement system receives a qualified domestic relations order that complies with the administrative regulations promulgated by the retirement system and subsections (4) to (12) of this section; or*
 - (b) *If the participant is not retired, the month of the participant's effective retirement date in which the first retirement allowance is payable to the participant or the month in which the participant receives a refund of contributions as provided by KRS 161.470(6).*
- (8) *An alternate payee's benefits and rights under a qualified domestic relations order shall terminate upon the earlier of:*
 - (a) *The death of the participant;*
 - (b) *The death of the alternate payee; or*
 - (c) *The termination of benefits to the participant under any provision of KRS 161.220 to 161.716.*
- (9) *An alternate payee shall not receive a monthly payment under a qualified domestic relations order if the participant is not receiving a monthly retirement allowance.*
- (10) *The cost of living adjustment provided to the participant pursuant to KRS 161.620 shall be divided between the participant and alternate payee in a qualified domestic relations order as follows:*
 - (a) *If the order specifies the alternate payee is to receive a percentage of the participant's benefit, then the cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's retirement or upon the date the order is approved by the retirement system, whichever is later; or*
 - (b) *If the order specifies that the alternate payee is to receive a set dollar amount of the participant's benefit, then the order shall specify that:*
 - 1. *The cost of living adjustment shall be divided between the participant and the alternate payee based upon the percentage of the total benefit each is receiving upon the participant's*

retirement or upon the date the order is approved by the retirement system, whichever is later; or

2. *The alternate payee shall receive no cost of living adjustment.*

If the order does not specify the division of the cost of living adjustment as required by this paragraph, then no cost of living adjustment shall be payable to the alternate payee. If no cost of living adjustment is provided to the alternate payee, then the participant shall receive the full cost of living adjustment he or she would have received if the order had not been applied to the participant's account.

- (11) *Except in cases involving child support payments, the retirement system may charge reasonable and necessary fees and expenses to the recipient and the alternate payee of a qualified domestic relations order for the administration of the qualified domestic relations order by retirement system. All fees and expenses shall be established by the administrative regulations promulgated by the board of trustees of the retirement system. The qualified domestic relations order shall specify whether the fees and expenses provided by this subsection shall be paid:***

- (a) *Solely by the participant;***
- (b) *Solely by the alternate payee; or***
- (c) *Equally shared by the participant and alternate payee.***

- (12) *The retirement system shall honor qualified domestic relations order issued prior to the effective date of this Act for prospective benefit payments if the order or an amended version of the order meets the requirements established by this section and the administrative regulations promulgated by the retirement system. The order shall not apply to benefit payments issued by the retirement system prior to the date the order was approved by the retirement system.***

Signed by Governor April 13, 2010.

CHAPTER 149

(HB 265)

AN ACT relating to crimes and punishments and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of trafficking in synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully traffics in synthetic cannabinoid agonists or piperazines.***
- (2) *Trafficking in synthetic cannabinoid agonists or piperazines is a Class A Misdemeanor.***

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of possession of synthetic cannabinoid agonists or piperazines when he or she knowingly and unlawfully possesses synthetic cannabinoid agonists or piperazines.***
- (2) *Possession of synthetic cannabinoid agonists or piperazines is a Class B misdemeanor.***

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) *A person is guilty of synthetic cannabinoid agonists or piperazines manufacture when he or she knowingly manufactures synthetic cannabinoid agonists or piperazines.***
- (2) *Synthetic cannabinoid agonists or piperazines manufacture is a Class A misdemeanor.***

➔Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:**

- (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
- 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 - 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 - 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
- 1. Any substance for which there is an approved new drug application;
 - 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 - 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (11) "Drug" means:
- (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;
 - (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
 - (d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories;

- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
- (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
- (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;
- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;

- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced registered nurse practitioner as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced registered nurse practitioner authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;
- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) *"Synthetic cannabinoid agonists or piperazines" means any chemical compound that contains Benzylpiperazine; Trifluoromethylphenylpiperazine; 1,1-Dimethylheptyl-11-hydroxytetrahydrocannabinol; 1-Butyl-3-(1-naphthoyl)indole; 1-Pentyl-3-(1-naphthoyl)indole; dexanabinol; or 2-[(1R,3S)-3-*

hydroxycyclohexyl]-5-(2-methyloctan-2-yl)phenol). The term shall not include synthetic cannabinoids that require a prescription, are approved by the United States Food and Drug Administration, and are dispensed in accordance with state and federal law;

- (36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- (37)~~(36)~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- (38)~~(37)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;
- (39)~~(38)~~ "Telehealth" has the same meaning it has in KRS 311.550;
- (40)~~(39)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant *Cannabis*, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- (41)~~(40)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- (42)~~(41)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- (43)~~(42)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 5. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properidine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphanol; Methyl-desorphine; Methyl-dihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone); ***synthetic cannabinoid agonists or piperazines***.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

➔Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
- (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and
 - (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, ***synthetic cannabinoid agonists or piperazines***, morphine, opium, paraldehyde, peyote, or sulfonylmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
- (a) The common or usual name of the drug, if such there be; and
 - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
- (a) Adequate directions for use; and
 - (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection

of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;

- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
- (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;
- (9) (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - (b) If it is an imitation of another drug; or
 - (c) If it is offered for sale under the name of another drug;
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;
- (11) If:
 - (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
 - (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
- (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
 - (a) Such practitioner is licensed by law to administer such drug; and
 - (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
- (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.

➔Section 7. KRS 218A.1401 is amended to read as follows:

- (1) A person is guilty of selling controlled substances to a minor when he, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance ***other than synthetic cannabinoid agonists or piperazines*** to any person under eighteen (18) years of age.
- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

➔Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, ***trafficking in synthetic cannabinoid agonists or piperazines***, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

➔Section 9. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) ***The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to synthetic cannabinoid agonists or piperazines.***

➔Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, ***synthetic cannabinoid agonists or piperazines***, or marijuana; or
 - (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class D felony.
 - (b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 11. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, ***synthetic cannabinoid agonists or piperazines***, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
 - (a) For a first offense a Class A misdemeanor.
 - (b) For a second or subsequent offense a Class D felony.

➔Section 12. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 ***or possession of synthetic cannabinoid agonists or piperazines pursuant to Section 2 of this Act*** may be ordered to a facility designated

by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.

- (2) The secretary of the Cabinet for Health and Family Services, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana *or possession of synthetic cannabinoid agonists or piperazines*, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

➔Section 13. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.
 - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.
 - (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the

manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.

- (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.
 - (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
 - (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.
 - (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
 - 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
 - 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana *or synthetic cannabinoid agonists or piperazines*.
 - (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
 - (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.
 - (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana *or synthetic cannabinoid agonists or piperazines*, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 14. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

- (1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:
- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
 - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
 - (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
 - (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.
- (2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

- (3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.
- (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (5) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

➔Section 15. KRS 218A.992 is amended to read as follows:

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
 - (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
 - (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210 **or Section 1, 2, or 3 of this Act.**

➔Section 16. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
 - (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana **or synthetic cannabinoid agonists or piperazines as defined in Section 4 of this Act;**

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

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

➔Section 17. KRS 189A.010 is amended to read as follows:

- (1) A person shall not operate or be in physical control of a motor vehicle anywhere in this state:
 - (a) Having an alcohol concentration of 0.08 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle;
 - (b) While under the influence of alcohol;
 - (c) While under the influence of any other substance or combination of substances which impairs one's driving ability;
 - (d) **While the presence of a controlled substance listed in subsection (12) of this section is detected in the blood, as measured by a scientifically reliable test, or tests, taken within two (2) hours of cessation of operation or physical control of a motor vehicle;**
 - (e) While under the combined influence of alcohol and any other substance which impairs one's driving ability; or

~~(f)(e)~~ Having an alcohol concentration of 0.02 or more as measured by a scientifically reliable test or tests of a sample of the person's breath or blood taken within two (2) hours of cessation of operation or physical control of a motor vehicle, if the person is under the age of twenty-one (21).

- (2) With the exception of the results of the tests administered pursuant to KRS 189A.103(7), if the sample of the person's blood or breath that is used to determine the alcohol concentration thereof was obtained more than two (2) hours after cessation of operation or physical control of a motor vehicle, the results of the test or tests shall be inadmissible as evidence in a prosecution under subsection (1)(a) or ~~(f)(e)~~ of this section. The results of the test or tests, however, may be admissible in a prosecution under subsection (1)(b) or ~~(e)(d)~~ of this section.
- (3) In any prosecution for a violation of subsection (1)(b) or ~~(e)(d)~~ of this section in which the defendant is charged with having operated or been in physical control of a motor vehicle while under the influence of alcohol, the alcohol concentration in the defendant's blood as determined at the time of making analysis of his blood or breath shall give rise to the following presumptions:
 - (a) If there was an alcohol concentration of less than 0.05 based upon the definition of alcohol concentration in KRS 189A.005, it shall be presumed that the defendant was not under the influence of alcohol; and
 - (b) If there was an alcohol concentration of 0.05 or greater but less than 0.08 based upon the definition of alcohol concentration in KRS 189A.005, that fact shall not constitute a presumption that the defendant either was or was not under the influence of alcohol, but that fact may be considered, together with other competent evidence, in determining the guilt or innocence of the defendant.

The provisions of this subsection shall not be construed as limiting the introduction of any other competent evidence bearing upon the questions of whether the defendant was under the influence of alcohol or other substances, in any prosecution for a violation of subsection (1)(b) or ~~(e)(d)~~ of this section.

- (4) (a) ***Except as provided in paragraph (b) of this subsection,*** the fact that any person charged with violation of subsection (1) of this section is legally entitled to use any substance, including alcohol, shall not constitute a defense against any charge of violation of subsection (1) of this section.

(b) ***A laboratory test or tests for a controlled substance shall be inadmissible as evidence in a prosecution under subsection (1)(d) of this section upon a finding by the court that the defendant consumed the substance under a valid prescription from a practitioner, as defined in KRS 218A.010, acting in the course of his or her professional practice.***
- (5) Any person who violates the provisions of paragraph (a), (b), (c), ~~(d)~~, **or (e)** of subsection (1) of this section shall:
 - (a) For the first offense within a five (5) year period, be fined not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500), or be imprisoned in the county jail for not less than forty-eight (48) hours nor more than thirty (30) days, or both. Following sentencing, the defendant may apply to the judge for permission to enter a community labor program for not less than forty-eight (48) hours nor more than thirty (30) days in lieu of fine or imprisonment, or both. If any of the aggravating circumstances listed in subsection (11) of this section are present while the person was operating or in physical control of a motor vehicle, the mandatory minimum term of imprisonment shall be four (4) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
 - (b) For the second offense within a five (5) year period, be fined not less than three hundred fifty dollars (\$350) nor more than five hundred dollars (\$500) and shall be imprisoned in the county jail for not less than seven (7) days nor more than six (6) months and, in addition to fine and imprisonment, may be sentenced to community labor for not less than ten (10) days nor more than six (6) months. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be fourteen (14) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.
 - (c) For a third offense within a five (5) year period, be fined not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) and shall be imprisoned in the county jail for not less than thirty (30) days nor more than twelve (12) months and may, in addition to fine and imprisonment, be sentenced to community labor for not less than ten (10) days nor more than twelve (12) months. If any

of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be sixty (60) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of early release.

- (d) For a fourth or subsequent offense within a five (5) year period, be guilty of a Class D felony. If any of the aggravating circumstances listed in subsection (11) of this section are present, the mandatory minimum term of imprisonment shall be two hundred forty (240) days, which term shall not be suspended, probated, conditionally discharged, or subject to any other form of release.
 - (e) For purposes of this subsection, prior offenses shall include all convictions in this state, and any other state or jurisdiction, for operating or being in control of a motor vehicle while under the influence of alcohol or other substances that impair one's driving ability, or any combination of alcohol and such substances, or while having an unlawful alcohol concentration, or driving while intoxicated, but shall not include convictions for violating subsection (1)(f)(e) of this section. A court shall receive as proof of a prior conviction a copy of that conviction, certified by the court ordering the conviction.
- (6) Any person who violates the provisions of subsection (1)(f)(e) of this section shall have his driving privilege or operator's license suspended by the court for a period of no less than thirty (30) days but no longer than six (6) months, and the person shall be fined no less than one hundred dollars (\$100) and no more than five hundred dollars (\$500), or sentenced to twenty (20) hours of community service in lieu of a fine. A person subject to the penalties of this subsection shall not be subject to the penalties established in subsection (5) of this section or any other penalty established pursuant to KRS Chapter 189A, except those established in KRS 189A.040(1).
 - (7) If the person is under the age of twenty-one (21) and there was an alcohol concentration of 0.08 or greater based on the definition of alcohol concentration in KRS 189A.005, the person shall be subject to the penalties established pursuant to subsection (5) of this section.
 - (8) For a second or third offense within a five (5) year period, the minimum sentence of imprisonment or community labor shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a fourth or subsequent offense under this section, the minimum term of imprisonment shall be one hundred twenty (120) days, and this term shall not be suspended, probated, or subject to conditional discharge or other form of early release. For a second or subsequent offense, at least forty-eight (48) hours of the mandatory sentence shall be served consecutively.
 - (9) When sentencing persons under subsection (5)(a) of this section, at least one (1) of the penalties shall be assessed and that penalty shall not be suspended, probated, or subject to conditional discharge or other form of early release.
 - (10) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
 - (11) For purposes of this section, aggravating circumstances are any one (1) or more of the following:
 - (a) Operating a motor vehicle in excess of thirty (30) miles per hour above the speed limit;
 - (b) Operating a motor vehicle in the wrong direction on a limited access highway;
 - (c) Operating a motor vehicle that causes an accident resulting in death or serious physical injury as defined in KRS 500.080;
 - (d) Operating a motor vehicle while the alcohol concentration in the operator's blood or breath is ~~0.15~~~~0.18~~ or more as measured by a test or tests of a sample of the operator's blood or breath taken within two (2) hours of cessation of operation of the motor vehicle;
 - (e) Refusing to submit to any test or tests of one's blood, breath, or urine requested by an officer having reasonable grounds to believe the person was operating or in physical control of a motor vehicle in violation of subsection (1) of this section; and
 - (f) Operating a motor vehicle that is transporting a passenger under the age of twelve (12) years old.
 - (12) *The substances applicable to a prosecution under subsection (1)(d) of this section are:*
 - (a) *Any Schedule I controlled substance except marijuana;*
 - (b) *Alprazolam;*

- (c) *Amphetamine;*
- (d) *Buprenorphine;*
- (e) *Butalbital;*
- (f) *Carisoprodol;*
- (g) *Cocaine;*
- (h) *Diazepam;*
- (i) *Hydrocodone;*
- (j) *Meprobamate;*
- (k) *Methadone;*
- (l) *Methamphetamine;*
- (m) *Oxycodone;*
- (n) *Promethazine;*
- (o) *Propoxyphene; and*
- (p) *Zolpidem.*

➔Section 18. KRS 189A.040 is amended to read as follows:

- (1) In addition to any other penalty prescribed by KRS 189A.010(5)(a) or (6), the court shall sentence the person to attend an alcohol or substance abuse education or treatment program subject to the following terms and conditions for a first offender or a person convicted under KRS 189A.010(1)(f)~~(e)~~:
 - (a) The treatment or education shall be for a period of ninety (90) days and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;
 - (b) Each defendant shall pay the cost of the education or treatment program up to his ability to pay but no more than the actual cost of the treatment;
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant shall be released prior to the expiration of the ninety (90) day period; and
 - (d) Failure to complete the education or treatment program or to pay the amount specified by the court for education or treatment shall constitute contempt, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the education or treatment program.
- (2) In addition to any other penalty prescribed by KRS 189A.010(5)(b), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a second offender:
 - (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program;
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the treatment;
 - (c) Upon written report to the court by the administrator of the program that the defendant has completed the program recommended by the administrator based upon the assessment of the defendant, the defendant may be released prior to the expiration of the one (1) year period; and
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending the completion of the treatment program.

- (3) In addition to any other penalty prescribed by KRS 189A.010(5)(c) or (d), the court shall sentence the person to an alcohol or substance abuse treatment program subject to the following terms and conditions for a third or subsequent offender:
- (a) The sentence shall be for a period of one (1) year and the program shall provide an assessment of the defendant's alcohol or other substance abuse problems, which shall be performed at the start of the program. The program may be an inpatient or residential-type program;
 - (b) Each defendant shall pay the cost of the treatment program up to his ability to pay but no more than the actual cost of the program;
 - (c) A defendant, upon written recommendation to the court by the administrator of the program, may be released from the inpatient or residential program prior to the expiration of one (1) year but shall be retained in the program on an outpatient basis for the remainder of the year period; and
 - (d) Failure to complete the treatment program or to pay the amount specified by the court for treatment shall constitute contempt of court, and the court shall, in addition to any other remedy for contempt, reinstitute all penalties which were previously imposed but suspended or delayed pending completion of the treatment program.
- (4) Costs of treatment or education programs which are paid from the service fee established by KRS 189A.050, or from state or federal funds, or any combination thereof, shall be deducted from the amount which the defendant must pay.
- (5) For the purposes of this section, "treatment" means service in an alcohol or substance abuse education or treatment program or facility licensed, regulated, and monitored by the Cabinet for Health and Family Services for services as required under this section.
- (6) The Cabinet for Health and Family Services shall promulgate administrative regulations for the licensure of education and treatment facilities and programs for offenders receiving education or treatment under this section. The criteria developed by the Cabinet for Health and Family Services shall include:
- (a) Manner of assessment;
 - (b) Appropriate education and treatment plans; and
 - (c) Referrals to other treatment providers.
- (7) The participating facilities and programs shall be required to abide by these standards and shall report completion to the Transportation Cabinet. Upon request, the facility or program shall report to the courts regarding the progress of offenders being treated pursuant to this section.
- (8) Administrative decisions regarding the licensure of education and treatment facilities and programs may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B.
- ➔Section 19. KRS 189A.050 is amended to read as follows:
- (1) All persons convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)** shall be sentenced to pay a service fee of three hundred seventy-five dollars (\$375), which shall be in addition to all other penalties authorized by law.
 - (2) The fee shall be imposed in all cases but shall be subject to the provisions of KRS 534.020 relating to the method of imposition and KRS 534.060 as to remedies for nonpayment of the fee.
 - (3) The first fifty dollars (\$50) of each service fee imposed by this section shall be paid into the general fund, and the remainder of the revenue collected from the service fee imposed by this section shall be utilized as follows:
 - (a) Twelve percent (12%) of the amount collected shall be transferred to the Department of Kentucky State Police forensic laboratory for the acquisition, maintenance, testing, and calibration of alcohol concentration testing instruments and the training of laboratory personnel to perform these tasks;
 - (b) Twenty percent (20%) of the service fee collected pursuant to this section shall be allocated to the Department for Public Advocacy;
 - (c) One percent (1%) shall be transferred to the Prosecutor's Advisory Council for training of prosecutors for the prosecution of persons charged with violations of this chapter and for obtaining expert witnesses

in cases involving the prosecution of persons charged with violations of this chapter or any other offense in which driving under the influence is a factor in the commission of the offense charged;

- (d) Sixteen percent (16%) of the amount collected shall be transferred as follows:
 - 1. Fifty percent (50%) shall be credited to the traumatic brain injury trust fund established under KRS 211.476; and
 - 2. Fifty percent (50%) shall be credited to the Cabinet for Health and Family Services, Department for Mental Health and Mental Retardation Services, for the purposes of providing direct services to individuals with brain injuries that may include long-term supportive services and training and consultation to professionals working with individuals with brain injuries. As funding becomes available under this subparagraph, the cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the services permitted by this subparagraph;
 - (e) Any amount specified by a specific statute shall be transferred as provided in that statute;
 - (f) Forty-six percent (46%) of the amount collected shall be transferred to be utilized to fund enforcement of this chapter and for the support of jails, recordkeeping, treatment, and educational programs authorized by this chapter and by the Department for Public Advocacy; and
 - (g) The remainder of the amount collected shall be transferred to the general fund.
- (4) The amounts specified in subsection (3)(a), (b), (c), and (d) of this section shall be placed in trust and agency accounts that shall not lapse.

➔Section 20. KRS 189A.070 is amended to read as follows:

- (1) Unless the person is under eighteen (18) years of age, in addition to the penalties specified in KRS 189A.010, a person convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)** shall have his license to operate a motor vehicle or motorcycle revoked by the court as follows:
 - (a) For the first offense within a five (5) year period, for a period of not less than thirty (30) days nor more than one hundred twenty (120) days;
 - (b) For the second offense within a five (5) year period, for a period of not less than twelve (12) months nor more than eighteen (18) months;
 - (c) For a third offense within a five (5) year period, for a period of not less than twenty-four (24) months nor more than thirty-six (36) months; and
 - (d) For a fourth or subsequent offense within a five (5) year period, sixty (60) months.
 - (e) For purposes of this section, "offense" shall have the same meaning as described in KRS 189A.010(5)(e).
- (2) In determining the five (5) year period under this section, the period shall be measured from the dates on which the offenses occurred for which the judgments of conviction were entered.
- (3) In addition to the period of license revocation set forth in subsection (1) or (7) of this section, no person shall be eligible for reinstatement of his privilege to operate a motor vehicle until he has completed the alcohol or substance abuse education or treatment program ordered pursuant to KRS 189A.040.
- (4) A person under the age of eighteen (18) who is convicted of violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)** shall have his license revoked by the court until he reaches the age of eighteen (18) or shall have his license revoked as provided in subsection (1) or (7) of this section, whichever penalty will result in the longer period of revocation or court-ordered driving conditions.
- (5) Licenses revoked pursuant to this chapter shall forthwith be surrendered to the court upon conviction. The court shall transmit the conviction records, and other appropriate information to the Transportation Cabinet. A court shall not waive or stay this procedure.
- (6) Should a person convicted under this chapter whose license is revoked fail to surrender it to the court upon conviction, the court shall issue an order directing the sheriff or any other peace officer to seize the license forthwith and deliver it to the court.

- (7) A person whose license has been revoked pursuant to subsection (1)(b), (c), or (d) of this section may move the court to reduce the applicable minimum period of revocation by one-half (1/2), but in no case less than twelve (12) months. The court may, upon a written finding in the record for good cause shown, order such a period to be reduced by one-half (1/2), but in no case less than twelve (12) months, if the following conditions are satisfied:
- (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the applicable minimum period of revocation provided for under subsection (1)(b), (c), or (d) of this section nor for more than the respective maximum period of revocation provided for under subsection (1)(b), (c), or (d) of this section.
- (8) Upon a finding of a violation of any of the conditions specified in subsection (7) of this section or of the order permitting any reduction in a minimum period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the minimum period of revocation required under subsection (1)(b), (c), or (d) of this section.

➔Section 21. KRS 189A.085 is amended to read as follows:

- (1) Unless the court orders installation of an ignition interlock device under KRS 189A.340, upon the conviction of a second or subsequent offense of KRS 189A.010, a person shall have the license plate or plates on all of the motor vehicles owned by him or her, either solely or jointly, impounded by the court of competent jurisdiction in accordance with the following procedures:
- (a) At the final sentencing hearing, the person who has been convicted of a second or subsequent offense of KRS 189A.010(1)(a), (b), (c), ~~(c), (d)~~, **or (e)** shall physically surrender any and all license plate or plates currently in force on any motor vehicle owned either individually or jointly by him or her to the court. The order of the court suspending the license plate or plates shall not exceed the time for the suspension of the motor vehicle operator's license of the second or subsequent offender as specified in KRS 189A.070.
 - (b) The clerk of the court shall retain any surrendered plate or plates and transmit all surrendered plate or plates to the Transportation Cabinet in the manner set forth by the Transportation Cabinet in administrative regulations promulgated by the Transportation Cabinet.
- (2) Upon application, the court may grant hardship exceptions to family members or other individuals affected by the surrender of any license plate or plates of any vehicle owned by the second or subsequent offender. Hardship exceptions may be granted by the court to the second or subsequent offender's family members or other affected individuals only if the family members or other affected individuals prove to the court's satisfaction that their inability to utilize the surrendered vehicles would pose an undue hardship upon the family members or affected other individuals. Upon the court's granting of hardship exceptions, the clerk or the Transportation Cabinet as appropriate, shall return to the family members or other affected individuals the license plate or plates of the vehicles of the second or subsequent offender for their utilization. The second or subsequent offender shall not be permitted to operate a vehicle for which the license plate has been suspended or for which a hardship exception has been granted under any circumstances.
- (3) If the license plate of a jointly owned vehicle is impounded, this vehicle may be transferred to a joint owner of the vehicle who was not the violator.
- (4) If the license plate of a motor vehicle is impounded, the vehicle may be transferred.

➔Section 22. KRS 189A.090 is amended to read as follows:

- (1) No person shall operate or be in physical control of a motor vehicle while his license is revoked or suspended under KRS 189A.010(6), 189A.070, 189A.107, 189A.200, or 189A.220, or operate or be in physical control of a motor vehicle without a functioning ignition interlock device in violation of KRS 189A.345(1).
- (2) In addition to any other penalty imposed by the court, any person who violates subsection (1) of this section shall:

- (a) For a first offense within a five (5) year period, be guilty of a Class B misdemeanor and have his license revoked by the court for six (6) months, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class A misdemeanor and have his license revoked by the court for a period of one (1) year;
 - (b) For a second offense within a five (5) year period, be guilty of a Class A misdemeanor and have his license revoked by the court for one (1) year, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of two (2) years;
 - (c) For a third or subsequent offense within a five (5) year period, be guilty of a Class D felony and have his license revoked by the court for two (2) years, unless at the time of the offense the person was also operating or in physical control of a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d)~~, **or (e)**, in which event he shall be guilty of a Class D felony and have his license revoked by the court for a period of five (5) years.
- (3) The five (5) year period under this section shall be measured in the same manner as in KRS 189A.070.
- (4) After one (1) year of the period of revocation provided for in subsection (2)(b) or (c) of this section has elapsed, a person whose license has been revoked pursuant to either of those subsections may move the court to have an ignition interlock device installed for the remaining portion of the period of revocation. The court may, upon a written finding in the record for good cause shown, order an ignition interlock device installed if the following conditions are satisfied:
- (a) The person shall not operate a motor vehicle or motorcycle without an ignition interlock device as provided for in KRS 189A.340(2);
 - (b) The person shall not operate a motor vehicle or motorcycle at any other time and for any other purposes than those specified by the court; and
 - (c) The ignition interlock device shall be installed on the motor vehicle or motorcycle for a period of time not less than the period of revocation required for the person under subsection (2)(b) or (c) of this section.
- (5) Upon a finding of a violation of any of the conditions specified in subsection (4) of this section or of the order permitting the installation of an ignition interlock device in lieu of the remaining period of revocation that is issued pursuant thereto, the court shall dissolve such an order and the person shall receive no credit toward the remaining period of revocation required under subsection (2)(b) or (c) of this section.

➔Section 23. KRS 189A.105 is amended to read as follows:

- (1) A person's refusal to submit to tests under KRS 189A.103 shall result in revocation of his driving privilege as provided in this chapter.
- (2) (a) At the time a breath, blood, or urine test is requested, the person shall be informed:
 - 1. That, if the person refuses to submit to such tests, the fact of this refusal may be used against him in court as evidence of violating KRS 189A.010 and will result in revocation of his driver's license, and if the person refuses to submit to the tests and is subsequently convicted of violating KRS 189A.010(1) then he will be subject to a mandatory minimum jail sentence which is twice as long as the mandatory minimum jail sentence imposed if he submits to the tests, and that if the person refuses to submit to the tests he will be unable to obtain a hardship license; and
 - 2. That, if a test is taken, the results of the test may be used against him in court as evidence of violating KRS 189A.010(1), and that if the results of the test are **0.15**~~0.18~~ or above and the person is subsequently convicted of violating KRS 189A.010(1), then he will be subject to a sentence that is twice as long as the mandatory minimum jail sentence imposed if the results are less than **0.15**~~0.18~~; and

3. That if the person first submits to the requested alcohol and substance tests, the person has the right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested.
- (b) Nothing in this subsection shall be construed to prohibit a judge of a court of competent jurisdiction from issuing a search warrant or other court order requiring a blood or urine test, or a combination thereof, of a defendant charged with a violation of KRS 189A.010, or other statutory violation arising from the incident, when a person is killed or suffers physical injury, as defined in KRS 500.080, as a result of the incident in which the defendant has been charged. However, if the incident involves a motor vehicle accident in which there was a fatality, the investigating peace officer shall seek such a search warrant for blood, breath, or urine testing unless the testing has already been done by consent. If testing done pursuant to a warrant reveals the presence of alcohol or any other substance that impaired the driving ability of a person who is charged with and convicted of an offense arising from the accident, the sentencing court shall require, in addition to any other sentencing provision, that the defendant make restitution to the state for the cost of the testing.
- (3) During the period immediately preceding the administration of any test, the person shall be afforded an opportunity of at least ten (10) minutes but not more than fifteen (15) minutes to attempt to contact and communicate with an attorney and shall be informed of this right. Inability to communicate with an attorney during this period shall not be deemed to relieve the person of his obligation to submit to the tests and the penalties specified by KRS 189A.010 and 189A.107 shall remain applicable to the person upon refusal. Nothing in this section shall be deemed to create a right to have an attorney present during the administration of the tests, but the person's attorney may be present if the attorney can physically appear at the location where the test is to be administered within the time period established in this section.
- (4) Immediately following the administration of the final test requested by the officer, the person shall again be informed of his right to have a test or tests of his blood performed by a person of his choosing described in KRS 189A.103 within a reasonable time of his arrest at the expense of the person arrested. He shall then be asked "Do you want such a test?" The officer shall make reasonable efforts to provide transportation to the tests.

➔Section 24. KRS 189A.240 is amended to read as follows:

In any judicial review of a pretrial suspension imposed under KRS 189A.200(1)(b), if the court determines by a preponderance of the evidence that:

- (1) The person was charged and arrested by a peace officer with a violation of KRS 189A.010(1)(a), (b), (c), ~~(d), or (e)~~ (d), **or (e)**;
- (2) The peace officer had reasonable grounds to believe that the person was operating a motor vehicle in violation of KRS 189A.010(1)(a), (b), (c), ~~(d), or (e)~~ (d), **or (e)**;
- (3) There is probable cause to believe that the person committed the violation of KRS 189A.010(1)(a), (b), (c), ~~(d), or (e)~~ (d), **or (e)** as charged; and
- (4) The person has been convicted of one (1) or more prior offenses as described in KRS 189A.010(5)(e) or has had his motor vehicle operator's license suspended or revoked on one (1) or more occasions for refusing to take an alcohol concentration or substance test, in the five (5) year period immediately preceding his arrest, then the court shall continue to suspend the person's operator's license or privilege to operate a motor vehicle. The provisions of this section shall not be construed as limiting the person's ability to challenge any prior convictions or license suspensions or refusals.

➔Section 25. Whereas synthetic cannabinoid agonists and piperazines are dangerous substances that are currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of these substances immediately in an effort to prevent stockpiling of them by individuals for future use, an emergency is declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 13, 2010.

CHAPTER 150**(HB 159)**

AN ACT relating to behavioral disorders.

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

➔SECTION 1. KRS CHAPTER 319B IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;*
- (2) *"Applied behavior analysis interventions" means interventions that are based on scientific research and the direct observation and measurement of behavior and environment which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and elicit behaviors under specific environmental conditions;*
- (3) *"Board" means the Kentucky Applied Behavior Analysis Licensing Board;*
- (4) *"Certification board" means the Behavior Analyst Certification Board® or its successor;*
- (5) *"Certified" means a practitioner who has met the certification criteria of the certification board;*
- (6) *"Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of Section 8 of this Act;*
- (7) *"Licensed assistant behavior analyst" means an individual who:*
 - (a) *Is licensed by the board as an assistant behavior analyst and meets the requirements of Section 8 of this Act; and*
 - (b) *Works under the supervision of a certified behavior analyst;*
- (8) *"Practice of applied behavior analysis" means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including but not limited to applications of those principles, methods, and procedures to:*
 - (a) *Design, implement, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;*
 - (b) *Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;*
 - (c) *Design, implement, evaluate, and modify treatment programs to change the behavior of groups; and*
 - (d) *Consult with individuals and organizations.*

The practice of applied behavior analysis shall not include diagnosis, counseling, psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy as treatment modalities;
- (9) *"Supervised experience" means services rendered as a part of the certification requirements of a behavior analyst or assistant behavior analyst under the supervision of a licensed behavior analyst;*
- (10) *"Supervisee" means a person who is not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and*
- (11) *"Temporary licensee" means a person who is obtaining supervised experience and has obtained a temporary license.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

(1) *No person shall:*

- (a) *Engage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render services designated as applied behavior analysis, or hold himself or herself out as a practitioner of applied behavior analysis in this state, unless licensed under the provisions of this chapter; or*
- (b) *Use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or any title which is substantially the same unless licensed by the board.*

Any person who violates this subsection shall be subject to the penalties contained in Section 15 of this Act.

(2) *The provisions of this chapter shall not apply to any person who is:*

- (a) *Providing applied behavior analysis services to an individual in a public school setting;*
- (b) *Implementing applied behavior analysis intervention services to an immediate family member or as a supervisee;*
- (c) *Licensed, certified, or registered as a health or allied health professional under any other provisions of the Kentucky Revised Statutes, including but not limited to physicians, psychologists, social workers, nurses, counselors, therapists, including occupational therapists, physical therapists and speech therapists, or students within accredited training programs of these professions. Nothing in this chapter shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which the health or allied health professional listed in this subsection hold themselves out to the public; or*
- (d) *Providing applicable Medicaid waiver services.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

(1) (a) *There is hereby created the Kentucky Applied Behavior Analysis Licensing Board. The board shall consist of seven (7) members appointed by the Governor.*

(b) *The initial board members shall be appointed as follows:*

- 1. *Four (4) members shall be credentialed behavior analysts nominated by a credentialed behavior analyst practicing in the state;*
- 2. *One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not limited to autism spectrum disorders. The psychologist member shall be nominated by a credentialed behavior analyst practicing in the state; and*
- 3. *Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.*

(c) *Subsequent board members shall be appointed by the Governor as follows:*

- 1. *Four (4) members shall be licensed behavior analysts nominated by a licensed behavior analyst practicing in the state;*
- 2. *One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not limited to autism spectrum disorders. The psychologist member shall be nominated by a licensed behavior analyst practicing in the state; and*
- 3. *Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.*

(2) *The terms of the board members shall be as follows:*

- (a) *The initial board members shall be appointed as determined by the Governor for the following terms:*
 - 1. *Two (2) behavior analysts shall serve for one (1) year;*

2. *Two (2) behavior analysts shall serve for three (3) years;*
3. *A psychologist shall serve for two (2) years;*
4. *One (1) parent shall serve for one (1) year; and*
5. *One (1) parent shall serve for two (2) years;*
- (b) *The terms of subsequent board members shall be for three (3) years; and*
- (c) *A vacancy of any board member shall be filled in the manner of the original appointment for the unexpired portion of the term only or as provided by KRS 12.070. The Governor, after notice and opportunity for a hearing, may remove any member of the board for malfeasance, neglect of duty, incompetency, or revocation or suspension of a license.*
- (3) *Members of the board shall not receive a salary but shall be allowed the usual mileage, subsistence, and per diem as provided for members of state boards, commissions, and committees. No member shall serve more than two (2) consecutive terms.*
- (4) *The board may request the removal of a board member by the Governor.*
- (5) *The board shall annually elect a chair, vice chair, and secretary.*
- (6) *There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall meet at least twice annually and may meet at such other times as necessary to complete the business required. A majority of the members of the board shall constitute a quorum for the transaction of business.*
- (2) *The board may employ an executive secretary and such clerical or other assistants as are necessary for the performance of its work and may make expenditures of its funds for any purpose which in the opinion of the board is necessary for proper performance of its duties, including compensation of the executive secretary and the premium on his or her bond.*
- (3) *The executive secretary or any other person so designated by the board shall give bond to the state in such sum as determined by the board, to be approved by the State Treasurer for the faithful performance of his or her duties. The executive secretary shall receive and account for all moneys derived under this chapter and shall pay such moneys to the State Treasurer who shall maintain them in the manner provided for other such agencies and boards of the Commonwealth.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *It shall be the duty of the board to establish requirements for licensure to practice applied behavior analysis in the state in accordance with Section 6 of this Act, to receive applications for licensure from persons desiring to become a behavior analyst, an assistant behavior analyst, or a temporary licensee from persons seeking to obtain supervised experience in the state, and to determine whether those applicants meet the qualifications and standards required by this chapter of all behavior analysts, assistant behavior analysts, or temporary licensees.*
- (2) *The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter brought to the board's notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.*
- (3) *All meetings shall be held at the call of the chair or at a call of a majority of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.*

- (4) *The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.*
- (5) *The board shall keep a minute book containing a record of all meetings of the board.*
- (6) *The board shall maintain a register of all persons licensed under this chapter. This register shall show the name of every licensee in this state, his or her current business and residence address and telephone numbers, and the date and number of his or her license. A licensee shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.*
- (7) *The board's records shall be updated annually.*
- (8) *The board shall publish annually and make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts, and temporary licensees obtaining supervised experience.*
- (9) *The board shall adopt a seal which shall be affixed to every license and certificate granted by it.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board shall have the right to regulate the practice of applied behavior analysis in the state including behavior analysts, assistant behavior analysts, and temporary licensees, including licensure, limitations of activities, supervision, and educational qualifications and continuing education requirements for behavior analysts, assistant behavior analysts, temporary licensees and supervisees. The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the licensure and regulation of behavior analysts, assistant behavior analysts, and temporary licensees including:*
 - (a) *Establishing standards for licensure, temporary licensure, limitations of activities, supervision, and compliance with the educational qualifications as required by Section 8 of this Act for behavior analysts, assistant behavior analysts, and temporary licensees;*
 - (b) *Establishing the number of persons a licensed behavior analyst may supervise at one (1) time, including temporary licensees and supervisees;*
 - (c) *Adopting a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees;*
 - (d) *Establishing a measure of continued competency as a condition of license renewal and standards for suspension, revocation, or refusal to issue or renew a license of a behavior analyst, assistant behavior analyst, or temporary licensee;*
 - (e) *Governing the physical and mental examination of behavior analysts, assistant behavior analysts, and temporary licensees who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a behavior analyst, assistant behavior analyst, temporary licensee, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently; and*
 - (f) *Establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board may deny an application or reregistration for a license, place a licensee on probation for a period not to exceed five (5) years, suspend a license for a period not to exceed five (5) years, limit or restrict a license for an indefinite period, or revoke any license issued by the board, upon proof that the licensee has:

- (1) *Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;*
- (2) *Practiced, or aided or abetted in the practice of, fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;*
- (3) *Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky or of the United States, or of any crime involving moral turpitude which is a misdemeanor under the laws of this or another state;*
- (4) *Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, or KRS 530.064(1)(a) or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the licensee;*
- (5) *Become addicted to a controlled substance;*
- (6) *Become a chronic or persistent alcoholic;*
- (7) *Been unable or is unable to practice applied behavior analysis according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition, including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of applied behavior analysis;*
- (8) *Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof; or*
- (9) *Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *A person applying for a license as a licensed behavior analyst shall apply to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence to the board that such person:*
 - (a) *Has met the education requirements of the Board Certified Behavior Analyst (BCBA)® standards, has passed the Board Certified Behavior Analyst (BCBA)® examination, and is credentialed as a behavior analyst by the certification board;*
 - (b) *Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Behavior Analyst (BCBA)®;*
 - (c) *Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with subsection (1) of Section 5 of this Act; and*
 - (d) *Complies with all applicable administrative regulations promulgated by the board.*
- (2) *A person applying for a license as a licensed assistant behavior analyst shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that such person:*
 - (a) *Has met the education requirements of the Board Certified Assistant Behavior Analyst (BCaBA)® standards, has passed the BCaBA® examination, and is credentialed as an assistant behavior analyst by the certification board;*
 - (b) *Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Assistant Behavior Analyst®;*
 - (c) *Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with subsection (1) of Section 5 of this Act;*
 - (d) *Complies with all applicable administrative regulations promulgated by the board; and*

- (e) *Is supervised by a certified behavior analyst in a manner consistent with the certification board requirements for supervision of Board Certified Assistant Behavior Analysts®.*
- (3) *A person applying for a temporary license to complete his or her experience requirement shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that he or she:*
 - (a) *Has met the coursework requirements for a Board Certified Behavior Analyst® or Board Certified Assistant Behavior Analyst® and will begin accumulating experience as required by the certification board; and*
 - (b) *Will comply with the provisions of this chapter and the requirements of the certification board during the period of temporary licensure.*
- (4) *If the certification board ceases certification of practitioners of applied behavior analysis, the board shall:*
 - (a) *Approve a successor entity to the certification board; or*
 - (b) *Establish a certification process by administrative regulation and approve an examination for behavior analysts and assistant behavior analysts and establish standards for acceptable performance.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

The board shall issue a license to a person who holds a valid license or certificate from another state, who meets the requirements specified in Section 8 of this Act, any licensing requirements contained in administrative regulation promulgated by the board, and who has no imposed or pending disciplinary actions.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

Any licensee or employer of a licensee having actual or direct knowledge of facts shall report to the board a behavior analyst or assistant behavior analyst who:

- (1) *Has been convicted of a felony that involved any act that bears directly on the qualifications or ability of the applicant or licensee to practice behavior analysis;*
- (2) *Is suspected of fraud or deceit in procuring or attempting to procure a license to practice behavior analysis or of negligently performing actions that justify action against a behavior analyst's or assistant behavior analyst's license as identified in subsection (2) of Section 11 of this Act;*
- (3) *Has had a license to practice as a behavior analyst or assistant behavior analyst denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or*
- (4) *Is practicing behavior analysis without a current active license issued by the board.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B, may take any one (1) or a combination of the following actions against any applied behavior analyst or applied assistant behavior analyst licensee or applicant:*
 - (a) *Refuse to license or certify any applicant;*
 - (b) *Refuse to renew the license or certificate of any person;*
 - (c) *Suspend or revoke or place on probation the license or certificate of any person;*
 - (d) *Impose restrictions on the scope of practice of any person;*
 - (e) *Issue an administrative reprimand to any person;*
 - (f) *Issue a private admonishment to any person; and*
 - (g) *Impose fines for violations of this chapter, not to exceed two thousand five hundred dollars (\$2,500).*
- (2) *The following acts by a licensee may be considered cause for disciplinary action:*
 - (a) *Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances that impairs the licensee's ability to practice applied behavior analysis;*

- (b) *Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself or herself or by persons working under his or her supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;*
 - (c) *Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person while that person is a patient or client of the behavior analyst or assistant behavior analyst;*
 - (d) *Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee;*
 - (e) *Sexually harassing an employee or coworker of the licensee;*
 - (f) *Conviction of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his or her ability to continue to practice competently and safely on the public. "Conviction," as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;*
 - (g) *Obtaining or attempting to obtain a license by fraud or material misrepresentation or making any other false statement to the board;*
 - (h) *Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or in advertising services in a false or misleading manner;*
 - (i) *Evidence of gross negligence or gross incompetence in his or her practice of behavior analysis;*
 - (j) *Documentation of being declared mentally disabled by a court of competent jurisdiction and not thereafter having had his or her rights restored;*
 - (k) *Failing or refusing to obey any lawful order or administrative regulation of the board;*
 - (l) *Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he or she has a financial interest; and*
 - (m) *Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.*
- (3) *A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(l). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee or applicant.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *The board may, within three (3) years, reinstate a license which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee to be established by the board by administrative regulation.*
- (2) *The board may reinstate a license which has been lapsed for more than three (3) years, upon showing that the applicant is certified and upon payment of a reinstatement fee.*
- (3) *The board may reinstate a license which has been suspended or revoked under Section 11 of this Act if, after a hearing conducted in accordance with KRS Chapter 13B, the board determines that the applicant is able to practice his or her profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee shall practice.*
- (4) *Any person aggrieved by a final order of the board denying, suspending, or revoking his or her license may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *All fees received by the board and collected under Sections 6 and 9 of this Act, the administrative regulations promulgated in accordance with Section 8 of this Act, and all penalties assessed in accordance with Section 11 or 15 of this Act shall be deposited in the State Treasury and credited to a trust and agency fund to be used by the board in defraying the costs and expenses of the board's administration of this*

chapter. Notwithstanding KRS 45.229, no part of this fund shall revert to the general fund of the Commonwealth.

- (2) *The board may employ personnel and may purchase such materials and supplies as it may deem necessary for the proper discharge of its duties.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

- (1) *A treating behavior analyst or assistant behavior analyst who provides or facilitates the use of telehealth, shall ensure:*
- (a) *That the informed consent of the patient, or another appropriate person with authority to make the health-care treatment decision for the patient, is obtained before services are provided through telehealth; and*
 - (b) *That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.*
- (2) *The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:*
- (a) *Prevent abuse and fraud through the use of telehealth services;*
 - (b) *Prevent fee-splitting through the use of telehealth services; and*
 - (c) *Utilize telehealth in the provision of applied behavior analysis and in the provision of continuing education.*
- (3) *For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.*

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 319B IS CREATED TO READ AS FOLLOWS:

Any person who violates subsection (1) of Section 2 of this Act shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

➔SECTION 16. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

As used in this section and Sections 17 and 18 of this Act, unless the context requires otherwise:

- (1) *"Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;*
- (2) *"Autism services provider" means any licensed person, entity, or group that provides treatment of autism spectrum disorders;*
- (3) *"Autism spectrum disorders" means a physical, mental, or cognitive illness or disorder which includes any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM") published by the American Psychiatric Association, including Autistic Disorder, Asperger's Disorder, and Pervasive Developmental Disorder Not Otherwise Specified;*
- (4) *"Diagnosis of autism spectrum disorders" means medically necessary assessments, evaluations, or tests to diagnose whether an individual has any of the autism spectrum disorders, including testing tools which shall be appropriate to the presenting characteristics and age of the individual and be empirically validated for autism spectrum disorders to provide evidence that meets the criteria for autism spectrum disorder in the most recent diagnostic and statistical Manual of Mental Disorders published by the American Psychiatric Association;*
- (5) *"Habilitative or rehabilitative care" means professional counseling and guidance services, therapy, and treatment programs, including applied behavior analysis, that are necessary to develop, maintain, and restore, to the maximum extent practicable, the functioning of an individual;*

- (6) *"Medical care" means services provided by a licensed physician, an advanced registered nurse practitioner, or other licensed health care provider;*
- (7) *"Pharmacy care" means medically necessary medications prescribed by a licensed physician or other health-care practitioner with prescribing authority, if covered by the plan, and any medically necessary health-related services to determine the need or effectiveness of the medications;*
- (8) *"Psychiatric care" means direct or consultative services provided by a psychiatrist licensed in the state in which the psychiatrist practices;*
- (9) *"Psychological care" means direct or consultative services provided by an individual licensed by the Kentucky Board of Examiners of Psychology or by the appropriate licensing agency in the state in which the individual practices;*
- (10) *"Therapeutic care" means services provided by licensed speech therapists, occupational therapists, or physical therapists; and*
- (11) *"Treatment for autism spectrum disorders" includes the following care for an individual diagnosed with any of the autism spectrum disorders:*
 - (a) *Medical care;*
 - (b) *Habilitative or rehabilitative care;*
 - (c) *Pharmacy care, if covered by the plan;*
 - (d) *Psychiatric care;*
 - (e) *Psychological care;*
 - (f) *Therapeutic care; and*
 - (g) *Applied behavior analysis prescribed or ordered by a licensed health or allied health professional.*

➔SECTION 17. A NEW SECTION OF SUBTITLE 17A OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A large group health benefit plan shall provide coverage of an individual between the ages of one (1) through twenty-one (21) years of age, as required by subsection (2) of this section, for the diagnosis and treatment of autism spectrum disorders. To the extent that the diagnosis and treatment of autism spectrum disorders are not already covered by a health insurance policy, coverage under this section shall be included in health benefit plans that are delivered, executed, issued, amended, adjusted, or renewed within the state on or after thirty (30) days after the effective date of this Act. An insurer shall not terminate coverage, or refuse to deliver, execute, issue, amend, adjust, or renew coverage, to an individual solely because the individual is diagnosed with or has received treatment for any of the autism spectrum disorders.*
- (2) *Coverage under this section shall be subject to a maximum annual benefit per covered individual as follows:*
 - (a) *For individuals between the ages of one (1) through their seventh birthday, the maximum annual benefit shall be fifty thousand dollars (\$50,000) per individual;*
 - (b) *For individuals between the ages of seven (7) through twenty-one (21), the maximum benefit shall be one thousand dollars (\$1,000), per month per individual; and*
 - (c) *These limits shall not apply to other health conditions of the individual and services for the individual not related to the treatment of an autism spectrum disorder.*
- (3) *Coverage under this section shall not be subject to any limits on the number of visits an individual may make to an autism services provider.*
- (4) *Coverage under this section may be subject to copayment, deductible, and coinsurance provisions of a health benefit plan that are no less favorable than those that apply to other medical services covered by the health benefit plan.*
- (5) *This section shall not be construed as limiting benefits that are otherwise available to an individual under a health benefit plan.*

- (6) *Except for inpatient services, if an individual is receiving treatment for autism spectrum disorders:*
- (a) *An insurer shall have the right to request a utilization review of that treatment not more than once every twelve (12) months, unless the insurer and the individual's licensed physician, licensed psychologist, or licensed psychological practitioner agree that a more frequent review is necessary. The cost of obtaining any review shall be borne by the insurer;*
 - (b) *Upon request of the reimbursing insurer, an autism services provider shall furnish medical records, clinical notes, or other necessary data that substantiate that initial or continued treatment or services that are medically necessary and are resulting in improved clinical status;*
 - (c) *When treatment is anticipated to require continued services to achieve demonstrable progress, the insurer may request a treatment plan consisting of diagnosis, proposed treatment by type, frequency, anticipated duration of treatment, anticipated outcomes stated as goals, and the frequency by which the treatment plan will be updated; and*
 - (d) *The treatment plan shall contain specific cognitive, social, communicative, self-care, or behavioral goals that are clearly defined, directly observed, and continually measured and that address the characteristics of the autism spectrum disorder.*
- (7) *This section shall not be construed as requiring coverage for treatment of autism spectrum disorders for individuals covered under an individual or small group health benefit plan, except as provided by Section 18 of this Act.*
- (8) *Nothing in this section and Sections 16 and 18 of this Act shall be construed as limiting, replacing, or otherwise affecting any obligation to provide services to an individual under an individualized service plan or other publicly funded program. Nothing in this Act shall be construed as requiring a health benefit plan to provide benefits for services that are included in an individualized family service plan, an individualized education program, an individualized service plan, or other publicly funded programs. The coverage mandated in this Act shall be in addition to any services which an individual is entitled to receive under any such publicly funded programs.*
- (9) *No reimbursement is required under this section for services, supplies, or equipment:*
- (a) *For which the insured has no legal obligation to pay in the absence of this or like coverage;*
 - (b) *Provided to the insured by a publicly funded program;*
 - (c) *Performed by a relative of an insured for which, in the absence of any health benefits coverage, no charge would be made; and*
 - (d) *For services provided by persons who are not licensed as required by law.*

➔Section 18. KRS 304.17A-143 is amended to read as follows:

- (1) All health benefit plans *in the individual and small group market* shall provide coverage, including *pharmacy care, if covered by the plan, psychiatric care, psychological care, therapeutic care, [respite], applied behavior analysis, as defined in subsection (1) of Section 16 of this Act, habilitative and rehabilitative care,* for the treatment of autism *spectrum disorders, as defined in subsection (3) of Section 16 of this Act, of an individual[~~a child~~]* covered under the policy.
- (2) Coverage for autism *spectrum disorders* shall be subject to a *one thousand dollar (\$1,000)[~~five hundred dollar (\$500)~~]* maximum benefit per month, per covered *individual[~~child~~]*. This limit shall not apply to other health conditions of the *individual[~~child~~]* and services for the *individual[~~child~~]* not related to the treatment of *an autism spectrum disorder*.
- (3) As used in this section, "autism *spectrum disorder*" means *a physical, mental, or cognitive illness or disorder which includes any of the pervasive developmental disorders as defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders ("DSM"), published by the American Psychiatric Association, including Autistic disorder, Asperger's disorder, and Pervasive Developmental disorder Not Otherwise Specified[~~;~~]*
 - ~~(a) A total of six (6) or more items from subparagraphs 1., 2., and 3. of this paragraph, with at least two (2) from subparagraph 1. and one (1) each from subparagraphs 2. and 3.:~~
 - ~~1. Qualitative impairment in social interaction, as manifested by at least two (2) of the following:~~

- a. ~~Marked impairment in the use of multiple nonverbal behaviors such as eye to eye gaze, facial expression, body postures, and gestures to regulate social interaction;~~
- b. ~~Failure to develop peer relationships appropriate to developmental level;~~
- c. ~~A lack of spontaneous seeking to share enjoyment, interests, or achievement with other people; or~~
- d. ~~Lack of social or emotional reciprocity.~~
- 2. ~~Qualitative impairments in communication as manifested by at least one (1) of the following:~~
 - a. ~~Delay in, or total lack of, the development of spoken language;~~
 - b. ~~In individuals with adequate speech, marked impairment in the ability to imitate or sustain a conversation with others;~~
 - c. ~~Stereotyped and repetitive use of language or idiosyncratic language; or~~
 - d. ~~Lack of varied, spontaneous make believe play or social imitative play appropriate to developmental levels.~~
- 3. ~~Restricted repetitive and stereotyped patterns of behavior, interests, and activities, as manifested by at least one (1) of the following:~~
 - a. ~~Encompassing preoccupation with one (1) or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus;~~
 - b. ~~Apparently inflexible adherence to specific, nonfunctional routines or rituals;~~
 - c. ~~Stereotyped and repetitive motor mannerisms; or~~
 - d. ~~Persistent preoccupation with parts of objects;~~
- (b) ~~Delays or abnormal functioning in at least one (1) of the following areas, with onset prior to age three (3) years:~~
 - 1. ~~Social interaction;~~
 - 2. ~~Language as used in social communication; or~~
 - 3. ~~Symbolic or imaginative play; and~~
- (c) ~~The disturbance is not better accounted for by Rett's Disorders or Childhood Disintegrative Disorder}.~~
- (4) As used in this section, "*individual[child]*" means a person *one (1)* ~~two (2)~~ through twenty-one (21) years of age.

➔ Section 19. KRS 18A.225 is amended to read as follows:

- (1) (a) The term "employee" for purposes of this section means:
 - 1. Any person, including an elected public official, who is regularly employed by any department, office, board, agency, or branch of state government; or by a public postsecondary educational institution; or by any city, urban-county, charter county, county, or consolidated local government, whose legislative body has opted to participate in the state-sponsored health insurance program pursuant to KRS 79.080; and who is either a contributing member to any one (1) of the retirement systems administered by the state, including but not limited to the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan, or the Judicial Retirement Plan; or is receiving a contractual contribution from the state toward a retirement plan; or, in the case of a public postsecondary education institution, is an individual participating in an optional retirement plan authorized by KRS 161.567;
 - 2. Any certified or classified employee of a local board of education;
 - 3. Any elected member of a local board of education;
 - 4. Any person who is a present or future recipient of a retirement allowance from the Kentucky Retirement Systems, Kentucky Teachers' Retirement System, the Legislators' Retirement Plan,

the Judicial Retirement Plan, or the Kentucky Community and Technical College System's optional retirement plan authorized by KRS 161.567, except that a person who is receiving a retirement allowance and who is age sixty-five (65) or older shall not be included, with the exception of persons covered under KRS 61.702(4)(c), unless he or she is actively employed pursuant to subparagraph 1. of this paragraph; and

5. Any eligible dependents and beneficiaries of participating employees and retirees who are entitled to participate in the state-sponsored health insurance program;
 - (b) The term "health benefit plan" for the purposes of this section means a health benefit plan as defined in KRS 304.17A-005;
 - (c) The term "insurer" for the purposes of this section means an insurer as defined in KRS 304.17A-005; and
 - (d) The term "managed care plan" for the purposes of this section means a managed care plan as defined in KRS 304.17A-500.
- (2) (a) The secretary of the Finance and Administration Cabinet, upon the recommendation of the secretary of the Personnel Cabinet, shall procure, in compliance with the provisions of KRS 45A.080, 45A.085, and 45A.090, from one (1) or more insurers authorized to do business in this state, a group health benefit plan that may include but not be limited to health maintenance organization (HMO), preferred provider organization (PPO), point of service (POS), and exclusive provider organization (EPO) benefit plans encompassing all or any class or classes of employees. With the exception of employers governed by the provisions of KRS Chapters 16, 18A, and 151B, all employers of any class of employees or former employees shall enter into a contract with the Personnel Cabinet prior to including that group in the state health insurance group. The contracts shall include but not be limited to designating the entity responsible for filing any federal forms, adoption of policies required for proper plan administration, acceptance of the contractual provisions with health insurance carriers or third-party administrators, and adoption of the payment and reimbursement methods necessary for efficient administration of the health insurance program. Health insurance coverage provided to state employees under this section shall, at a minimum, contain the same benefits as provided under Kentucky Kare Standard as of January 1, 1994, and shall include a mail-order drug option as provided in subsection (13) of this section. All employees and other persons for whom the health care coverage is provided or made available shall annually be given an option to elect health care coverage through a self-funded plan offered by the Commonwealth or, if a self-funded plan is not available, from a list of coverage options determined by the competitive bid process under the provisions of KRS 45A.080, 45A.085, and 45A.090 and made available during annual open enrollment.
- (b) The policy or policies shall be approved by the executive director of insurance and may contain the provisions he approves, whether or not otherwise permitted by the insurance laws.
 - (c) Any carrier bidding to offer health care coverage to employees shall agree to provide coverage to all members of the state group, including active employees and retirees and their eligible covered dependents and beneficiaries, within the county or counties specified in its bid. Except as provided in subsection ~~(19)~~~~(18)~~ of this section, any carrier bidding to offer health care coverage to employees shall also agree to rate all employees as a single entity, except for those retirees whose former employers insure their active employees outside the state-sponsored health insurance program.
 - (d) Any carrier bidding to offer health care coverage to employees shall agree to provide enrollment, claims, and utilization data to the Commonwealth in a format specified by the Personnel Cabinet with the understanding that the data shall be owned by the Commonwealth; to provide data in an electronic form and within a time frame specified by the Personnel Cabinet; and to be subject to penalties for noncompliance with data reporting requirements as specified by the Personnel Cabinet. The Personnel Cabinet shall take strict precautions to protect the confidentiality of each individual employee; however, confidentiality assertions shall not relieve a carrier from the requirement of providing stipulated data to the Commonwealth.
 - (e) The Personnel Cabinet shall develop the necessary techniques and capabilities for timely analysis of data received from carriers and, to the extent possible, provide in the request-for-proposal specifics relating to data requirements, electronic reporting, and penalties for noncompliance. The Commonwealth shall own the enrollment, claims, and utilization data provided by each carrier and shall

develop methods to protect the confidentiality of the individual. The Personnel Cabinet shall include in the October annual report submitted pursuant to the provisions of KRS 18A.226 to the Governor, the General Assembly, and the Chief Justice of the Supreme Court, an analysis of the financial stability of the program, which shall include but not be limited to loss ratios, methods of risk adjustment, measurements of carrier quality of service, prescription coverage and cost management, and statutorily required mandates. If state self-insurance was available as a carrier option, the report also shall provide a detailed financial analysis of the self-insurance fund including but not limited to loss ratios, reserves, and reinsurance agreements.

- (f) If any agency participating in the state-sponsored employee health insurance program for its active employees terminates participation and there is a state appropriation for the employer's contribution for active employees' health insurance coverage, then neither the agency nor the employees shall receive the state-funded contribution after termination from the state-sponsored employee health insurance program.
 - (g) Any funds in flexible spending accounts that remain after all reimbursements have been processed shall be transferred to the credit of the state-sponsored health insurance plan's appropriation account.
 - (h) Each entity participating in the state-sponsored health insurance program shall provide an amount at least equal to the state contribution rate for the employer portion of the health insurance premium. For any participating entity that used the state payroll system, the employer contribution amount shall be equal to but not greater than the state contribution rate.
- (3) The premiums may be paid by the policyholder:
- (a) Wholly from funds contributed by the employee, by payroll deduction or otherwise;
 - (b) Wholly from funds contributed by any department, board, agency, public postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government; or
 - (c) Partly from each, except that any premium due for health care coverage or dental coverage, if any, in excess of the premium amount contributed by any department, board, agency, postsecondary education institution, or branch of state, city, urban-county, charter county, county, or consolidated local government for any other health care coverage shall be paid by the employee.
- (4) If an employee moves his place of residence or employment out of the service area of an insurer offering a managed health care plan, under which he has elected coverage, into either the service area of another managed health care plan or into an area of the Commonwealth not within a managed health care plan service area, the employee shall be given an option, at the time of the move or transfer, to change his or her coverage to another health benefit plan.
- (5) No payment of premium by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall constitute compensation to an insured employee for the purposes of any statute fixing or limiting the compensation of such an employee. Any premium or other expense incurred by any department, board, agency, public postsecondary educational institution, or branch of state, city, urban-county, charter county, county, or consolidated local government shall be considered a proper cost of administration.
- (6) The policy or policies may contain the provisions with respect to the class or classes of employees covered, amounts of insurance or coverage for designated classes or groups of employees, policy options, terms of eligibility, and continuation of insurance or coverage after retirement.
- (7) Group rates under this section shall be made available to the disabled child of an employee regardless of the child's age if the entire premium for the disabled child's coverage is paid by the state employee. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.
- (8) The health care contract or contracts for employees shall be entered into for a period of not less than one (1) year.
- (9) The secretary shall appoint thirty-two (32) persons to an Advisory Committee of State Health Insurance Subscribers to advise the secretary or his designee regarding the state-sponsored health insurance program for employees. The secretary shall appoint, from a list of names submitted by appointing authorities, members

representing school districts from each of the seven (7) Supreme Court districts, members representing state government from each of the seven (7) Supreme Court districts, two (2) members representing retirees under age sixty-five (65), one (1) member representing local health departments, two (2) members representing the Kentucky Teachers' Retirement System, and three (3) members at large. The secretary shall also appoint two (2) members from a list of five (5) names submitted by the Kentucky Education Association, two (2) members from a list of five (5) names submitted by the largest state employee organization of nonschool state employees, two (2) members from a list of five (5) names submitted by the Kentucky Association of Counties, two (2) members from a list of five (5) names submitted by the Kentucky League of Cities, and two (2) members from a list of names consisting of five (5) names submitted by each state employee organization that has two thousand (2,000) or more members on state payroll deduction. The advisory committee shall be appointed in January of each year and shall meet quarterly.

- (10) Notwithstanding any other provision of law to the contrary, the policy or policies provided to employees pursuant to this section shall not provide coverage for obtaining or performing an abortion, nor shall any state funds be used for the purpose of obtaining or performing an abortion on behalf of employees or their dependents.
- (11) Interruption of an established treatment regime with maintenance drugs shall be grounds for an insured to appeal a formulary change through the established appeal procedures approved by the Office of Insurance, if the physician supervising the treatment certifies that the change is not in the best interests of the patient.
- (12) Any employee who is eligible for and elects to participate in the state health insurance program as a retiree, or the spouse or beneficiary of a retiree, under any one (1) of the state-sponsored retirement systems shall not be eligible to receive the state health insurance contribution toward health care coverage as a result of any other employment for which there is a public employer contribution. This does not preclude a retiree and an active employee spouse from using both contributions to the extent needed for purchase of one (1) state sponsored health insurance policy for that plan year.
- (13) (a) The policies of health insurance coverage procured under subsection (2) of this section shall include a mail-order drug option for maintenance drugs for state employees. Maintenance drugs may be dispensed by mail order in accordance with Kentucky law.
- (b) A health insurer shall not discriminate against any retail pharmacy located within the geographic coverage area of the health benefit plan and that meets the terms and conditions for participation established by the insurer, including price, dispensing fee, and copay requirements of a mail-order option. The retail pharmacy shall not be required to dispense by mail.
- (c) The mail-order option shall not permit the dispensing of a controlled substance classified in Schedule II.
- (14) The policy or policies provided to state employees or their dependents pursuant to this section shall provide coverage for obtaining a hearing aid and acquiring hearing aid-related services for insured individuals under eighteen (18) years of age, subject to a cap of one thousand four hundred dollars (\$1,400) every thirty-six (36) months pursuant to KRS 304.17A-132.
- (15) ***Any policy provided to state employees or their dependents pursuant to this section shall provide coverage for the diagnosis and treatment of autism spectrum disorders consistent with Section 17 of this Act.***
- (16) If a state employee's residence and place of employment are in the same county, and if the hospital located within that county does not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a contiguous county that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- ~~(17)(16)~~ If a state employee's residence and place of employment are each located in counties in which the hospitals do not offer surgical services, intensive care services, obstetrical services, level II neonatal services, diagnostic cardiac catheterization services, and magnetic resonance imaging services, the employee may select a plan available in a county contiguous to the county of residence that does provide those services, and the state contribution for the plan shall be the amount available in the county where the plan selected is located.
- ~~(18)(17)~~ The Personnel Cabinet is encouraged to study whether it is fair and reasonable and in the best interests of the state group to allow any carrier bidding to offer health care coverage under this section to submit bids that may vary county by county or by larger geographic areas.

~~(19)~~~~(18)~~ Notwithstanding any other provision of this section, the bid for proposals for health insurance coverage for calendar year 2004 shall include a bid scenario that reflects the statewide rating structure provided in calendar year 2003 and a bid scenario that allows for a regional rating structure that allows carriers to submit bids that may vary by region for a given product offering as described in this subsection:

- (a) The regional rating bid scenario shall not include a request for bid on a statewide option;
- (b) The Personnel Cabinet shall divide the state into geographical regions which shall be the same as the partnership regions designated by the Department for Medicaid Services for purposes of the Kentucky Health Care Partnership Program established pursuant to 907 KAR 1:705;
- (c) The request for proposal shall require a carrier's bid to include every county within the region or regions for which the bid is submitted and include but not be restricted to a preferred provider organization (PPO) option;
- (d) If the Personnel Cabinet accepts a carrier's bid, the cabinet shall award the carrier all of the counties included in its bid within the region. If the Personnel Cabinet deems the bids submitted in accordance with this subsection to be in the best interests of state employees in a region, the cabinet may award the contract for that region to no more than two (2) carriers; and
- (e) Nothing in this subsection shall prohibit the Personnel Cabinet from including other requirements or criteria in the request for proposal.

~~(20)~~~~(19)~~ Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section which provides coverage for services rendered by a physician or osteopath duly licensed under KRS Chapter 311 that are within the scope of practice of an optometrist duly licensed under the provisions of KRS Chapter 320 shall provide the same payment of coverage to optometrists as allowed for those services rendered by physicians or osteopaths.

~~(21)~~~~(20)~~ Any fully insured health benefit plan or self-insured plan issued or renewed on or after July 12, 2006, to public employees pursuant to this section shall comply with the provisions of KRS 304.17A-270 and 304.17A-525.

~~(22)~~~~(21)~~ Any full insured health benefit plan or self insured plan issued or renewed on or after July 12, 2006, to public employees shall comply with KRS 304.17A-600 to 304.17A-633 pertaining to utilization review, KRS 205.593 and 304.17A-700 to 304.17A-730 pertaining to payment of claims, KRS 304.14-135 pertaining to uniform health insurance claim forms, KRS 304.17A-580 and 304.17A-641 pertaining to emergency medical care, KRS 304.99-123, and any administrative regulations promulgated thereunder.

➔Section 20. Sections 16 to 19 of this Act take effect January 1, 2011.

Signed by Governor April 13, 2010.

CHAPTER 151

(SB 151)

AN ACT relating to business entities.

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

➔SECTION 1. KRS CHAPTER 14A IS ESTABLISHED, SUBCHAPTER 1 OF KRS CHAPTER 14A IS ESTABLISHED, AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

This chapter shall be known and may be cited as the Kentucky Business Entity Filing Act.

➔SECTION 2. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

Each entity and each foreign entity is subject to the provisions of this chapter.

➔SECTION 3. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

The Secretary of State shall have the power reasonably necessary to perform the duties required by this chapter.

➔SECTION 4. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may propound to any entity or foreign entity that the Secretary of State has reason to believe is subject of the provisions of this chapter, and to any authorized representative thereof including a registered agent, such written interrogatories as may be necessary and proper to enable the Secretary of State to ascertain whether the entity or foreign entity is subject to the provisions of this chapter applicable to it and is in compliance therewith. The interrogatories shall be answered within thirty (30) days after the mailing thereof, or within such additional time as may be fixed by the Secretary of State, and the answers thereto shall be full and complete and shall be made in writing and under oath. Interrogatories directed to an individual shall be answered by the individual. Interrogatories directed to an entity or a foreign entity shall be answered by a person with the authority, pursuant to the organic law governing the entity or foreign entity, to bind the entity or foreign entity.*
- (2) *The Secretary of State may take such action as is deemed appropriate, including a referral to the Attorney General, when the interrogatories and the answers thereto disclose a violation of any of the provisions of this chapter or of the organic law governing an entity or foreign entity.*

➔SECTION 5. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *If an entity or foreign entity fails or refuses to answer truthfully and fully within the time prescribed to any interrogatories propounded by the Secretary of State, the Secretary of State may with respect to that entity initiate its administrative dissolution or, with respect to a foreign entity qualified to transact business in Kentucky, revoke its certificate of authority.*
- (2) *Each person who fails or refuses within the time prescribed to truthfully and fully answer interrogatories propounded to an entity or a foreign entity shall be guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).*
- (3) *Further, an action may be initiated in Franklin Circuit Court by the Secretary of State or the Attorney General against any domestic or foreign entity in furtherance of subsection (1) of Section 4 of this Act.*

➔SECTION 6. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

Interrogatories propounded by the Secretary of State and the answers thereto shall not be open to public inspection, nor shall the Secretary of State disclose any facts or information described therefrom except insofar as the Secretary of State's official duty may require the same to be made public or in the event the interrogatories or the answers thereto are required as evidence in any criminal proceeding or in any other action or proceeding by this state.

➔SECTION 7. A NEW SECTION OF SUBCHAPTER 1 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

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

- (1) *"Business" includes every trade, occupation, and profession;*
- (2) *"Corporation" means a business corporation governed as to its internal affairs by KRS Chapter 271B, a cooperative or association governed as to its internal affairs by KRS Chapter 272, a nonprofit corporation governed as to its internal affairs by KRS Chapter 273, and a rural electric or rural telephone cooperative corporation governed as to its internal affairs by KRS Chapter 279;*
- (3) *"Business trust" means a business trust governed as to its internal affairs by KRS Chapter 386;*
- (4) *"Debtor in bankruptcy" means a person who is the subject of:*
 - (a) *An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or*
 - (b) *A comparable order under federal, state, or foreign law governing insolvency;*
- (5) *"Deliver" or "delivery" means any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;*

- (6) *"Electronic transmission" or "electronically transmitted" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;*
- (7) *"Entity" means a corporation, business trust, partnership, limited partnership, or limited liability company, governed as to its internal affairs by the laws of the Commonwealth of Kentucky;*
- (8) *"Foreign business trust" means a business or statutory trust not governed as to its internal affairs by KRS Chapter 386;*
- (9) *"Foreign corporation" means a corporation as defined in subsection (2) of this section that is not:*
 - (a) *Organized pursuant to the laws of the Commonwealth of Kentucky; or*
 - (b) *As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;*
- (10) *"Foreign entity" means a corporation, not-for-profit corporation, cooperative, association, business or statutory trust, partnership, limited partnership, or limited liability company not:*
 - (a) *Organized pursuant to the laws of the Commonwealth of Kentucky; or*
 - (b) *As to its internal affairs, governed by the laws of the Commonwealth of Kentucky;*
- (11) *"Foreign limited liability partnership" means a partnership that:*
 - (a) *Is formed under laws other than the laws of this Commonwealth; and*
 - (b) *Has the status of a limited liability partnership under those laws;*
- (12) *"Foreign professional service corporation" has the same meaning as in KRS 274.005;*
- (13) *"Foreign rural electric cooperative" means a rural electric cooperative organized otherwise than under KRS 279.010 to 279.210;*
- (14) *"Foreign rural telephone cooperative" means a rural telephone cooperative organized otherwise than under KRS 279.310 to 279.990 excepting 279.570;*
- (15) *"Limited liability company" has the same meaning as in KRS 275.015;*
- (16) *"Limited liability partnership" means a partnership that has filed a statement of qualification under Section 98 of this Act or a registration as a registered limited liability partnership under KRS 362.555 and does not have a similar statement of registration in effect in any other jurisdiction;*
- (17) *"Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of an entity or foreign entity;*
- (18) *"Nonprofit corporation," other than in the term "foreign nonprofit corporation," means a nonprofit corporation incorporated pursuant to and governed as to its internal affairs by KRS Chapter 273 or predecessor law;*
- (19) *"Organic act" means the law of a state or other jurisdiction governing the organization and internal affairs of an entity or foreign entity;*
- (20) *"Organized" means organized, incorporated, or formed;*
- (21) *"Organizational filing" means a filing made with the Secretary of State as a precondition to the formation, organization, or incorporation of an entity, including articles of incorporation, articles of organization, and certificates of limited partnership. A statement of qualification filed pursuant to KRS 362.1-1101 or a registration as a limited liability partnership filed pursuant to Section 112 of this Act is not an organizational filing;*
- (22) *"Partnership" means an association of two (2) or more persons to carry on as co-owners a business for profit formed under KRS 362.1-202, predecessor law, or comparable law of another jurisdiction;*
- (23) *"Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement;*
- (24) *"Person" means an individual, an entity, a foreign entity, or any other legal or commercial entity;*

- (25) *"Principal office" means the address required by this chapter or the organic act to be of record with the Secretary of State as the principal office, the principal place of business address, the designated office of a limited partnership, or the chief executive office of a limited liability partnership;*
- (26) *"Professional service corporation" has the same meaning as in KRS 274.005;*
- (27) *"Professional services" means the personal services rendered by physicians, osteopaths, optometrists, podiatrists, chiropractors, dentists, nurses, pharmacists, psychologists, occupational therapists, veterinarians, engineers, architects, landscape architects, certified public accountants, public accountants, physical therapists, and attorneys;*
- (28) *"Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein;*
- (29) *"Qualified person" has the same meaning as in KRS 274.005;*
- (30) *"Registered agent" means a registered agent appointed in accordance with Section 28 of this Act or predecessor law, and is synonymous with agent for service of process;*
- (31) *"Regulatory board" means the agency that is charged by law with the licensing and regulation of the practice of the profession which the professional partnership is organized to provide;*
- (32) *"Rural electric cooperative" means a rural electric cooperative governed as to its internal affairs by KRS 279.010 to 279.210;*
- (33) *"Rural telephone cooperative" means a rural telephone cooperative governed as to its internal affairs by 279.310 to 279.990 excepting 279.570;*
- (34) *"Sign" or "signature" includes any manual, facsimile, conformed, or electronic signature; and*
- (35) *"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.*

➔SECTION 8. SUBCHAPTER 2 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.*
- (2) *This chapter shall require or permit filing a document in the office of the Secretary of State.*
- (3) *A document shall contain the information required by the organic law or by this chapter, and may contain other information if permitted by the organic law.*
- (4) *A document shall be typewritten, printed, or electronically transmitted. If a document is electronically transmitted, the document shall be in a format that can be retrieved or reproduced in typewritten or printed form.*
- (5) *A document shall be in the English language. A name may be in a language other than English if written in English letters or Arabic or Roman numerals. A document not in English shall be accompanied by an English translation reasonably authenticated to the satisfaction of the Secretary of State.*
- (6) *A document shall be executed in the manner set forth in Section 9 of this Act.*
- (7) *The person executing the document shall sign it and state beneath or opposite the signature the person's name and the capacity in which the document is signed. The document may but need not contain:*
 - (a) *A seal of the entity or foreign entity;*
 - (b) *An attestation, acknowledgment, or verification; or*
 - (c) *A statement regarding the preparer of the document which complies with subsection (1) of Section 113 of this Act.*
- (8) *If the Secretary of State has prescribed a mandatory form for a document, it shall be in or on the prescribed form.*
- (9) *A document shall be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission, if and to the extent permitted by the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require that up to two (2) exact or conformed copies be delivered with the document.*

- (10) *When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, the organization tax, and any penalty required by this chapter or other law to be collected by the office of the Secretary of State with the document shall be paid or provision for payment shall be made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by check, credit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, the liability shall not be finally discharged until the Secretary of State receives final payment or credit of collectible funds. If, after five (5) days' prior written notice to the entity, foreign entity, or person who delivered a document for filing for which the filing fee was not collectible, payment of the filing fee in full is not made in immediately available funds, the Secretary of State may declare the document filed to be null and void and of no legal effect and may remove the document from the records of the Secretary of State. Written notice given pursuant to this subsection may be given by electronic communication.*
- (11) *A document is delivered to the office of the Secretary of State for filing upon actual receipt. A document delivered electronically that is self-operative will be treated as received on the date of receipt. A document that is not self-operative delivered electronically or otherwise will be treated as received on the date of delivery if delivery is accomplished not later than 4:30 p.m. prevailing time in Frankfort, Kentucky or otherwise on the next business day.*
- (12) *Any communication from the Secretary of State to an entity or foreign entity may be accomplished electronically. Communications to an entity may be mailed to the entity by first-class mail at its principal office address.*

➔SECTION 9. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A document delivered to the Secretary of State for filing shall be executed as follows:*
- (a) *If delivered by or on behalf of a corporation or foreign corporation, by:*
 - 1. *The chairman of its board of directors, by its president, or by another of its officers;*
 - 2. *A duly authorized representative; or*
 - 3. *If the directors have not been selected or the corporation has not been formed, by its incorporator;*
 - (b) *If delivered by or on behalf of a limited liability company or foreign limited liability company, by:*
 - 1. *A manager, if management of the limited liability company or foreign limited liability company is reserved to one (1) or more managers;*
 - 2. *A member, if management of the limited liability company or foreign limited liability company is reserved to the members;*
 - 3. *A duly authorized representative; or*
 - 4. *If the limited liability company or foreign limited liability company has not been formed, by its organizer;*
 - (c) *If delivered by or on behalf of a limited partnership or foreign limited partnership, by at least one (1) general partner;*
 - (d) *If delivered by or on behalf of a business trust or foreign business trust, by at least one (1) trustee;*
 - (e) *If delivered by or on behalf of a partnership, by at least two (2) partners;*
 - (f) *If delivered by or on behalf of any other entity or foreign entity, by a person certifying the authority and capacity to execute and deliver the document; or*
 - (g) *If the entity or foreign entity is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.*
- (2) *This section relates exclusively to execution of documents delivered for filing to the Secretary of State, and shall not control as to the execution of other documents of an entity or foreign entity.*

➔SECTION 10. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A person who executes a document with intent that the document be delivered to the Secretary of State for filing shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the document are true.*
- (2) *An offense under this section shall be a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100).*

➔SECTION 11. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section, one (1) exact or conformed copy of each of the following documents shall be filed with the county clerk of the county in which the entity or foreign entity maintains its registered office:*
 - (a) *Articles of incorporation and all amendments thereto;*
 - (b) *Articles of organization and all amendments thereto;*
 - (c) *Certificate of limited partnership and all amendments thereto;*
 - (d) *Declaration of trust for a business trust and all amendments thereto;*
 - (e) *Application for a certificate of authority;*
 - (f) *Amendment to a certificate of authority;*
 - (g) *Withdrawal of a certificate of authority;*
 - (h) *Articles of merger;*
 - (i) *A statement of change of principal office address filed pursuant to Section 33 of this Act or predecessor law; and*
 - (j) *A statement of change of registered office or registered agent or both filed pursuant to Section 29 of this Act or predecessor law.*
- (2) *The articles of incorporation of a rural electric cooperative or a rural telephone cooperative, all amendments thereto, and all articles of merger involving a rural electric cooperative or rural telephone cooperative shall be filed with the county clerk in which is maintained the principal office address.*
- (3) *Annual reports filed with the Secretary of State pursuant to Section 34 of this Act or predecessor law need not be filed with the county clerk.*
- (4) *The county clerk shall receive a fee as provided in Section 49 of this Act for each filing made pursuant to subsection (1) or (2) of this section.*
- (5) *The county clerk shall receive a fee pursuant to Section 49 of this Act for recording and issuing reports, articles, and statements pertaining to an entity or foreign entity.*

➔SECTION 12. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may prescribe and furnish on request forms for:*
 - (a) *An application for a certificate of existence;*
 - (b) *An application for a certificate of authority;*
 - (c) *An amended application for a certificate of authority;*
 - (d) *A certificate of withdrawal;*
 - (e) *A change of registered office, registered agent, or both;*
 - (f) *A change of principal address;*
 - (g) *An application for a reserved name;*
 - (h) *The renewal of a reserved name;*

- (i) *The transfer of a reserved name;*
 - (j) *The annual report; and*
 - (k) *An amendment to the annual report.*
- (2) *If the Secretary of State so requires, the use of some or all forms listed in subsection (1) shall be mandatory.*
- (3) *The Secretary of State may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter, but their use shall not be mandatory.*

➔SECTION 13. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) The Secretary of State shall collect the following fees when the documents described in this subsection are delivered for filing:
- (a) *Application for use of indistinguishable name*\$ 20
 - (b) *Application or renewal of application for reserved name*\$ 15
 - (c) *Cancellation of application for reserved name*\$ 10
 - (d) *Notice of transfer of reserved name*\$ 15
 - (e) *Application for registered name*\$ 36
 - (f) *Application for renewal of registered name*\$ 36
 - (g) *Statement of change of registered office or registered agent, or both*\$ 10
 - (h) *Statement of change of principal office address*\$ 10
 - (i) *Agent's statement of change of registered office for each affected entity or foreign entity*\$ 10
 - not to exceed a total of*\$2,000
 - (j) *Reinstatement penalty following administrative dissolution*\$ 100
 - (k) *Application for certificate of authority*\$ 90
 - (l) *Application for amended certificate of authority*\$ 40
 - (m) *Certificate of withdrawal*\$ 40
 - (n) *Certificate of existence*\$ 10
 - (o) *Certificate of authorization*.....\$ 10
 - (p) *Any other document required or permitted to be filed by this chapter*\$ 15
 - (q) *Agent's statement of resignation* No fee
 - (r) *Certificate of administrative dissolution* No fee
 - (s) *Certificate of reinstatement* No fee
 - (t) *Certificate of revocation of authority to transact business* No fee
- (2) *The Secretary of State shall collect a fee of fifteen dollars (\$15) with respect to each annual report or amendment thereto.*
- (3) *The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him or her under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.*
- (4) *The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign entity:*
- (a) *Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and*

(b) *Five dollars (\$5) for the certificate.*

➔SECTION 14. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *Except as provided in subsection (2) of this section and subsection (3) of Section 16 of this Act, a document delivered to the Secretary of State for filing shall be effective:*
 - (a) *On the date and at the time of filing, as evidenced by such means as the Secretary of State may use for the purpose of recording the date and time of filing; or*
 - (b) *At the time specified in the document as its effective time on the date it is effective.*
- (2) *A document may specify a delayed effective time and date, and if it does so the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective as of 5 p.m. prevailing time in Frankfort, Kentucky, on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed; a document delivered for filing with a delayed effective date more than ninety (90) days after the date of filing will be effective on the ninetieth day thereafter. A document cannot have an effective time or date preceding the document's filing by the Secretary of State.*
- (3) *A document filed by the Secretary of State shall be effective regardless of a failure to file the document with the county clerk pursuant to Section 11 of this Act.*

➔SECTION 15. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *The parties to a document having a delayed effective date, time, or both may withdraw the filing before it takes effect.*
- (2) *To withdraw a document the parties shall deliver a statement of withdrawal to the Secretary of State for filing.*
- (3) *A statement of withdrawal shall:*
 - (a) *Be signed on behalf of each party to the action or transaction contemplated by the initial document in accordance with Section 9 of this Act;*
 - (b) *State the nature of the document to be withdrawn, the date of the filing, and the parties to the filing; and*
 - (c) *State that the document has been withdrawn in accordance with the agreement of the parties.*
- (4) *From the filing by the Secretary of State of a statement of withdrawal, the action or transaction evidenced by the original filing shall not take effect.*
- (5) *A statement of withdrawal shall be accompanied by a filing fee equal to that of the filed document that is being withdrawn.*

➔SECTION 16. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity or foreign entity may correct a document filed by a Secretary of State if:*
 - (a) *The document contains an inaccuracy;*
 - (b) *The document was defectively executed, attested, sealed, verified, or acknowledged; or*
 - (c) *Electronic transmission of the document to the Secretary of State was defective.*
- (2) *A document is corrected by:*
 - (a) *Preparing articles of correction that:*
 1. *Describe the document, including its filing date, or attach a copy of it to the articles of correction;*
 2. *Specify the inaccuracy or defect to be corrected; and*
 3. *Correct the inaccuracy or defect; and*

(b) Delivering the articles of correction to the Secretary of State for filing.

- (3) Articles of correction shall be effective on the effective date of the document they correct except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, articles of correction shall be effective when filed.*

➔SECTION 17. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) If a document delivered to the office of the Secretary of State for filing satisfies the requirements of this chapter and applicable organic law, the Secretary of State shall file it.*
- (2) The Secretary of State files a document by recording it as filed as provided in subsection (1)(a) of Section 14 of this Act.*
- (3) After filing a document, the Secretary of State shall deliver to the entity or foreign entity or to the person delivering the document for filing or to another person as identified in writing a copy of the document with an acknowledgment of the time and date of filing.*
- (4) If the Secretary of State refuses to file a document, the Secretary of State shall return it to the filer within five (5) days after the document was delivered, together with a brief, written explanation of the reason for the refusal.*
- (5) The Secretary of State's delivery of an acknowledgment of filing, an explanation for the reason a document was not filed, or other communication as to a document filed or delivered for filing may be accomplished electronically.*
- (6) The Secretary of State's duty to file documents under this section shall be ministerial. The filing or refusal to file a document shall not:*
 - (a) Affect the validity or invalidity of the document in whole or part;*
 - (b) Relate to the correctness or incorrectness of information contained in the document; or*
 - (c) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.*

➔SECTION 18. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

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

➔SECTION 19. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) A certificate from the Secretary of State delivered with a copy of the document filed by the Secretary of State shall be conclusive evidence that the original document is on file with the Secretary of State.*
- (2) The certificate shall bear the signature of the Secretary of State, which may be in facsimile, and the seal of the Commonwealth.*
- (3) The only obligation of the Secretary of State is to certify that a document is of record, and the Secretary of State is not obligated to certify as to the accuracy of any fact set forth in a document of record.*

➔SECTION 20. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) Anyone may apply to the Secretary of State to furnish a certificate of existence for an entity.*
- (2) A certificate of existence shall set forth:*

- (a) *The entity's real name;*
- (b) *That the entity was duly organized under the laws of this Commonwealth, the date of its organization, and the period of its duration if less than perpetual;*
- (c) *That no articles of dissolution, statement of cancellation, or document of similar import is effective;*
- (d) *That all fees, taxes, and penalties owed to this state have been paid, if:*
 - 1. *Payment is reflected in the records of the Secretary of State; and*
 - 2. *Nonpayment affects the existence of the entity;*
- (e) *That its most recent annual report required by Section 34 of this Act or predecessor law has been filed by the Secretary of State; and*
- (f) *Subject to subsection (3) of Section 19 of this Act, other facts of record in the office of the Secretary of State that may be requested by the applicant.*
- (3) *Subject to any qualification stated in the certificate, a certificate of existence issued by the Secretary of State may be relied upon as conclusive evidence that the entity is in existence.*
- (4) *This section shall not apply to:*
 - (a) *Partnerships organized pursuant to KRS Chapter 362 or 362.1;*
 - (b) *Limited partnerships other than those subject to KRS Chapter 362.2; or*
 - (c) *Business trusts.*

➔SECTION 21. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *Anyone may apply to the Secretary of State to furnish a certificate of authorization for a foreign entity.*
- (2) *A certificate of authorization shall set forth:*
 - (a) *The foreign entity's real name and, if applicable, its fictitious name as adopted for use in this Commonwealth;*
 - (b) *That the foreign entity is authorized to transact business in this Commonwealth;*
 - (c) *That all fees, taxes, and penalties owed to this Commonwealth have been paid, if:*
 - 1. *Payment is reflected in the records of the Secretary of State; and*
 - 2. *Nonpayment affects the authorization of the foreign entity to transact business in this Commonwealth;*
 - (d) *That its most recent annual report required by Section 34 of this Act or predecessor law has been filed by the Secretary of State;*
 - (e) *That no certificate of withdrawal or document of similar import under prior law has been filed; and*
 - (f) *Other facts of record in the office of the Secretary of State that may be requested by the applicant.*
- (3) *Subject to any qualification stated in the certificate, a certificate of authorization issued by the Secretary of State may be relied upon as conclusive evidence that the foreign entity is authorized to transact business in this Commonwealth.*
- (4) *This section shall not apply to:*
 - (a) *A foreign partnership; or*
 - (b) *A foreign rural telephone cooperative or foreign rural electric cooperative not obligated to qualify to transact business by filing an application for a certificate of authority or document of similar import with the Secretary of State.*

➔SECTION 22. A NEW SECTION OF SUBCHAPTER 2 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

In addition to a certificate of existence and a certificate of authorization issued pursuant to Sections 20 and 21 of this Act, the Secretary of State, subject to subsection (3) of Section 19 of this Act, may issue additional certificates as the Secretary of State shall determine to be appropriate.

➔SECTION 23. SUBCHAPTER 3 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *Except as authorized by subsections (14) and (15) of this section, the real name of an entity or foreign entity shall be distinguishable from any name of record with the Secretary of State.*
- (2) *The real name of a corporation or nonprofit corporation shall:*
 - (a) *1. Contain the word "corporation," "company," or "limited" or the abbreviation "Corp.," "Inc.," "Co.," or "Ltd." or words or abbreviations of like import in another language, provided, however, that if a nonprofit corporation's name includes the word "company" or the abbreviation "Co.," it may not be immediately preceded by the word "and" or the abbreviation "&;" or*
 - 2. If a professional service corporation, shall contain the words "professional service corporation" or the abbreviation "P.S.C."; and*
 - (b) *Shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by its organic act and its articles of incorporation.*
- (3) *The real name of a limited liability company shall contain the phrase "limited liability company" or "limited company" or the abbreviation "LLC" or "LC," provided, however, if the company is a professional limited liability company the name shall contain the phrase "professional limited liability company" or "professional limited company" or the abbreviation "PLLC" or "PLC." In the name of either a limited liability company or a professional limited liability company, the word "limited" may be abbreviated as "Ltd." and the word "Company" may be abbreviated as "Co."*
- (4) *The real name of a limited liability partnership registered pursuant to Section 112 of this Act shall contain the phrase "Registered Limited Liability Partnership" or the abbreviation "LLP" as the last words or letters of its name.*
- (5) *The real name of a partnership subject to KRS 362.1-101 to 362.1-1205, the "Kentucky Revised Uniform Partnership Act (2006)":*
 - (a) *Shall not contain the word "corporation" or "incorporated" or the abbreviation "Corp." or "Inc.;" and*
 - (b) *May contain the word "limited" or the abbreviation "Ltd." only if the partnership has filed a statement of qualification.*
- (6) *The real name of a limited liability partnership that has filed a statement of qualification pursuant to Section 98 of this Act shall end with the phrase "Registered Limited Liability Partnership" or "Limited Liability Partnership" or the abbreviation "R.L.L.P.," "L.L.P.," "RLLP," or "LLP."*
- (7) *The real name of a limited partnership subject to KRS 362.401 to 362.525, the "Kentucky Revised Uniform Limited Partnership Act (2006)," shall:*
 - (a) *Contain the word "Limited" or the abbreviation "Ltd." unless the limited partnership was formed under any statute of the Commonwealth prior to the adoption of the Kentucky Revised Uniform Limited Partnership Act; and*
 - (b) *Not contain the name of a limited partner unless:*
 - 1. That name is also the name of a general partner; or*
 - 2. The business of the limited partnership had been carried on under that name before the admission of that limited partner.*
- (8) *The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is not a limited liability limited partnership may contain the name of any partner and shall:*

- (a) *Contain the phrase "limited partnership" or "limited" or the abbreviation "L.P.," "LP," or "Ltd.";*
and
 - (b) *Not contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP."*
- (9) *The real name of a limited partnership subject to KRS 362.2-102 to 362.2-1207, the "Kentucky Uniform Limited Partnership Act (2006)," that is a limited liability limited partnership may contain the name of any partner and shall:*
 - (a) *Contain the phrase "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP";*
and
 - (b) *Not contain only the phrase "limited partnership" or the abbreviation "L.P." or "LP."*
- (10) *Subject to KRS 362.2-1204, subsections (8) and (9) of this section shall not apply to a limited partnership formed under any statute of this Commonwealth prior to July 15, 1988.*
- (11) *The real name of a rural telephone cooperative corporation:*
 - (a) *Shall contain the word "Telephone," "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.," unless in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger, or conversion which relate to that cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name; and*
 - (b) *May include the word "Cooperative."*
- (12) *The phrase "Rural Electric Cooperative" may not be used in the name of any entity or foreign entity except for one formed under KRS Chapter 279.*
- (13) *Except as otherwise provided in this section, the word "cooperative" may not be used in the name of any entity doing business for profit in this Commonwealth unless it has complied with the provisions of KRS 271.020 to 272.050.*
- (14) *An entity may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:*
 - (a) *The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying entity; or*
 - (b) *The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.*
- (15) *An entity may use the name, including the fictitious name, of another entity that is used in this Commonwealth if the other entity is organized or authorized to transact business in this Commonwealth, and the proposed user entity:*
 - (a) *Has merged with the other entity;*
 - (b) *Has been formed by reorganization of the other entity; or*
 - (c) *Has acquired all or substantially all of the assets, including the business name of the other entity.*
- (16) *This chapter does not control the use of assumed names.*
- (17) *The filing of articles of incorporation, articles of organization, a statement of qualification, a certificate of limited partnership, a declaration of trust, an application to transact authority in the Commonwealth, a statement of foreign qualification, a name registration, or name resurrection under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.*
- (18) *The provisions of subsection (2)(a) of this section shall not affect the right of any nonprofit corporation existing on June 13, 1968, to continue the use of its name as then in effect.*

- (19) *The assumption of a nonprofit corporate name in violation of this section shall not affect or vitiate the corporate existence, but the courts of this Commonwealth having equity jurisdiction may, upon the application of the Commonwealth or of any person interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although a certificate of incorporation may have been issued.*
- (20) *This section shall not apply to any domestic or foreign telephone cooperative which became subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470 or which does business in this Commonwealth pursuant to KRS 279.570 and which elects to retain a name which does not comply with this section.*
- (21) *Nothing in this section shall limit the ability of a professional regulatory board to promulgate rules governing entities and foreign entities under its jurisdiction.*
- (22) *The real name of a foreign entity will be determined according to KRS 365.015. For entities not covered by that statute, the real name of the foreign entity will be the real name of the entity as so recognized in the jurisdiction of its origination.*

➔SECTION 24. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A person may reserve the exclusive use of a name, including a fictitious name for a foreign entity whose real name is not available, by delivering an application to the Secretary of State for filing. The application shall set forth the real name and address of the applicant and the name proposed to be reserved. If the Secretary of State finds that the name applied for is distinguishable from any name of record with the Secretary of State, that name shall be reserved for the applicant's exclusive use for a one hundred twenty (120) day period. During the thirty (30) days prior to the expiration of a reservation, the holder thereof may apply to renew the reservation on such form as shall be provided by the Secretary of State. The renewal shall be effective as of the expiration of the current reservation and shall renew the reservation for an additional one hundred twenty (120) days from the otherwise applicable expiration.*
- (2) *A reserved name shall satisfy the requirements of Section 23 of this Act.*
- (3) *The applicant holding a reserved name may transfer the reservation to another person by delivering to the Secretary of State a signed notice of the transfer that states the name and address of the transferee.*
- (4) *The holder of a reserved name may cancel the reservation by delivery to the Secretary of State of a notice of cancellation, executed by the applicant for whom the name is reserved, that states the reserved name and its initial date of reservation.*
- (5) *It shall not be necessary that a foreign entity desiring to reserve a name be qualified to transact business in this Commonwealth.*

➔SECTION 25. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity may register its real name, or its real name with any addition required by Section 23 of this Act, if the name is distinguishable upon the records of the Secretary of State.*
- (2) *A foreign entity shall register its real name, or its real name with any addition required by Section 23 of this Act, by delivering to the Secretary of State for filing an application setting forth:*
 - (a) *Its real name, or its real name with any addition required by Section 23 of this Act;*
 - (b) *The state or country of its organization;*
 - (c) *Its form of organization;*
 - (d) *Its principal office address; and*
 - (e) *A brief description of the nature of the business in which it is engaged.*
- (3) *The name shall be registered for the applicant's exclusive use upon the effective date of the application. A registration not renewed as provided in subsection (4) of this section shall expire on the next January 1.*

- (4) *A foreign entity whose registration is effective may renew it for successive years by delivering to the Secretary of State for filing a renewal application, which complies with the requirements of subsection (2) of this section, between October 1 and December 31 of the preceding year. The renewal application when filed shall renew the registration for the following calendar year.*
- (5) *A foreign entity whose registration is effective may thereafter qualify as a foreign entity under the registered name or consent in writing to the use of that name by an entity thereafter organized under the laws of the Commonwealth or by another foreign entity thereafter authorized to transact business in this Commonwealth. The registration shall terminate when the domestic entity is organized or the foreign entity qualifies or consents to the qualification of another foreign entity under the registered name.*

➔SECTION 26. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *If the real name of a foreign entity does not satisfy the requirements of Section 23 of this Act as would apply were the foreign entity organized in this Commonwealth, the foreign entity seeking to obtain or maintain a certificate of authority to transact business in this Commonwealth:*
 - (a) *May use a fictitious name to transact business in this Commonwealth if its real name is not distinguishable from any name of record with the Secretary of State; or*
 - (b) *May supplement its name with such identifier as would be appropriate under Section 23 of this Act were the foreign entity organized in this Commonwealth.*
- (2) *Except as authorized by subsections (14) and (15) of Section 23 of this Act, the real or fictitious name of a foreign entity shall be distinguishable upon the records of the Secretary of State from any name of record with the Secretary of State.*
- (3) *If a foreign entity authorized to transact business in this Commonwealth changes its real name to one that does not satisfy the requirements of Section 23 of this Act, it shall not transact business in this Commonwealth under the changed name until it adopts a fictitious name satisfying the requirements of Section 23 of this Act and obtains an amended certificate of authority in accordance with Section 43 of this Act.*

➔SECTION 27. A NEW SECTION OF SUBCHAPTER 3 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

Each entity and each foreign business entity that has qualified to transact business, if transacting business under other than its real or a duly adopted fictitious name, shall comply with KRS 365.015.

➔SECTION 28. SUBCHAPTER 4 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *Each entity and each foreign entity qualified to transact business in this Commonwealth shall continuously maintain in this Commonwealth:*
 - (a) *A registered office that may be the same as any of its places of business; and*
 - (b) *A registered agent, who may be:*
 1. *An individual who resides in this Commonwealth and whose business address is identical with the registered office; or*
 2. *An entity or foreign entity qualified to transact business in this Commonwealth whose business address is identical with the registered office.*
- (2) *Unless the registered agent signs the document making the appointment, the appointment of the registered agent or a successor registered agent on whom process may be given is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.*
- (3) *Each entity and each foreign entity maintaining a registered office and agent in this Commonwealth shall provide to its registered agent and update from time to time as necessary the name, business address, and business telephone number of a natural person who is authorized to receive communications from the registered agent. Such person shall be deemed the communications contact for the entity or foreign entity. Every registered agent shall retain in paper or electronic form the information concerning the current communications contact for each entity and each foreign entity for which that registered agent serves as registered agent. If the entity or foreign entity fails to provide the registered agent with a current*

communications contact, the registered agent may resign as the registered agent for such entity or foreign entity.

- (4) *This section shall not apply to a domestic or foreign partnership that is not a limited liability partnership.*
- (5) *This section shall not apply to a limited partnership governed as to its internal affairs by the Kentucky Uniform Limited Partnership Act, KRS 362.410 to 362.700.*
- (6) *This section shall not apply to a rural electric cooperative or to a foreign rural electric cooperative that is not required to qualify to transact business by means of a filing with the Secretary of State.*
- (7) *This section shall not apply to a rural telephone cooperative or to a foreign rural telephone cooperative that is not required to qualify to transact business by means of a filing with the Secretary of State.*

➔SECTION 29. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity or foreign entity may change its registered office or registered agent or both by delivering a statement of change to the Secretary of State for filing that sets forth:*
 - (a) *The name of the entity or foreign entity;*
 - (b) *The street address of its current registered office;*
 - (c) *If the current registered office is to be changed, the street address of the new registered office;*
 - (d) *The name of its current registered agent;*
 - (e) *If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent to the appointment; and*
 - (f) *That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.*
- (2) *If a registered agent changes its business address, it shall change the street address of the registered office of any entity or foreign entity for which it is the registered agent by notifying the entity or foreign entity in writing of the change and signing and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and reciting that the entity or foreign entity has been notified of the change.*
- (3) *The change of address of the registered office or registered agent shall be effective upon filing by the Secretary of State. The appointment of a new registered agent shall be effective upon filing of the statement of change by the Secretary of State.*

➔SECTION 30. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A registered agent may resign the appointment by signing and delivering a statement of resignation to the Secretary of State for filing that may also provide that the registered office is discontinued.*
- (2) *After filing the statement, the Secretary of State shall mail one (1) copy to the registered office, if not discontinued, and the other copy to the entity or foreign entity at its principal office.*
- (3) *The agency appointment shall be terminated, and the registered office discontinued, if so provided, on the earlier of:*
 - (a) *The appointment of a successor registered agent and, if applicable, registered office; or*
 - (b) *The thirty-first day after the date on which the statement of resignation was filed.*

➔SECTION 31. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity's or foreign entity's registered agent shall be its agent for service of process, notice, or demand required or permitted by law to be served on the entity or foreign entity.*
- (2) *If an entity or foreign entity has no registered agent, or the agent cannot with reasonable diligence be served, the entity or foreign entity may be served with process, or any notice or demand may be served by*

registered or certified mail, return receipt requested, addressed to the entity or foreign entity at its principal office and to the attention of the person or office appropriate for giving notice to the entity or foreign entity. Service shall be perfected under this subsection at the earliest of:

- (a) The date the entity or foreign entity receives the mail;*
 - (b) The date shown on the return receipt, if signed on behalf of the entity or foreign entity; or*
 - (c) Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postage paid and correctly addressed.*
- (3) This section does not prescribe the only means, or necessarily the required means, of serving an entity or foreign entity.*

➔SECTION 32. A NEW SECTION OF SUBCHAPTER 4 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

The duties of a registered agent are to:

- (1) Forward to the entity or foreign entity for which it is the registered agent any service of process, notice, or demand received on its behalf; and*
- (2) Collect and maintain the information described in subsection (3) of Section 28 of this Act.*

➔SECTION 33. SUBCHAPTER 5 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) An entity required in its organizational filing to identify its principal office or a foreign entity qualified to transact business that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:*
 - (a) The name of the entity or foreign entity;*
 - (b) The address of its principal office prior to the change; and*
 - (c) The new principal office address.*
- (2) Subsection (1) of this section shall apply to a statement of registration as a limited liability partnership filed pursuant to Section 113 of this Act or statements filed pursuant to KRS Chapter 362.1.*
- (3) Subsection (1) of this section shall apply to a change in the designated office of a limited partnership.*

➔SECTION 34. SUBCHAPTER 6 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) Each entity and each foreign entity authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report that sets forth:*
 - (a) The name of the entity or foreign entity and the state or country under whose law it is organized;*
 - (b) The address of its registered office and the name of its registered agent at that office in this Commonwealth;*
 - (c) The address of its principal office; and*
 - (d) With respect to each:*
 - 1. Corporation, not-for-profit corporation, cooperative, or association, whether domestic or foreign:*
 - a. The name and business address of the secretary or other officer with responsibility for authenticating the records of the entity;*
 - b. The name and business of each other principal officer; and*
 - c. The name and business of each director;*
 - 2. Manager-managed limited liability company, whether domestic or foreign, the name and business address of each manager;*

3. *Limited partnership, whether domestic or foreign, the name and business address of each general partner;*
 4. *Business trust, whether domestic or foreign, the name and business address of each trustee; and*
 5. *Professional service corporation, domestic or foreign, a statement that each of the shareholders, not less than one-half (1/2) of the directors, and each of the officers other than secretary and treasurer is a qualified person.*
- (2) *A professional service corporation formed under the provisions of this chapter, except as this chapter may otherwise provide, shall have the same powers, authority, duties, and liabilities as a corporation formed under KRS Chapter 271B.*
 - (3) *Information in the annual report shall be current as of the date the annual report is executed on behalf of the entity or foreign entity.*
 - (4) *The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which an entity was organized or a foreign entity was authorized to transact business in this state. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of each following calendar year.*
 - (5) *If an annual report does not contain the information required by this section, the Secretary of State shall promptly notify the entity or foreign entity in writing and return the report to it for correction, which notification may be accomplished electronically. For purposes of Section 20 or 21 of this Act, an annual report returned for correction shall not be deemed to have been delivered until it is returned and accepted by the Secretary of State.*
 - (6) *An entity or foreign entity may amend the information in its last filed annual report by delivery of an amendment to the annual report to the Secretary of State for filing on such form as is provided by the Secretary of State.*
 - (7) *The requirement to file an annual report shall not apply to:*
 - (a) *A limited partnership governed as to its internal affairs by the Kentucky Uniform Limited Partnership Act as it existed prior to its repeal by 1988 Ky. Acts ch. 284, sec. 65;*
 - (b) *A partnership other than a limited liability partnership that has filed a statement of qualification pursuant to Section 99 of this Act or a foreign limited liability partnership; or*
 - (c) *A foreign rural electric cooperative or foreign rural telephone cooperative not required to qualify to transact business by a filing with the Secretary of State.*

➔SECTION 35. SUBCHAPTER 7 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *The Secretary of State may commence a proceeding to administratively dissolve an entity:*
 - (a) *If the entity does not deliver for filing its annual report with the Secretary of State by the due date thereof;*
 - (b) *If the entity is without a registered office or registered agent in this state for sixty (60) days or more;*
 - (c) *If the entity does not notify the Secretary of State within sixty (60) days that its registered office or registered agent has been changed, that its registered office has been discontinued or that its registered agent has resigned; or*
 - (d) *For such other reasons as are provided in this chapter or the organic law governing the entity.*
- (2) *Subsection (1)(a) of this section shall not apply to any entity not obligated to file an annual report.*
- (3) *Subsection (1)(b) and (c) of this section shall not apply to any entity that is not obligated to maintain a registered office and agent.*

➔SECTION 36. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State determines that one (1) or more grounds exist for the administrative dissolution of an entity, the Secretary of State shall advise the entity of that determination.*
- (2) *If the entity does not within sixty (60) days from the date on which the notice was mailed, correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State shall administratively dissolve the entity by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original of the certificate and advise the entity of that determination.*
- (3) *An entity administratively dissolved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs.*
- (4) *The administrative dissolution of an entity shall not terminate the authority of its registered agent.*

➔SECTION 37. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *An entity administratively dissolved under Section 36 of this Act or predecessor law may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution. The application shall:*
 - (a) *Recite the name of the entity and the effective date of its administrative dissolution;*
 - (b) *State that the ground or grounds for dissolution either did not exist or have been eliminated;*
 - (c) *State that the entity's name satisfies the requirements of Section 23 of this Act;*
 - (d) *Contain a certificate from the Department of Revenue reciting that all taxes owed by the entity have been paid;*
 - (e) *Contain a representation that the entity has taken no steps to wind up and liquidate its business and affairs and notify claimants;*
 - (f) *If a business corporation, contain a certificate from the Division of Unemployment Insurance in the Department for Workforce Investment reciting that all employer contributions, interest, penalties, and service capacity upgrade fund assessments have been paid; and*
 - (g) *Be accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report as provided for in this chapter.*
- (2) *If the Secretary of State determines that the application satisfies the requirement of subsection (1) of this section, he or she shall cancel the certificate of dissolution and prepare a certificate of existence that recites his or her determination and the effective date of reinstatement, file the original of the certificate, and notify the entity of that filing, which notification may be accomplished electronically.*
- (3) *When the reinstatement is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution and the entity shall resume carrying on its business as if the administrative dissolution or revocation had never occurred.*
- (4) *Notwithstanding any other provision to the contrary, any entity which was administratively dissolved and has taken the action necessary to wind up and liquidate its business and affairs and notify claimants shall be prohibited from reinstatement.*

➔SECTION 38. A NEW SECTION OF SUBCHAPTER 7 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State denies an entity's application for reinstatement the Secretary of State shall notify the entity and provide the reason or reasons for denial, which notification may be accomplished electronically.*
- (2) *The entity may appeal the denial of reinstatement to the Franklin Circuit Court. The entity may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the Secretary of State's certificate of dissolution, the entity's application for reinstatement, and the Secretary of State's notice of denial.*
- (3) *The court may summarily order the Secretary of State to reinstate the dissolved entity or may take other action the court considers appropriate.*

- (4) *The court's final decision may be appealed as in other civil proceedings.*

➔SECTION 39. SUBCHAPTER 8 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *An entity, upon the expiration of its period of duration as set forth in its organic filing, may in the sixty (60) day period thereafter amend its organic filing to extend its period of duration or to delete its period of duration, which amendment shall relate back to the day immediately preceding the expiration of the period of duration.*
- (2) *An entity that fails to so amend its organic filing in that sixty (60) day period may not thereafter be reinstated, and shall liquidate its business and affairs in accordance with its organic act.*
- (3) *The Secretary of State may with respect to an entity whose period of duration has expired issue a certificate of dissolution or document of similar import notwithstanding that such certificate is issued within the sixty (60) day period referenced in subsection (1) of this section.*
- (4) *This section shall have no bearing on whether or not the owners and representatives of an entity, after expiration of its period of duration, have limited liability from the debts, obligations, and liabilities of the entity.*

➔SECTION 40. SUBCHAPTER 9 OF KRS CHAPTER 14A IS ESTABLISHED AND A NEW SECTION THEREOF IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.*
- (2) *The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:*
 - (a) *Maintaining, defending, or settling any proceeding;*
 - (b) *Holding meetings of the board of directors, shareholders, partners, members, managers, beneficial owners, or trustees or carrying on other activities concerning the internal affairs of the foreign entity;*
 - (c) *Maintaining bank accounts;*
 - (d) *Maintaining offices or agencies for the transfer, exchange, and registration of the foreign entity's own securities or maintaining trustees or depositaries with respect to those securities;*
 - (e) *Selling through independent contractors;*
 - (f) *Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;*
 - (g) *Creating or acquiring indebtedness, mortgages, and security interests in real, personal, or intangible property;*
 - (h) *Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;*
 - (i) *Owning, without more, real or personal property;*
 - (j) *Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; and*
 - (k) *Transacting business in interstate commerce.*
- (3) *The list of activities in subsection (2) of this section is not exhaustive.*
- (4) *This section shall not apply to:*
 - (a) *Foreign limited liability partnerships; and*
 - (b) *Foreign general partnerships.*

- (5) *This section shall not apply in determining the contracts or activities that may subject a foreign entity to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.*

➔SECTION 41. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity transacting business in this Commonwealth without a certificate of authority may not maintain a proceeding in any court in this Commonwealth until it obtains a certificate of authority.*
- (2) *Neither the successor to a foreign entity that transacted business in this Commonwealth without a certificate of authority nor the assignee of a cause of action arising out of that business shall maintain a proceeding based on that cause of action in any court in this Commonwealth until the foreign entity or the assignee of the cause of action obtains a certificate of authority.*
- (3) *A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, its successor, or assignee requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign entity, its successor, or assignee obtains the certificate.*
- (4) *A foreign entity is liable for a civil penalty of two dollars (\$2) for each day it transacts business in this Commonwealth without a certificate of authority. The Secretary of State may collect all penalties due under this subsection.*
- (5) *Notwithstanding subsections (1) and (2) of this section, the failure of a foreign entity to obtain a certificate of authority shall not impair the validity of the acts of the foreign entity or prevent it from defending any proceeding in this Commonwealth.*

➔SECTION 42. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity may apply for a certificate of authority to transact business in this Commonwealth by delivering an application to the Secretary of State for filing. The application shall set forth:*
 - (a) *The real name of the foreign entity and, if its real name is unavailable for use in this Commonwealth, a name that satisfies the requirements of Section 23 of this Act;*
 - (b) *The name of the state or country under whose law it is organized;*
 - (c) *Its form of organization;*
 - (d) *Its date of organization;*
 - (e) *Its period of duration or a statement that its duration is perpetual;*
 - (f) *The street address of its principal office;*
 - (g) *The address of its registered office in this Commonwealth and the name of its registered agent at that office;*
 - (h) *The names and usual business addresses of:*
 1. *The secretary, the other principal officers, and the directors, if the entity is a foreign corporation;*
 2. *Each of the general partners, if the entity is a foreign limited partnership;*
 3. *Each of the managers, if the entity is a foreign limited liability company with managers; or*
 4. *Each of the trustees, if the entity is a foreign business trust;*
 - (i) *If the foreign entity is a foreign limited partnership, whether it is a foreign limited liability limited partnership; and*
 - (j) *If the foreign entity is a foreign professional service corporation, a representation that all of the shareholders, not less than one-half (1/2) of the directors, and all officers other than the secretary and treasurer would be qualified persons with respect to the corporation were it incorporated in this Commonwealth.*

- (2) *The execution of a certificate of authority shall constitute a representation by that person that the foreign entity validly exists under the laws of its jurisdiction of organization.*
- (3) *Unless the registered agent signs the application, the foreign entity shall deliver with the application for certificate of authority the registered agent's written consent to the appointment.*
- (4) *A certificate of authority or document of similar import of record with the Secretary of State as of the date immediately preceding the effective date of this Act, including a statement of foreign qualification, shall remain effective, but its amendment shall be governed by Section 43 of this Act.*

➔SECTION 43. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity authorized to transact business in this Commonwealth shall obtain an amended certificate of authority from the Secretary of State if it changes:*
 - (a) *Its real name;*
 - (b) *The period of its duration;*
 - (c) *The state or country of its organization; or*
 - (d) *Its form of organization.*
- (2) *The requirements of Section 42 of this Act for obtaining an original certificate of authority shall apply to obtaining an amended certificate.*
- (3) *A foreign entity that changes its principal office address shall promptly satisfy the requirements of Section 33 of this Act.*
- (4) *A foreign entity that changes its registered office, its registered agent, or both as maintained in this Commonwealth shall promptly satisfy the requirements of Section 29 of this Act.*

➔SECTION 44. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A certificate of authority shall authorize the foreign entity to which it is issued the authority to transact business in this Commonwealth subject, however, to the right of the Commonwealth to revoke the certificate as provided in this chapter.*
- (2) *A foreign entity with a valid certificate of authority shall have the same but no greater rights and shall have the same but no greater privileges as, and except as otherwise provided by this chapter shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic entity of like character.*
- (3) *This chapter shall not authorize this Commonwealth to regulate the organization or internal affairs, including the inspection of books, records, and documents, of a foreign entity authorized to transact business in this Commonwealth.*
- (4) *Nothing in this section shall be interpreted or construed to limit the capacity and authority of a professional regulatory board to regulate the terms and manner by which professional services are rendered in the Commonwealth of Kentucky through or on behalf of a foreign entity.*

➔SECTION 45. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity authorized to transact business in this Commonwealth shall not withdraw from this Commonwealth until there has been filed with the Secretary of State a certificate of withdrawal.*
- (2) *A foreign entity authorized to transact business in this Commonwealth may submit a certificate of withdrawal for filing by delivering it to the Secretary of State. The certificate shall set forth:*
 - (a) *The real name of the foreign entity and, if applicable, the fictitious name under which it has qualified to transact business in this Commonwealth;*
 - (b) *The name of the state or country under whose law it is organized;*

- (c) *That it is not transacting business in this Commonwealth and that it surrenders its authority to transact business in this Commonwealth;*
 - (d) *That it revokes the authority of its registered agent to accept service on its behalf and appoints the Secretary of State as its agent for service of process in any proceeding based on a cause of action arising consequent to having transacted business in this Commonwealth;*
 - (e) *A mailing address to which the Secretary of State may mail a copy of any process served on the Secretary of State under paragraph (d) of this subsection; and*
 - (f) *A commitment to notify the Secretary of State in the future of any change in its mailing address.*
- (3) *A certificate of withdrawal shall be deemed amended by the filing of a change in mailing address delivered pursuant to subsection (2)(f) of this section.*
 - (4) *After the certificate of withdrawal of the foreign entity is effective, service of process on the Secretary of State under this section shall be service on the foreign entity. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign entity at the address set forth under subsection (2)(e) of this section.*

➔SECTION 46. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

The Secretary of State may commence a proceeding to revoke the certificate of authority of a foreign entity if:

- (1) *The foreign entity does not deliver its annual report to the Secretary of State for filing on or before the due date;*
- (2) *The foreign entity is without a registered office or registered agent in this Commonwealth for sixty (60) days or more;*
- (3) *The foreign entity does not comply with Section 29 of this Act;*
- (4) *An incorporator, organizer, director, member, manager, officer, partner, agent or trustee of the foreign entity signed a document knowing it was false in any material respect with intent that the document be delivered to the Secretary of State for filing; or*
- (5) *The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of business entity records in the state or country under whose law the foreign entity is organized stating that it has been dissolved or disappeared as the result of a merger.*

➔SECTION 47. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *If the Secretary of State determines that one (1) or more grounds exist under Section 46 of this Act for revocation of a certificate of authority, the foreign entity shall be served with written notice of that determination by mailing the notice by first-class mail to the foreign entity at its principal place of business address.*
- (2) *If within sixty (60) days after the mailing of the notice, the foreign entity does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist, the Secretary of State may revoke the foreign entity's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The Secretary of State shall file the original of the certificate and serve a copy on the foreign entity by mailing the notice by first-class mail to the foreign entity at its principal place of business address.*
- (3) *The authority of a foreign entity to transact business in this Commonwealth shall cease on the date shown on the certificate revoking its certificate of authority.*
- (4) *The Secretary of State's revocation of a foreign entity's certificate of authority shall be considered to appoint the Secretary of State the foreign entity's registered agent in any proceeding based on a cause of action which arose during the time the foreign entity was authorized to transact business in this Commonwealth. Service of process on the Secretary of State under this subsection shall be service on the foreign entity. Upon receipt of process, the Secretary of State shall mail a copy of the process to the secretary of the foreign entity at its principal office address shown in its most recent annual report or in any*

subsequent communication received from the foreign entity stating its current principal office address, or, if none is on file, in its application for a certificate of authority.

- (5) *Revocation of a foreign entity's certificate of authority shall not terminate the authority of the registered agent of the foreign entity.*

➔SECTION 48. A NEW SECTION OF SUBCHAPTER 9 OF KRS CHAPTER 14A IS CREATED TO READ AS FOLLOWS:

- (1) *A foreign entity may appeal the Secretary of State's revocation of its certificate of authority to the Franklin Circuit Court within thirty (30) days after service of the certificate of revocation. The foreign entity may appeal by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Secretary of State's certificate of revocation.*
- (2) *The court may summarily order the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.*
- (3) *The court's final decision may be appealed as in other civil proceedings.*

➔Section 49. KRS 64.012 is amended to read as follows:

The county clerk shall receive for the following services the following fees:

- (1) (a) Recording and indexing of a:
1. Deed of trust or assignment for the benefit of creditors;
 2. Deed;
 3. Real estate mortgage;
 4. Deed of assignment;
 5. Real estate option;
 6. Power of attorney;
 7. Revocation of power of attorney;
 8. Lease which is recordable by law;
 9. Deed of release of a mortgage or lien under KRS 382.360;
 10. United States lien;
 11. Release of a United States lien;
 12. Release of any recorded encumbrance other than state liens;
 13. Lis pendens notice concerning proceedings in bankruptcy;
 14. Lis pendens notice;
 15. Mechanic's and artisan's lien under KRS Chapter 376;
 16. Assumed name;
 17. Notice of lien issued by the Internal Revenue Service;
 18. Notice of lien discharge issued by the Internal Revenue Service;
 19. Original, assignment, amendment, or continuation financing statement;
 20. Making a record for the establishment of a city, recording the plan or plat thereof, and all other service incident;
 21. Survey of a city, or any part thereof, or any addition to or extensions of the boundary of a city;
 22. Recording with statutory authority for which no specific fee is set, except a military discharge; and
 23. Filing with statutory authority for which no specific fee is set.

For all items in this subsection if the entire thereof does not exceed

three (3) pages \$12.00

And, for all items in this subsection exceeding three (3) pages,

for each additional page \$3.00

And, for all items in this subsection for each additional reference

relating to same instrument \$4.00

(b) The twelve dollar (\$12) fee imposed by paragraph (a) of this subsection shall be divided as follows:

1. Six dollars (\$6) shall be retained by the county clerk; and

2. Six dollars (\$6) shall be paid to the affordable housing trust fund established in KRS 198A.710 and shall be remitted by the county clerk within ten (10) days following the end of the quarter in which the fee was received. Each remittance to the affordable housing trust fund shall be accompanied by a summary report on a form prescribed by the Kentucky Housing Corporation.

(2) Recording and indexing a file-stamped copy of documents *set forth in subsection (1) or (2) of Section 11 of this Act* ~~pertaining~~

~~to corporations authorized by KRS Chapter 271B., 272, 273, 274, 275,~~

~~or 279]~~ that have been filed first with the Secretary of State:

(a) The entire record thereof does not exceed three (3) pages \$10.00

(b) And, exceeding three (3) pages, for each additional page \$3.00

(3) Recording wills or other probate documents pursuant to KRS

Chapter 392 or 394 \$ 8.00

(4) Recording court ordered name changes pursuant to KRS Chapter 401 \$ 8.00

(5) For noting a security interest on a certificate of title pursuant to

KRS Chapter 186A \$12.00

(6) For filing the release of collateral under a financing statement

and noting same upon the face of the title pursuant to KRS Chapter

186 or 186A \$5.00

(7) Filing or recording state tax or other state liens \$5.00

(8) Filing release of a state tax or other state lien \$5.00

(9) Marginal release, noting release of any lien, mortgage, or redemption

other than a deed of release \$8.00

(10) Acknowledging or notarizing any deed, mortgage, power of attorney,

or other written instrument required by law for recording and certifying

same \$4.00

(11) Recording a land use restriction according to KRS 100.3681 \$15.00

(12) Recording plats, maps, and surveys, not exceeding 24 inches by

36 inches, per page \$20.00

(13) Recording a bond, for each bond \$10.00

(14) Each bond required to be taken or prepared by the clerk \$4.00

(15) Copy of any bond when ordered \$3.00

(16) Administering an oath and certificate thereof \$5.00

(17)	Issuing a license for which no other fee is fixed by law	\$8.00
(18)	Issuing a solicitor's license	\$15.00
(19)	Marriage license, indexing, recording, and issuing certificate thereof	\$24.00
(20)	Every order concerning the establishment, changing, closing, or discontinuing of roads, to be paid out of the county levy when the road is established, changed, closed, or discontinued, and by the applicant when it is not	\$3.00
(21)	Registration of licenses for professional persons required to register with the county clerk	\$10.00
(22)	Certified copy of any record	\$5.00
	Plus fifty cents (\$.50) per page after three (3) pages	
(23)	Filing certification required by KRS 65.070(1)(a)	\$5.00
(24)	Filing notification and declaration and petition of candidates for Commonwealth's attorney	\$200.00
(25)	Filing notification and declaration and petition of candidates for office in cities of the fifth or sixth class and candidates for county and independent boards of education	\$20.00
(26)	Filing notification and declaration and petition of candidates for boards of soil and water conservation districts	\$20.00
(27)	Filing notification and declaration and petition of candidates for other office	\$50.00
(28)	Filing declaration of intent to be a write-in candidate for office other than municipal office in a city of the fifth or sixth class	\$50.00
(29)	Filing declaration of intent to be a write-in candidate for municipal office in a city of the fifth or sixth class	\$20.00
(30)	Filing petitions for elections, other than nominating petitions	\$50.00
(31)	Notarizing any signature, per signature	\$2.00
(32)	Filing bond for receiving bodies under KRS 311.310	\$10.00
(33)	Noting the assignment of a certificate of delinquency and recording and indexing the encumbrance under KRS 134.126 or 134.127	\$27.00
(34)	Filing a going-out-of-business permit under KRS 365.445	\$50.00
(35)	Filing a renewal of a going-out-of-business permit under KRS 365.445	\$50.00
(36)	Filing a grain warehouseman's license under KRS 359.050	\$10.00
(37)	Filing and processing a transient merchant permit under KRS 365.680	\$25.00

➔Section 50. KRS 271B.1-200 is repealed, reenacted, and amended to read as follows:

- (1) ***Each document delivered by a domestic or foreign corporation to the Secretary of State for filing shall satisfy the requirements of Sections 8 to 22 of this Act.*** ~~A document shall satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the Secretary of State.~~

- ~~(2) This chapter must require or permit filing the document in the office of the Secretary of State.~~
- ~~(3) The document shall contain the information required by this chapter. It may contain other information as well.~~
- ~~(4) The document shall be typewritten, printed, or electronically transmitted. If the document is electronically transmitted, the document shall be in a format that can be retrieved or reproduced in typewritten or printed form.~~
- ~~(5) The document shall be in the English language. A corporate name may be in a language other than English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations, if not in English, shall be accompanied by a reasonably authenticated English translation.~~
- ~~(6) The document shall be executed:~~
 - ~~(a) By the chairman of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;~~
 - ~~(b) If directors have not been selected or the corporation has not been formed, by an incorporator; or~~
 - ~~(c) If the corporation is in the hands of a receiver, trustee, or other court appointed fiduciary, by that fiduciary.~~
- ~~(7) The person executing the document shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. The document may but need not contain:~~
 - ~~(a) A corporate seal of the corporation;~~
 - ~~(b) An attestation, acknowledgment, or verification; or~~
 - ~~(c) A statement regarding the preparer of the document which complies with KRS 382.335.~~
- ~~(8) If the Secretary of State has prescribed a mandatory form for the document under KRS 271B.1 210, the document shall be in or on the prescribed form.~~
- ~~(9) The document shall be delivered to the office of the Secretary of State for filing. Delivery may be made by electronic transmission, if and to the extent permitted by the Secretary of State. If the document is filed in typewritten or printed form and not transmitted electronically, the Secretary of State may require one (1) exact or conformed copy to be delivered with the document, except as provided in KRS 271B.5 030 and 271B.15 090.~~
- ~~(10) One (1) exact or conformed paper, but not electronic, copy of the document shall then be filed with and recorded by the county clerk of the county in which the registered office of the corporation is situated.~~
- ~~(11) When the document is delivered to the office of the Secretary of State for filing, the correct filing fee, the organization tax, and any penalty required by this chapter or other law to be collected by the office of the Secretary of State with the document shall be paid or provision for payment shall be made in a manner permitted by the Secretary of State. The Secretary of State may accept payment of the correct amount due by credit card, charge card, or similar method. However, if the amount due is tendered by any method other than cash, the liability shall not be finally discharged until the Secretary of State receives final payment or credit of collectible funds}.~~
- ~~(2){(12)}~~ Whenever a provision of KRS Chapter 271B permits any of the terms of a plan or a filed document to be dependent on facts objectively ascertainable outside the plan or filed document, the following provisions apply:
 - (a) The manner in which the facts will operate upon the terms of the plan or filed document shall be set forth in the plan or filed document;
 - (b) The facts may include but are not limited to:
 - 1. Any of the following that is available in a nationally recognized news or information medium either in print or electronically:
 - a. Statistical or market indices;
 - b. Market prices of any security or group of securities;
 - c. Interest rates;

- d. Currency exchange rates; or
- e. Similar economic or financial data;
- 2. A determination or action by any person or body, including the corporation or any other party to a plan or filed document; or
- 3. The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document;
- (c) As used in this subsection:
 - 1. "Filed document" means a document filed with the Secretary of State under any provision of KRS Chapter 271B except *an annual report or a filing pursuant to Subtitle 15 of KRS Chapter 271B*~~[Subtitle 15 or KRS 271B.16-220]~~; and
 - 2. "Plan" means a plan of nonprofit conversion as provided for in KRS 273.382, conversion into an LLC as provided for in KRS 275.376, merger, or of share exchange;
- (d) The following provisions of a plan or filed document shall not be made dependent on facts outside the plan or filed document:
 - 1. The name and address of any person required in a filed document;
 - 2. The registered office of any entity required in a filed document;
 - 3. The registered agent of any entity required in a filed document;
 - 4. The number of authorized shares and designation of each class or series of shares;
 - 5. The effective date of a filed document; or
 - 6. Any required statement in a filed document of the date on which the underlying transaction was approved or the manner in which that approval was given; and
- (e) If a provision of a filed document is made dependent on a fact ascertainable outside of the filed document, and that fact is not ascertainable by reference to a source described in paragraph (b)1. of this subsection or a document that is a matter of public record, or the affected shareholders have not received notice of the fact from the corporation, then the corporation shall file with the Secretary of State articles of amendment setting forth the fact promptly after the time when the fact referred to is first ascertainable or thereafter changes. Articles of amendment under this paragraph are deemed to be authorized by the authorization of the original filed document or plan to which they relate and may be filed by the corporation without further action by the board of directors or the shareholders.

➔Section 51. KRS 271B.1-220 is repealed, reenacted, and amended to read as follows:

~~{(1)—}~~The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

(1){(a)}	Articles of incorporation	\$ 40
(2){(b)}	{Application for use of indistinguishable name	\$ 20
(c)—	Application or renewal of application for reserved name	\$ 15
(d)—	Cancellation of application for reserved name	\$ 10
(e)—	Notice of transfer of reserved name	\$ 15
(f)—	Application for registered name	\$ 36
(g)—	Application for renewal of registered name	\$ 36
(h)—	Corporation's statement of change of registered agent	
	_____ or registered office, or both	\$ 10
(i)—	Corporation's statement of change of principal office address	\$ 10
(j)—	Agent's statement of change of registered office for	

- | | | |
|------------------|--------------------------------------------|--------------------|
| _____ | each affected corporation | \$ 10 |
| _____ | not to exceed a total of | \$1,000 |
- ~~(k) — } Amendment of articles of incorporation~~ ~~\$ 40~~
~~(3){(l)}~~ Restatement of articles of incorporation ~~\$ 40~~
~~(4){(m)}~~ Amended and restated articles ~~\$ 80~~
~~(5){(n)}~~ Articles of merger or share exchange ~~\$ 50~~
~~(6){(o)}~~ Articles of dissolution ~~\$ 40~~
~~(7){(p)}~~ Articles of revocation of dissolution ~~\$ 15~~
~~{(q) — Reinstatement penalty following administrative dissolution~~ ~~\$ 100~~
~~(r) — Application for certificate of authority~~ ~~\$ 90~~
~~(s) — Application for amended certificate of authority~~ ~~\$ 40~~
~~(t) — Application for certificate of withdrawal~~ ~~\$ 40~~
~~(u) — Annual report~~ ~~\$ 15~~
~~(v) — Amendment to annual report.....~~ ~~\$ 10~~
~~(w) — Articles of correction~~ ~~\$ 20~~
~~(x) — Certificate of existence or authorization~~ ~~\$ 10}~~
~~(8){(y)}~~ Any other document required or permitted to
 be filed by this chapter ~~\$ 15~~
~~{(z) — Agent's statement of resignation~~ ~~No fee~~
~~(aa) — Certificate of administrative dissolution~~ ~~No fee~~
~~(AB) — Certificate of reinstatement~~ ~~No fee~~
~~(ac) — Certificate of judicial dissolution~~ ~~No fee~~
~~(ad) — Certificate of revocation of authority to transact business~~ ~~No fee~~
- ~~(2) — The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on him under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if he prevails in the proceeding.~~
~~(3) — The Secretary of State shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:~~
 ~~(a) — Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and~~
 ~~(b) — Five dollars (\$5) for the certificate.~~
~~(4) — The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to corporations}.~~
- ➔ Section 52. KRS 271B.2-020 is amended to read as follows:
- (1) The articles of incorporation shall set forth:
- (a) A corporate name for the corporation that satisfies the requirements of *Section 23 of this Act*~~{KRS 271B.4-010}~~;
 - (b) The number of shares the corporation is authorized to issue;
 - (c) The~~{ street address of the }~~ corporation's initial registered office and~~{ the name of its }~~ initial registered agent *that satisfy the requirements of Section 28 of this Act*~~{at that office}~~;
 - (d) The mailing address of the corporation's principal office; and

- (e) The name and mailing address of each incorporator.
- (2) The articles of incorporation may set forth:
 - (a) The names and mailing addresses of the individuals who are to serve as the initial directors;
 - (b) Provisions not inconsistent with law regarding:
 - 1. The purpose or purposes for which the corporation is organized;
 - 2. Managing the business and regulating the affairs of the corporation;
 - 3. Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
 - 4. A par value for authorized shares or classes of shares; and
 - 5. The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
 - (c) Any provision that under this chapter is required or permitted to be set forth in the bylaws; and
 - (d) A provision eliminating or limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of his duties as a director, provided that such provision shall not eliminate or limit the liability of a director:
 - 1. For any transaction in which the director's personal financial interest is in conflict with the financial interests of the corporation or its shareholders;
 - 2. For acts or omissions not in good faith or which involve intentional misconduct or are known to the director to be a violation of law;
 - 3. For any vote for or assent to an unlawful distribution to shareholders as prohibited under KRS 271B.8-330; or
 - 4. For any transaction from which the director derived an improper personal benefit.

No such provision shall eliminate or limit the liability of any director for any act or omission occurring prior to the date when such provision becomes effective. In no case shall this subsection or any such provision be construed to expand the liability of any director as determined pursuant to KRS 271B.8-300.

- (3) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

~~[(4) Unless the registered agent signs the articles, the corporation shall deliver with the articles of incorporation the registered agent's written consent to the appointment.]~~

➔SECTION 53. KRS 271B.4-010 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The name of each corporation shall satisfy the requirements of Section 23 of this Act.

➔SECTION 54. KRS 271B.5-025 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A corporation that changes the mailing address of its principal office shall comply with Section 33 of this Act.~~[A corporation that changes the mailing address of its principal office shall deliver to the Secretary of State for filing, on a form supplied by the Secretary of State, a statement of change that sets forth:~~

- ~~(1) The name of the corporation;~~
- ~~(2) The mailing address of its principal office prior to the change; and~~
- ~~(3) The new mailing address of its principal office.]~~

➔SECTION 55. KRS 271B.15-010 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A foreign corporation transacting business in this Commonwealth is subject to Section 34 of this Act.

➔SECTION 56. KRS 271B.16-220 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each domestic corporation and each foreign corporation qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔Section 57. KRS 272.131 is repealed, reenacted, and amended to read as follows:

- (1) The articles of incorporation of each association shall state:
 - (a) The name of the association *that satisfies Section 23 of this Act*;
 - (b) The purposes for which it is formed;
 - (c) The place where its principal business will be transacted;
 - (d) The period of duration, which may be perpetual. When the articles of incorporation fail to state the period of duration, it shall be considered perpetual. Any association heretofore or hereafter organized for a period less than perpetual, may, by amendment to its articles of incorporation, extend the period of its duration for a specified period or perpetually;
 - (e) The names and addresses, not less than five (5), of those who are to serve as directors for the first term or until the election of their successors;
 - (f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members in accordance with the general rules. These provisions of the articles of incorporation shall not be altered, amended, or repealed except by the affirmative vote of not less than two-thirds (2/3) of the votes entitled to be cast by members present in person, or by proxy, if permitted by the bylaws, and voting thereon at any regular or special meeting; and
 - (g) If organized with capital stock, the authorized amount of the stock and the number of shares into which it is divided and the par value thereof. Capital stock may be divided into preferred and common stock. The articles of incorporation must contain a statement of the number of shares of stock to which preference is granted and the number of shares of stock to which no preference is granted and the nature and extent of the preference and the privileges granted to each. No specific amount of the capital stock authorized is required to be subscribed before the association may transact business with other than its members; the board may determine the amount of capital stock to be issued as the business of the association may justify or demand, from time to time, within the amount of the total authorization.
- (2) The articles of incorporation may contain any provision consistent with law with respect to management, regulation, government, financing, indebtedness, membership, the establishment of voting districts and the election of delegates for representative purposes, the issuance, retirement and transfer of its stock, if formed with capital stock, or any provisions relative to the way or manner in which it shall operate with respect to its members, officers, or directors, and any other provisions relating to its affairs; but nothing set forth in this section shall be construed as limiting any of the rights or powers otherwise given to such associations.
- (3) The articles of incorporation must be subscribed by the incorporators and acknowledged by one (1) of them before an officer authorized by the laws of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed and recorded in accordance with the statute relating to corporations generally; and when so filed, the articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of the association. A copy of the articles of incorporation, indorsed by the Secretary of State with the fact and time of recording in his office, shall be filed with the dean of the College of Agriculture of the University of Kentucky and with the Commissioner of the Department of Agriculture.
- ~~[(4) Except as authorized by subsections (5) and (6) of this section, the name of an association shall be distinguishable from any name of record with the Secretary of State.~~
- ~~(5) An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:~~
 - ~~(a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or~~

- ~~(b) — The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~
- ~~(6) — An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:~~
 - ~~(a) — Has merged with the other entity;~~
 - ~~(b) — Has been formed by reorganization of the other entity; or~~
 - ~~(c) — Has acquired all or substantially all of the assets, including the name, of the other entity.~~
- ~~(7) — This chapter does not control the use of assumed names.~~
- ~~(8) — The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.~~

➔ Section 58. KRS 272.335 is amended to read as follows:

A foreign association may be authorized to transact business in this *Commonwealth*~~[state]~~, upon compliance with the provisions of *Section 34 of this Act*~~[KRS 271B.15-030]~~.

➔ Section 59. KRS 272.390 is repealed, reenacted, and amended to read as follows:

~~{(1) —}~~ Each association formed under KRS 272.360 to 272.510 must prepare and file articles of incorporation, setting forth:

- ~~(1){(a)}~~ The name of the association *that satisfies Section 23 of this Act*;
- ~~(2){(b)}~~ The place where its principal business will be transacted;
- ~~(3){(c)}~~ The term for which it is to exist; the number of directors thereof which must not be less than five (5) and may be any number in excess thereof; the term of office of such directors; and the names and addresses of those who are to serve as incorporating directors for the first term, or until election and qualification of their successors; and
- ~~(4){(d)}~~ The property rights of the members and whether the interest of each member will be equal or unequal; and if unequal, the rule or rules applicable to all members by which the property rights and interests, respectively, of each member shall be determined and fixed; and provision for the admission of new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

~~{(2) — Except as authorized by subsections (3) and (4) of this section, the name of an association must be distinguishable from any name of record with the Secretary of State.~~

~~(3) — An association may apply to the Secretary of State for authorization to use a name that is not distinguishable from any name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:~~

- ~~(a) — The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying association; or~~
- ~~(b) — The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~
- ~~(4) — An association may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user association:~~
 - ~~(a) — Has merged with the other entity;~~
 - ~~(b) — Has been formed by reorganization of the other entity; or~~
 - ~~(c) — Has acquired all or substantially all of the assets, including the name, of the other entity.~~

~~(5) — This chapter does not control the use of assumed names.~~

~~(6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.}~~

➔ Section 60. KRS 273.177 is repealed, reenacted, and amended to read as follows:

The name of the corporation shall satisfy the requirements of Section 23 of this Act~~[(1) The corporate name shall include the word "corporation" or "incorporated" or the abbreviation "Inc." or the word "company" or the abbreviation "Co."; but if the word "company" or the abbreviation "Co." is used, it may not be immediately preceded by the word "and" or the abbreviation "&." The provisions of this subsection shall not affect the right of any corporation existing on June 13, 1968, to continue the use of its name.~~

~~(2) Except as authorized by subsection (3) of this section, a corporate name shall be distinguishable from any name of record with the Secretary of State.~~

~~(3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:~~

~~(a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or~~

~~(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~

~~(4) The corporate name shall not contain any word or phrase which indicates or implies that it is organized for any purpose not permitted under KRS 273.161 to 273.390.~~

~~(5) This chapter shall not control the use of assumed names.~~

~~(6) The filing of articles of incorporation under the particular corporate name shall not automatically prevent the use of that name or protect that name from use by other persons.~~

~~(7) The assumption of a name in violation of this section shall not affect or vitiate the corporate existence; but the courts of this state having equity jurisdiction may, upon the application of the state or of any person interested or affected, enjoin such corporation from doing business under a name assumed in violation of this section, although a certificate of incorporation may have been issued}.~~

➔ Section 61. KRS 273.182 is repealed, reenacted, and amended to read as follows:

~~[(1) Each corporation shall continuously maintain in this state {~~

~~(a) a registered office{ that may be the same as any of its places of business;} and~~

~~[(b) } a registered agent *that comply with Section 28 of this Act*{, who may be:~~

~~1. An individual who resides in this state and whose business office is identical with the registered office;~~

~~2. A domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office;~~

~~3. A foreign corporation or nonprofit foreign corporation authorized to transact business in this state whose business office is identical with the registered office; or~~

~~4. A domestic limited liability company or a foreign limited liability company authorized to transact business in the state whose business office is identical with the registered office.~~

~~(2) Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment}.~~

➔ SECTION 62. KRS 273.1842 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A corporation that changes the mailing address of its principal office shall comply with Section 33 of this Act.

➔ Section 63. KRS 273.247 is amended to read as follows:

(1) The articles of incorporation shall set forth:

- (a) The name of the corporation *that satisfies the requirements of Section 23 of this Act*;
 - (b) The purpose or purposes for which the corporation is organized;
 - (c) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets or dissolution or final liquidation;
 - (d) The ~~street address of the~~ corporation's initial registered office and ~~the name of its~~ initial registered agent *that satisfy the requirements of Section 28 of this Act* ~~at that address~~;
 - (e) The mailing address of the corporation's principal office;
 - (f) The number of directors constituting the initial board of directors, and the names and mailing addresses of the persons who are to serve as the initial directors; and
 - (g) The name and mailing address of each incorporator.
- (2) It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in KRS 273.163 to 273.387.
- (3) Unless its articles of incorporation provide otherwise, every corporation shall be presumed to have perpetual duration and succession in its corporate name.
- (4) Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, when a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.
- (5) Unless the registered agent signs the articles, the corporation shall deliver with the articles of incorporation the registered agent's written consent to the appointment.

➔SECTION 64. KRS 273.252 IS REPEALED AND REENACTED TO READ AS FOLLOWS

Each document delivered by a domestic or foreign corporation to the Secretary of State for filing shall satisfy the requirements of Sections 8 to 22 of this Act.

➔Section 65. KRS 273.267 is amended to read as follows:

A corporation amending its articles of incorporation shall deliver to the Secretary of State for filing articles of amendment *that satisfy Sections 8 to 22 of this Act* setting forth:

- (1) The name of the corporation.
- (2) The amendment so adopted.
- (3) If there are members entitled to vote thereon, (a) a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds (2/3) of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
- (4) If there are no members, or no members entitled to vote thereon, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

➔SECTION 66. KRS 273.361 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each foreign nonprofit corporation transacting business in the Commonwealth of Kentucky shall comply with Section 40 of this Act.

➔Section 67. KRS 273.3641 is amended to read as follows:

- ~~{(1) —}~~ Each foreign corporation authorized to transact business in this state shall continuously maintain in this state ~~{~~
- ~~(a) —}~~ a registered office ~~{ that may be the same as any of its places of business; }~~ and
 - ~~{(b) —}~~ a registered agent *that satisfy the requirements of Section 28 of this Act* ~~{, who may be:~~

1. ~~An individual who resides in this state and whose business office is identical with the registered office;~~
 2. ~~A domestic corporation or nonprofit domestic corporation whose business office is identical with the registered office; or~~
 3. ~~A foreign corporation or foreign nonprofit corporation authorized to transact business in this state whose business office is identical with the registered office.~~
- (2) ~~Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment}.~~

➔ SECTION 68. KRS 273.3671 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each corporation and each foreign corporation qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔ Section 69. KRS 273.368 is amended to read as follows:

~~{(1)—}~~In respect of the following documents, the fees to be collected by the Secretary of State for filing, when required by this chapter, shall be:

- (1)~~{(a)}~~ Articles of incorporation, eight dollars (\$8);
- (2)~~{(b)}~~ Articles of amendment, eight dollars (\$8);
- (3)~~{(c)}~~ Restated articles of incorporation, eight dollars (\$8);
- (4)~~{(d)}~~ Articles of merger or consolidation, eight dollars (\$8);
- (5)~~{(e)}~~ Articles of dissolution, five dollars (\$5); **and**
- (6)~~{(f)}~~ ~~{A statement of change of address of registered office or change of registered agent, or both, five dollars (\$5);~~
 - (g) ~~An annual report by a domestic corporation, four dollars (\$4);~~
 - (h) ~~An annual report by a foreign corporation, eight dollars (\$8);~~
 - (i) ~~Application for certificate of authority, forty dollars (\$40); and~~
 - (j) ~~Any other statement or report of a foreign or domestic corporation, eight dollars (\$8).~~

~~{(2)—}~~For recording any documents, as required by this chapter, the county clerk shall be entitled to the fees specified in KRS 64.012.}

➔ Section 70. KRS 274.105 is amended to read as follows:

Each professional service corporation shall file an annual report as provided in Section 34 of this Act.~~{In addition to the matter required to be included in annual reports by KRS Chapter 271B, there shall be included in the annual report of each domestic or foreign professional service corporation (a) the names and addresses of all shareholders of said professional service corporation, and (b) a certificate signed by the president of the corporation certifying that all of its shareholders, not less than one half (1/2) of its directors and all officers other than secretary and treasurer, are duly qualified as provided in this chapter.}~~ A duplicate original copy of ***each***~~{such}~~ annual report shall be filed with the regulating board which licenses the shareholders ***of the corporation***~~{described in the certificate}~~.

➔ Section 71. KRS 275.025 is amended to read as follows:

- (1) The articles of organization shall set forth:
 - (a) A name for the limited liability company that satisfies the requirements of ***Section 12 of this Act***~~{KRS 275.100}~~;
 - (b) The~~{ street address of the limited liability company's initial}~~ registered office~~{,}~~ and~~{ the name of its}~~ initial registered agent ***that satisfy the requirements of Section 28 of this Act***~~{at that office}~~;
 - (c) The mailing address of the initial principal office of the limited liability company; and

- (d) A statement that the limited liability company is to be managed by a manager or managers or that the limited liability company is to be managed by its members.
- (2) The term of a limited liability company shall be perpetual unless a period of duration other than perpetual is set forth in the articles of organization.
- (3) The articles of organization of a professional limited liability company shall designate the professional services to be practiced through the professional limited liability company.
- (4) The articles of organization may set forth any other matter that under this chapter is permitted to be set forth in an operating agreement not inconsistent with law.
- (5) ~~[A written statement of the initial registered agent consenting to serve in that capacity shall accompany the articles of organization.]~~
- ~~(6)~~ A member of a limited liability company shall not have a vested property right resulting from any provision of the articles of organization.
- ~~(6)~~~~(7)~~ If the limited liability company is a nonprofit limited liability company, then the articles of organization shall state that fact and its nonprofit purpose. This provision of the articles of organization shall not be removed from the articles of organization without written notice to the Attorney General of Kentucky given not less than ten (10) business days prior to the filing of the amendment.
- ~~(7)~~~~(8)~~ The fact that the articles of organization are on file with the Secretary of State is notice:
 - (a) That the limited liability company formed by the filing of the articles of organization is a limited liability company formed under the laws of the Commonwealth of Kentucky; and
 - (b) Of all other facts set forth in the articles of organization which are required to be set forth by subsections (1), (3), and (7) of this section.

➔Section 72. KRS 275.030 is amended to read as follows:

- (1) A limited liability company shall amend its articles of organization to add or change a provision that is required by this chapter to be included in the articles of organization. A limited liability company may amend its articles of organization to add, change, or delete a provision that is permitted to be or that is not required to be in the articles of organization. The articles of organization shall be amended if:
 - (a) There is a change in the name of the limited liability company;
 - (b) There is a change in the latest date upon which the limited liability company is to dissolve;
 - (c) There is a change in whether the management of the limited liability company is vested in managers or members; or
 - (d) There is a change in any other matter required to be set forth in the articles of organization under KRS 275.025.
- (2) Except as provided in subsection (3) of this section, or unless the articles of organization or the operating agreement provide otherwise, an amendment to the articles of organization of a limited liability company shall be approved by the members in accordance with KRS 275.175.
- (3) Unless the articles of organization or the written operating agreement provide otherwise, a manager or, if there is no manager, any member may amend the articles of organization of the limited liability company without action by the members to delete:
 - (a) The name and address of the initial registered agent or initial registered office if a statement of change pursuant to **Section 29 of this Act or predecessor law**~~[KRS 275.120]~~ is on file with the Secretary of State; or
 - (b) The mailing address of the initial principal office, if a statement of change pursuant to **Section 33 of this Act or predecessor law**~~[KRS 275.040]~~ is on file with the Secretary of State.
- (4) To amend its articles of organization, a limited liability company shall file with the Secretary of State articles of amendment **that satisfy Sections 8 to 22 of this Act** setting forth:
 - (a) The name of the limited liability company;

- (b) The text of each amendment adopted;
 - (c) The date of each amendment's adoption; and
 - (d) A statement that the amendment was duly adopted by the managers or the members in accordance with the articles of organization, the operating agreement of the limited liability company, or this chapter.
- (5) The articles of organization may be amended in any respect as may be desired, if the articles of organization as amended contain only provisions that may be lawfully contained in articles of organization at the time of making the amendment.
- (6) Unless the articles of organization provide otherwise, no member of a limited liability company shall have the right to dissent from an amendment to the articles of organization.

➔SECTION 73. KRS 275.040 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A limited liability company that changes the mailing address of its principal place of business shall comply with Section 33 of this Act.

➔SECTION 74. KRS 275.045 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each document delivered by a domestic or foreign limited liability company to the Secretary of State for filing shall satisfy the requirements of Sections 8 to 22 of this Act.

➔Section 75. KRS 275.055 is repealed, reenacted, and amended to read as follows:

~~{(1)}~~—The Secretary of State shall collect the following fees when the documents described in this subsection are delivered to him for filing:

~~(1){(a)}~~Articles of organization \$ 40.00

~~(2){(b)}~~Application for certificate of authority as a
~~foreign limited liability company \$ 90.00~~

~~{(c)}~~ Amendment of article of organization \$ 40.00

~~(3){(d)}~~ Restatement of articles of organization \$ 40.00

~~(4){(e)}~~Amendment and restatement of articles of organization \$ 80.00

~~(5){(f)}~~ Articles of dissolution with respect to a domestic
 limited liability company\$ 40.00

~~{(g)}~~ Limited liability company's statement of change of
~~registered agent or change of the address of the registered~~
~~office, or both\$ 10.00~~

~~(h)~~ Registered agent's statement of change of registered office for
~~each affected limited liability company\$ 10.00~~
~~not to exceed a total of\$ 1,000.00~~

~~(i)~~ Limited liability company's statement of change of the
~~mailing address of the principal office\$ 10.00~~

~~(j)~~ Application to reserve a name for use by a domestic
~~or foreign limited liability company\$ 15.00~~

~~(k)~~ Renewal of application to reserve a name for use by
~~a domestic or foreign limited liability company\$ 15.00~~

~~(l)~~ Notice of the transfer of a name reserved for use by a
~~domestic or a foreign limited liability company\$ 15.00~~

~~(m)~~ Application for use of indistinguishable name\$ 20.00

- (n) Application for registered name\$ 36.00
- (o) Application for renewal of registered name\$ 36.00]
- (6)(p) Articles of merger \$ 50.00
- {(q) Application for amended certificate of authority\$ 40.00
- (r) Application for certificate of withdrawal\$ 40.00]
- (7)(s) Articles of correction \$ 20.00
- {(t) Certificate of existence or authorization\$ 10.00
- (u) Reinstatement penalty following administrative dissolution\$ 100.00
- (v) Annual report\$ 15.00
- (w) Amendment to annual report\$ 10.00]
- (8)(x) Articles of share exchange \$ 50.00
- (9)(y) Any other document required or permitted to be
filed by this chapter\$ 15.00
- {(2) The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on the Secretary of State under this chapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if the party prevails in the proceeding.
- (3) The Secretary of State shall collect the following fees for copying and certifying the copy of any filed documents relating to a domestic or foreign limited liability company:
 - (a) Five dollars (\$5) per request for the first five (5) pages and fifty cents (\$0.50) a page for each page thereafter; and
 - (b) Five dollars (\$5) for the certificate.
- (4) The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited liability companies.]

➔SECTION 76. KRS 275.100 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The name of each limited liability company shall satisfy the requirements of Section 23 of this Act.

➔Section 77. KRS 275.115 is repealed, reenacted, and amended to read as follows:

- {(1)} Each domestic limited liability company[and each foreign limited liability company authorized to transact business in the Commonwealth pursuant to KRS 275.380 to 275.450]shall continuously maintain in this Commonwealth {
 - (a) }a registered office[that may be the same as any of its places of business;] and{
 - (b) }a registered agent *that comply with Section 28 of this Act*{who shall be either:
 - 1. An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;
 - 2. A domestic corporation, domestic limited liability company, or not for profit domestic corporation whose business office is identical with the registered office; or
 - 3. A foreign corporation, foreign limited liability company, or not for profit foreign corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.
- (2) Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment}.

➔SECTION 78. KRS 275.190 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each limited liability company and each foreign limited liability company qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔SECTION 79. KRS 275.385 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A foreign limited liability company qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔Section 80. KRS 279.030 is amended to read as follows:

(1) The articles of incorporation shall set forth:

- (a) The name of the corporation *that satisfies the requirements of Section 23 of this Act*~~[, which shall be distinguishable from any name of record with the Secretary of State];~~
- (b) The purpose for which it is formed;
- (c) The place, including the county, where its principal office will be located;
- (d) A reasonable description of the territory in which its operations are to be conducted;
- (e) The number of directors;
- (f) The names and post office addresses of the directors who are to manage the affairs of the corporation for the first year of its existence, or until the first meeting called to elect directors, or until the successors of the first directors are elected and have qualified;
- (g) The period limited for the duration of the corporation, or that the corporation is to be perpetual;
- (h) If the corporation is organized without capital stock, the terms upon which members may be admitted and the terms upon which their membership shall terminate;
- (i) If the corporation is organized with capital stock, the amount of the stock, the number of shares into which it is divided and the par value; and
- (j) If the capital stock is divided into common and preferred stock, as it may be, the number of shares to which preference is granted and the number of shares to which no preference is granted, and the nature and definite extent of the preference and privileges granted to each.

(2) The articles of incorporation may contain any other lawful provision that the incorporators choose to insert for the purpose of regulating the business and affairs of the corporation, for the purpose of creating, defining, limiting or regulating the rights, powers and duties of the corporation and its board of directors and members, and the exercise of any such powers, or for the purpose of creating or defining the rights and privileges of the members of the corporation among themselves, including separation of members into classes or districts and providing for representation of each class or district on the board of directors.

~~[(3) A corporation may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records. The Secretary of State shall authorize use of the name applied for if:~~

- ~~(a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying corporation; or~~
- ~~(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~

~~(4) A corporation may use the name, including the fictitious name, of another entity that is used in this state if the other entity is incorporated, organized, or authorized to transact business in this state, and the proposed user corporation:~~

- ~~(a) Has merged with the other entity;~~
- ~~(b) Has been formed by reorganization of the other entity; or~~
- ~~(c) Has acquired all or substantially all of the assets, including the name, of the other entity.~~

~~(5) This chapter does not control the use of assumed names.~~

~~(6) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.]~~

➔Section 81. KRS 279.040 is amended to read as follows:

- (1) The incorporators shall execute triplicate originals of the articles of incorporation ***that satisfy the requirements of Sections 8 to 22 of this Act***, and each incorporator shall acknowledge each triplicate original before an officer authorized to take acknowledgments of deeds. They shall then file the triplicate originals, together with the certificate of acknowledgment, in the office of the Secretary of State. If the Secretary of State finds the articles to be legal and valid, he shall immediately indorse his approval on each of the triplicate originals, retain, record and file one (1) triplicate original in his office, and deliver the other two (2) triplicate originals, with his approval indorsed thereon, to the incorporators. The incorporators shall then file one (1) approved triplicate original in the office of the county clerk of the county in which the principal office of the corporation is to be located.
- (2) As soon as the Secretary of State has ~~filed~~~~indorsed his approval on~~ the articles of incorporation, the proposed corporation shall be a body politic and corporate and may transact business in its corporate name.

➔Section 82. KRS 279.050 is amended to read as follows:

The articles of incorporation may be amended as provided in this section at any regular or special meeting of the members of the corporation duly called upon notice of the specific purpose. The amendment shall first be approved by two-thirds (2/3) of the directors and then adopted by a vote representing not less than a majority of the votes entitled to be cast by the members present in person, or by proxy (if permitted by the bylaws) and voting at such meeting. The president of the corporation shall make triplicate originals of the amendments so adopted, ***each satisfying the requirements of Sections 8 to 22 of this Act*** and the secretary of the corporation shall attest each triplicate original. Each triplicate original shall be acknowledged by the president and the secretary before an officer authorized to take acknowledgments of deeds, and the president shall then cause them to be filed, approved and recorded in the same manner as is provided by KRS 279.040 for original articles of incorporation, and the amendments shall take effect upon ~~filing by~~~~indorsement of~~ the Secretary of State.

➔Section 83. KRS 279.220 is amended to read as follows:

- (1) Any rural electric cooperative corporation organized under a law of any state contiguous to this state, which law is substantially similar to the law under which such corporations may be organized in this state, may extend its operations into this state for a distance not exceeding three (3) miles from the boundary between that state and this state, and such extension shall not be considered doing business in this state within the meaning of the statutes regulating or taxing foreign corporations doing business in this state. Such corporation shall be entitled to the same exemptions granted to, and shall pay the same tax required of, domestic corporations under KRS 279.200.
- (2) The operations of such corporation within this state shall be subject to the supervision of the Public Service Commission, and the commission may take the necessary action to require the corporation to furnish adequate service at reasonable rates. If the corporation fails to comply with the regulations and requirements of the commission it shall forfeit the privilege granted by this section.
- (3) The privilege granted by this section shall be effective for a period of five (5) years from June 12, 1940, at which date it shall expire, unless the contiguous state grants a similar privilege to rural electric cooperative corporations incorporated in this state, in which case it shall continue so long as the contiguous state continues to grant the same privilege.
- (4) ***A rural electric cooperative corporation organized under a law of any state other than Kentucky not satisfying the exemptions set forth in subsections (1), (2) and (3) of this section is subject to Section 40 of this Act.***

➔Section 84. KRS 279.330 is amended to read as follows:

- (1) The articles of incorporation of a corporation formed under KRS 279.310 to 279.600 shall be entitled "Articles of Incorporation of Corporation" and the title may include the word "Cooperative." The articles shall ***satisfy the requirements of Sections 8 to 22 of this Act***, recite that they are executed pursuant to KRS 279.310 to 279.600 and shall state:
 - (a) The name of the corporation.
 - (b) The address of its principal office.

- (c) The names and addresses of the incorporators.
 - (d) The names and addresses of its trustees.
 - (e) A general description of the territory in which it proposes to operate.
- (2) If a cooperative desires to issue nonvoting shares of stock, its articles of incorporation, in addition to the provisions of subsection (1) of this section, shall state:
- (a) The total number of such shares of stock which may be issued and the par value of each share;
 - (b) The fixed or maximum rate of dividends on the par value of such shares of stock, in either case not exceeding four percent (4%) per annum, and whether dividends shall be cumulative or noncumulative;
 - (c) Whether such shares of stock may be issued to members only or to members and nonmembers;
 - (d) The maximum number of such shares of stock which may be owned by any person;
 - (e) The terms and conditions on which such shares of stock may be transferred, redeemed or retired.

➔Section 85. KRS 279.340 is repealed, reenacted, and amended to read as follows:

- (1) The name of a cooperative shall *satisfy the requirements of Section 23 of this Act*~~{include the words "Telephone," "Telecommunications," "Company," or "Corporation" and the abbreviation "Inc.,"} unless, in an affidavit made by its president or vice president, and filed with the Secretary of State, or in an affidavit made by a person signing articles of incorporation, consolidation, merger or conversion, which relate to such cooperative, and filed, together with any such articles, with the Secretary of State, it shall appear that the cooperative desires to do business in another state and is or would be precluded therefrom by reason of the inclusion of such words or either thereof in its name. {The name may include the word "Cooperative."}~~
- (2)~~{Except as authorized by subsection (3), (4), or (5) of this section, the name of a cooperative shall be distinguishable from any name of record with the Secretary of State.~~
- ~~{3}~~ This section shall not apply to any corporation which becomes subject to KRS 279.310 to 279.600 by complying with the provisions of KRS 279.470, which does business in this state pursuant to KRS 279.570 and which elects to retain a corporate name which does not comply with this section.
- ~~{(4) A cooperative may apply to the Secretary of State for authorization to use a name that is not distinguishable from a name of record with the Secretary of State. The Secretary of State shall authorize use of the name applied for if:~~
- ~~(a) The other entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying cooperative; or~~
 - ~~(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.~~
- ~~(5) A cooperative may use the name, including the fictitious name, of another entity that is used in this state, if the other entity is incorporated, organized, or authorized to transact business in this state and the proposed user cooperative:~~
- ~~(a) Has merged with the other entity;~~
 - ~~(b) Has been formed by reorganization of the other entity; or~~
 - ~~(c) Has acquired all or substantially all of the assets, including the name, of the other entity.~~
- ~~(6) This chapter does not control the use of assumed names.~~
- ~~(7) The filing of articles of incorporation under the particular name shall not automatically prevent the use of that name or protect that name from use by other persons.}~~

➔Section 86. KRS 279.350 is amended to read as follows:

- (1) The incorporators shall execute four (4) copies of the articles of incorporation *that satisfy Sections 8 to 22 of this Act*, and each incorporator shall acknowledge each copy before an officer authorized to take acknowledgments of deeds. They shall then *deliver for filing*~~{file}~~ the four (4) copies, together with the certificate of acknowledgment, *to*~~{in the office of}~~ the Secretary of State *for filing*.~~{If the Secretary of State~~

~~finds the articles to be legal and valid, he shall immediately indorse his approval on each of the copies, retain, record and file one (1) copy in his office, and deliver the other three (3) copies, with his approval indorsed thereon, to the incorporators. The incorporators shall then file one (1) approved copy in the office of the county clerk of the county in which the principal office of the corporation is to be located.]~~

- (2) As soon as the Secretary of State has *filed*~~[indorsed his approval on]~~ the articles of incorporation, the ~~proposed~~ corporation shall be a body politic and corporate and may transact business in its corporate name.

➔ Section 87. KRS 279.420 is amended to read as follows:

A cooperative may, upon authorization of its board of trustees or its members, change the location of its principal office by filing a *statement of*~~[certificate reciting such]~~ change *in accordance with Section 33 of this Act*~~[of principal office, executed and acknowledged by its president or vice president under its seal attested by its secretary, in the office of the Secretary of State].~~

➔ Section 88. KRS 362.403 is repealed, reenacted, and amended to read as follows:

The name of each limited partnership *shall satisfy the requirements of Section 23 of this Act*~~[as set forth in its certificate of limited partnership:~~

- ~~(1) Shall contain the word "Limited" or its abbreviation, "Ltd.";~~
- ~~(2) Shall not contain the name of a limited partner unless:

 - ~~(a) That name is also the name of a general partner or the corporate name of a corporate general partner; or~~
 - ~~(b) The business of the limited partnership had been carried on under that name before the admission of that limited partner; and~~~~
- ~~(3) Shall be distinguishable from any name of record with the Secretary of State].~~

➔ Section 89. KRS 362.407 is amended to read as follows:

~~[(1)]~~ Each limited partnership shall continuously maintain in this *Commonwealth*:

- (1) *A registered office and registered agent that comply with Section 28 of this Act; and*
- (2) *An office which may, but need not be, a place of business in this state, at which shall be kept the records required by Section 122 of this Act to be maintained*~~[state:~~
 - ~~(a) An office which may, but need not be, a place of its business in this state, at which shall be kept the records required by KRS 362.409 to be maintained; and~~
 - ~~(b) An agent for service of process on the limited partnership, which agent shall be an individual resident of this state, a domestic corporation, a foreign corporation authorized to do business in this state, a domestic limited liability company, or a foreign limited liability company authorized to do business in this state.~~
- ~~(2) Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served is not effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment].~~

➔ Section 90. KRS 362.1-105 is amended to read as follows:

- (1) A statement may be filed in the office of Secretary of State. *A statement shall satisfy the requirements of Sections 8 to 22 of this Act.* A filed statement has the effect provided in this subchapter with respect to partnership property located in or transactions that occur in this Commonwealth.
- (2) A certified copy of a statement that has been filed in the office of the Secretary of State may be filed with and recorded by any county clerk to which the statement is presented for filing and recording.
- (3) A statement filed by a partnership shall be executed by at least two (2) partners. Other statements shall be executed by a partner or other person authorized by this subchapter.
- (4) A person authorized by this subchapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the

amendment or cancellation. No amendment or cancellation shall be made with respect to a statement of merger or statement of dissolution after filing with the Secretary of State.

- (5) A person authorized by this subchapter to file a statement may correct a filed statement if the statement contains information that was incorrect as of the time of the original filing or if the statement was defectively executed, attested, sealed, verified, or acknowledged. A statement is corrected by filing with the Secretary of State a statement of correction that describes the original filing, specifies the information that was incorrect as of the original filing or the manner in which the execution was defective, corrects the incorrect information or the defective execution, and is accompanied by a copy of the original defective statement, accompanied by the proper filing fee. A statement of correction shall be effective as of the effective date of the statement it corrects except as to persons relying on the uncorrected document adversely affected by the correction. As to those persons, the statement of correction shall be effective in the same manner as they were on notice of the original statement.
- (6) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.
- (7) A person who executes a statement shall be deemed to have declared under penalty of perjury that to that person's knowledge the contents of the statement are accurate.
- (8) ~~[(a)] It shall be unlawful for any person to sign a statement the person knows is false in any material respect with the intent that the statement be delivered to the Secretary of State for filing.~~
~~[(b)] Any person who violates this subsection shall be guilty of an offense punishable by a fine not to exceed one hundred dollars (\$100).~~
- ~~[(9)]~~ The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The county clerk may collect a fee of ten dollars (\$10) for recording a statement.
- ~~[(9)]~~~~[(10)]~~ The Secretary of State may prescribe and furnish on request forms for:
 - (a) A statement of change of registered office or registered agent;
 - (b) An application to reserve a name;
 - (c) An application to cancel the reservation of a name;
 - (d) A resignation of a registered agent or registered office or both;
 - (e) An annual report; and
 - (f) An amendment to the annual report.
- ~~[(10)]~~~~[(11)]~~ The Secretary of State may mandate the use of the forms listed in subsection ~~[(9)]~~~~[(10)]~~ of this section.
- ~~[(11)]~~~~[(12)]~~ The Secretary of State may prescribe and furnish on request forms for any other records required or permitted to be filed pursuant to this subchapter, but their use shall not be mandatory.

➔SECTION 91. KRS 362.1-108 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A statement delivered to the Secretary of State for filing, whether submitted by a partnership, a foreign partnership, or otherwise, shall satisfy the requirements of Sections 8 to 22 of this Act.

➔Section 92. KRS 362.1-109 is repealed, reenacted and amended to read as follows:

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

[(1)] [(a)]	Statement of Partnership Authority	\$40.00
[(2)] [(b)]	Statement of Denial	\$20.00
[(3)] [(c)]	Statement of Dissociation	\$20.00
[(4)] [(d)]	Statement of Dissolution	\$40.00
[(5)] [(e)]	Statement of Merger	\$40.00

(6)(f)	Statement of Qualification	\$40.00
(7)(g)	Amendment to a Statement of Qualification	\$40.00
(8)(h)	Statement of Foreign Qualification	\$90.00
(9)(i)	Reinstatement of a Statement of Qualification	\$100.00
(10)(j)	Change of Registered Agent or Change of the Address of the Registered Office, or Both	\$10.00
(k)	Registered Agent's Statement of Change of Registered Office for Each Affected Partnership	\$10.00
	not to exceed a total of	\$1,000.00
(l)	Change of the Mailing Address of the Chief Executive Office	\$10.00
(m)	Application to Reserve a Name for Use by a Domestic or Foreign Partnership	\$15.00
(n)	Notice of the Transfer of a Name Reserved for Use by a Domestic or Foreign Partnership	\$15.00
(o)	Application for Registered Name	\$36.00
(p)	Application for Renewal of Registered Name	\$36.00
(q)	Annual report.....	\$15.00
(r)	Amendment to the annual report	\$10.00
(s)	All other filings	\$40.00
{(2)}	The Secretary of State shall collect the following fees for copying and certifying the copy of any filed statements relating to a domestic or foreign partnership:	
(a)	Fifty cents (\$0.50) a page for copying; and	
(b)	Five dollars (\$5) for the certificate.	

➔SECTION 93. KRS 362.1-110 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A statement filed by or with respect to a partnership shall be effective as provided in Section 14 of this Act.

➔Section 94. KRS 362.1-114 is repealed, reenacted, and amended to read as follows:

- ~~{(1)}~~ Except as authorized by subsections (2) and (3) of this section,]The name of a partnership as set forth on a statement of qualification or statement of foreign qualification shall *satisfy the requirements of Section 23 of this Act*~~[be distinguishable from any name of record with the Secretary of State.~~
- ~~(2)~~ No partnership may include in its name "corporation," "incorporated," or the abbreviations "corp." or "inc." and only a partnership that has filed a statement of qualification or a statement of foreign qualification may include in its name "limited" or the abbreviation "Ltd."
- ~~(3)~~ A partnership may use the name, including the fictitious name, with any modification required by this section or KRS 362.1-1002 of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth and the partnership:
- ~~(a)~~ Has merged with the other business entity;
 - ~~(b)~~ Has been formed by reorganization of the other business entity; or
 - ~~(c)~~ Has acquired all or substantially all of the assets, including the business name, of the other business entity.
- ~~(4)~~ This subchapter shall not control the use of assumed names.

- (5) ~~The filing of a statement, including statement of qualification or statement of foreign qualification, under the particular name of the partnership shall not automatically prevent the use of that name or protect that name from use by other persons.~~
- (6) ~~If a foreign limited liability partnership authorized to transact business in this Commonwealth changes its name to one that does not satisfy the requirements of this section, then it shall not transact business in this Commonwealth under the changed name until it adopts a name satisfying the requirements of this section and amends its statement of foreign qualification to set forth that name.~~

➔Section 95. KRS 362.1-117 is repealed, reenacted, and amended to read as follows:

~~{(1)}~~Each limited liability partnership and each foreign limited liability partnership authorized to transact business in the Commonwealth ~~{pursuant to KRS 362.1-1101 to 362.1-1104}~~ shall continuously maintain in this Commonwealth ~~{~~:

(a) ~~—~~a registered office ~~{that may be the same as any of its places of business; }and~~

~~{(b)}~~—a registered agent *that comply with Section 28 of this Act*~~{who shall be:~~

1. ~~An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;~~
2. ~~A domestic corporation, domestic limited liability company, or domestic nonprofit corporation whose business office is identical with the registered office; or~~
3. ~~A foreign corporation, foreign limited liability company, or foreign nonprofit corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.~~

- (2) ~~Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.~~

➔Section 96. KRS 362.1-120 is repealed, reentacted and amended to read as follows:

~~{(1)}~~ The registered agent of a limited liability partnership or of a foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to KRS 362.1-1101 to 362.1-1104 shall be the partnership's agent for service of process, notice, or demand required or permitted by law to be served on the domestic limited liability partnership or foreign partnership.

- (2) ~~If a limited liability partnership or foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to KRS 362.1-1101 to 362.1-1104 has no registered agent in this Commonwealth, or the registered agent cannot with reasonable diligence be served, then the partnership may be served by registered or certified mail, return receipt requested, addressed to the partnership at its principal office. Service shall be perfected under this subsection at the earliest of:~~

- (a) ~~—~~ The date the partnership receives the mail;
- (b) ~~—~~ The date shown on the return receipt, if signed on behalf of the domestic or foreign partnership; or
- (c) ~~—~~ Five (5) days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

- (3) ~~—~~An agent named pursuant to KRS 362.1-303(1)(a)3. is not a registered agent for the partnership, and service of process is not accomplished against that agent.

~~{(4)}~~ This section does not prescribe the only means, or necessarily the required means, of serving a limited liability partnership or a foreign limited liability partnership authorized to transact business in this Commonwealth pursuant to KRS 362.1-1101 to 362.1-1104.

➔Section 97. KRS 362.1-121 is amended to read as follows:

~~{(1)}~~ Each limited liability partnership and each foreign limited liability partnership authorized to transact business in this Commonwealth ~~{pursuant to KRS 362.1-1101 to 362.1-1104}~~ shall file an annual report in the office of the Secretary of State on such form as shall be prescribed by the Secretary of State *as provided in Section 34 of this Act*~~{which contains:~~

- (a) ~~—~~ The name of the partnership and the state or other jurisdiction under whose laws it is formed;

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

➔Section 98. KRS 362.1-1001 is amended to read as follows:

- (1) A partnership may become a limited liability partnership pursuant to this section.
- (2) The terms and conditions on which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions.
- (3) After the approval required by subsection (2) of this section, a partnership may become a limited liability partnership by filing with the Secretary of State a statement of qualification. The statement shall contain:
 - (a) The name of the partnership, which shall comply with **Section 23 of this Act**~~[KRS 362.1-114 and 362.1-1002]~~;
 - (b) The address of the partnership's chief executive office and, if different, the street address of an office in this Commonwealth, if any;
 - (c) The street address of the partnership's registered office, and the name of its registered agent **that comply with Section 28 of this Act**~~[at that office]~~;
 - (d) A statement that the partnership elects to be a limited liability partnership; and
 - (e) The date any statement of partnership authority was previously filed with the Secretary of State.
- (4) The status of a partnership as a limited liability partnership remains effective, regardless of changes in the partnership, until the statement of qualification is canceled pursuant to KRS 362.1-105(4) or administratively dissolved pursuant to KRS 362.1-122.
- (5) The status of a partnership as a limited liability partnership and the liability of its partners is not affected by errors or later changes in the information required to be contained in the statement of qualification under subsection (3) of this section.
- (6) The filing of a statement of qualification establishes that a partnership has satisfied all conditions precedent to the qualification of the partnership as a limited liability partnership.
- (7) An amendment or cancellation of a statement of qualification is effective when it is filed or on a deferred effective date specified in the amendment or cancellation. An amendment to a statement of qualification shall include the date of filing of the statement being amended and all information required in an initial statement of qualification. A cancellation of a statement of qualification shall include the name of the partnership and the date of filing of the statement of qualification.

➔Section 99. KRS 362.1-1102 is amended to read as follows:

- (1) Before transacting business in this Commonwealth, a foreign limited liability partnership shall file a statement of foreign qualification. The statement shall contain:

- (a) The name of the foreign limited liability partnership which satisfies the requirements of *Section 23 of this Act*~~[KRS 362.1-114 and, if applicable, subsection (3) of this section, and ends with "Registered Limited Liability Partnership," "Limited Liability Partnership," "R.L.L.P.," "L.L.P.," "RLLP," or "LLP"];~~
 - (b) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this Commonwealth, if any;
 - (c) The~~[street address of the]~~ partnership's registered office~~[within this Commonwealth,]~~ and the name of its registered agent at that office, *which shall comply with Section 28 of this Act*; and
 - (d) Its jurisdiction of organization.
- (2) The status of a partnership as a foreign limited liability partnership remains effective, regardless of changes in the partnership, until it is canceled pursuant to KRS 362.1-105(4) or revoked pursuant to *Section 47 of this Act*~~[KRS 362.1-123]~~.
 - (3) If the name of a foreign limited liability partnership is not distinguishable upon the records of the Secretary of State, then it may file a statement of foreign qualification using a fictitious name that is distinguishable upon the records of the Secretary of State, in which instance the statement of foreign qualification shall be filed under the fictitious name, shall recite that the partnership has filed the statement of foreign qualification under a fictitious name, and shall include in the statement its real name in its jurisdiction of organization.
 - (4) A statement of foreign qualification shall authorize the foreign limited liability partnership to transact business in this Commonwealth subject to the right of the Commonwealth to revoke the statement.
 - (5) A foreign limited liability partnership, having filed a statement of foreign qualification, shall have the same as, but no greater rights than, and shall have the same, but no greater privileges than, and except as otherwise provided by this subchapter, shall be subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a limited liability partnership.

➔SECTION 100. KRS 362.2-108 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

The name of a limited partnership shall satisfy the requirements of Section 23 of this Act.

➔Section 101. KRS 362.2-114 is amended to read as follows:

- (1) *Each*~~[A]~~ limited partnership shall designate and continuously maintain in this Commonwealth:
 - (a) A designated office, which need not be a place of its activity in this Commonwealth; and
 - (b) A registered office and agent for service of process at that office *that comply with Section 28 of this Act*.
- (2) *Each*~~[A]~~ foreign limited partnership *qualified to transact business in the Commonwealth of Kentucky* shall designate and continuously maintain in this Commonwealth a registered office and agent for service of process *that comply with Section 28 of this Act*~~[at that office]~~.

~~[(3) A registered agent shall be:~~

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

➔Section 102. KRS 362.2-115 is amended to read as follows:

- (1) In order to change its designated office,~~[registered office or agent for service of process,]~~ a limited partnership or a foreign limited partnership shall *comply with Section 33 of this Act*~~[deliver to the Secretary of State for filing a statement of change containing:~~

- (a) ~~The name of the limited partnership or foreign limited partnership;~~
 - (b) ~~The street and mailing address of its current designated office;~~
 - (c) ~~The address of its registered office and the name of its registered agent at that office in this Commonwealth;~~
 - (d) ~~If the current designated office is to be changed, the street address of the new designated office;~~
 - (e) ~~If the current registered office is to be changed, the street address of the new registered office;~~
 - (f) ~~If the current registered agent is to be changed, the name of the new registered agent and the new registered agent's written consent; and~~
 - (g) ~~That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical].~~
- (2) *A limited partnership or foreign limited partnership may change its registered office or registered agent as provided in Section 29 of this Act*~~[If a registered agent changes the street address of the registered agent's business office to another place within this Commonwealth, then the registered agent shall change the street address of the registered office of any limited partnership or foreign limited partnership of which the registered agent is a registered agent by notifying the limited partnership or foreign limited partnership in writing of the change, and delivering to the Secretary of State for filing a statement that complies with the requirements of subsection (1) of this section and recites that the limited partnership or foreign limited partnership has been notified of the change.~~
- (3) ~~The change of address of the registered office or registered agent shall be effective on delivery of the statement to the Secretary of State. The appointment of a new registered agent shall be effective on delivery of the statement to the Secretary of State and on receipt by the Secretary of State of evidence that the new registered agent has accepted the appointment.~~
- (4) ~~Any statement of change of a designated office or the name or address of an agent for service of process shall be made on a form provided by the Secretary of State].~~

➔SECTION 103. KRS 362.2-121 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each document delivered by a domestic or foreign limited partnership to the Secretary of State for filing shall satisfy the requirements of Sections 8 to 22 of this Act.

➔Section 104. KRS 362.2-122 is repealed, reenacted, and amended to read as follows:

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

(1) (a)	Certificate of limited partnership	\$40.00
(2) (b)	Application for certificate of authority as a foreign limited partnership	\$90.00
(c)	Amendment of certificate of limited partnership	\$40.00
(3) (d)	Restatement of certificate of limited partnership	\$40.00
(4) (e)	Amendment and restatement of certificate of limited partnership	\$80.00
(5) (f)	Certificate of dissolution with respect to a domestic limited partnership	\$40.00
(g)	Statement of change of registered agent or change of the address of the registered office, or both	\$10.00
(h)	Registered agent's statement of change of registered office for each affected limited partnership	\$10.00

- Not to exceed a total of.....\$1,000.00
- (i) ~~Statement of change of the mailing address~~
~~of the principal office~~\$10.00
- (j) ~~Application to reserve a name for use by~~
~~a domestic or foreign limited partnership~~\$15.00
- (k) ~~Notice of the transfer of a name reserved~~
~~for use by a domestic or a foreign limited partnership~~\$15.00
- (l) ~~Application for registered name~~\$36.00
- (m) ~~Application for renewal of registered name~~\$36.00
- (n) ~~Articles of merger~~\$50.00
- (o) ~~Application for amended certificate of authority~~\$40.00
- (p) ~~Application for certificate of withdrawal~~\$40.00
- (q) ~~Statement of correction~~\$20.00
- (r) ~~Certificate of existence or authorization~~\$10.00
- (s) ~~Reinstatement penalty following administrative dissolution~~\$100.00
- (t) ~~Annual report~~\$15.00
- (u) ~~Amendment to annual report~~\$10.00
- (v) ~~Any other record required or permitted to be filed by this subchapter~~\$15.00
- (2) ~~The Secretary of State shall collect a fee of ten dollars (\$10) each time process is served on the Secretary of State under this subchapter. The party to a proceeding causing service of process shall be entitled to recover this fee as costs if the party prevails in the proceeding.~~
- (3) ~~The Secretary of State shall collect the following fees for copying and certifying the copy of any filed records relating to a domestic or foreign limited partnership:~~
- ~~Copies, per page~~\$0.50
- ~~Certifications, each~~\$5.00
- (4) ~~The county clerk shall receive a fee pursuant to KRS 64.012 for recording and issuing reports, articles, and statements pertaining to limited partnerships.]~~
- ➔Section 105. KRS 362.2-201 is amended to read as follows:
- (1) In order to form a limited partnership, a certificate of limited partnership shall be delivered to the Secretary of State for filing. The certificate shall state:
 - (a) The name of the limited partnership, which shall comply with **Section 23 of this Act**~~[KRS 362.2-108]~~;
 - (b) The street address of the initial designated office;
 - (c) The~~[street address of the]~~ limited partnership's initial registered office~~[,]~~ and the name of its initial registered agent **which shall comply with Section 28 of this Act**~~[at that office]~~;
 - (d) The name and street address of each general partner; and
 - (e) Any additional information required by this subchapter.
 - (2) If the limited partnership elects to be a limited liability limited partnership, then the certificate shall contain a statement that the limited partnership elects to be a limited liability limited partnership.
 - (3) A certificate of limited partnership may also contain any other matters but shall not vary from the provisions specified in KRS 362.2-110(2) in a manner inconsistent with that section.

- (4) Subject to subsection (2) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, cancellation, or change, or filed articles of conversion or merger, then:
- (a) The partnership agreement prevails as to partners and transferees; and
 - (b) The filed certificate of limited partnership, statement of dissociation, cancellation, or change, or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

~~[(5) A written statement of the initial registered agent consenting to serve in that capacity shall accompany the certificate of limited partnership.]~~

➔Section 106. KRS 362.2-202 is amended to read as follows:

- (1) In order to amend its certificate of limited partnership, a limited partnership shall deliver to the Secretary of State for filing an amendment *that satisfies Sections 8 to 22 of this Act* or, pursuant to KRS 362.2-1101 to 362.2-1113, articles of merger, stating:
 - (a) The name of the limited partnership;
 - (b) The date of filing of its initial certificate; and
 - (c) The changes the amendment makes to the certificate as most recently amended or restated.
- (2) A limited partnership shall promptly deliver to the Secretary of State for filing an amendment to a certificate of limited partnership to reflect:
 - (a) The admission of a new general partner;
 - (b) The dissociation of a person as a general partner; or
 - (c) The appointment of a person to wind up the limited partnership's activities under KRS 362.2-803(3) or (4).
- (3) A general partner who knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:
 - (a) Cause the certificate to be amended; or
 - (b) If appropriate, deliver to the Secretary of State for filing a statement of change pursuant to *Section 33 of this Act* ~~[KRS 362.2-115]~~ or a statement of correction pursuant to *Section 16 of this Act* ~~[KRS 362.2-207]~~.
- (4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.
- (5) A restated certificate of limited partnership may be delivered to the Secretary of State for filing in the same manner as an amendment.
- (6) ~~[Subject to KRS 362.2-120(3),]~~ An amendment or restated certificate is effective *as provided in Section 14 of this Act* ~~[when filed by the Secretary of State]~~.

➔Section 107. KRS 362.2-208 is amended to read as follows:

- (1) If a record delivered to the Secretary of State for filing under this subchapter and filed by the Secretary of State contains false information, ~~[then]~~ a person that suffers loss by reliance on the information may recover damages for the loss from:
 - (a) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and
 - (b) A general partner that has notice that the information was false when the record was filed or has become false due to changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under KRS 362.2-202, file a petition pursuant to KRS 362.2-205, or deliver to the Secretary of State for filing a

statement of change pursuant to KRS 362.2-115 or a statement of correction pursuant to *Section 16 of this Act*~~[KRS 362.2-207]~~.

- (2) *The provisions of this section are in addition to those in Section 10 of this Act*~~[It shall be unlawful for any person to sign a record the person knows is false in any material respect with intent that the record be delivered to the Secretary of State for filing. Any person who violates the provisions of this section shall be guilty of a Class B misdemeanor punishable by a fine not to exceed one hundred dollars (\$100)].~~

➔Section 108. KRS 362.2-210 is repealed, reenacted, and amended to read as follows:

~~[(1)]~~A limited partnership subject to this subchapter or a foreign limited partnership authorized to transact business in this Commonwealth shall deliver to the Secretary of State for filing an annual report *as provided in Section 34 of this Act*~~[that states:~~

- ~~(a) The name of the limited partnership or foreign limited partnership and the state or country under whose law it is organized;~~
- ~~(b) The street address of its designated office or, if a foreign limited partnership, the street address of its principal office; and~~
- ~~(c) The street address of the limited partnership's registered office and the name of its registered agent at that office.~~

~~(2) Information in an annual report shall be current as of the date the annual report is delivered to the Secretary of State for filing.~~

~~(3) The first annual report shall be delivered to the Secretary of State between January 1 and June 30 of the year following the calendar year in which a limited partnership was formed or a foreign limited partnership was authorized to transact business. Subsequent annual reports shall be delivered to the Secretary of State between January 1 and June 30 of the ensuing calendar years.~~

~~(4) If a filed annual report contains an address of a designated office or the name of a registered agent or registered office address which differs from the information shown upon the records of the Secretary of State immediately before the filing, then the differing information in the annual report is not considered a statement of change under KRS 362.2-115.~~

~~(5) A limited partnership or foreign limited partnership may amend the information in its last filed annual report by delivery to the Secretary of State of an amendment to the annual report on an appropriate form provided by the Secretary of State].~~

➔Section 109. KRS 362.2-801 is amended to read as follows:

Except as otherwise provided in KRS 362.2-802, a limited partnership is dissolved, and its activities shall be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of all limited partners;
- (3) After the dissociation of a person as a general partner:
 - (a) If the limited partnership has at least one (1) remaining general partner, the consent to dissolve the limited partnership given within ninety (90) days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or
 - (b) If the limited partnership does not have a remaining general partner, the passage of ninety (90) days after the dissociation, unless before the end of that period:
 - 1. Consent to continue the activities of the limited partnership and admit at least one (1) general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - 2. At least one (1) person is admitted as a general partner in accordance with that consent;
- (4) The passage of ninety (90) days after the dissociation of the limited partnership's last limited partner, unless before the end of that period the limited partnership admits at least one (1) limited partner; or

- (5) The administrative dissolution of the limited partnership by the Secretary of State under ***Section 35 of this Act or predecessor law*** ~~[KRS 362.2-809].~~

➔Section 110. KRS 362.415 is amended to read as follows:

- (1) In order to form a limited partnership, a certificate of limited partnership shall be executed and filed with the Secretary of State. The certificate shall be in the form prescribed by the Secretary of State and shall set forth:
- (a) The name of the limited partnership;
 - (b) The address of the office and the name and address of the agent for service of process required to be maintained by ***Section 28 of this Act or predecessor law*** ~~[KRS 362.407];~~
 - (c) The name and the business address of each general partner;
 - (d) A mailing address for the limited partnership;
 - (e) The latest date upon which the limited partnership is to dissolve; and
 - (f) Any other matters the general partners determine to include therein.
- (2) A limited partnership shall be formed at the time of the filing of the certificate of limited partnership with the Secretary of State or at any later time specified in the certificate of limited partnership, which shall be a date certain and shall not be later than the ninetieth day after the date it is filed, if, in either case, there has been substantial compliance with the requirements of this section.

~~[(3) Unless the registered agent signs the certificate, the limited partnership shall deliver with the certificate of limited partnership the consent of appointment of the agent for service of process to be maintained by KRS 362.407.]~~

➔Section 111. KRS 362.417 is amended to read as follows:

- (1) A certificate of limited partnership may be amended by filing a certificate of amendment ***that satisfies the requirements of Sections 8 to 22 of this Act*** with the Secretary of State. The certificate of amendment shall be in the form prescribed by the Secretary of State and shall set forth:
- (a) The name of the limited partnership;
 - (b) The date of filing the certificate of limited partnership; and
 - (c) The amendment to the certificate of limited partnership.
- (2) (a) Within thirty (30) days after the happening of any of the following events, an amendment to a certificate of limited partnership reflecting the occurrence of the event or events, shall be filed:
- 1. The admission of a new general partner;
 - 2. The withdrawal of a general partner;
 - 3. The continuation of the business under KRS 362.487 after an event of withdrawal of a general partner; ***or***
 - 4. A change in name of the limited partnership; ~~or~~
 - 5. ~~A change in the address of the office or the name or address of the agent for service of process required to be maintained by KRS 362.407].~~
- (b) A general partner who becomes aware that any statement in a certificate of limited partnership was false when made, or that any arrangements or other facts described in the certificate have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.
 - (c) A certificate may be amended at any time for any other proper purpose the general partners determine.
- (3) If an amendment to a certificate is filed within the thirty (30) day period referred to in subsection (2) of this section, no person shall be liable because the amendment was not filed earlier.
- (4) ~~[Unless otherwise provided in KRS 362.403 to 362.525 or in the certificate of amendment,]~~A certificate of amendment shall be effective ***as provided in Section 14 of this Act*** ~~[at the time of its filing with the Secretary of State].~~

- (5) A limited partnership may, if desired, integrate into a single instrument all of the provisions of its certificate of limited partnership which are then in effect and operative as a result of filing with the Secretary of State one (1) or more certificates of amendment and it may, at the same time, further amend its certificate of limited partnership.
- (6) If the restated certificate of limited partnership merely restates and integrates, but does not further amend the certificate of limited partnership as theretofore amended, it shall be specifically designated in its heading as a "restated certificate of limited partnership." If the restated certificate restates and integrates and also further amends in any respect the certificate of limited partnership as theretofore amended, it shall be specifically designated in its heading as an "amended and restated certificate of limited partnership". A restated, or amended and restated, certificate of limited partnership shall be executed and filed in the same manner as a certificate of amendment.
- (7) Upon the filing of a restated, or amended and restated, certificate of limited partnership with the Secretary of State, or upon its future effective date or time as provided for therein, the initial certificate of limited partnership, as amended, shall be superseded. Thereafter, the restated certificate of limited partnership, including further amendments made thereto, shall be the certificate of limited partnership of the limited partnership.

➔Section 112. KRS 362.555 is amended to read as follows:

- (1) To become and to continue as a registered limited liability partnership, a partnership that is not a limited partnership shall file with the Secretary of State a statement or a renewal statement, as the case may be, *that satisfies the requirements of Sections 8 to 22 of this Act* stating the name of the partnership *that satisfies the requirements of Section 23 of this Act*; the address of its principal office; the number of partners; the names of the partners; a brief statement of the business in which the partnership engages; and that the partnership registers its status or renews its status, as the case may be, as a registered limited liability partnership.
- (2) The statement or renewal statement shall be executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a statement or renewal statement.
- (3) The statement or renewal statement shall be accompanied by a fee of two hundred dollars (\$200).
- (4) The Secretary of State shall register as a registered limited liability partnership, and shall renew the registration of any registered limited liability partnership, any partnership that submits a completed statement or renewal statement with the required fee.
- (5) Registration shall be effective for one (1) year after the date a statement is filed, unless voluntarily withdrawn by filing with the Secretary of State a written withdrawal notice executed by a majority in interest of the partners or by one (1) or more partners authorized to execute a withdrawal notice. Registration, whether pursuant to an original statement or a renewal statement, as a registered limited liability partnership shall be renewed if, during the sixty (60) day period preceding the date the statement or renewal statement otherwise would have expired, the partnership files with the Secretary of State a renewal statement. Registration pursuant to a renewal statement shall expire one (1) year after the date the registration would have expired if the last renewal of the registration had not occurred.
- (6) The status of a partnership as a registered limited liability partnership shall not be affected by changes made in the information stated in the statement or renewal statement after the filing of the statement or renewal statement.
- (7) The Secretary of State may provide forms for use under this section.

➔Section 113. KRS 382.335 is amended to read as follows:

- (1) No county clerk shall receive or permit the recording of any instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, granted, encumbered, assigned, or otherwise disposed of; nor receive any instrument or permit any instrument, provided by law, to be recorded as evidence of title to real estate~~[-; and shall not receive or permit any instrument, relating to the organization or dissolution of a private corporation]~~, unless the instrument has endorsed on it, a printed, typewritten, or stamped statement showing the name and address of the individual who prepared the instrument, and the statement is signed by the individual. The person who prepared the instrument may execute his signature by affixing a facsimile of his signature on the instrument. This subsection shall not apply to any instrument executed or acknowledged prior to July 1, 1962.

- (2) No county clerk shall receive or permit the recording of any instrument by which the title to real estate or any interest therein is conveyed, granted, assigned, or otherwise disposed of unless the instrument contains the mailing address of the grantee or assignee. This subsection shall not apply to any instrument executed or acknowledged prior to July 1, 1970.
- (3) This section shall not apply to wills or to statutory liens in favor of the Commonwealth.
- (4) No county clerk shall receive, or permit the recording of, any instrument by which real estate, or any interest therein, is conveyed, granted, assigned, transferred, or otherwise disposed of unless the instrument complies with the official indexing system of the county. The indexing system shall have been in place for at least twenty-four (24) months prior to July 15, 1994 or shall be implemented for the purpose of allowing computerized searching for the instruments of record of the county clerk. If a county clerk requires a parcel identification number on an instrument before recording, the clerk shall provide a computer terminal, at no charge to the public, for use in finding the parcel identification number. The county clerk may make reasonable rules about the use of the computer terminal, requests for a parcel identification number, or both.
- (5) The receipt for record and recording of any instrument by the county clerk without compliance with the provisions of this section shall not prevent the record of filing of the instrument from becoming notice as otherwise provided by law, nor impair the admissibility of the record as evidence.

➔Section 114. KRS 386.382 is repealed, reenacted, and amended to read as follows:

~~{(1) Except as authorized by subsections (2) and (3) of this section,}~~The name of a business trust or foreign business trust qualified to transact business in this Commonwealth shall **satisfy the requirements of Section 23 of this Act**~~{be distinguishable from any name of record with the Secretary of State.~~

~~(2) A business trust or foreign business trust may apply to the Secretary of State for authorization to use a name that is not distinguishable upon the Secretary of State's records from one (1) or more of the names described in subsection (1) of this section. The Secretary of State shall authorize use of the name applied for if:~~

~~(a) The other business entity consents to the use in writing and submits an undertaking in form satisfactory to the Secretary of State to change its name to a name that is distinguishable upon the records of the Secretary of State from the name of the applying limited liability company; or~~

~~(b) The applicant delivers to the Secretary of State a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this Commonwealth.~~

~~(3) A business trust or foreign business trust may use the name, including the fictitious name, of another business entity that is used in this Commonwealth if the other business entity is organized or authorized to transact business in this Commonwealth, and the business trust or foreign business trust:~~

~~(a) Has merged with the other business entity;~~

~~(b) Has been formed by reorganization of the other business entity; or~~

~~(c) Has acquired all or substantially all of the assets, including the business name, of the other business entity.~~

~~(4) This chapter shall not control the use of assumed names.~~

~~(5) The filing of a declaration of trust or an application to transact authority in the Commonwealth under the particular name of a business trust or foreign business trust shall not automatically prevent the use of that name or protect that name from use by other persons}.~~

➔Section 115. KRS 386.384 is repealed, reenacted, and amended to read as follows:

~~{(1)}~~Each domestic business trust and each foreign business trust authorized to transact business in the Commonwealth shall continuously maintain in this Commonwealth~~{:~~

~~(a) — } a registered office{ that may be the same as any of its places of business;} and{~~

~~(b) — } a registered agent **that comply with Section 28 of this Act**{who shall be either:~~

~~1. — An individual who is a resident of this Commonwealth and whose business office is identical with the registered office;~~

- ~~2. A domestic corporation, limited liability company, or not for profit corporation whose business office is identical with the registered office; or~~
- ~~3. A foreign corporation, limited liability company, or not for profit corporation authorized to transact business in this Commonwealth whose business office is identical with the registered office.~~
- ~~(2) Unless the registered agent signs the document making the appointment, the appointment of a registered agent or a successor registered agent on whom process may be served shall not be effective until the agent delivers a statement in writing to the Secretary of State accepting the appointment.~~

➔SECTION 116. KRS 386.392 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

Each business trust and each foreign business trust qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔Section 117. KRS 386.420 is amended to read as follows:

- (1) The written declaration of trust may provide for the election of successor trustees in the event of the death, resignation and removal of a trustee and may provide for the amendment of the declaration of trust. The declaration of trust may also contain such other provisions regarding the operating and administration of the business trust as may be necessary or desirable. ***A declaration of trust and any amendments thereto is effective as provided in Section 14 of this Act.***
- (2) A declaration of trust filed on or after June 26, 2007, shall name or shall be accompanied by a document naming the initial registered agent and registered office ***satisfying the requirements of Section 28 of this Act***~~[conforming to KRS 386.384].~~
- (3) ***Each document delivered to the Secretary of State for filing by a business trust or a foreign business trust shall satisfy the requirements of Sections 8 to 22 of this Act***~~[The declaration of trust shall be recorded in the office of the Secretary of State of the Commonwealth of Kentucky and in the office of the county clerk in the county in which its principal place of business is located and a recording charge of \$15 shall be paid at each of those offices].~~

➔SECTION 118. KRS 386.4422 IS REPEALED AND REENACTED TO READ AS FOLLOWS:

A foreign business trust qualified to transact business in this Commonwealth is subject to Section 34 of this Act.

➔Section 119. KRS 386.4434 is repealed, reenacted, and amended to read as follows:

Each foreign business trust authorized to transact business in this Commonwealth shall continuously maintain in this Commonwealth:

- ~~(1) a registered office[that may be the same as any of its places of business;] and~~
- ~~(2) a registered agent ***that comply with Section 28 of this Act***, who may be:~~
 - ~~(a) An individual who resides in this Commonwealth and whose business office is identical with the registered office;~~
 - ~~(b) A domestic corporation, not for profit corporation, or limited liability company whose business office is identical with the registered office; or~~
 - ~~(c) A foreign corporation, not for profit corporation, or limited liability company authorized to transact business in this Commonwealth whose business office is identical with the registered office.~~
- ~~(3) The registered agent shall execute and deliver to the Secretary of State a document accepting the agency appointment, and the appointment of the agent shall not be effective until delivered to the Secretary of State.~~

➔Section 120. KRS 446.010 is amended to read as follows:

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

- (1) "Action" includes all proceedings in any court of this state;
- (2) "Animal" includes every warm-blooded living creature except a human being;
- (3) "Attorney" means attorney-at-law;
- (4) "Bequeath" and "devise" mean the same thing;

- (5) "Bequest" and "legacy" mean the same thing, and embrace either real or personal estate, or both;
- (6) "Cattle" includes horse, mule, ass, cow, ox, sheep, hog, or goat of any age or sex;
- (7) "Company" may extend and be applied to any corporation, company, person, partnership, joint stock company, or association;
- (8) "Corporation" may extend and be applied to any corporation, company, partnership, joint stock company, or association;
- (9) "Cruelty" as applied to animals includes every act or omission whereby unjustifiable physical pain, suffering, or death is caused or permitted;
- (10) "Directors," when applied to corporations, includes managers or trustees;
- (11) "Domestic," when applied to ***a corporation, partnership, business trust, or limited liability company***~~[corporations, partnerships, limited partnerships, or limited liability companies]~~, means all those incorporated or formed by authority of this state;
- (12) "Domestic animal" means any animal converted to domestic habitat;
- (13) "Federal" refers to the United States;
- (14) "Foreign," when applied to ***a corporation, partnership, business trust, or limited liability company***~~[corporations, partnerships, limited partnerships, or limited liability companies]~~, includes all those incorporated or formed by authority of any other state;
- (15) "Generally accepted accounting principles" are those uniform minimum standards of and guidelines to financial accounting and reporting as adopted by the National Council on Governmental Accounting, under the auspices of the Municipal Finance Officers Association and by the Financial Accounting Standards Board, under the auspices of the American Institute of Certified Public Accountants;
- (16) "Humane society," "society," or "Society for the Prevention of Cruelty to Animals," means any nonprofit corporation, organized under the laws of this state and having as its primary purpose the prevention of cruelty to animals;
- (17) "Issue," as applied to the descent of real estate, includes all the lawful lineal descendants of the ancestors;
- (18) "Land" or "real estate" includes lands, tenements, and hereditaments and all rights thereto and interest therein, other than a chattel interest;
- (19) "Legatee" and "devisee" convey the same idea;
- (20) "May" is permissive;
- (21) "Month" means calendar month;
- (22) "Oath" includes "affirmation" in all cases in which an affirmation may be substituted for an oath;
- (23) "Owner" when applied to any animal, means any person having a property interest in such animal;
- (24) "Partnership" includes both general and limited partnerships;
- (25) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;
- (26) "Penitentiary" includes all of the state penal institutions except the houses of reform;
- (27) "Person" may extend and be applied to bodies-politic and corporate, societies, communities, the public generally, individuals, partnerships,~~[registered limited liability partnerships]~~ joint stock companies, and limited liability companies;
- (28) "Personal estate" includes chattels, real and other estate that passes to the personal representative upon the owner dying intestate;
- (29) "Regular election" means the election in even-numbered years at which members of Congress are elected and the election in odd-numbered years at which state officers are elected;
- (30) "Shall" is mandatory;

- (31) "State" when applied to a part of the United States, includes territories, outlying possessions, and the District of Columbia; "any other state" includes any state, territory, outlying possession, the District of Columbia, and any foreign government or country;
- (32) "State funds" or "public funds" means sums actually received in cash or negotiable instruments from all sources unless otherwise described by any state agency, state-owned corporation, university, department, cabinet, fiduciary for the benefit of any form of state organization, authority, board, bureau, interstate compact, commission, committee, conference, council, office, or any other form of organization whether or not the money has ever been paid into the Treasury and whether or not the money is still in the Treasury if the money is controlled by any form of state organization, except for those funds the management of which is to be reported to the Legislative Research Commission pursuant to KRS 42.600, 42.605, and 42.615;
- (33) "Sworn" includes "affirmed" in all cases in which an affirmation may be substituted for an oath;
- (34) "United States" includes territories, outlying possessions, and the District of Columbia;
- (35) "Vacancy in office," or any equivalent phrase, means such as exists when there is an unexpired part of a term of office without a lawful incumbent therein, or when the person elected or appointed to an office fails to qualify according to law, or when there has been no election to fill the office at the time appointed by law; it applies whether the vacancy is occasioned by death, resignation, removal from the state, county or district, or otherwise;
- (36) "Violate" includes failure to comply with;
- (37) "Will" includes codicils; "last will" means last will and testament;
- (38) "Year" means calendar year;
- (39) "City" includes town;
- (40) Appropriation-related terms are defined as follows:
 - (a) "Appropriation" means an authorization by the General Assembly to expend, from public funds, a sum of money not in excess of the sum specified, for the purposes specified in the authorization and under the procedure prescribed in KRS Chapter 48;
 - (b) "Appropriation provision" means a section of any enactment by the General Assembly which is not provided for by KRS Chapter 48 and which authorizes the expenditure of public funds other than by a general appropriation bill;
 - (c) "General appropriation bill" means an enactment by the General Assembly that authorizes the expenditure of public funds in a branch budget bill as provided for in KRS Chapter 48;
- (41) "Mediation" means a nonadversarial process in which a neutral third party encourages and helps disputing parties reach a mutually acceptable agreement. Recommendations by mediators are not binding on the parties unless the parties enter into a settlement agreement incorporating the recommendations;
- (42) "Biennium" means the two (2) year period commencing on July 1 in each even-numbered year and ending on June 30 in the ensuing even-numbered year; and
- (43) "Branch budget bill" or "branch budget" means an enactment by the General Assembly which provides appropriations and establishes fiscal policies and conditions for the biennial financial plan for the judicial branch, the legislative branch, and the executive branch, which shall include a separate budget bill for the Transportation Cabinet.

➔Section 121. KRS 271B.6-010 is amended to read as follows:

- (1) The articles of incorporation shall prescribe the classes of shares and series of shares within a class and the number of shares of each class and series that the corporation is authorized to issue. If more than one (1) class or series of shares is authorized, the articles of incorporation shall prescribe a distinguishing designation for each class or series, and, prior to the issuance of shares of a class or series, the preferences, limitations, and relative rights of that class or series must be described in the articles of incorporation. All shares of a class shall have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by KRS 271B.6-020.
- (2) The articles of incorporation shall authorize:

- (a) One (1) or more classes or series of shares that together have unlimited voting rights; and
 - (b) One (1) or more classes or series of shares which may be the same class or classes as those with voting rights, that together are entitled to receive the net assets of the corporation upon dissolution.
- (3) The articles of incorporation may authorize one (1) or more classes or series of shares that:
- (a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided by this chapter;
 - (b) Are redeemable or convertible as specified in the articles of incorporation:
 - 1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;
 - 2. For cash, indebtedness, securities, or other property; or
 - 3. In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;
 - (c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or
 - (d) Have preference over any other class or series of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.
- (4) Terms of shares may be made dependent upon facts objectively ascertainable outside the articles of incorporation in accordance with *subsection (2) of Section 50 of this Act* ~~[KRS 271B.1-200(12)]~~.
- (5) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (3) of this section shall not be considered exhaustive.

➔Section 122. KRS 362.409 is amended to read as follows:

- (1) Each limited partnership shall keep, at the office referred to in KRS 362.407(2) ~~[(4)]~~, the following records:
- (a) A current list of the full names and last known business, residence, or mailing addresses of all partners, separately identifying in alphabetical order the general partners and the limited partners;
 - (b) A copy of the certificate of limited partnership and all certificates of amendment thereto, together with executed copies of any powers of attorney pursuant to which any certificate was executed;
 - (c) Copies of the limited partnership's federal, state and local income tax returns and reports, if any, for the three (3) most recent years;
 - (d) Copies of any then effective written partnership agreement and of any financial statements of the limited partnership for the three (3) most recent years; and
 - (e) Unless contained in a written partnership agreement, a writing setting out:
 - 1. The amount of cash and a description and statement of the agreed value of the other property or services contributed by each partner and which each partner has agreed to contribute;
 - 2. The times at which, or events upon the happening of which, any additional contributions agreed to be made by each partner are to be made;
 - 3. Any right of a partner to receive distributions, or of a general partner to make distributions to a partner, that includes a return of all or any part of the partner's contribution; and
 - 4. Any events upon the happening of which the limited partnership is to be dissolved and its affairs wound up.
- (2) Records kept under this section may be inspected and copied during ordinary business hours at the reasonable request, and at the expense, of any partner.

➔Section 123. KRS 271B.16-010 is amended to read as follows:

- (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record

of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

- (2) A corporation shall maintain appropriate accounting records.
- (3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, by class of shares showing the number and class of shares held by each.
- (4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- (5) A corporation shall keep a copy of the following records at its principal office:
 - (a) Its articles or restated articles of incorporation and all amendments to them currently in effect;
 - (b) Its bylaws or restated bylaws and all amendments to them currently in effect;
 - (c) Resolutions adopted by its board of directors creating one (1) or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
 - (d) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three (3) years;
 - (e) All written communications to shareholders generally within the past three (3) years, including the financial statements furnished for the past three (3) years under KRS 271B.16-200;
 - (f) A list of the names and business addresses of its current directors and officers; and
 - (g) Its most recent annual report delivered to the Secretary of State under *Section 34 of this Act*~~KRS 271B.16-220~~.

➔Section 124. KRS 75.430 is amended to read as follows:

- (1) Each recognized and certified fire department created pursuant to KRS Chapter 273 shall send a copy of its annual report as required by *Section 34 of this Act*~~KRS 273.3671~~ to the commission at the time the report is filed with the Secretary of State.
- (2) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes less than one hundred thousand dollars (\$100,000) shall prepare a financial statement and submit it to the commission by July 31 of each year.
- (3) The governing body of each recognized and certified volunteer fire department created pursuant to KRS Chapter 273 which, for the year in question, receives from all sources or expends for all purposes one hundred thousand dollars (\$100,000) or more shall prepare a financial statement and shall employ an independent certified public accountant or contract with the Auditor of Public Accounts to perform a review of the financial statement, and shall submit the reviewed statement to the commission by July 31 of each year.

➔Section 125. KRS 273.320 is amended to read as follows:

A corporation may be dissolved involuntarily by a decree of the Circuit Court in an action filed by the Attorney General when it is established that:

- (1) The corporation is guilty of abuse or misuse of its corporate powers, privileges or franchises, or the corporation has become detrimental to the interest and welfare of the Commonwealth of Kentucky or its citizens; or
- (2) The corporation procured its articles of incorporation through fraud; or
- (3) The corporation has failed~~for six (6) months~~ to file its annual report as required by *Section 34 of this Act*~~KRS 273.3671~~; or
- (4) The corporation has failed~~for six (6) months~~ to appoint and maintain a registered agent in this state; or
- (5) The corporation has failed~~for six (6) months~~ after change of its registered agent to file in the office of the Secretary of State a statement of such change.

➔Section 126. KRS 275.360 is amended to read as follows:

- (1) The business entity surviving from the merger shall deliver to the Secretary of State for filing articles of merger duly executed by each constituent business entity setting forth:
 - (a) The name and jurisdiction of formation or organization of each constituent business entity which is to merge;
 - (b) The plan of merger;
 - (c) The name of the surviving business entity;
 - (d) A statement that the plan of merger was duly authorized and approved by each constituent business entity in accordance with KRS 275.350; and
 - (e) If the surviving entity is not a business entity organized under the laws of this Commonwealth, a statement that the surviving business entity:
 1. Agrees that it may be served with process in this Commonwealth in any proceeding for enforcement of any obligation of any constituent business entity party to the merger that was organized under the laws of this Commonwealth, as well as for enforcement of any obligation of the surviving business entity arising from the merger; and
 2. Appoints the Secretary of State as its agent for service of process in any such proceeding. The surviving entity shall specify the address to which a copy of the process shall be mailed to it by the Secretary of State.
- (2) A merger shall take effect upon the later of the effective date of the filing of the articles of merger or the date set forth in the articles of merger.
- (3) The articles of merger shall be executed by a limited liability company that is a party to the merger in the manner provided for in *Section 9 of this Act* ~~[KRS 275.045]~~ and shall be filed with the Secretary of State in the manner provided for in *Section 8 of this Act* ~~[KRS 275.045]~~.
- (4) A plan of merger approved in accordance with KRS 275.350 may effect any amendment to an operating agreement for a limited liability company if it is the surviving company in the merger. An approved plan of merger may also provide that the operating agreement of any constituent limited liability company to the merger, including a limited liability company formed for the purpose of consummating a merger, shall be the operating agreement of the limited liability company that is the surviving business entity. Any amendment to an operating agreement or adoption of a new operating agreement made pursuant to this subsection shall be effective at the effective time or date of the merger. The provisions of this subsection shall not be construed to limit the accomplishment of a merger or of any of the matters referred to in this section by any other means provided for in an operating agreement or other agreement or as otherwise permitted by law.

➔Section 127. KRS 362.1-905 is amended to read as follows:

- (1) Pursuant to a plan of merger approved as provided in subsection (3) of this section, a partnership may be merged with one (1) or more partnerships or limited partnerships.
- (2) The plan of merger shall set forth:
 - (a) The name of each partnership or limited partnership that is a party to the merger;
 - (b) The name of the surviving entity into which the other partnerships or limited partnerships will merge;
 - (c) Whether the surviving entity is a partnership or a limited partnership and the status of each partner;
 - (d) The terms and conditions of the merger;
 - (e) The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or part; and
 - (f) The street address of the surviving entity's chief executive office.
- (3) The plan of merger shall be approved:

- (a) In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
 - (b) In the case of a limited partnership that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the limited partnership is organized and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.
- (4) After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
- (5) The merger takes effect on the later of:
- (a) The approval of the plan of merger by all parties to the merger, as provided in subsection (3) of this section;
 - (b) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or
 - (c) Subject to **Section 14 of this Act**~~[KRS 362.1-110]~~, any effective date specified in the plan of merger.

➔Section 128. KRS 362.1-122 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a statement of qualification if:
 - (a) The limited liability partnership does not file its annual report with the Secretary of State within sixty (60) days after it is due;
 - (b) The limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or
 - (c) The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (2) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for the administrative dissolution of a statement of qualification, then he shall serve the partnership with written notice of his determination by mailing such notice by first class mail to the limited liability partnership at the street address of the partnership's chief executive office as set forth in the partnership's most recent annual report filed pursuant to KRS 362.1-121 or, if none, that set forth in the statement of partnership qualification filed pursuant to KRS 362.1-1001 or the statement of foreign qualification filed by a foreign limited liability partnership pursuant to KRS 362.1-1102.
- (3) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the statement of qualification by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited liability partnership by mailing such certificate by first class mail to the partnership at its registered office. The administrative dissolution of a statement of qualification shall not terminate the authority of the registered agent of the partnership.
- (4) The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.
- (5) The partnership whose statement of qualification has been administratively dissolved may apply to the Secretary of State for reinstatement of the statement at any time after the effective date of the dissolution by filing an application that:
 - (a) Recites the name of the partnership, identifies the statement that was administratively dissolved and the effective date of that administrative dissolution;
 - (b) States that the ground or grounds for dissolution either did not exist or have been eliminated;
 - (c) States that the name of the partnership satisfies the requirements of **Section 23 of this Act**~~[KRS 362.1-114]~~; and

- (d) Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.
- (6) If the Secretary of State determines that the application contains the information required by subsection (5) of this section and that the information provided therein is correct, then the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its registered office. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.
- (7) If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then he shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its registered office. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the partnership's application for reinstatement, and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

➔Section 129. KRS 362.1-303 is amended to read as follows:

- (1) A partnership may file a statement of partnership authority, which:
- (a) Shall include:
1. The name of the partnership, which shall comply with *Section 23 of this Act* ~~[KRS 362.1-114 and 362.1-1002]~~;
 2. The street address of its chief executive office and of one (1) office in this Commonwealth, if any;
 3. The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subsection (2) of this section;
 4. The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership;
 5. The date any statement of qualification or statement of foreign qualification was previously filed by the partnership with the Secretary of State; and
- (b) May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.
- (2) The agent named in the statement of partnership authority pursuant to subsection (1)(a)3. of this section, if any, shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on written request for good cause shown.
- (3) If a filed statement of partnership authority is executed pursuant to KRS 362.1-105(3) and states the name of the partnership but does not contain all of the other information required by subsection (1) of this section, then the statement nevertheless operates with respect to a person not a partner as provided in subsections (4) and (5) of this section.
- (4) Except as otherwise provided in subsection (7) of this section, a filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:
- (a) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without notice to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.
- (b) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that

real property is conclusive in favor of a person who gives value without having notice to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

- (5) A person not a partner has knowledge of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.
- (6) Except as otherwise provided in subsections (4) and (5) of this section and KRS 362.1-702 and 362.1-803, a person not a partner does not have notice of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.
- (7) Unless earlier canceled, a filed statement of partnership authority is canceled by operation of law five (5) years after the date on which the statement, or the most recent amendment to the statement of partnership authority expressly extending its term for not more than five (5) years from the date of the amendment, was filed with the Secretary of State.

➔Section 130. KRS 362.1-122 is amended to read as follows:

- (1) The Secretary of State may commence a proceeding to administratively dissolve a statement of qualification if:
 - (a) The limited liability partnership does not file its annual report with the Secretary of State within sixty (60) days after it is due;
 - (b) The limited liability partnership is without a registered agent or registered office in this Commonwealth for sixty (60) days or more; or
 - (c) The limited liability partnership does not notify the Secretary of State within sixty (60) days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.
- (2) If the Secretary of State determines that one (1) or more grounds exist under subsection (1) of this section for the administrative dissolution of a statement of qualification, then he shall serve the partnership with written notice of his determination by mailing such notice by first class mail to the limited liability partnership at the street address of the partnership's chief executive office as set forth in the partnership's most recent annual report filed pursuant to *Section 34 of this Act* ~~KRS 362.1-121~~ or, if none, that set forth in the statement of partnership qualification filed pursuant to KRS 362.1-1001 or the statement of foreign qualification filed by a foreign limited liability partnership pursuant to KRS 362.1-1102.
- (3) If the limited liability partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the Secretary of State that each ground determined by the Secretary of State does not exist within sixty (60) days from the date on which the notice was mailed, then the Secretary of State shall administratively dissolve the statement of qualification by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The Secretary of State shall file the original certificate and serve a copy on the limited liability partnership by mailing such certificate by first class mail to the partnership at its registered office. The administrative dissolution of a statement of qualification shall not terminate the authority of the registered agent of the partnership.
- (4) The administrative dissolution of a statement of qualification affects only the partnership's status as a limited liability partnership and is not an event of dissolution of the partnership.
- (5) The partnership whose statement of qualification has been administratively dissolved may apply to the Secretary of State for reinstatement of the statement at any time after the effective date of the dissolution by filing an application that:
 - (a) Recites the name of the partnership, identifies the statement that was administratively dissolved and the effective date of that administrative dissolution;
 - (b) States that the ground or grounds for dissolution either did not exist or have been eliminated;
 - (c) States that the name of the partnership satisfies the requirements of KRS 362.1-114; and
 - (d) Is accompanied by the reinstatement penalty and the current fee for filing each delinquent annual report.

- (6) If the Secretary of State determines that the application contains the information required by subsection (5) of this section and that the information provided therein is correct, then the Secretary of State shall cancel the certificate of administrative dissolution and prepare a certificate reciting the cancellation of the administrative dissolution and the effective date thereof, file the original of the certificate, and serve a copy on the partnership by mailing the certificate by first class mail to the partnership at its registered office. When the revocation of the administrative dissolution is effective, it shall relate back to and take effect as of the effective date of the administrative dissolution, and the statement or statements shall be in full force and effect as if the administrative dissolution had never occurred.
- (7) If the Secretary of State denies a partnership's application for reinstatement of its statement of qualification following administrative dissolution, then he shall serve the partnership with written notice that explains the reason or reasons for denial by mailing the notice by first class mail to the partnership at its registered office. The partnership may appeal the denial of reinstatement to the Franklin Circuit Court within thirty (30) days after the service of the notice of the denial transmitted to the partnership. The partnership may appeal by petitioning the court to set aside the administrative dissolution and attaching to the petition copies of the Secretary of State's certificate of administrative dissolution, the partnership's application for reinstatement, and the Secretary of State's notice of denial. The court may summarily order the Secretary of State to reinstate the statement of qualification or may take any other action the court considers appropriate. The court's final decision may be appealed as in any other civil proceedings.

➔Section 131. KRS 362.2-111 is amended to read as follows:

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

- (1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;
- (2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;
- (3) A copy of any filed articles of conversion or merger;
- (4) A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three (3) most recent years;
- (5) A copy of any partnership agreement made in record form and any amendment made in record form to any partnership agreement;
- (6) A copy of any financial statement of the limited partnership for the three (3) most recent years;
- (7) A copy of the three (3) most recent annual reports delivered by the limited partnership to the Secretary of State pursuant to **Section 34 of this Act** ~~KRS 362.2-210~~;
- (8) A copy of any record made by the limited partnership during the past three (3) years of any consent given by or vote taken of any partner pursuant to this subchapter or the partnership agreement; and
- (9) Unless contained in a partnership agreement in record form, a record stating:
 - (a) The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;
 - (b) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;
 - (c) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and
 - (d) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

➔Section 132. KRS 271B.10-070 is amended to read as follows:

- (1) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

- (2) The restatement may include one (1) or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it shall be adopted as provided in KRS 271B.10-030.
- (3) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles.
- (4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:
 - (a) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or
 - (b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by KRS 271B.10-060.
- (5) Restated articles of incorporation supersede the original articles of incorporation and all amendments to them when the restated articles of incorporation become effective pursuant to ***Section 14 of this Act***~~KRS 271B.1-230~~.
- (6) The secretary of state may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section.

➔Section 133. KRS 304.3-230 is amended to read as follows:

- (1) Upon issuance of a certificate of authority to do business in this state, the following shall be deemed to have appointed the Secretary of State as their attorney to receive service of lawful process issued against them in this state:
 - (a) Foreign or alien insurers;
 - (b) Domestic reciprocal insurers;
 - (c) Domestic Lloyd's insurers;
 - (d) Qualified self-insurers.
- (2) Such appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the insurer, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the insurer, or liabilities or duties arising therefrom.
- (3) Service of lawful process against unauthorized insurers, except in contracts issued by insurers or underwriters to those insureds specified in KRS 304.11-020, shall be made upon the Secretary of State, as provided in KRS 304.11-040.
- (4) Service of lawful process against authorized domestic insurers shall be had pursuant to ***Section 31 of this Act***~~KRS 271B.5-040~~.
- (5) If the Secretary of State is by law the lawful attorney for service of process, the clerk of the court in which action is brought shall issue a summons against the defendant named in the complaint and shall serve by certified mail, return receipt requested, two (2) true copies of the summons with two (2) attested copies of plaintiff's complaint to the Secretary of State. The Secretary of State shall immediately mail a copy of the summons and complaint to the defendant; if an authorized insurer, to the person designated pursuant to subsection (7) of KRS 304.3-150, and if an unauthorized insurer to the last known principal place of business. The letter shall be posted by prepaid certified mail, return receipt requested, and shall bear the return address of the Secretary of State. The Secretary of State shall make a return to the court showing that the acts contemplated by this statute have been performed, and shall attach to his return the registry receipt, if any. Summons shall be deemed to be served on the return of the Secretary of State and the action shall proceed as provided in the Kentucky Rules of Civil Procedure.
- (6) The Secretary of State shall keep a record of the date and hour of receipt of such lawful process, as well as the date it is forwarded to the defendant.

- (7) For the purpose of this section, "lawful process" shall include only the summons which initiates and commences a cause of action, and such other initial notices, rules, or orders which would be required by the Kentucky Rules of Civil Procedure to be by personal service.
- (8) The sheriff serving the summons upon the Secretary of State shall pay to him at the time of service a fee in the amount set forth in KRS 454.210, which shall be taxed as costs in the action.

➔Section 134. KRS 365.015 is amended to read as follows:

- (1) (a) The real name of an individual shall include his or her surname at birth, or his or her name as changed by a court of competent jurisdiction, or the surname of a married woman.
- (b) The real name of a domestic:
1. General partnership that is not a limited liability partnership and that has not filed a statement of partnership authority is that name which includes the real name of each of the partners;
 2. General partnership that is not a limited liability partnership and that has filed a statement of partnership authority is the name set forth on the statement of partnership authority;
 3. General partnership that is a limited liability partnership is the name stated on the statement of qualification filed pursuant to KRS 362.1-1001 or predecessor law;
 4. Limited partnership is that name stated in its certificate of limited partnership filed pursuant to KRS 362.2-201 or predecessor law;
 5. Business trust is the name set forth in the declaration of trust;
 6. Corporation is the name set forth in its articles of incorporation; and
 7. Limited liability company is the name set forth in its articles of organization.
- (c) The real name of a foreign:
1. General partnership is the name recognized by the laws of the jurisdiction under which it is formed as being the real name;
 2. Limited liability partnership is the name stated in its statement of foreign qualification filed pursuant to KRS 362.1-1102 or predecessor law;
 3. Limited partnership is the name set forth in its certificate of limited partnership or the fictitious name adopted for use in this Commonwealth under *Sections 23 to 27 of this Act* ~~[KRS 362.2-905]~~ or predecessor law;
 4. Business trust is the name recognized by the laws of the jurisdiction under which it is formed as being the real name of the business trust;
 5. Corporation is the name set forth in its articles of incorporation or the fictitious name adopted for use in this Commonwealth under *Sections 23 to 27 of this Act or predecessor law* ~~[KRS 271B.15-060]~~; and
 6. Limited liability company is the name set forth in its articles of organization or the fictitious name adopted for use in this Commonwealth under *Sections 23 to 27 of this Act or predecessor law* ~~[KRS 275.410]~~.
- (2) (a) No individual, general partnership, limited partnership, business trust, corporation, or limited liability company shall conduct or transact business in this Commonwealth under an assumed name or any style other than his or its real name, as defined in subsection (1) of this section, unless such individual, partnership, limited partnership, business trust, corporation, or limited liability company has filed a certificate of assumed name;
- (b) The certificate shall state the assumed name under which the business will be conducted or transacted, the real name of the individual, partnership, limited partnership, business trust, corporation, or limited liability company and his or its address, including street and number, if any;
- (c) A separate certificate shall be filed for each assumed name;

- (d) No certificate to be filed with the Secretary of State shall set forth an assumed name which is not distinguishable upon the records of the Secretary of State from any other name previously filed and on record with the Secretary of State;
 - (e) The certificate shall be executed for an individual, by the individual; for a general partnership, by at least one (1) partner authorized to do so by the partners; for a limited partnership, by a general partner; for a business trust, by a trustee; for a corporation, by any person authorized to act for the corporation; and for a limited liability company, by a member or manager authorized to act for the limited liability company.
- (3) Each certificate of assumed name for an individual shall be filed with the county clerk where the person maintains his or her principal place of business. Each certificate of assumed name for a general partnership, limited partnership, business trust, corporation, or limited liability company shall be delivered to the Secretary of State for filing, accompanied by one (1) exact or conformed copy. One (1) of the exact or conformed copies stamped as "filed" by the Secretary of State shall be filed with the county clerk of the county where the entity maintains its registered agent for service of process or, if no registered agent for service of process is required, then with the county clerk of the county where the entity maintains its principal office. If the entity does not maintain a registered agent for service of process and does not maintain a principal office in this Commonwealth, then the certificate of assumed name shall be filed only with the Secretary of State.
- (4) An assumed name shall be effective for a term of five (5) years from the date of filing and may be renewed for successive terms upon filing a renewal certificate within six (6) months prior to the expiration of the term, in the same manner of filing the original certificate as set out in subsection (3) of this section. Any certificate in effect on July 15, 1998, shall continue in effect for five (5) years and may be renewed by filing a renewal certificate with the Secretary of State.
- (5) Upon discontinuing the use of an assumed name, the certificate shall be withdrawn by filing a certificate in the office wherein the original certificate of assumed name was filed. The certificate of withdrawal shall state the assumed name, the real name and address of the party formerly transacting business under the assumed name and the date upon which the original certificate was filed. The certificate of withdrawal shall be signed for a general partnership by at least one (1) partner authorized to act for the partnership, for a limited partnership by a general partner, for a business trust by a trustee, for a corporation by any person authorized to act for the corporation, and for a limited liability company by a member or manager authorized to act for the limited liability company.
- (6) A general partnership, except a limited liability partnership, shall amend an assumed name to reflect a change in the identity of partners. The amendment shall set forth:
- (a) The assumed name and date of original filing;
 - (b) A statement setting out the changes in identity of the partners; and
 - (c) Shall be signed by at least one (1) partner authorized to do so by the partners.
- (7) The filing of a certificate of assumed name shall not automatically prevent the use of that name or protect that name from use by other persons.
- (8) In the event of the merger or conversion of a partnership, limited partnership, business trust, corporation, or limited liability company, any certificate of assumed name filed by a party to a merger or conversion shall remain in full force and effect, as provided in subsection (4) of this section, as if originally filed by the business organization which survives the merger or conversion.
- (9) A certificate of assumed name may be amended to revise the real name or the address of the person or business organization holding the certificate of assumed name.
- (10) A certificate of assumed name, or its amendment or cancellation, shall be effective on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document, or at a time specified in the document as its effective time on the date it is filed. The document may specify a delayed effective time and date and, if it does so, the document shall become effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the ninetieth day after the date it is filed.
- (11) The county clerk shall receive a fee pursuant to KRS 64.012 for filing each certificate, and the Secretary of State shall receive a fee of twenty dollars (\$20) for filing each certificate, amendment, and renewal certificate.

➔Section 135. KRS 272.010 is amended to read as follows:

(1) As used in KRS 272.020 to ~~272.044~~~~[272.050]~~:

- (a) "Cooperative corporation" means a business concern that distributes the net profit of its business by first paying a fixed dividend upon its stock, if any, and then prorating the remainder of its profits as patronage refunds to its stockholders, members or customers, as provided in bylaws;
- (b) "Patronage refund" means the portion of net profit returned to member patrons or to all patrons in proportion to their patronage. In the case of an employee cooperative in which only employees are voting members, "patronage" means the amount or value of work performed by an employee, as provided in bylaws;
- (c) "Stockholder" means the holder of voting stock in a cooperative corporation organized with shares;
- (d) "Member" means the holder of a membership in a cooperative corporation organized with memberships;
- (e) "Membership" means a lifetime payment made to a cooperative corporation to secure or provide services, not made in expectation of dividend or profit, and without any redemption value except at time of dissolution. The articles of incorporation or bylaws may specify the conditions under which a membership may be terminated;
- (f) "Nonprofit basis" means that no part of the income or profit of the cooperative corporation is distributable to its members, directors or officers except in the form of patronage refunds;
- (g) "Entity" includes a domestic or foreign corporation and corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business or statutory trust; estate; partnership; limited partnership; limited liability company; trust; two (2) or more persons having a joint or common economic interest; and state, United States, and foreign government;
- (h) "Name of record with the Secretary of State" means any real, fictitious, reserved, registered, or assumed name of a business entity; and
- (i) "Real name" shall have the meaning set forth in KRS 365.015.

(2) As used in KRS 272.360 to 272.510, unless the content for such requires otherwise, the term:

- (a) "Livestock" shall mean sheep, cattle, hogs, horses, jacks, mules, poultry, or any other animal or bird commonly kept on the farm;
- (b) "Farmer" shall mean any individual, firm, partnership, limited partnership, limited liability company, corporation, or farm management group which derives a portion or all of its income from the production of live stock domiciled on a farm within the Commonwealth;
- (c) "Member" shall include actual members of the association organized under KRS 272.360 to 272.510;
- (d) "Association" means any corporation organized under KRS 272.360 to 272.510; and
- (e) "Department" shall mean the Department of Agriculture.

(3) Associations organized under KRS 272.360 to 272.510 shall be termed nonprofit inasmuch as they are not organized to make profit for themselves.

➔Section 136. KRS 272.040 is amended to read as follows:

Any cooperative company may become subject to the provisions of KRS 272.020 to ~~272.044~~~~[272.050]~~ by filing with the Secretary of State a declaration signed and sworn to by the president and secretary that the company, by a majority vote of its stockholders or members, has decided to adopt KRS 272.020 to ~~272.044~~~~[272.050]~~. There shall be paid to the Secretary of State a fee of two dollars (\$2) for filing the declaration.

➔Section 137. KRS 272.042 is amended to read as follows:

Unless otherwise provided in KRS 272.010(1) and KRS 272.020 to ~~272.044~~~~[272.050]~~, a cooperative corporation organized with shares shall be subject to the provisions of KRS Chapter 271B, and a cooperative corporation organized with memberships and operated on a nonprofit basis shall be subject to the provisions of KRS 273.161 to 273.390.

➔Section 138. KRS 272.044 is amended to read as follows:

The provisions of KRS 272.010(1) and 272.020 to ~~272.044~~~~[272.050]~~ are applicable only to cooperative associations organized under KRS 272.020 to ~~272.044~~~~[272.050]~~.

➔Section 139. KRS 272.990 is amended to read as follows:

- (1) Any corporation, association or company using the word "cooperative" as part of its name in violation of KRS ~~272.044~~~~[272.050]~~ shall be fined not less than fifty dollars (\$50) nor more than one thousand dollars (\$1,000), and may be enjoined from doing business under that name by any corporation, or stockholder thereof, organized under KRS 272.020 to ~~272.044~~~~[272.050]~~.
- (2) Any individual or any corporation whose officers or employees knowingly induce or attempt to induce any member to break his marketing contract with an association or who maliciously and knowingly spreads false reports about the finances or management of any association shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each offense, and shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500) for each offense.
- (3) Any person conducting a warehouse in this state who persuades or permits any member of any association to breach his marketing contract with the association by receiving his products for sale, auction or display contrary to the terms of any marketing contract of which the offender has notice shall be liable to the association aggrieved in a civil suit in the penal sum of five hundred dollars (\$500) for each offense, and shall also pay the association a reasonable attorney's fee and all the costs of the action against him. The association may obtain an injunction against such warehouseman to prevent further breaches and a multiplicity of actions.

➔Section 140. KRS 292.400 is amended to read as follows:

KRS 292.340 to 292.390 shall not apply to any of the following:

- (1) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing;
- (2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;
- (3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institutions, or trust company organized and supervised under the laws of any state;
- (4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state;
- (5) Securities issued by corporations formed under KRS Chapter 279;
- (6) Any security issued or guaranteed by any federal credit union or any credit union;
- (7) Any security issued or guaranteed by any common carrier, public utility, or holding company which is:
 - (a) A registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of such a company within the meaning of that act;
 - (b) Regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or
 - (c) Regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province;
- (8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Chicago Stock Exchange, the Pacific Stock Exchange, the Philadelphia Stock Exchange, the Chicago Board Options Exchange, or any other stock exchange approved by the executive director; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to

any of the foregoing. This exemption is available only for securities listed on Tier I of those exchanges having more than one (1) tier;

- (9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association;
- (10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidence an obligation to pay cash within nine (9) months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal;
- (11) Any security issued in connection with an employee stock purchase, stock option, savings, pension, profit-sharing, or similar benefit plan, including any underlying security. For those plans that do not qualify under Section 401 of the Internal Revenue Code and that provide for contribution by employees, the securities are exempt if a notice specifying the terms of the plan is filed with the executive director before the securities are issued or before December 31, 1998, and the executive director does not disallow the exemption within the next five (5) business days. The executive director may, by rule, modify any requirement for a specific class of issuers or impose additional requirements for this exemption or waive any requirement;
- (12) Securities issued by corporations formed under or which have adopted the provisions of KRS 272.101 to 272.345 and patronage dividends or refunds be they in the form of stock, book equities, letters of credit, or letters of advice issued by any agricultural cooperative association which are the result of distributable earnings or savings;
- (13) Memberships and voting stock issued by cooperative corporations formed under or which have adopted the provisions of KRS 272.020 to ~~272.044~~~~272.050~~, and patronage refunds issued by cooperative corporations which are the result of distributable earnings or savings;
- (14) Any security for which the executive director expressly by rule or order finds that registration is not necessary or appropriate in the public interest or for the protection of investors; or
- (15) Any security issued by and representing an interest in or a debt of, or guaranteed by, any insurance company organized under the laws of any state and authorized to do business in this state.

➔Section 141. KRS 275.020 is amended to read as follows:

- (1) One (1) or more persons may serve as the organizer and form a limited liability company by delivering articles of organization to the Secretary of State for filing. It shall not be necessary that the person or persons be members of the limited liability company.
- (2) Unless a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are filed by the Secretary of State. If a delayed effective date is specified, the existence of the limited liability company shall begin when the articles of organization are effective as specified in **Section 14 of this Act**~~[KRS 275.060]~~.
- (3) The Secretary of State's filing of the articles of organization shall be conclusive proof that the organizer or organizers satisfied all conditions precedent to organization, except in a proceeding by the state to cancel or revoke the organization or involuntarily dissolve the limited liability company.

➔Section 142. KRS 275.035 is amended to read as follows:

- (1) A limited liability company may restate its articles of organization by delivering to the Secretary of State for filing articles of restatement setting forth the name of the limited liability company and the text of the restated articles of organization together with a certificate stating whether the restatement contains an amendment to the articles of organization requiring member approval and, if it does, setting forth the information required by KRS 275.030(4).
- (2) Restated articles of organization shall supersede the original articles of organization and all amendments to them when the restated articles of organization become effective pursuant to **Section 14 of this Act**~~[KRS 275.060]~~.
- (3) The Secretary of State may certify restated articles of organization as the articles of organization currently in effect, without including the certificate information required by subsection (1) of this section.

➔Section 143. KRS 275.376 is amended to read as follows:

- (1) A corporation may be converted to a limited liability company pursuant to this section.
- (2) The terms and conditions of the conversion of a corporation to a limited liability company shall be set forth in a written plan of conversion and approved by the board of directors and by the shareholders of the corporation.
- (3) The plan of conversion shall set forth:
 - (a) The name of the corporation planning to convert;
 - (b) The terms and conditions of the conversion, including the articles of organization and the written operating agreement, if any, of the limited liability company into which the corporation will convert; and
 - (c) The manner and basis of converting the shares of the corporation into membership interests, obligations, or other securities of the limited liability company or into cash or other property in whole or part.
- (4) The plan of conversion may set forth any other provision relating to the conversion.
- (5) For a plan of conversion to be approved:
 - (a) The board of directors shall recommend the plan of conversion to the shareholders, unless the board of directors determines that, because of conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders with a plan; and
 - (b) The shareholders entitled to vote shall approve the plan.
- (6) The board of directors may condition its submission of the proposed conversion on any basis.
- (7) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with KRS 271B.7-050. The notice shall also state that the purpose, or one (1) of the purposes, of the meeting is to consider the plan of conversion and contain or be accompanied by a copy or summary of the plan.
- (8) Unless KRS Chapter 271B, the articles of incorporation, or the board of directors acting pursuant to subsection (6) of this section, require a greater vote or vote by voting groups, the plan of conversion to be authorized shall be approved by each voting group entitled to vote separately on the plan by a majority of all the votes entitled to be cast on the plan by that voting group.
- (9) Separate voting by voting groups shall be required on a plan of conversion if the plan contains a provision that, if contained in a proposed amendment to the articles of incorporation, would require action by one (1) or more separate voting groups on the proposed amendment under KRS 271B.10-040.
- (10) After a conversion is authorized, and at any time before articles of organization are filed, the planned conversion may be abandoned subject to any contractual rights, without further shareholder action, in accordance with the procedure set forth in the plan of conversion or, if none is set forth, in the manner determined by the board of directors.
- (11) After the conversion is approved, the corporation shall file articles of organization with the office of the Secretary of State that satisfy the requirements of KRS 275.025 and also include:
 - (a) A statement that the corporation was converted to a limited liability company;
 - (b) Its former name;
 - (c) A statement that any assumed name held by the corporation has been canceled; and
 - (d) The designation, number of outstanding shares, and number of votes to be cast by each voting group entitled to vote separately on the plan of conversion and either the total number of undisputed votes cast for the plan separately by each voting group or a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group.
- (12) The conversion shall take effect when the articles of organization are filed with the office of the Secretary of State or, subject to **Section 14 of this Act**~~KRS 275.060~~, at a later date specified in the articles of organization.

➔Section 144. KRS 275.285 is amended to read as follows:

A limited liability company shall be dissolved, and it shall commence to wind up its affairs upon the happening of the first to occur of the following:

- (1) The expiration of the term of the limited liability company set forth in the articles of organization, if any;
- (2) Upon the occurrence of events specified in the articles of organization or a written operating agreement;
- (3) Unless otherwise set forth in the operating agreement, the written consent of all of the members of a limited liability company;
- (4) There are no remaining members, except that the limited liability company shall not be dissolved and its affairs shall not be wound up when:
 - (a) A member is admitted to the limited liability company in the manner provided for in a written operating agreement, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or
 - (b) Unless otherwise provided in a written operating agreement, within ninety (90) days after the occurrence of the event that terminated the continued membership of the last remaining member, the successor-in-interest of the last remaining member agrees in writing to continue the limited liability company and to the admission of the successor-in-interest of that member or its designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member;
- (5) Entry of a decree of judicial dissolution under KRS 275.290; or
- (6) Filing of a certificate of dissolution by the Secretary of State under *Section 36 of this Act* ~~[KRS 275.295]~~.

➔Section 145. KRS 275.305 is amended to read as follows:

- (1) Except as provided in subsections (3) and (4) of this section, after dissolution of the limited liability company, each member or manager having authority to wind up the limited liability company's business and affairs may bind the limited liability company:
 - (a) By any act appropriate for winding up the limited liability company's affairs or completing transactions unfinished at dissolution; and
 - (b) By any other act that would have bound the limited liability company if it had not been dissolved, if the other party to the transaction did not have notice of the dissolution.
- (2) The filing of articles of dissolution pursuant to KRS 275.315, the entry of a decree of dissolution pursuant to KRS 275.290, or the filing of a certificate of dissolution pursuant to *Section 36 of this Act* ~~[KRS 275.295]~~ shall be presumed to constitute notice of dissolution for purposes of subsection (1)(b) of this section.
- (3) An act of a member or manager which is not binding on the limited liability company pursuant to subsection (1) of this section shall be binding if it is otherwise authorized by the limited liability company.
- (4) An act of a member or manager which would be binding under subsection (1) of this section, or would be otherwise authorized but which is in contravention of a restriction on authority, shall not bind the limited liability company to persons having knowledge of the restriction.

➔Section 146. KRS 275.325 is amended to read as follows:

- (1) A dissolved limited liability company may publish notice of its dissolution pursuant to this section.
- (2) The notice shall:
 - (a) Be published once in a newspaper of general circulation in the county where the limited liability company's principal office, or, if none in this state, its registered office, is or was last located;
 - (b) Describe the information that must be included in a claim and provide a mailing address where the claim may be sent; and
 - (c) State that a claim against the limited liability company will be barred unless a proceeding to enforce the claim is commenced within two (2) years, or five (5) years for a professional limited liability company, after the publication of the notice.

- (3) If the dissolved limited liability company publishes a newspaper notice in accordance with subsection (2) of this section and, if required, files articles of dissolution pursuant to KRS 275.315, the claim of each of the following claimants shall be barred unless the claimant commences a proceeding to enforce the claim against the limited liability company within two (2) years, or five (5) years for a professional limited liability company, after the later of publication date of the newspaper notice or the filing of the articles of dissolution pursuant to KRS 275.315, the filing of a certificate of dissolution by the Secretary of State pursuant to **Section 36 of this Act**~~[KRS 275.295(2)(b)]~~, or the filing of a decree of judicial dissolution by the Secretary of State pursuant to KRS 275.290(2):
- (a) A claimant who did not receive written notice under KRS 275.320;
 - (b) A claimant whose claim was timely sent to the limited liability company but not acted on;
 - (c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.
- (4) A claim may be enforced under this section:
- (a) Against the limited liability company, to the extent of its undistributed assets; or
 - (b) If the assets have been distributed in liquidation, against a member of the limited liability company to the extent of his pro rata share of the claim or the assets of the limited liability company distributed to him in liquidation, whichever is less, but a member's total liability for all claims under this section shall not exceed the total amount of assets, less liabilities assumed or taken subject to, distributed to him.

➔Section 147. KRS 362.431 is amended to read as follows:

Upon the return by the Secretary of State pursuant to **subsection (3) of Section 17 of this Act**~~[KRS 362.425]~~ of a certificate,~~[marked "filed,"]~~ the general partners shall deliver or mail a copy of the certificate of limited partnership and each certificate of amendment or certificate of cancellation to each limited partner unless the partnership agreement provides otherwise.

➔Section 148. KRS 362.155 is amended to read as follows:

In KRS 362.150 to 362.360:

- (1) "Court" includes every court and judge having jurisdiction in the case.
- (2) "Business" includes every trade, occupation, or profession.
- (3) "Person" includes individuals, partnerships, corporations, and other associations.
- (4) "Bankrupt" includes bankrupt under the Federal Bankruptcy Act or insolvent under any state insolvent act.
- (5) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.
- (6) "Real property" includes land and any interest or estate in land.
- (7) "Registered limited liability partnership" includes a partnership formed pursuant to an agreement governed by the laws of this Commonwealth or a state or jurisdiction registered under KRS 362.555 and complying with **Section 23 of this Act**~~[KRS 362.565]~~.

➔Section 149. KRS 362.2-206 is amended to read as follows:

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

- (c) For all other records, send a copy of the filed record to the person, or the duly authorized representative thereof, on whose behalf the record was filed.
- (2) Upon request and payment of a fee, the Secretary of State shall send to the requester a certified copy of the requested record.
- (3) Except as otherwise provided in *Sections 16 and 30 of this Act* ~~[KRS 362.2-116 and 362.2-207]~~, a record delivered to the Secretary of State for filing under this subchapter may specify an effective time and a delayed effective date.

➔Section 150. KRS 362.2-1105 is amended to read as follows:

- (1) An organization that has been converted pursuant to KRS 362.2-1101 to 362.2-1113 is for all purposes the same entity that existed before the conversion.
- (2) When a conversion takes effect:
 - (a) All property and contract rights owned by, and all rights, privileges, and immunities of, the converting partnership or limited partnership shall remain vested in the converted partnership or limited partnership without assignment, reversion, or impairment;
 - (b) All obligations of the converting partnership or limited partnership shall continue as obligations of the converted partnership or limited partnership;
 - (c) An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred, and the name of the converted partnership or limited partnership may be substituted in any pending action or proceeding for the name of the converting partnership or limited partnership; and
 - (d) Any written partnership agreement of the converted partnership or limited partnership shall be binding upon each person who becomes a partner in the converted partnership or limited partnership.
- (3) A converted organization that is a foreign entity consents to the jurisdiction of the courts of this Commonwealth to enforce any obligation owed by the converting limited partnership if, before the conversion, the converting limited partnership was subject to suit in this Commonwealth on that obligation. A converted organization that is a foreign entity and not authorized to transact business in this Commonwealth appoints the Secretary of State as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the Secretary of State under this subsection is made in the same manner and with the same consequences as in *subsection (4) of Section 45 of this Act* ~~[KRS 362.2-117(3) or (4)]~~.
- (4) A person who becomes a general partner in a limited partnership that is not a limited liability limited partnership as a result of a conversion shall be personally liable as a general partner for only those obligations incurred by the limited partnership after the conversion takes effect.

➔Section 151. The following KRS sections are repealed:

- 271B.1-210 Forms.
- 271B.1-230 Effective time and date of filing.
- 271B.1-240 Correcting filed documents.
- 271B.1-250 Filing duty of Secretary of State.
- 271B.1-260 Appeal from Secretary of State's refusal to file document.
- 271B.1-270 Evidentiary effect of filed document.
- 271B.1-280 Certificate of existence.
- 271B.4-020 Reserved name.
- 271B.4-030 Registered name.
- 271B.5-020 Change of registered office or registered agent.
- 271B.5-030 Resignation of registered agent.

- 271B.5-040 Service on corporation.
- 271B.14-200 Grounds for administrative dissolution.
- 271B.14-210 Procedure for and effect of administrative dissolution.
- 271B.14-220 Reinstatement following administrative dissolution or revocation under prior law -- Exception -- Amendment to extend or delete period of duration.
- 271B.14-230 Appeal from denial of reinstatement.
- 271B.14-230 Appeal from denial of reinstatement.
- 271B.15-020 Consequences of transacting business without authority.
- 271B.15-030 Application for certificate of authority -- Requirement for agent's written acceptance of appointment.
- 271B.15-040 Amended certificate of authority.
- 271B.15-050 Effect of certificate of authority.
- 271B.15-060 Corporate name of foreign corporation.
- 271B.15-070 Registered office and registered agent of foreign corporation -- Requirement for agent's written acceptance of appointment.
- 271B.15-080 Change of registered office or registered agent of foreign corporation.
- 271B.15-090 Resignation of registered agent of foreign corporation.
- 271B.15-100 Service on foreign corporation.
- 271B.15-200 Withdrawal of foreign corporation.
- 271B.15-300 Grounds for revocation.
- 271B.15-310 Procedure for an effective revocation.
- 271B.15-320 Appeal from revocation.
- 272.050 Limited use of word "cooperative."
- 273.178 Reserved name.
- 273.179 Registered name.
- 273.184 Change of registered office or registered agent.
- 273.1841 Resignation of registered agent.
- 273.185 Service on corporation.
- 273.2521 Forms.
- 273.2522 Effective time and date of document.
- 273.2523 Correcting filed document.
- 273.2524 Filing duty of Secretary of State.
- 273.2525 Appeal from Secretary of State's refusal to file document.
- 273.2526 Evidentiary effect of filed document.
- 273.2527 Certificate of existence.
- 273.2528 Penalty for signing false document.
- 273.318 Grounds for administrative dissolution.
- 273.3181 Procedure for and effect of administrative dissolution.
- 273.3182 Reinstatement following administrative dissolution or revocation under prior law.
- 273.3183 Appeal from denial of reinstatement.

- 273.3611 Amended certificate of authority.
- 273.3612 Effect of certificate of authority.
- 273.363 Applicability of service and withdrawal provisions of KRS Chapter 271B.
- 273.364 Corporate name of foreign corporation.
- 273.3642 Change of registered office or registered agent of foreign corporation.
- 273.3643 Resignation of registered agent of foreign corporation.
- 273.3644 Service on foreign corporation.
- 273.3645 Withdrawal of a foreign corporation.
- 273.3646 Grounds for revocation of certificate of authority of foreign corporation.
- 273.3647 Procedure for an effective revocation of certificate of authority of foreign corporation.
- 273.3648 Appeal from revocation.
- 273.369 Charges collected by Secretary of State.
- 274.077 Name of professional service corporation.
- 274.245 Admission of foreign professional service corporation.
- 274.250 Application of foreign professional service corporation for a certificate of authority.
- 274.255 Revocation of certificate of authority.
- 275.050 Prescribed forms.
- 275.060 Effective date and time of document.
- 275.065 Articles of correction.
- 275.070 Duty of Secretary of State to file document -- Manner of filing -- Effect of filing or refusal to file.
- 275.075 Appeal of refusal of Secretary of State to file document.
- 275.080 Effect of certificate of Secretary of State attached to copy of filed document.
- 275.085 Certificate of existence -- Certificate of authorization.
- 275.090 Prohibition against knowingly signing false document -- Penalty.
- 275.105 Reserved limited liability company name.
- 275.110 Registration of name of foreign limited liability company.
- 275.120 Change of registered office or registered agent.
- 275.125 Resignation of registered agent.
- 275.130 Service of process.
- 275.295 Administrative dissolution -- Reinstatement.
- 275.390 Certificate of authority required of foreign limited liability company for access to courts -- Civil penalty for violation.
- 275.395 Application for certificate of authority for foreign limited liability company.
- 275.400 Amended certificate of authority for foreign limited liability company.
- 275.405 Effect of certificate of authority for foreign limited liability company.
- 275.410 Name used by foreign limited liability company.
- 275.420 Change of registered office or registered agent for foreign limited liability company.
- 275.425 Statement of resignation of registered agent of foreign limited liability company.

- 275.430 Service of process on foreign limited liability company.
- 275.435 Certificate of withdrawal for foreign limited liability company.
- 275.440 Grounds for revocation of certificate of authority of foreign limited liability company.
- 275.445 Notice of determination -- Revocation of certificate -- Effect of revocation.
- 275.450 Appeal of revocation.
- 279.060 Use of "Rural Electric Cooperative" in name limited.
- 362.405 Reservation of name.
- 362.425 Filing in office of Secretary of State.
- 362.565 Name of registered limited liability partnership.
- 362.1-111 Duty of Secretary of State to file document -- Manner of filing -- Effect of filing or refusal to file.
- 362.1-112 Appeal of refusal of Secretary of State to file.
- 362.1-113 Effect of certificate of Secretary of State attached to copy of statement filed.
- 362.1-115 Reserved partnership name.
- 362.1-116 Registration of name of foreign partnership.
- 362.1-118 Change of registered office or registered agent.
- 362.1-119 Resignation of registered agent.
- 362.1-123 Revocation of a statement of foreign qualification.
- 362.1-1002 Name of limited liability partnership.
- 362.1-1101 Law governing foreign limited liability partnership.
- 362.1-1103 Effect of failure to qualify.
- 362.1-1104 Activities not constituting transacting business.
- 362.2-109 Reservation of name.
- 362.2-116 Resignation of agent for service of process.
- 362.2-117 Service of process.
- 362.2-119 Prescribed forms.
- 362.2-120 Effective time and date of document.
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- 386.4446 Notice of determination -- Revocation of certificate -- Effect of revocation.
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Section 6 of Senate Bill 150 of the 2010 Regular Session of the General Assembly.

➔Section 152. This Act shall become effective on January 1, 2011.

Signed by Governor April 13, 2010.

CHAPTER 152

(HB 287)

AN ACT relating to economic development.

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

➔Section 1. KRS 154.22-050 is amended to read as follows:

The authority may enter into, with any approved company, a tax incentive agreement with respect to its economic development project, upon adoption of a resolution authorizing the tax incentive agreement. Subject to the inclusion of the mandatory provisions set forth below, the terms and provisions of each tax incentive agreement shall be determined by negotiations between the authority and the approved company.

- (1) The tax incentive agreement shall set forth the maximum amount of inducements available to the approved company for recovery of the approved costs authorized by the authority and expended by the approved company.
- (2) The approved company shall expend the authorized approved costs for the economic development project within three (3) years of the date of the final approval by the authority.
- (3) The approved company shall provide the authority with documentation as to the expenditures for approved costs in a manner acceptable to the authority.

- (4) (a) The term of the tax incentive agreement shall commence upon the activation date and ~~shall~~^{will} terminate upon the earlier of the full receipt of the maximum amount of inducements by the approved company or fifteen (15) years after the activation date *unless paragraph (b) of this subsection applies.*
- (b) 1. *An approved company may request an extension of the fifteen (15) year term as provided in this paragraph. The extension may be granted by the authority for up to ten (10) years under the following conditions:*
- a. *The approved company commits to an additional investment or the creation of additional jobs at the approved economic development project;*
 - b. *The approved company consolidates operations, facilities, or services currently located in another state to the Kentucky facility;*
 - c. *At the time the extension is granted, the approved company has used less than sixty percent (60%) of the inducements awarded under the tax incentive agreement; and*
 - d. *The authority shall not increase the maximum amount of incentives established by the existing tax incentive agreement.*
2. *If the authority approves the extension, the tax incentive agreement shall be amended as necessary to extend the term, and to incorporate any additional requirements established by the authority as required by this paragraph.*
- (5) The tax incentive agreement shall include the activation date. To implement the activation date, the approved company shall notify the authority, the Department of Revenue, and the approved company's employees of the activation date when the implementation of the inducements authorized in the tax incentive agreement shall occur. If the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) by the activation date, the approved company shall not be entitled to receive inducements pursuant to this subchapter until the approved company satisfies the requirements; however, the fifteen (15) year period for the term of the tax incentive agreement shall begin from the activation date. Notwithstanding the previous sentence, if the approved company does not satisfy the minimum investment and minimum employment requirements of KRS 154.22-040(3) within two (2) years from the date of final approval of the tax incentive agreement, then the approved company shall be ineligible to receive inducements under this subchapter unless an extension is approved by the authority.
- (6) The tax agreement shall also state that if the total number of new full-time employees at the site of the economic development project who are residents of the Commonwealth and subject to the Kentucky income tax is less than fifteen (15) at any time after activation, the authorized inducements shall be suspended for a period of up to one (1) year. If the company does not have at least fifteen (15) new full-time employees at the site who are residents of the Commonwealth and subject to Kentucky income tax within one (1) year from the date of the initial suspension, the inducements may be terminated at the discretion of the authority.
- (7) The approved company shall comply with the hourly wage criteria set forth in KRS 154.22-040(4) and provide documentation in connection with hourly wages paid to its full-time employees hired as a result of the economic development project in a manner acceptable to the authority.
- (8) The approved company may be permitted the following inducements during the term of the tax incentive agreement:
- (a) A one hundred percent (100%) credit against the Kentucky income tax and the limited liability entity tax imposed under KRS 141.0401 that would otherwise be owed in the approved company's fiscal year, as determined under KRS 141.347, to the Commonwealth by the approved company on the income, Kentucky gross receipts, or Kentucky gross profits of the approved company generated by or arising from the economic development project. The ordering of the credits shall be as provided in KRS 141.0205; and
 - (b) The aggregate assessments withheld by the approved company in each year.
- (9) The credit allowed the approved company shall be applied against both the income tax imposed by KRS 141.020 or 141.040, and the limited liability entity tax imposed by KRS 141.0401, with credit ordering as provided in KRS 141.0205, for the fiscal year for which the tax return of the approved company is filed. The total inducements may not exceed authorized cumulative approved costs paid by the approved company in the period commencing with the date of final approval.

- (10) The approved company shall not be required to pay estimated tax payments as prescribed in KRS 141.042 on the Kentucky taxable income, Kentucky gross receipts or Kentucky gross profits generated by or arising from the economic development project.
- (11) The tax incentive agreement may be assigned by the approved company only upon the prior written consent of the authority following the adoption of a resolution by the authority to that effect.
- (12) The tax incentive agreement shall provide that if an approved company fails to comply with its obligations under the tax incentive agreement then the authority shall have the right, at its option, to:
 - (a) Suspend the tax credits and assessments available to the approved company;
 - (b) Pursue any remedy provided under the tax incentive agreement, including termination thereof; and
 - (c) Pursue any other remedy at law to which it may be entitled.
- (13) All remedies provided in subsection (12) of this section shall be deemed to be cumulative.

Signed by the Governor April 13, 2010.

CHAPTER 153

(HB 149)

AN ACT relating to executive branch employees and declaring an emergency.

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

➔Section 1. KRS 18A.005 is amended to read as follows:

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

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;
- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;
- (7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;
- (8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;
- (9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- (10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;

- (11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range ~~and for~~ less discretion or responsibility;
- (12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;
- (13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 ~~or and~~ who has qualified to be placed on a register;
- (14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;
- (15) "Federally funded time-limited employee" means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of KRS 18A.113, shall serve at the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(14) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(14) and 18A.140;
- (16) "Federally funded position" means a full-time or a part-time position in which the unclassified employee is eligible for benefits at the same level as a classified employee in a permanent position;
- (17) "Full-time employee" means an employee in a full-time position;
- (18) "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:
 - (a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and
 - (b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;
- (19) "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence;
- (20) "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;
- (21) "Interim position" means a position established to address a one-time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;
- (22) "Part-time employee" means an employee in a part-time position;
- (23) "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;
- (24) "Penalization" ~~means~~~~[shall include, but not be limited to,]~~ demotion, dismissal, suspension, fines, and other disciplinary actions;~~[-]~~ involuntary transfers; salary adjustments; any action that **increases or** diminishes the level, rank, discretion, or responsibility of an employee without proper cause **or authority**, including a reclassification or reallocation **to a lower grade or rate of pay**; and the ~~abridgment~~~~[abridgement]~~ or denial of other rights granted to state employees;
- (25) "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;

- (26) "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;
- (27) "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;
- (28) ***"Qualifying" means the selection method type which results when the knowledge, skills, and abilities necessary for a job classification cannot be accurately measured by written examination;***
- (29) "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- ~~(30)~~~~(29)~~ "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee ***has been assigned in writing by the appointing authority***~~occurs~~;
- ~~(31)~~~~(30)~~ "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- ~~(32)~~~~(31)~~ "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- ~~(33)~~~~(32)~~ "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- ~~(34)~~~~(33)~~ "Reinstatement" ~~means~~~~shall mean~~ the ***privilege of*** restoration of an employee who has resigned in good standing ***at the option of the appointing authority***, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- ~~(35)~~~~(34)~~ "Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(12);
- ~~(36)~~~~(35)~~ "Seniority" means the total number of months of state service;
- ~~(37)~~~~(36)~~ "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service; and
- ~~(38)~~~~(37)~~ "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

➔Section 2. KRS 18A.030 is amended to read as follows:

- (1) The secretary shall be the executive and administrative head of the cabinet and shall supervise and control all examinations and work of the cabinet. He shall advise the board on matters pertaining to the classified service of this state. Within the limitations of the budget, the secretary shall appoint and supervise the staff needed in the cabinet to carry out the purposes of KRS 18A.005 to 18A.200 except employees of the board who shall be appointed as provided in KRS 18A.090.
- (2) Subject to the provisions of this chapter and KRS Chapter 13A, the secretary shall, with the aid of his staff:
 - (a) Attend all meetings of the board;

- (b) As provided by this chapter, promulgate comprehensive administrative regulations consistent with the provisions of KRS Chapters 13A and 18A, and with federal standards for the administration of a personnel system in the agencies of the state government receiving federal grants;
 - (c) Establish general procedures for personnel recruitment, for certification, and for improving the efficiency of employed personnel;
 - (d) Appoint the examiners and technicians necessary for the conduct of the personnel program, whether on a permanent or temporary basis;
 - (e) Prepare and maintain a record of all employees, showing for each employee his name, address, title of position held, rate of compensation, changes in status, compensation, or title, transfer, and to make the data and the class specifications for all positions available to the press and public;
 - (f) Prepare, in accordance with the provisions of KRS 18A.005 to 18A.200 and the administrative regulations adopted thereunder, examinations, eligible lists, and ratings of candidates for appointment;
 - (g) Make certification for appointment or promotion within the classified service, in accordance with the provisions of KRS 18A.005 to 18A.200;
 - (h) Make investigations concerning all matters touching the enforcement and effect of the provisions of KRS 18A.005 to 18A.200 and administrative regulations prescribed thereunder;
 - (i) Prepare, in cooperation with appointing authorities and others, programs for employee training, safety, morale, work motivation, health, counseling, and welfare, and exercise leadership in the development of effective personnel administration within the several departments of the Commonwealth, and make available the facilities of the department to this end;
 - (j) Provide personnel services to unclassified employees in agreement with the agencies involved not otherwise provided for in KRS 18A.005 to 18A.200;
 - (k) Present, in accordance with the provisions of KRS Chapter 48, budget requests for the support of the personnel system created by KRS 18A.005 to 18A.200, excluding the board, which shall present its own budget estimates;
 - (l) Make a report and submit the same to the board, the Legislative Research Commission, and the Governor not later than October first of each year;~~and~~
 - (m) ***Propose selection method changes for any classification to the Personnel Board with documentation justifying the need for the selection method change. The Personnel Board shall, at its next regularly scheduled monthly meeting, review and comment on any proposed selection method change. A classification shall not have its selection method changed without review and comment by the Personnel Board; and***
 - (n) Discharge the other duties imposed upon him by KRS 18A.005 to 18A.200.
- (3) The secretary on behalf of the cabinet may join or subscribe to any association or service having as its purpose the interchange of information relating to the improvement of the public service and especially improvement of personnel administration.
 - (4) The secretary shall keep records relative to employee turnover and report to the board, the Governor, and the Legislative Research Commission quarterly. The report shall reflect employee turnover rates by cabinet, department, bureau, division, and section. If any cabinet, department, bureau, division, or section has a turnover rate of fifteen percent (15%) or more in any twelve (12) month period, the secretary shall conduct an investigation into the reasons for the turnover and report the findings to the board, the Governor, and the Legislative Research Commission.
 - (5) The secretary shall provide to each new state employee and to each existing state employee, classified or otherwise, on an annual basis an informational pamphlet about human immunodeficiency virus infection and acquired immunodeficiency syndrome. The pamphlet shall be approved by the Cabinet for Health and Family Services and shall contain information about the nature and extent of these diseases, methods of transmission, preventive measures, and referral services.
 - (6) ***The secretary shall establish and maintain a list of all filled positions exempted from classified service under paragraphs (e), (g), (h), (i), (k), (t), (w), (aa), and (ab) of subsection (1) of Section 10 of this Act. The list shall include the following information for each filled position:***

- (a) *The name of the agency where the position is assigned;*
 - (b) *The statutory authority for the unclassified status of the position;*
 - (c) *The title of the position;*
 - (d) *The pay grade of the position;*
 - (e) *The annual salary of the employee in the position; and*
 - (f) *The work county of the employee in the position.*
- (7) ***Beginning September 1, 2010, and every six (6) months thereafter, the secretary shall provide the Governor and the Legislative Research Commission with a copy of the list described in subsection (6) of this section, and shall indicate on the list any position that has been added to the list since the last submission.***

➔Section 3. KRS 18A.040 is amended to read as follows:

The board and the ~~secretary~~~~commissioner~~ shall see that rules, regulations and practices meeting federal merit system standards shall, where such standards apply as a prerequisite for federal grants-in-aid, be in effect continuously, notwithstanding any other provision of KRS 18A.005 to 18A.200.

➔Section 4. KRS 18A.045 is amended to read as follows:

- (1) There is hereby created a Personnel Board in which shall be vested the constitutional powers and responsibilities of officers of the Commonwealth. The board shall consist of seven (7) members, five (5) of whom shall be appointed by the Governor as provided in KRS 18A.050. Two (2) members of the board shall be elected by classified employees as provided in KRS 18A.0551.
- (2) ***Personnel Board members shall not accept gifts as provided in KRS 11A.045(1), benefit under any contract or agreement as provided in KRS 11A.040(4), or fail to disclose to other members of the board any direct or indirect conflict of interest as described in KRS 11A.005(2)(c).***
- (3) Any person retaliating in any manner and any person ordering retaliation against a classified employee or a member of his family because he has participated in an election to the board, either by being a candidate or voting for a candidate, shall be subject to the provisions of KRS 18A.990.

➔Section 5. KRS 18A.050 is amended to read as follows:

- (1) Any person serving on the board on July 15, 1982, shall serve until the expiration of his current term of office. Subsequent appointments shall be for a term of four (4) years from the date of expiration of the term for which his predecessor was appointed as provided in subsections (2) and (3) of this section, except that a person appointed to fill a vacancy prior to the expiration of such term shall be appointed in the same manner as provided in KRS 18A.045 and for the remainder of such term.
- (2) Upon the expiration of the terms of office of the two (2) board members whose terms expire January 1, 1984, the Governor shall appoint two (2) members from a list of four (4) names submitted by the Legislative Research Commission. Thereafter, upon the expiration of these terms, such terms shall be filled in the same manner as provided in this subsection.
- (3) Upon the expiration of the terms of office, of the members whose terms expire December 31, 1982, January 1, 1985, and January 1, 1986, the Governor shall appoint citizens at large who are not associated with state government in any manner. Thereafter upon the expiration of these terms, such terms shall be filled in the same manner as provided in this subsection.
- (4) These five (5) appointments to the board shall be subject to confirmation by the Senate. If the Senate is not in session, these five (5) appointments shall be subject to review by the Interim Joint Committee on State Government which shall hold a public hearing and shall transmit its recommendations to the Senate.
- (5) The initial election of classified employees to the board shall be held as provided in KRS 18A.0551. The two (2) classified employees initially elected to the board shall serve until July 1, 1986. Subsequent elections shall be for a term of four (4) years from the date of expiration of the term for which his predecessor was elected. If a vacancy occurs prior to the expiration of such term, the board shall fill the vacancy as provided in KRS 18A.060. ~~Effective for the election to be held in 1986 and all subsequent elections, a classified employee elected to the board shall not be eligible for reelection to the board for the four (4) year term succeeding the expiration of the term for which he shall have been elected. He shall also be ineligible to be appointed to fill a~~

~~vacancy that occurs during the four (4) year term succeeding the expiration of the four (4) year term for which he shall have been elected. The classified employees elected to the board at the election held in 1982 shall be eligible for the 1986 election.~~

- (6) If an elected board member accepts an unclassified position with state government, his membership on the board shall be terminated immediately and the vacancy shall be filled as provided in KRS 18A.060.
- (7) If an elected board member accepts a classified position in a cabinet employing another board member or if, through no fault of his own, he is placed in that cabinet, his membership on the board shall not be terminated for the remainder of his term.

➔Section 6. KRS 18A.0551 is amended to read as follows:

- (1) (a) Elections to the board shall be scheduled every four (4) years on or before ***June 15***~~*July 1*~~. The board shall provide written notification of the date of the election to all classified employees on or before ***April***~~*May*~~ 1; and
 - (b) Upon receipt of the notification provided for by paragraph (a) of this subsection, an employee wishing to serve on the board shall notify the board, in writing, no later than ***May 15***~~*June 1*~~. This notification shall be notarized and shall include the candidate's name, address, ***unique personal identification***~~*Social Security*~~ number, job classification, and length of state employment. It shall also include the name and address of his current employer.
- (2) On the last working day of ***April***~~*May*~~, the cabinet shall certify a payroll listing to the board that is current on such day and that contains the name, ***unique personal identification***~~*Social Security*~~ number, and home address of every classified employee.
- (3) At least ***ten (10)***~~*fifteen (15)*~~ working days prior to the election provided for in subsection (1) of this section, the board shall mail to each classified employee whose name appeared on the payroll listing certified by the cabinet at his home address:
 - (a) A list of candidates for election to the board~~[, in alphabetical order, with a brief biography following the name of each candidate];~~
 - (b) Instructions for voting;
 - (c) A ballot listing the names of all candidates for election to the board~~[in alphabetical order and providing a blank space next to each name];~~ and
 - (d) ***An envelope***~~*Two (2) envelopes*~~ for returning the ballot ***should the classified employee wish to return the ballot by first-class mail.***~~[Prior to mailing the envelopes to a state employee, one (1) envelope shall be addressed by the board to the impartial third party selected by the board to receive, validate, and tabulate the ballots at a post office box rented by the board for the election. The upper left corner of the preaddressed or outer envelope shall contain a sufficient number of blank lines and spaces to permit an employee to print his name and address. The upper left corner of the second or inner envelope shall contain a sufficient number of blank lines and spaces to permit an employee to print his name, address, Social Security number, the date, and to affix his signature.]~~
- (4) Upon receipt of his ballot, a classified employee wishing to participate in the election provided for in subsection (1) of this section shall:
 - (a) Vote for no more than two (2) candidates ***on the ballot, following the instructions for voting;***
 - (b) ***Print his or her unique personal identification number on the ballot in the space provided on the ballot***~~[Mark his ballot by placing a mark in the blank space next to the name of the candidate for whom he is casting his vote];~~ and
 - (c) ***Deliver the ballot to the board by any means, including first-class mail, facsimile, scanned e-mail, or hand delivery. Ballots shall arrive at the board's principal address no later than the date of the election or be postmarked on or before the date of the election***~~[Print his name and address in the upper left corner of the preaddressed or outer envelope provided by the board];~~
 - (d) ~~Print his name, address, Social Security number, the date, and affix his signature in the upper left corner of the second or inner envelope provided by the board;~~
 - (e) ~~Seal his ballot in the second or inner envelope; and~~

~~(f) Seal the second or inner envelope in the preaddressed or outer envelope, affix a stamp to it, and post it.~~

(5) The board shall:

(a) Select an impartial third party to receive, validate, and tabulate all returned ballots as provided by this subsection and subsection (6) of this section; *and*

~~(b) Acquire a post office box to which all ballots shall be mailed; and~~

~~(c) Provide the impartial third party with a computer-generated list of the *unique personal identification* {names and Social Security} numbers of eligible voters *in numerical order* {, with the names of the eligible voters in numerical sequence as determined by their Social Security numbers. The names and Social Security numbers listed on the list shall correspond to those appearing on the payroll certified by the cabinet under subsection (2) of this section}.~~

(6) The impartial third party selected by the board shall collect all ballots~~{, unopened,}~~ from the *board and*~~{post office box. It shall}~~:

~~(a) Examine the postmark on each envelope;~~

~~(b) Set aside, *untabulated* {unopened}, any {preaddressed or outer} envelope postmarked with, *or ballot stamped as received at the board on*, a date subsequent to the deadline provided for by this section;~~

~~{(c) Remove the second or inner envelope from the preaddressed or outer envelope;}~~

~~(b){(d)} Verify the *unique personal identification* {name and Social Security} number on the *ballot* {second or inner envelope} by comparing *the number* {them} to the computer-generated list of *unique personal identification* {names and Social Security} numbers of eligible voters provided by the cabinet;~~

~~(c){(e)} Set aside, *untabulated* {unopened}, any *ballot* {second or inner envelope} containing a *unique personal identification* {name and Social Security} number that does not match the *unique personal identification* {name and Social Security} number appearing next to the name on the computer-generated list;~~

~~(d){(f)} Tabulate the *timely* ballots {by electronic data entry in duplicate, provided that ballots in envelopes specified in paragraphs (b) and (c) of this subsection shall not be counted};~~

~~(e){(g)} Compare the total tabulated vote with the total number of eligible employees appearing on the computer generated list provided by the cabinet;~~

~~(f){(h)} Return the ballots; envelopes, including envelopes that have not been opened; and other election material to the board; and~~

~~(g){(i)} Certify to the board:~~

- ~~1. That the tabulation does not include two (2) or more ballots with the same *unique personal identification* {Social Security} number;~~
- ~~2. The total number of ballots received;~~
- ~~3. The total number of ballots not included in the tabulation, and the reason each such ballot was not included in the tabulation;~~
- ~~4. The total number of ballots included in the tabulation; and~~
- ~~5. The total vote for each candidate.~~

(7) For at least sixty (60) days after the completion of the tabulation provided for by subsection (6) of this section, the ballots, envelopes, and other election materials provided for by this section shall be public record and open to inspection, but the home addresses and *unique personal identification* {Social Security} numbers of the eligible employees and voters shall be redacted prior to public inspection or disclosure.

(8) The two (2) candidates receiving the greatest number of votes shall be declared the successful candidates. In the event of a tie vote, the tie shall be broken by a coin toss in the presence of the candidates receiving the tie vote.

- (9) Successful candidates shall be notified by the board no later than **ten (10)**~~five (5)~~ working days after the election. Successful candidates shall take office immediately upon notification.
- (10) State employees ~~may~~~~shall not~~ use state materials or equipment, ***except for state-paid first-class postage, to vote in***~~for any purpose related to~~ the election of classified employees to the board. ***Except for voting in accordance with this section,***~~nor shall~~ any activity related to the election of a classified employee to the board ***shall not*** be conducted during working hours.

➔Section 7. KRS 18A.075 is amended to read as follows:

Subject to the provisions of this chapter and KRS Chapter 13A, it shall be the duty of the board to:

- (1) As provided by this chapter, promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200, and with federal standards for the administration of a personnel system in the agencies of the state government receiving federal grants for the purpose of carrying out the provisions of this chapter;
- (2) Make investigations, either on petition of a citizen, taxpayer, interested party, or on its own motion, concerning the enforcement and effect of KRS 18A.005 to 18A.200, and to require observance of its provisions and the administrative regulations promulgated pursuant to the provisions of this chapter and KRS Chapter 13A; and to make such investigation as may be requested by the General Assembly or the Governor and to report thereon;
- (3) Hear appeals from applicants for positions for which examinations are being or have been conducted, from eligibles on examination registers, from unclassified employees who have been dismissed, demoted, suspended, or ***reduced in pay or grade***~~otherwise penalized~~ for cause, and from officers or employees serving under the personnel systems created by this chapter, as provided by 1986 Acts Ch. 494;
- (4) In cooperation with the secretary, promote public understanding of merit principles in government service;
- (5) Present, in accordance with the provisions of KRS Chapter 48, budget requests for the support of the personnel board;
- (6) Make annual reports to the Governor, the Legislative Research Commission,~~and~~ the secretary ***of the Personnel Cabinet, and the co-chairs of the Interim Joint Committee on State Government prior to October 1. The board shall make,***~~and~~ biennial reports to the General Assembly, which reports shall be a public record freely available to those persons interested in obtaining a copy. ***The board may request state agencies to provide information to assist the board in compiling the reports, which shall include the following:***
 - (a) ***The number of merit state employees at the beginning and the end of the reporting period;***
 - (b) ***The total number of grievances filed and mediation requests made by merit employees during the reporting period;***
 - (c) ***A tabulation of the stages in which employee complaints were resolved during the reporting period; and***
 - (d) ***The average amount of time taken to resolve employee complaints during the reporting period, by stage;***
- (7) Advise the Governor and the secretary with respect to the administration of the personnel system created by this chapter;
- (8) Consider and act on such matters as may be referred to the board by the secretary;~~and~~
- (9) Represent the public interest in the improvement of personnel administration in the state service, and advise and assist the secretary in fostering the interest of institutions of learning and of civic, professional, and employee organizations in the improvement of personnel standards in the state service; ***and***
- (10) ***Make a determination, upon receiving notification of proposed classification selection method changes with proper documentation for the necessity for the change from the secretary, on classification selection method changes prior to those changes occurring. Upon receiving a classification selection method change proposal from the secretary, the board shall, at its next regularly scheduled monthly meeting, review and comment on proposed selection method changes. No classification shall have its selection method changed without review and comment from the board.***

➔Section 8. KRS 18A.095 is amended to read as follows:

- (1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (2) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the intent to dismiss is based;
 3. The date, time, and place of such action or activity; and
 4. The name of the parties involved;~~and~~
 - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee; **and**
 - (c) ***Whether the employee is placed on administrative leave by the appointing authority with pay upon receiving the intent to dismiss letter prior to the agency's final action.***
- (3) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (5) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (6) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
 - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (7) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
 - (a) The effective date of his dismissal or other penalization;
 - (b) The specific reason for this action, including:
 1. The statutory or regulatory violation;
 2. The specific action or activity on which the dismissal or other penalization is based;
 3. The date, time, and place of the action or activity; and
 4. The name of the parties involved; and
 - (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
 - (a) The demotion, suspension, or other penalization;
 - (b) The effective date of the demotion, suspension, or other penalization;

- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (d) That he *or she* has the right to appeal to the board within sixty (60) days, excluding the day that he *or she* received notification *of the personnel action*.
- (9) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (10) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
- 1. The reallocation; and
 - 2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification.
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration.
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (11) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (12) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (13) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (14) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board.
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly.
- (d) An appeal to the board by applicants or eligibles under subsections ~~(11)(40)~~ and ~~(13)(12)~~ of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.

- (15) An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j).
- (16)
 - (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms.
 - (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney.
 - (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal.
 - (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (17) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (18)
 - (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.
 - (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (19) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
 - (a) Employ class action procedures; or
 - (b) Conduct test representative cases.
- (20) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (21) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (22)
 - (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
 - (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.

- (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action.
- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (23) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (24) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (25) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (26) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (27) ***After a final decision in a contested case has been rendered by the last administrative or judicial body to which the case has been appealed, the board shall make the decision available to the public in electronic format on its Web site and shall organize the decisions according to the statutory basis for which the appeal was based.***
- (28) For the purposes of subsections (2), (3), (4), (5), (6), and (7) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- ~~(29)~~~~(28)~~ Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

➔Section 9. KRS 18A.111 is amended to read as follows:

- (1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 ***and this section***, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.
- (2) An employee who satisfactorily completes the initial probationary period for the position to which he was initially appointed to the classified service shall be granted status and may not be demoted, disciplined, dismissed, or otherwise penalized, except as provided by the provisions of this chapter.
- (3) An employee ordered reinstated by the board shall not be required to serve a probationary period unless the board rules otherwise.
- (4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.
- (5) An employee with status may request that he be reverted to a position in his former class at any time during the promotional probationary period.

- (6) A laid-off employee who accepts a bona fide written offer of appointment to a position shall not be required to serve an initial probationary period. He shall be an employee with status and shall have all rights and privileges granted employees with status under the provisions of this chapter.
- (7) ***A former unclassified employee under KRS 18A.115(1)(d), (e), (f), (g), (h), or (i) shall serve an initial probationary period of twelve (12) months if the employee is appointed to a position in the classified service, unless that employee had previously had status in the classified service or had been separated from his or her previous unclassified position for at least one hundred eighty (180) days prior to the effective date of his or her appointment to the classified service.***
- (8) ***Notification to an employee on initial or promotional probation of the reason the probationary employment has been terminated by the appointing authority shall not confer a right to appeal to the board.***

➔Section 10. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
 - (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
 - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the ~~secretary~~~~commissioner~~ approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the board may approve such an addition or additions on petition of the department head approved by the ~~secretary~~.
Effective August 1, 2010:
 - 1. ***All positions approved under this paragraph prior to August 1, 2010, shall be abolished effective December 31, 2010, unless reapproved under subparagraph 2. of this paragraph; and***
 - 2. ***A position approved under this paragraph on or after August 1, 2010, shall be approved for a period of five (5) years, after which time the position shall be abolished unless reapproved under this subparagraph for an additional five (5) year period***~~commissioner~~;
 - (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
 - (j) Physicians employed as such;
 - (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
 - (l) The judicial department, referees, receivers, jurors, and notaries public;

- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
 - (n) Patients or inmates employed in state institutions;
 - (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
 - (p) Interim employees;
 - (q) Officers and members of the state militia;
 - (r) Department of Kentucky State Police troopers;
 - (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
 - (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
 - (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
 - (v) County and Commonwealth's attorneys and their respective appointees;
 - (w) Chief district engineers and the state highway engineer;
 - (x) Veterinarians employed as such by the Kentucky Horse Racing Authority;
 - (y) Employees of the Kentucky Peace Corps;
 - (z) Employees of the Council on Postsecondary Education;
 - (aa) Executive director of the Commonwealth Office of Technology;
 - (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;
 - (ac) Persons employed in certified teaching positions at the Kentucky School for the Blind and the Kentucky School for the Deaf; and
 - (ad) Federally funded time-limited employees as defined in KRS 18A.005.
- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
 - (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
 - (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
 - (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
 - (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same

benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.

- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

➔Section 11. KRS 18A.140 is amended to read as follows:

- (1) No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions,~~for~~ affiliations,~~for~~ ethnic origin,~~for~~ sex, **race** or disability. No person over the age of forty (40) shall be discriminated against because of age.
- (2) No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person.
- (3) No employee in the classified service or member of the board or its executive director or secretary shall, directly or indirectly, pay or promise to pay any assessment for political purposes, or solicit or take any part in soliciting for any political party, or solicit or take any part in soliciting any political assessment, subscription, contribution, or service. No person shall solicit any political assessment, subscription, contribution, or service of any employee in the classified service.
- (4) No employee in the classified service or member of the board or its executive director shall be a member of any national, state, or local committee of a political party, or an officer or member of a committee of a partisan political club, or a candidate for nomination or election to any paid **partisan** public office, or shall take part in the management or affairs of any political party or in any political campaign, except to exercise his right as a citizen privately to express his opinion and to cast his vote. Officers or employees of the classified service may be candidates for and occupy ***an elected office*** ~~if a town or school district office if the office is one for which no compensation, other than a per diem payment, is provided and~~ the election is on a nonpartisan basis, ***the officers or employees have complied with the requirements of KRS 61.080, and the duties of the elective office do not interfere with, or create any conflicts of interest with, the state duties of the officers or employees in the classified service. An employee shall give notice to his or her appointing authority of his or her intent to run for elective office upon filing to run for the office.***

➔Section 12. KRS 18A.195 is amended to read as follows:

- (1) A state employee who is authorized to work one (1) or more hours in excess of the prescribed hours of duty shall be granted compensatory leave on an hour-for-hour basis. Upon the written request of an employee who is not exempt from the provisions of the Federal Fair Labor Standards Act, 29 U.S.C. sec. 201 et seq., an appointing authority may grant compensatory time, in lieu of overtime pay, at the rate of one and one-half (1.5) hours for each hour the employee is authorized to work in excess of forty (40) hours in a work week. An

employee who is transferred or otherwise changed from the jurisdiction of one agency to another shall retain his compensatory leave in the receiving agency.

- (2) ***An employee in a position listed in KRS 18A.115(1)(d), (e), (f), (g), (h), (i), or (k) shall not be eligible to receive any level of block payment for compensatory leave hours, except as provided in subsection (3) of this section.***
- (3) Any employee who leaves state service shall be paid for the balance of unused compensatory time ***not to exceed two hundred forty (240) hours.***

➔Section 13. KRS 61.373 is amended to read as follows:

- (1) Any public employee who leaves a position after June 16, 1966, voluntarily or involuntarily, in order to perform military duty, and who is relieved or discharged from such duty under conditions other than dishonorable, and who has not been absent from public employment due to military duty in time of war or national or state emergency for a period of time longer than the duration of the war or national or state emergency plus six (6) months or in time of peace for a period of time not longer than six (6) years, and makes application for reemployment within ninety (90) days after he is relieved from military duty or from hospitalization or treatment continuing after discharge for a period of not more than one (1) year:
 - (a) If still physically qualified to perform the duties of his position, shall be restored to such position if it exists and is not held by a person with greater seniority, otherwise to a position of like seniority, status and pay;
 - (b) If not qualified to perform the duties of his position by reason of disability sustained during such service, the public employee shall be placed in another position, the duties of which he is qualified to perform and which will provide him like seniority, status and pay, or the nearest approximation thereof consistent with the circumstances of his case.
- (2)
 - (a) ***Officers and employees of this state, or any department or agency thereof, shall be granted a leave of absence by their employers for the period required to perform active duty or training in the National Guard or any reserve component of the Armed Forces of the United States.***
 - (b) ***Upon the officer's or employee's release from a period of active duty or training, except as provided in KRS 61.394, he or she shall be permitted to return to his or her former position of employment or a position with equivalent seniority, status, pay, and any other rights or benefits that would have been bestowed if he or she had not been absent.***
 - (c) ***An officer or employee who is not permitted to return to his or her former position may appeal the dismissal in accordance with KRS Chapter 18A.***
- (3) In the case of any person who is entitled to be restored to a position in accordance with KRS 61.371 to 61.379, if the personnel board finds that the department or agency with which such person was employed immediately prior to his military duty:
 - (a) Is no longer in existence and its functions have not been transferred to any other agency; or
 - (b) For any reason it is not feasible for such person to be restored to employment by the department or agency, the board shall determine whether or not there is a position in any other department or agency of the same public employer for which the person is qualified and which is either vacant or held by a person having a temporary appointment thereto. In any case in which the board determines that there is such a position, the person shall be restored to the position by the department or agency in which the position exists.

➔Section 14. Whereas KRS 18A.0551, as amended by this Act, will require the Personnel Board to hold elections every four years on or before June 15 and provide written notification to classified employees of the election before April 1, and whereas 2010 is a Personnel Board election year and the procedures described in this Act will need to be in effect before April 1, 2010, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by the Governor April 13, 2010.

CHAPTER 154**(HB 293)**

AN ACT making appropriations for the operations, maintenance, support, and functioning of the Judicial Branch of the government of the Commonwealth of Kentucky and its various officers, boards, commissions, subdivisions, and other state-supported activities.

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

PART I**OPERATING BUDGET**

(1) Funds Appropriations: There is appropriated out of the General Fund, Restricted Funds accounts, or Federal Funds accounts for the fiscal year beginning July 1, 2010, and ending June 30, 2011, and for the fiscal year beginning July 1, 2011, and ending June 30, 2012, in the following sums to be used for the purposes of the Judicial Branch of the government of the Commonwealth of Kentucky, including the Supreme Court, Court of Appeals, Circuit Court, Family Court, District Court, the Administrative Office of the Courts, Judicial Retirement, Local Facilities Fund, Local Facilities Use Allowance Contingency Fund, and for services performed by the Circuit Court Clerks' offices, including both Circuit and District Court support.

1. Court of Justice**a. Court Operations and Administration**

	2010-11	2011-12
General Fund	195,030,000	193,079,700
Restricted Funds	35,218,000	35,218,000
Federal Funds	2,707,700	2,707,700
TOTAL	232,955,700	231,005,400

(1) Salary Adjustments: No funds are provided in fiscal year 2010-2011 and fiscal year 2011-2012 for salary adjustments for non-elected court personnel, Justices, Judges, and Circuit Court Clerks.

(2) Issuance of Employee Paychecks: Notwithstanding any statute or administrative regulation to the contrary, the state payroll that would normally be scheduled to be paid on June 30, 2012, shall not be issued prior to July 1, 2012. The associated cost of this payroll shall be paid from fiscal year 2012-2013 resources. The Chief Justice shall transfer any Restricted Funds, that become excess as the result of this action, to the General Fund.

(3) Funds Carry Forward: Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2009-2010 shall not lapse and shall continue into fiscal year 2010-2011, and any unexpended balance remaining at the close of fiscal year 2010-2011 shall not lapse and shall continue into fiscal year 2011-2012.

(4) Civil Filing Fees: Pursuant to its authority, if the Supreme Court retains the increase from 2008 in civil filings fees, the additional income resulting from the fee increases, not to exceed \$5,000,000 in each fiscal year of the biennium, shall be deposited into a trust and agency account for court operations. Any revenue generated by these increases in excess of \$5,000,000 in each fiscal year of the biennium shall be deposited into the General Fund.

(5) Night Court in Jefferson County: The Administrative Office of the Courts shall continue the operations and current schedule of night court in Okolona and Middletown in Jefferson County in fiscal year 2010-2011 and fiscal year 2011-2012.

b. Local Facilities Fund

	2010-11	2011-12
General Fund	90,500,000	117,500,000

(1) Local Court Facility Compensation: Included in the above General Fund appropriation are moneys to compensate local units of government for providing court space and for costs incurred in the development

of local court facilities as defined in KRS Chapter 26A and provided in Part II of this Act, and to perform all other acts required or authorized by KRS Chapter 26A.

(2) **Funds Carry Forward:** Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2009-2010 shall not lapse and shall continue into fiscal year 2010-2011, and any unexpended balance remaining at the close of fiscal year 2010-2011 shall not lapse and shall continue into fiscal year 2011-2012.

(3) **Fayette County Courthouse Use Allowance:** The use allowance for the Fayette County Courthouse is contingent upon Short Street in Lexington, Kentucky, remaining open to traffic.

c. Local Facilities Use Allowance Contingency Fund

	2010-11	2011-12
General Fund	-0-	-0-

(1) **Funds Carry Forward:** Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2009-2010 shall not lapse and shall continue into fiscal year 2010-2011, and any unexpended balance remaining at the close of fiscal year 2010-2011 shall not lapse and shall continue into fiscal year 2011-2012 to provide for cost overruns in authorized court facilities projects not to exceed 15 percent of the use allowance in accordance with KRS Chapter 26A.

TOTAL - COURT OF JUSTICE

	2010-11	2011-12
General Fund	285,530,000	310,579,700
Restricted Funds	35,218,000	35,218,000
Federal Funds	2,707,700	2,707,700
TOTAL	323,455,700	348,505,400

2. Judicial Retirement System

	2010-11	2011-12
General Fund	5,319,100	5,759,100

(1) **Judicial Retirement Benefits:** Notwithstanding KRS 21.345 to 21.580, included in the above General Fund appropriation is \$4,840,000 in fiscal year 2010-2011 and \$5,280,000 in fiscal year 2011-2012 to fund 44 percent in fiscal year 2010-2011 and 48 percent in fiscal year 2011-2012 of the actuarial assessed judicial retirement benefits.

TOTAL - OPERATING BUDGET

	2010-11	2011-12
General Fund	290,849,100	316,338,800
Restricted Funds	35,218,000	35,218,000
Federal Funds	2,707,700	2,707,700
TOTAL	328,774,800	354,264,500

PART II

CAPITAL PROJECTS BUDGET

Budget Unit	2010-11	2011-12
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1. Local Facilities

(1) **Local Facilities Projects - Authorized:** Nothing in this Act shall reduce funding of court facility projects authorized by the General Assembly.

(2) **Local Facilities Use Allowance Contingency Fund:** For any court facility project which is occupied and use allowance funding is insufficient, the use allowance payments shall be approved from the Local Facilities Use Allowance Contingency Fund. If funds are not available in the Local Facilities Use Allowance Contingency Fund, the

use allowance payments shall be deemed a necessary governmental expense (General Fund Surplus Account, KRS 48.700).

2. Lease Authorizations

- 001.** Franklin County - Lease - Office Space
- 002.** Franklin County - Lease - Court of Appeals
- 003.** Jefferson County - Courts Parking Lease

TOTAL - JUDICIAL BRANCH BUDGET

	2010-11	2011-12
General Fund	290,849,100	316,338,800
Restricted Funds	35,218,000	35,218,000
Federal Funds	2,707,700	2,707,700
TOTAL	328,774,800	354,264,500

PART III

GENERAL PROVISIONS

1. Expenditure Authority: The Director of the Administrative Office of the Courts, with the approval of the Chief Justice, may expend any of the funds appropriated for the court operations and administration in any lawful manner and for any legal purpose that the Chief Justice shall authorize or direct. No executive agency of state government shall have the power to restrict or limit the expenditure of funds appropriated to the Judicial Branch of government.

2. Severability of Budget Provisions: Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provision thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

3. Duplicate Appropriations: Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2010 Regular Session of the General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

4. Priority of Individual Appropriations: KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

5. Carry Forward of Restricted and Federal Funds: Notwithstanding KRS 45.229, any unexpended balance remaining in the Court's Restricted Funds accounts or Federal Funds accounts at the close of the fiscal years ending June 30, 2010, and June 30, 2011, shall not lapse and shall continue into the next fiscal year.

6. Final Budget Document: The Chief Justice shall cause the Director of the Administrative Office of the Courts to prepare a final budget document reflecting the 2010-2012 biennial budget of the Court of Justice. A copy shall be provided to the Legislative Research Commission and an informational copy shall be furnished to the Finance and Administration Cabinet within 60 days of the adjournment of the 2010 Regular Session of the General Assembly.

7. Transferability of Funds: The Chief Justice of the Commonwealth of Kentucky shall have the ability to transfer funds to other programs and budget units within the Judicial Branch. Any funds transferred to other budget units within the Judicial Branch may be used to support any activity, program, or operation of the budget unit or program receiving the respective funds.

8. Appropriations Revisions: Proposed revisions to Restricted Funds and Federal Funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Administrative Office of the Courts shall notify on a timely basis the Legislative Research Commission of the most current estimates of anticipated receipts for the affected fiscal year and an accompanying statement which explains such variations from the anticipated amount.

9. Maximum Salary of Trial Commissioners: Notwithstanding KRS 24A.100(3), funds are included to continue the statutory maximum salary of trial commissioners as provided for in the Judicial Branch Budget Recommendation.

PART IV

BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN

The Judicial Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Signed by Governor April 13, 2010.

CHAPTER 155

(HB 264)

AN ACT relating to financial institutions.

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

➔Section 1. KRS 160.570 is amended to read as follows:

- (1) Each board of education shall appoint a bank, trust company, or savings and loan association to serve as its depository, and if its annual receipts from all sources exceed one hundred thousand dollars (\$100,000), it may designate three (3) depositories, except boards of education of school districts in counties containing cities of the first class may designate up to six (6) depositories. The depository may be designated for a period not to exceed two (2) years, and before entering upon its duties shall agree with the board as to the rate of interest to be paid on average daily or monthly balances.
- (2) The depository selected shall, before entering upon its duties, ***provide collateral in accordance with KRS 41.240***~~[execute bond for the faithful performance of its duties]~~, to be approved by the local board of education in accordance with Kentucky Board of Education administrative regulations, and to be approved by the commissioner of education.~~[The bond shall be guaranteed by at least five (5) solvent personal sureties whose solvency must exceed the amount of the bond, or by a surety company authorized to do business in this state, or through the execution of a collateral bond consistent with the general banking laws of the state and the bonding laws applying to the safeguarding of state funds. The penal sum of the depository bond shall be determined by the board of education in accordance with the administrative regulations promulgated by the Kentucky Board of Education.]~~ A board of education may enter into an agreement with its depository whereby the premium on ***collateral***~~[a bond]~~ guaranteed by a surety company may be paid either by the board or by the depository. If the board pays the premium, the depository shall allow the board not less than two percent (2%) interest on its average daily or average monthly balances.~~[All depository bond forms shall be prepared by the chief state school officer and approved by the Kentucky Board of Education.]~~
- (3) The depository shall hold for the board all funds deposited by the treasurer of the board or its tax collector or duly authorized agent, subject to withdrawal by the board at any time, and shall pay all funds so deposited to such person and in such manner as the board directs. The depository shall keep full and complete accounts of all of the board's funds, and make reports to the board or its authorized agents upon request. The depository shall keep all records relating to the transactions and duties of the office and turn them over to the successor of its office along with all school funds in hand. The board of education may at any time require a due and proper audit of the depository's records of the funds of the board by a competent outside agent.
- ~~{(4) A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases, the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out.}~~

➔Section 2. KRS 382.270 is amended to read as follows:

No deed or deed of trust or mortgage conveying a legal or equitable title to real property shall be lodged for record and, thus, valid against a purchaser for a valuable consideration, without notice thereof, or against creditors, until such deed or mortgage is acknowledged or proved according to law. However, if a deed or deed of trust or mortgage conveying a legal or equitable title to real property is not so acknowledged or proved according to law, but is or has been~~[, prior to July 12, 2006,]~~ otherwise lodged for record, such deed or deed of trust or mortgage conveying a legal or equitable title to real property or creating a mortgage lien on real property shall be deemed to be validly lodged for record for purposes of KRS Chapter 382, and all interested parties shall be on constructive notice of the contents

thereof. As used in this section "creditors" includes all creditors irrespective of whether or not they have acquired a lien by legal or equitable proceedings or by voluntary conveyance.

➔Section 3. KRS 382.430 is amended to read as follows:

- (1) No mortgage, conveyance or other instrument or writing constituting a lien or other security for any note or other evidence of indebtedness shall be received for record by any county clerk unless such mortgage, conveyance or other writing gives the ~~county and state of the residence and the post office~~ address of the person or, ***the address of the principal place of business of a*** corporation owning or holding the note or other evidence of indebtedness, or liable for the payment of taxes thereon.
- (2) Should there be an assignment of such note or other evidence of indebtedness, of record in the clerk's office, the assignment shall state the ~~county and state of the residence and post office~~ address of the assignee. Unless any assignment is made of record, the original holder or owner shall be liable for taxes as though no assignment had been made.
- (3) ***For the purposes of this chapter, a mortgage that has been recorded with any county clerk shall not be deemed invalid or ineffective as constructive notice for failure to include the county of residence in the mortgagee's address.***

➔Section 4. KRS 425.126 is amended to read as follows:

- (1) If any claim be made by attachment, garnishment or other judicial order to a security ***or security entitlement, as defined in KRS 355.8-102(1)***~~[which is transferable in the manner set forth in KRS 355.8-320]~~, such order shall not be valid as against any ***securities intermediary, as defined in KRS 355.8-102(1) or any issuer as defined in KRS 355.8-201,***~~[clearing corporation as defined in KRS 355.8-102(3), custodian bank as defined in KRS 355.8-102(4)]~~ or nominee or agent of either having any interest in, custody of or control over such security ***or security entitlement,*** unless such order ***specifies the following:***~~[identifies the security by setting forth]~~
 - (a) ***For a security,*** the name of the issuer, the class or series of the security, or both, the number of shares or other units of interest represented by the security, the name of the debtor and the name of the person, ***if different from the debtor,*** having an account on the books of the ***securities intermediary or issuer***~~[clearing corporation (as defined in KRS 355.8-102(3))]~~ in which such security is shown;
 - (b) ***For an option or right to acquire a security,*** the name of the issuer the class or series of the security in which the option or right to acquire exists, the name of the debtor and the name of the person, ***if different from the debtor,*** having an account on the books of the ***securities intermediary or issuer*** in which such option or right is shown; or
 - (c) ***For a security entitlement, other than a security or an option or right to acquire a security,*** the name of the debtor and the name of the person, ***if different from the debtor,*** having an account on the books of the ***securities intermediary or issuer*** in which such security entitlement is shown.
- (2) An attachment, garnishment or other judicial order of the kind described in subsection (1) ***of this section***~~[hereof]~~ which does not set forth all the elements of identification ***required by subsection (1) of this section***~~[of the security as specified therein]~~ shall in no manner bind or give notice of such claim to any ***securities intermediary, as defined in KRS 355.8-102(1) or any issuer as defined in KRS 355.8-201,***~~[clearing corporation as defined in KRS 355.8-102(3), custodian bank as defined in KRS 355.8-102(4)]~~ or nominee or agent of either having an interest in, custody of or control over such security, ***or option or right to acquire such security, or security entitlement,*** and such ***securities intermediary, issuer, nominee, or agent***~~[person, clearing corporation, custodian bank or nominee]~~ may transfer, pledge or in any manner deal with such security ***or option, or right to acquire such security or security entitlement*** in disregard of such order or claim without liability to the claimant.
- (3) It shall be the duty of every person mentioned in subsections (1) and (2) ***of this section*** to whom ***any plaintiff or any judgment creditor***~~[the sheriff]~~ shall apply therefor, ***in good faith and for a proper purpose stated in the request,*** to furnish him or her a written statement setting forth any reasonably requested information in such person's possession, custody, or control that concerns the ownership of or records concerning ownership of a security, an option or right to acquire a security, or a security entitlement concerning a specifically identified person. The statement shall be provided within ten (10) days of receipt of the written request~~[a certificate of the number of shares of the defendant in the stock of the corporation or a description of~~

~~the property held by such corporation or person for the benefit of the defendant, or belonging to him, or the amount of the debt owing to the defendant, by such corporation or person, whether due or not,] and a failure to perform this duty may be punished by the court as a contempt.~~

➔Section 5. KRS 427.150 is amended to read as follows:

- (1) To the extent reasonably necessary for the support of an individual and his dependents in addition to property totally exempt under subsection (2) of this section, that individual shall be entitled to exemption of money or property received and rights to receive money or property for alimony, support, or separate maintenance.
- (2) An individual shall be entitled to exemption of the following property:
 - (a) An award under a crime victim's reparation law;
 - (b) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (c) A payment, not to exceed seven thousand five hundred dollars (\$7,500), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;
 - (d) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (e) Assets held, payments made and amounts payable under pensions exempt pursuant to KRS 61.690, 161.700, 427.120 and 427.125; or
 - (f) The right or interest of a person in an individual retirement account or annuity, deferred compensation account, tax sheltered annuity, simplified employee pension, pension, profit-sharing, stock bonus, or other retirement plan described in the Internal Revenue Code of 1986, or Section 408 or 408A of the Internal Revenue Code, as amended which qualifies for the deferral of income tax until the date benefits are distributed. This exemption shall also apply to the operation of the Federal Bankruptcy Code, ***for the purpose of applying the provisions of 11 U.S.C. sec. 522(b)(3) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law***~~[as permitted by 11 U.S.C. sec. 522].~~ This exemption shall not apply to any amounts contributed to an individual retirement account or annuity, deferred compensation account, a pension, profit-sharing, stock bonus, or other qualified retirement plan or annuity if the contribution occurs within one hundred twenty (120) days:
 1. Before the debtor files for bankruptcy ***if this exemption is being applied in a federal bankruptcy proceeding; or***
 2. ***Before the earlier of the entry of the judgment or other ruling against the debtor or the issuance of the levy, attachment, garnishment, or other execution, or order against which this exemption is being applied, if this exemption is being applied in other than a federal bankruptcy proceeding.*** This exemption shall not apply to the right or interest of a person in an individual retirement account or annuity, deferred compensation account, pension, profit-sharing, stock bonus, or other retirement plan to the extent that that right or interest is subject to any of the following:
 - a.~~[1.]~~ An order of a court for payment of maintenance;
 - b.~~[2.]~~ An order of a court for payment of child support.

➔Section 6. KRS 427.160 is amended to read as follows:

Solely for the purpose of applying the provisions of 11 U.S.C. sec. 522(b)(3)(A) in a federal bankruptcy proceeding, in addition to other exemptions provided in this chapter ***and only to the extent otherwise allowed by applicable federal law,*** every debtor shall have a general exemption not to exceed one thousand dollars (\$1,000) in value to be applied toward any property, real or personal, tangible or intangible in his estate when he ***or she*** has filed for bankruptcy under the provisions of The Bankruptcy Code of 1978, 92 Stat. 2549 (1978), Public Law 95-598, ***as amended.***

➔Section 7. KRS 427.170 is amended to read as follows:

Solely for the purpose of applying the provisions of 11 U.S.C. sec. 522(b)(2) in a federal bankruptcy proceeding and only to the extent otherwise allowed by applicable federal law an individual debtor domiciled in this state is authorized to exempt from property of said debtor's ***bankruptcy*** estate the property specified under 11 U.S.C. sec. 522(d).

➔Section 8. KRS 355.9-518 is amended to read as follows:

- (1) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.
- (2) A correction statement ~~shall~~~~must~~:
 - (a) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;
 - (b) Indicate that it is a correction statement; and
 - (c) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.
- (3) ***Except as provided in subsection (4) of this section,*** the filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.
- (4) ***A correction statement that is filed by a bank, or subsidiary or affiliate thereof, shall affect the effectiveness of the record to which it relates if:***
 - (a) ***The correction statement includes a written statement of an officer of the entity filing the correction statement, which provides the information specified in subsection (2) of this section;***
 - (b) ***The officer's written statement provides the officer's title and information identifying how the filer qualifies as a bank, or subsidiary or affiliate thereof;***
 - (c) ***The officer's written statement has been duly acknowledged before a notary public; and***
 - (d) ***The record to which the correction statement relates was originally filed by or refers to a record filed by the entity filing the correction statement.***

➔Section 9. KRS 355.9-510 is amended to read as follows:

- (1) A filed record is effective only to the extent that it was filed by a person that may file it under KRS 355.9-509 ***or subsection (4) of Section 8 of this Act.***
- (2) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.
- (3) A continuation statement that is not filed within the six (6) month period prescribed by KRS 355.9-515(4) is ineffective.

Signed by Governor April 13, 2010.

CHAPTER 156

(HB 511)

AN ACT making appropriations for the operations, maintenance, and support of the Legislative Branch of the Commonwealth of Kentucky.

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

PART I

OPERATING BUDGET

Funds Appropriations: Funds are appropriated to the Legislative Research Commission for the Legislative Branch of government out of the General Fund and Restricted Funds accounts for the fiscal year beginning July 1, 2010, and ending June 30, 2011, and for the fiscal year beginning July 1, 2011, and ending June 30, 2012, in the

following discrete sums, or so much thereof as may be necessary. Each appropriation is made by the source of respective fund or funds accounts to be used for the purposes of the Legislative Branch of government of the Commonwealth of Kentucky.

	2010-11	2011-12
1. General Assembly		
General Fund	18,097,700	18,883,200
Restricted Funds	53,000	119,300
TOTAL	18,150,700	19,002,500

(1) Legislators Retirement and Compensation: Notwithstanding KRS 6.500 to 6.577 and 21.345 to 21.580, included in the above General Fund appropriation are sufficient funds to pay 44 percent of the actuarially required contribution in fiscal year 2010-2011 and 48 percent of the actuarially required contribution in fiscal year 2011-2012 for the Legislators Retirement Plan. Notwithstanding KRS 6.190 and 6.213, the daily compensation provided by KRS 6.190 and the interim expense allowance provided by KRS 6.213 for members of the General Assembly shall remain at the January 1, 2010, level.

(2) Kentucky Legislative Ethics Commission: Included in the above General Fund appropriation is \$388,500 in fiscal year 2010-2011 and \$388,600 in fiscal year 2011-2012 for the Kentucky Legislative Ethics Commission. Included in the above Restricted Funds appropriation is \$48,000 in fiscal year 2010-2011 and \$114,300 in fiscal year 2011-2012 for the Kentucky Legislative Ethics Commission.

(3) Kentucky Long-Term Policy Research Center: Notwithstanding KRS 7B.010 to 7B.090, operation of the Kentucky Long-Term Policy Research Center and its governing board shall be suspended effective July 1, 2010, and shall remain suspended for the 2010-2012 fiscal biennium or until funding is restored. No funds are appropriated for the Kentucky Long-Term Policy Research Center for fiscal year 2010-2011 and fiscal year 2011-2012.

	2010-11	2011-12
2. Legislative Research Commission		
General Fund	32,786,100	34,916,900
Restricted Funds	-0-	-0-
TOTAL	32,786,100	34,916,900

Permanent Full-time Employees: The total number of permanent full-time employees hired by the Legislative Research Commission with the above appropriation, and not assigned specifically to the House and Senate members of the Legislative Research Commission, shall not exceed 232 in fiscal year 2010-2011 and 232 in fiscal year 2011-2012. In addition to this number, the total number of permanent full-time employees assigned specifically to the House members of the Legislative Research Commission shall not exceed 19 and the permanent full-time employees assigned specifically to the Senate members of the Legislative Research Commission shall not exceed 10.

TOTAL - OPERATING BUDGET

	2010-11	2011-12
General Fund	50,883,800	53,800,100
Restricted Funds	53,000	119,300
TOTAL	50,936,800	53,919,400

Unexpended Balance: Notwithstanding KRS 45.229, any unexpended balance remaining at the close of fiscal year 2009-2010 shall not lapse but shall continue into fiscal year 2010-2011, and any unexpended balance in any succeeding fiscal year shall not lapse but shall continue into the following fiscal year.

TOTAL - LEGISLATIVE BRANCH BUDGET

	2010-11	2011-12
General Fund	50,883,800	53,800,100
Restricted Funds	53,000	119,300

TOTAL

50,936,800

53,919,400

PART II**GENERAL PROVISIONS**

1. Expenditure Authority: The Director of the Legislative Research Commission, under the supervision of the Legislative Research Commission, may expend any of the funds appropriated for legislative operation and administration in any lawful manner and for any legal purpose consistent with the policies and practices of the Commission. No executive agency or statute governing the executive agencies of state government shall have the power to restrict or limit the actions of, or the expenditure of funds appropriated to, the Legislative Research Commission for the Legislative Branch of government.

2. Capitol Annex Capital Construction Expenditures: Any expenditure authorized by the Director of the Legislative Research Commission, under the supervision of the Legislative Research Commission, relating to implementation of KRS 56.463(4)(b) and funded by previous or current appropriations to the Legislative Research Commission for the Legislative Branch of government shall not be governed by KRS 7A.010, 7A.120, 45.750 to 45.810, 48.010(16), 48.020, and 48.110.

3. Severability of Budget Provisions: Appropriation items and sums in this Act conform to KRS 48.311. If any section, any subsection, or any provision thereof shall be invalid or unconstitutional, the decision of the courts shall not affect or impair any of the remaining sections, subsections, or provisions.

4. Duplicate Appropriation: Any appropriation item and sum in this Act and in an appropriation provision in another Act of the 2010 Regular Session of the General Assembly which constitutes a duplicate appropriation shall be governed by KRS 48.312.

5. Priority of Individual Appropriations: KRS 48.313 shall control when a total or subtotal figure in this Act conflicts with the sum of the appropriations of which it consists.

6. Appropriations Revisions: Proposed revisions to Restricted Funds appropriations in this Act shall be made and reported pursuant to KRS 48.630(10). The Director of the Legislative Research Commission may transfer any available funds between all appropriation units as needed to meet the constitutional requirements of the Legislative Branch for fiscal years 2009-2010, 2010-2011, and 2011-2012.

7. Allowance in Lieu of Stationery: Notwithstanding KRS 6.220, in lieu of stationery, there shall be allowed to each member of the House of Representatives the sum of \$250 and to each member of the Senate the sum of \$500. This allowance shall be paid out of the State Treasury at the beginning of each legislative session.

8. Non-Merit Employee Reductions: It is the intent of the General Assembly to reduce the number of non-merit employees in state government and to reduce the number of non-merit employees in the Legislative Branch in an amount which approximates the reduction obligation of the Executive Branch. The Director of the Legislative Research Commission shall therefore cause the number of non-merit employees employed by the Legislative Branch to be reduced by 23 from the effective date of this Act through the end of fiscal year 2010-2011 and shall keep the positions vacant in fiscal year 2011-2012.

9. Issuance of Employee Paychecks: Notwithstanding any statute or administrative regulation to the contrary, the state payroll that would normally be scheduled to be paid on June 30, 2012, shall not be issued prior to July 1, 2012. The associated cost of this payroll shall be paid from fiscal year 2012-2013 resources.

PART III**BUDGET REDUCTION OR SURPLUS EXPENDITURE PLAN**

The Legislative Branch shall participate in any Budget Reduction Plan or Surplus Expenditure Plan in accordance with the provisions of KRS Chapter 48.

Signed by Governor April 13, 2010.

CHAPTER 157**(SB 178)**

AN ACT relating to evaluation of superintendents of schools.

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

➔Section 1. KRS 156.557 is amended to read as follows:

- (1) The Kentucky Board of Education shall establish statewide standards for evaluation and support for improving the performance of all certified school personnel.
- (2) The performance criteria on which teachers and administrators shall be evaluated shall include, but not be limited to:
 - (a) Performance of professional responsibilities related to his or her assignment, including attendance and punctuality and evaluating results;
 - (b) Demonstration of effective planning of curricula, classroom instruction, and classroom management, based on research-based instructional practices, or school management skills based on validated managerial practices;
 - (c) Demonstration of knowledge and understanding of subject matter content or administrative functions and effective leadership techniques;
 - (d) Promotion and incorporation of instructional strategies or management techniques that are fair and respect diversity and individual differences;
 - (e) Demonstration of effective interpersonal, communication, and collaboration skills among peers, students, parents, and others;
 - (f) Performance of duties consistent with the goals for Kentucky students and mission of the school, the local community, laws, and administrative regulations;
 - (g) Demonstration of the effective use of resources, including technology;
 - (h) Demonstration of professional growth;
 - (i) Adherence to the professional code of ethics; and
 - (j) Attainment of the teacher standards or the administrator standards as established by the Education Professional Standards Board that are not referenced in paragraphs (a) to (i) of this subsection.
- (3) The certified employee evaluation programs shall contain the following provisions:
 - (a) Each certified school employee, ~~below~~~~[including]~~ the **level of** superintendent, shall be evaluated by a system developed by the local school district and approved by the Kentucky Department of Education.
 - (b) The local evaluation system shall include formative evaluation and summative evaluation.
 1. "Formative evaluation" means a continuous cycle of collecting evaluation information and interacting and providing feedback with suggestions regarding the certified employee's professional growth and performance.
 2. "Summative evaluation" means the summary of, and conclusions from, the evaluation data, including formative evaluation data, that:
 - a. Occur at the end of an evaluation cycle; and
 - b. Include a conference between the evaluator and the evaluated certified employee, and a written evaluation report.
 - (c) The Kentucky Board of Education shall adopt administrative regulations incorporating written guidelines for a local school district to follow in developing, implementing, and revising the evaluation system and shall require the following:

1. All evaluations of certified employees below the level of the district superintendent shall be in writing on evaluation forms and under evaluation procedures developed by a committee composed of an equal number of teachers and administrators;
 2. The immediate supervisor of the certified school employee shall be designated as the primary evaluator. At the request of a teacher, observations by other teachers trained in the teacher's content area or curriculum content specialists may be incorporated into the formative process for evaluating teachers;
 3. All monitoring or observation of performance of a certified school employee shall be conducted openly and with full knowledge of the employee;
 4. Evaluators shall be trained, tested, and approved in accordance with administrative regulations adopted by the Kentucky Board of Education in the proper techniques for effectively evaluating certified school employees and in the use of the school district evaluation system;
 5. The evaluation system shall include a plan whereby the person evaluated is given assistance for professional growth as a teacher or administrator. The system shall also specify the processes to be used when corrective actions are necessary in relation to the performance of one's assignment; and
 6. The training requirement for evaluators contained in subparagraph 4. of this paragraph shall not apply to district board of education members.
- (4) ***Each superintendent shall be evaluated according to a policy and procedures developed by the local board of education and approved by the department.***
- (a) ***The summative evaluation of the superintendent shall be discussed and adopted in an open meeting of the board and reflected in the minutes.***
 - (b) ***If the local board policy requires a written evaluation of the superintendent, it shall be made available to the public upon request.***
 - (c) ***Any preliminary discussions relating to the evaluation of the superintendent by the board or between the board and the superintendent prior to the summative evaluation shall be conducted in closed session.***
- (5) A local district may request from the Kentucky Department of Education a waiver from the guidelines and administrative regulations promulgated by the Kentucky Board of Education as required in subsection (3)(c) of this section in order to implement an alternative evaluation plan for employees on continuing contracts. The department shall grant a waiver if the alternative plan provides for a three (3) phase certified employee evaluation plan that includes:
- (a) Phase One: Evaluation for Professional Growth.
 1. Evaluation is based on a wide array of relevant sources and directed toward general and specific recommendations for improvement; and
 2. Evaluation does not include documentation that might adversely affect employment status.
 - (b) Phase Two: Transition.
 1. Evaluation is for the purpose of intensive scrutiny of job performance;
 2. Evaluation includes documentation that may lead to adverse employment decisions;
 3. Assistance and support for improvement shall be provided by the school district; and
 4. Placement of an individual in the transition phase shall not be subject to appeal, but the employee shall be notified of the decision in writing.
 - (c) Phase Three: Evaluation for Deficiency.
 1. Notwithstanding KRS 161.760, written notice of potential termination, reduction of direct classroom responsibility, or other adverse actions and conditions for job retention are given the employee;

2. A clear time frame for proposed actions is provided the employee; and
3. The summative evaluation is subject to appeal.

An alternative plan for the evaluation of certified personnel shall be proposed to the Kentucky Department of Education if the local district evaluation committee is in support of the plan. Training necessary to implement the alternative plan shall be provided to the principals, supervisory personnel, and the employees to be evaluated. The local district shall provide support to implement the plan. The department shall provide technical assistance to districts wishing to develop alternative evaluation plans.

- ~~(6)(5)~~ The Kentucky Board of Education shall establish an appeals procedure for certified school employees who believe that the local school district failed to properly implement the approved evaluation system. The appeals procedure shall not involve requests from individual certified school employees for review of the judgmental conclusions of their personnel evaluations.
- ~~(7)(6)~~ The local board of education shall establish an evaluation appeals panel for certified personnel that shall consist of two (2) members elected by the certified employees of the district and one (1) member appointed by the board of education who is a certified employee of the board. Certified employees who think they were not fairly evaluated may submit an appeal to the panel for a timely review of their evaluation. In districts that have adopted an alternative evaluation plan under subsection (4) of this section, the appeal shall only apply to the summative evaluation of Phase Three.
- ~~(8)(7)~~ Local school districts with an enrollment of sixty-five thousand (65,000) or more students shall have an evaluation system but shall be exempt from procedures or processes described in this section as long as the plan meets the standards established by the Kentucky Board of Education for local school district evaluation systems. The local plan shall include an appeals process for employees who believe they were not fairly evaluated.
- ~~(9)(8)~~ Between July 15, 2000, and June 30, 2001, each school district shall review its local evaluation system to assure that the system is working effectively and to make changes to improve its system.
- ~~(10)(9)~~ Beginning with the 2001-2002 school year, and in subsequent years, the Kentucky Department of Education shall annually provide for on-site visits by trained personnel to a minimum of fifteen (15) school districts to review and ensure appropriate implementation of the evaluation system by the local school district. The department shall provide technical assistance to local districts to eliminate deficiencies and to improve the effectiveness of their evaluation systems. The department may implement the requirement in this subsection in conjunction with other requirements, including, but not limited to, the scholastic audit process required by KRS 158.6455.

Signed by Governor April 13, 2010.

CHAPTER 158

(SB 64)

AN ACT relating to the Kentucky Department of Fish and Wildlife Resources.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

Each year when the Auditor of Public Accounts conducts the statewide single audit of the Commonwealth of Kentucky, the Auditor of Public Accounts shall with respect to the Department of Fish and Wildlife Resources:

- (1) Examine the separate revenue streams of each account within the game and fish fund to ensure compliance with the prohibition against commingling of funds;***
- (2) Disaggregate and report the revenue and expenditures, by type, within the program income fund of the fish and game fund;***
- (3) Identify internal controls, weaknesses, operating inefficiencies, and make recommendations for improvements; and***
- (4) Submit a written report to the Interim Joint Committee on Natural Resources and Environment in conjunction with the release of the statewide single audit of the Commonwealth of Kentucky.***

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

- (1) *Except as provided in this section, no person shall knowingly take game with a firearm during bow season.*
- (2) *This section shall not apply to a person who:*
 - (a) *Uses a firearm permitted by law to take game permitted by law to be taken during bow season; or*
 - (b) *Kills, attempts to kill, wounds, or attempts to wound an animal in self-defense, in defense of another person, or in defense of property, or as provided in Section 3 of this Act.*

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

- (1) *Any person who is not prohibited by state or federal law from possessing a firearm may carry a firearm and ammunition for that firearm for purposes of self-defense and defense of others while hunting, fishing, trapping, or engaging in any other activity not constituting a crime under KRS Chapter 218A or Chapters 500 to 534, and may do so on any public lands under the control of the department and on any private land under the control of the department, unless the owner of the private land has posted notice that concealed deadly weapons are not allowed in a building where they may be prohibited pursuant to KRS 237.110 or 237.115.*
- (2) (a) *A person may use a firearm, if he or she is not prohibited by state or federal law from possessing a firearm, or may use any other deadly weapon, at any time and during any season to:*
 1. *Kill or attempt to kill an animal, whether protected or unprotected, in self-defense or defense of another person; or*
 2. *Kill or attempt to kill an injured animal for humane purposes.*
- (b) *An arrest shall not be made, except upon a warrant issued by a judge of a court of competent jurisdiction, and a citation shall not be issued by a peace officer if an animal is killed under circumstances described in paragraph (a) of this subsection.*
- (c) *A citation may be issued by a peace officer who witnesses the killing of an animal in violation of a statute or federal regulation under circumstances different from those described in paragraph (a) of this subsection.*
- (d) *An arrest warrant or a summons may be issued by a judge of a court of competent jurisdiction, upon application of the appropriate county attorney, if the court believes that there is sufficient cause to doubt the claim that the animal was killed under circumstances described in paragraph (a) of this subsection.*
- (3) *In cases where an animal is killed and there is a claim that the animal was killed under circumstances described in paragraph (a) of subsection (2) of this section, the department shall provide forensic evidence or other competent evidence as to how the animal was killed and the circumstances surrounding the event.*
- (4) *The department shall not promulgate administrative regulations restricting any right provided by this section or the spirit thereof.*
- (5) *This section shall not apply to the killing, wounding, or other prohibited act relating to specific wildlife which are protected by the federal Endangered Species Act, 16 U.S.C. secs. 1531 to 1544; federal Migratory Bird Treaty Act, 16 U.S.C. secs. 703 to 712; or federal Bald and Golden Eagle Protection Act, 16 U.S.C. secs. 668 to 668d.*
- (6) *The principles contained in KRS Chapter 503 relating to the use of force and deadly force against human beings shall apply to acts where wildlife is involved.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section unless the context otherwise requires:*
 - (a) *"Commission" has the same meaning as in KRS 150.010;*
 - (b) *"Commission-managed lands" means those lands owned by the commission, those lands owned by the Commonwealth over which the commission holds management authority, or those privately owned lands that are leased or managed by the commission; and*

- (c) *"Hunting" means the lawful pursuit, trapping, shooting, capture, collection, or killing of wildlife or the lawful attempt to do the same.*
- (2) *Commission-managed lands shall be open to access and use for hunting except as limited by the commission for reasons of fish or wildlife management, or as otherwise limited by a statute outside KRS Chapter 150 or 235.*
- (3) *The commission, in exercising its authority under the Constitution of the Commonwealth of Kentucky and statutes, shall exercise its authority consistent with subsection (2) of this section, in a manner that supports, promotes, and enhances hunting opportunities to the extent authorized by law.*
- (4) *Commission land management decisions and actions, including decisions made by private owners to close land managed by the commission, shall not result in any net loss of habitat land acreage available for hunting opportunities on commission-managed lands that exists on the effective date of this Act. The commission shall expeditiously find replacement acreage for hunting to compensate for closures of any existing hunting land. Replacement lands shall, to the greatest extent possible, be located within the same wildlife district and shall be consistent with the hunting discipline that the commission allowed on the closed land.*
- (5) *Any state agency that owns or manages lands shall assist and coordinate and cooperate with the commission to allow hunting on these lands if the lands are determined by the commission and that agency to be suitable for hunting. To ensure no net loss of land acreage available for hunting, state agencies shall cooperate with the commission to open new, additional hunting lands to replace lost hunting acreage. Lands officially designated as units within the state park system may be considered for replacement hunting lands and may be open for hunting when necessary as a wildlife control or management tool as determined by the Department of Parks.*
- (6) *By October 1 of each year, the commissioner shall submit to the Legislative Research Commission and the Interim Joint Committee on Natural Resources and Environment a written report describing:*
- (a) *The acreage managed by the commission that was closed to hunting during the previous fiscal year and the reasons for the closures; and*
- (b) *The acreage managed by the commission that was opened to hunting to compensate for closures of existing land pursuant to subsection (4) of this section.*
- (7) *By October 1 of each year, any state agency that owns or manages lands shall submit a written report to the commission, the Legislative Research Commission, and the Interim Joint Committee on Natural Resources and Environment describing:*
- (a) *A list of properties that were open for hunting during the previous fiscal year;*
- (b) *A list of properties that were not open for hunting during the previous fiscal year; and*
- (c) *1. The acreage for each property and the county where each property is located, including lands on which a right-of-way exists which make the lands unsuitable for hunting, and an explanation of why the right-of-way makes the land unsuitable for hunting; and*
- 2. Parcels under fifty (50) acres. No agency shall subdivide land it owns or manages into parcels under fifty (50) acres in an attempt to avoid compliance with the provisions of this section.*
- (8) *The first report under this section shall be due no later than October 1, 2010.*

➔Section 5. KRS 150.022 is amended to read as follows:

- (1) The Department of Fish and Wildlife Resources Commission shall consist of nine (9) members, one (1) from each wildlife district, as set out by the commissioner with the approval of the commission, and not more than five (5) of the same political party.
- (2) The Governor shall appoint the members of the commission *subject to confirmation by the Senate*. Each of the members shall be appointed for a term of four (4) years *and may be reappointed only once. No person who has been convicted of a felony offense, in Kentucky or under the law of any other state, or any other law of the United States shall be eligible to serve on the commission.*
- (3) Vacancies through the expiration of terms of the members of the commission shall be filled by appointment by the Governor from a list of five (5) names from each wildlife district, recommended and submitted by the sportsmen of each respective district. When the term of a member expires, the commissioner shall call a

meeting of the sportsmen in that district not later than thirty (30) days prior to the expiration of the member's term. Notice of the meeting shall be given by publication pursuant to KRS Chapter 424. At the meeting, the sportsmen in attendance shall select and submit to the Governor a list of five (5) residents and citizens of the district who are well informed on the subject of wildlife conservation and restoration. Each sportsman may vote for one (1) candidate only, and the list submitted to the Governor shall be made up of the names of the five (5) candidates receiving the five (5) highest vote totals. The Governor shall appoint a successor to the member whose term is about to expire within sixty (60) days following the submission to him of the list referred to in this subsection, and in no event later than August 13.

- (4) Upon appointment to the commission of the Department of Fish and Wildlife Resources, each commissioner shall execute a bond of one thousand dollars (\$1,000) in favor of the Department of Fish and Wildlife Resources, the premium on this bond to be paid out of department funds.
- (5) In the event of vacancies other than by expiration, the Governor shall fill the vacancy for the unexpired part of the term from the names remaining on the list previously submitted for the district from which the vacancy arose.
- (6) Each member of the commission shall take the constitutional oath of office.
- (7) The Governor ~~shall~~~~may~~ remove any member of the commission for *cause under subsection (2) of this section and may remove any member of the commission for* inefficiency, neglect of duty, or misconduct in office; but shall first deliver to the member a copy of all charges in writing and afford to him an opportunity of being publicly heard in person or by counsel in defense of the charges, upon not less than ten (10) days' notice. If a member shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the member and his findings thereon, together with a complete record of the proceedings.
- (8) Each member of the commission shall be entitled to reimbursement for actual and necessary traveling and other expenses incurred by him in the discharge of his official duties and to be paid from the game and fish fund.
- (9) A majority of the commission shall constitute a quorum for the transaction of any business, for the performance of any duty or for the exercise of any power vested in the commission.
- (10) The department shall have its principal office in Franklin County, and is authorized to purchase all supplies, equipment, and printed forms and to issue any notices and publications as the commissioner may deem necessary to carry out the provisions of this chapter.
- (11) The word "sportsman" as used in this section shall mean a resident hunter or fisherman who has been licensed~~or a resident who has registered a motorboat,~~ in Kentucky for each of the past two (2) consecutive years.

➔Section 6. KRS 150.150 is amended to read as follows:

- (1) Except as provided in this chapter, all moneys derived from the sale of licenses or from any other source connected with the administration of this chapter shall be promptly paid over to the State Treasurer, who shall deposit such moneys in a special fund, known as the game and fish fund, *except that the moneys shall be entered under separate restricted fund accounts, not commingled, and maintained according to generally accepted accounting principles. Moneys derived from the sale of licenses issued under this chapter shall be under separate restricted fund account from any other proceeds derived from this chapter or from proceeds obtained under any other chapter.* The game and fish fund shall be used to carry out the purposes of this chapter and any law or regulation for the protection of wildlife and for no other purpose.
- (2) All funds received under KRS 150.110 and 150.520 shall be used by the department for the purpose of enforcing those sections and for the protection and propagation of mussel beds. Any surplus remaining in the fund at the close of each calendar year shall be turned into the general fund of the department.
- (3) In addition to the funds derived pursuant to KRS 186.050(15), the department shall, beginning August 1, 2006, and each fiscal year thereafter, set aside not less than twenty-five thousand dollars (\$25,000) from the game and fish fund for the purpose of promoting hunger relief through specific wildlife management and conservation efforts. The department shall provide for a separate accounting of these funds and shall, by October 1, 2007, and annually thereafter, report on the expenditures made pursuant to this subsection to the Governor and the Legislative Research Commission.

- (4) *The department shall prescribe a method to allow any applicant for a license required under KRS 150.175 to make, at the time of application, a voluntary contribution in the amount of two dollars (\$2) for the Becoming an Outdoors-Woman Program or other hunter and angler recruitment and retention program. The voluntary contribution shall be deposited into a separate, restricted account within the game and fish fund. The Becoming an Outdoors-Woman Program shall encourage women in developing skills for outdoor recreational activities including but not limited to hunting and angling. The voluntary contribution shall be automatically added to the cost of the license at the time of sale.*

➔Section 7. KRS 150.061 is amended to read as follows:

- (1) The commission shall appoint a commissioner of the Department of Fish and Wildlife Resources, who shall be a person with knowledge of and experience in the requirements for the protection, conservation and restoration of the wildlife resources of the state. The commissioner shall serve for *a defined employment contract term not to exceed four (4) years and shall be subject to:*
 - (a) *Annual review by the commission in closed, executive session;*
 - (b) *Removal by the commission for the same cause and in the same manner in which the Governor may remove a member of the commission; and*
 - (c) *Reappointment by*~~[an indefinite term, subject to removal by the commission for the same cause and in the same manner in which the Governor may remove a member of]~~*the commission.*
- (2) The commissioner shall receive such compensation as the commission may determine, and shall be reimbursed for all actual and necessary travel and other expenses incurred by him in the performance of his official duties.
- (3) Before entering upon the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office, and shall, in addition thereto, swear or affirm that he holds no other public office, nor any position upon or under any political committee or party. Upon appointment by the commission, the commissioner shall execute a bond of five thousand dollars (\$5,000) in favor of the Department of Fish and Wildlife Resources, the premium on said bond to be paid out of department funds.
- (4) The commissioner shall have general supervision and control of all activities, functions, appointments, and employees of the Department of Fish and Wildlife Resources. He shall enforce all provisions of the laws of the state relating to wild animals, birds, fish and amphibians, and shall exercise all powers necessarily incident thereto not specifically conferred on the commission. The commissioner shall make an annual report of all receipts and disbursements and file same with the Secretary of State of the Commonwealth of Kentucky.
- (5) If federal or other grant funds become available to pay their salaries, the commissioner may appoint and employ other persons that he may deem necessary or desirable to accomplish the purposes of this chapter. The commissioner shall determine the compensation, duties, and terms of employment of these employees, *and grant funded, time-limited positions shall be approved by the commission as needed.* Employees whose salaries are funded through federal or other grant funds shall not be counted in any tally of permanent employees made for employee cap or budgetary purposes.

➔Section 8. KRS 235.330 is amended to read as follows:

~~{(1)—}~~All moneys collected under the provisions of KRS 235.080, 235.130, and 235.220, except that specified for distribution to the county clerks or Transportation Cabinet, shall be paid into the State Treasury in the manner prescribed by law and credited to a special fund known as the fish and game fund *under separate restricted fund account not commingled with funds received under KRS Chapter 150 and maintained according to generally accepted accounting principles.*

~~{(2)—}~~Appropriations for the operation of the Division of Law Enforcement may also be made from the general expenditure fund.~~}~~

➔Section 9. KRS 150.725 is amended to read as follows:

As used in KRS 150.725 to 150.735:

- (1) "Permit" means a permit to hold captive cervids;
- (2) "Applicant" means a person or entity who has applied to the department for a permit to hold captive cervids;
- (3) "Application" means an application to obtain a permit to hold captive cervids;~~{and}~~
- (4) "Hold" means to confine to a facility regulated under KRS 150.725 to 150.735;

- (5) *"Import" means to knowingly bring a captive cervid into the state for the purpose of that captive cervid remaining in the state or being slaughtered in the state. "Import" shall not include transporting a captive cervid into the state for the purpose of transporting that captive cervid through the state to a location out of the state. A captive cervid specified in this subsection shall be deemed to be in transit; and*
- (6) *"In transit" means to transport a captive cervid through this Commonwealth by a direct route and in a continuous manner from a location out of state to another location out of state.*

➔Section 10. KRS 150.740 is amended to read as follows:

- (1) There shall be a ban on the importation of live members of the animal family Cervidae into the Commonwealth that have not been subject to a program of surveillance and identification for cervid chronic wasting disease (CWD) that meets or exceeds:
 - (a) The requirements of the Kentucky Cervid CWD Surveillance and Identification (CCWDSI) Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
 - (b) Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.
- (2) The Kentucky Department of Agriculture shall be responsible for authorizing importation of the members of the animal family Cervidae into the Commonwealth that have been subject to a program of surveillance and identification for cervid CWD that meets or exceeds:
 - (a) The requirements of the Kentucky CCWDSI Program set forth in this section and in administrative regulations promulgated by the Kentucky Department of Agriculture; and
 - (b) Any other health requirements as regulated by the Kentucky Department of Agriculture or the United States Department of Agriculture for cervids.
- (3) Members of the animal family Cervidae shall not be eligible for importation into the Commonwealth unless the program of surveillance and identification for cervid CWD to which they have been subject:
 - (a) Has been certified by the exporting state's state veterinarian or agency having jurisdiction over that state's surveillance and identification program;
 - (b) Has been approved by the Kentucky state veterinarian as meeting or exceeding the standards imposed under the Kentucky CCWDSI Program; and
 - (c) Meets, at minimum, the following requirements:
 - 1. The program shall require cervid owners to obtain identification and laboratory diagnosis from brain tissue as directed by the exporting state's state veterinarian or agency with jurisdiction for cervids twelve (12) months of age or greater that:
 - a. Display clinical signs of CWD;
 - b. Die, including deaths by slaughter or by hunting, including hunting on hunting preserves; or
 - c. Are ill or injured regardless of whether the illness or injury results in death; and
 - 2. The program shall require cervid owners to obtain cervids from herds that have been monitored for at least five (5) years and that have complied with the standards contained in the Kentucky CCWDSI Program.
- (4) Cervids originating from a state that has reported a confirmed case of CWD in wild or captive cervids shall not be imported into Kentucky until The United States Department of Agriculture approves:
 - (a) Regulations that allow importation from those states; and
 - (b) A live test for CWD that is available for live testing of cervids.
- (5) Importation of members of the animal family Cervidae into the Commonwealth shall be consistent with this section and with administrative regulations promulgated by the Kentucky Department of Agriculture in cooperation with the Kentucky Department of Fish and Wildlife Resources.

- (6) A person shall be guilty of a Class D felony upon conviction for violating this section. Upon conviction of a second violation of this section and in addition to all other penalties, a person shall be permanently ineligible for renewal of a captive cervid permit. On or before November 1 of each year, the Department of Fish and Wildlife Resources and the Department of Agriculture, Office of the State Veterinarian, respectively shall issue reports to the Interim Joint Committee on Agriculture and Natural Resources on the status of chronic wasting disease, and the reports may include the status of other animal or wildlife diseases in Kentucky and the United States. The reports shall be used for the purpose of determining the need for modifications to the statutory ban on the importation of cervids into the Commonwealth.
- (7) The Department of Fish and Wildlife Resources shall have the authority to immediately, and without compensation to the owner, seize captive cervids that have been imported into the Commonwealth contrary to this section. The individual whose cervids were seized may request an administrative hearing pursuant to KRS Chapter 13B within thirty (30) days of the department's seizure and may appeal the final decision to Franklin Circuit Court in accordance with KRS Chapter 13B. Pending the final outcome of all appeals, the seized cervids may be disposed of by the department without compensation to the owner.
- (8) The department shall have the authority to immediately, and without compensation to the owner, seize and destroy captive cervids that are in the process of being imported into the Commonwealth contrary to this section.
- (9) *A captive cervid originating from outside the Commonwealth of Kentucky which is in transit, as defined in Section 9 of this Act and which is being transported through the Commonwealth to another state or nation of destination shall meet the entry requirements of the state or nation of destination.*
- (10) *A person intending to transport a captive cervid through Kentucky shall, prior to the captive cervid entering Kentucky, obtain a transportation permit from the Office of the State Veterinarian. This permit shall specify that:*
 - (a) *A captive cervid being transported through Kentucky shall not remain in Kentucky for more than twenty-four (24) hours from the time of entry and, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit;*
 - (b) *A captive cervid being transported through Kentucky shall not leave the transport vehicle while in Kentucky; and*
 - (c) *The person transporting the captive cervid through Kentucky shall follow the routes specified in the transport permit, if this requirement cannot be met once the animal is in Kentucky, the Office of the State Veterinarian shall be contacted to secure a variance to the permit.*

➔Section 11. KRS 150.990 is amended to read as follows:

- (1) Each bird, fish, or animal taken, possessed, bought, sold, or transported and each device used or possessed contrary to the provisions of this chapter or any administrative regulation promulgated by the commission thereunder shall constitute a separate offense. The penalties prescribed in this section shall be for each offense.
- (2)
 - (a) Any person who fails to appear pursuant to a citation or summons issued by a conservation officer or peace officer of this Commonwealth for violation of this chapter or any administrative regulation promulgated thereunder shall forfeit his or her license or, if that person is license-exempt, shall forfeit the privilege to perform the acts authorized by the license. The individual shall not be permitted to purchase another license or exercise the privileges granted by a license until the citation or summons is resolved. The court shall notify the department whenever a person has failed to appear pursuant to a citation or summons for a violation of this chapter or any administrative regulation promulgated thereunder.
 - (b) Any person who violates any of the provisions of this chapter or any administrative regulations promulgated by the commission thereunder may, in addition to the penalties provided in subsections (3), (4), (5), (6), (7), and (8) of this section, forfeit his license or, if that person is license-exempt, may forfeit the privilege to perform the acts authorized by the license and shall not be permitted to purchase another license or exercise the privileges granted by a license during the same license year. No fines, penalty, or judgment assessed or rendered under this chapter shall be suspended, reduced, or remitted otherwise than expressly provided by law. Any person who violates any administrative regulation which has been or may be promulgated by the commission under any provisions of this chapter shall be subject

to the same penalty as is provided for the violation of any provisions of this chapter under which the administrative regulation is promulgated.

- (3) Any person who violates any of the provisions of KRS 150.120, 150.170, 150.280, 150.320, 150.355, 150.362, 150.400, 150.410, 150.415, 150.416, 150.445, 150.450, 150.470, 150.603, 150.235(1), 150.330(2), or 150.470, or any of the provisions of this chapter or any administrative regulation promulgated by the commission for which no definite fine or imprisonment is fixed shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500).
- (4) Any person who violates any of the provisions of KRS 150.290, 150.300, 150.340, 150.360, 150.362(1), 150.485, 150.600, 150.630, 150.660, the provisions of KRS 150.195(5) to (8), or KRS 150.660(3) shall be fined not less than fifty dollars (\$50) nor more than five hundred dollars (\$500) or be imprisoned for not more than six (6) months, or both. Also, any person violating the provisions of KRS 150.300 shall be assessed treble damages as provided in KRS 150.690 or 150.700. Damages assessed under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the damages be paid through the circuit clerk.
- (5) Any person who violates any of the provisions of KRS 150.411, 150.412, or 150.417 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- (6) Any person who violates any of the provisions of KRS 150.183, 150.305, 150.365, 150.370, 150.330(1), 150.235(2), (3), or (4), or 150.363 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both.
- (7) Any person who violates any of the provisions of KRS 150.460 shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) or imprisoned for not more than six (6) months, or both, and in addition to these penalties shall be liable to the department in an amount not to exceed the replacement value of the fish and wildlife which has been killed or destroyed. Costs assessed for the restoration of wildlife under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the costs be paid through the circuit clerk.
- (8) Any person who violates the provisions of KRS 150.180, 150.520, 150.525, or administrative regulations issued thereunder shall for the first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000); and shall for a second offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500); and for any subsequent offense, be fined two thousand dollars (\$2,000).
- (9) Any person who violates the provisions of KRS 150.520 or administrative regulations issued thereunder shall, if the violation relates to methods of taking mussels, for a first offense be imprisoned in the county jail for no more than thirty (30) days; for a second offense be imprisoned in the county jail for no more than six (6) months; and for any subsequent offense be imprisoned in the county jail for no more than one (1) year. The penalties for violation of this subsection shall be in addition to the penalties for violation of subsection (8).
- (10) Any person who violates any of the provisions of KRS 150.411, 150.640, or KRS 150.450(2) or (3) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000).
- (11) Any person who violates any of the provisions of KRS 150.390 or KRS 150.092(4) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or imprisoned for not less than thirty (30) days nor more than one (1) year, or both. In addition to the penalties prescribed above, he *or she* shall forfeit his license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years and shall be liable to the department in an amount reasonably necessary to replace any deer, wild turkey, or bear taken in violation of KRS 150.390 and for violations of KRS 150.092(4) shall be liable to the landowner or occupant for reasonable compensation for damages. Wildlife replacement costs assessed under this subsection shall be ordered to be paid directly to the department. The court shall not direct that the damages be paid through the circuit clerk. Damages assessed under this subsection shall be ordered to be paid directly to the landowner or occupant. The court shall not direct that the damages be paid through the circuit clerk. Any person who possesses, takes, or molests a wild elk in violation of KRS 150.390 or administrative regulations ~~promulgated~~^{adopted} under authority of that section shall be fined not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000) or imprisoned for up to six (6) months, or both. In addition to these penalties, the person shall pay to the department an amount not to exceed the greater of the replacement cost of the wild elk or double any monetary gain realized from the illegal activity

and shall forfeit his or her license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of one (1) to three (3) years.

- (12) Any person who violates any of the provisions of KRS 150.090 other than a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be guilty of a Class A misdemeanor.
- (13) Any person who commits a criminal homicide or an assault against an officer enforcing the provisions of this chapter, KRS Chapter 235, or the administrative regulations issued thereunder shall be subject to the penalties specified for the offense under KRS Chapter 507 or 508, as appropriate.
- (14) A person shall be guilty of a Class B misdemeanor upon the first conviction for a violation of KRS 150.710. A subsequent conviction shall be a Class A misdemeanor.
- (15) Any person who violates the provisions of KRS 150.092 or the administrative regulations promulgated thereunder for which no other penalty is specified elsewhere in this section shall for the first offense be fined not less than one hundred dollars (\$100) nor more than three hundred dollars (\$300); for the second offense, be fined not less than three hundred dollars (\$300) nor more than one thousand dollars (\$1,000); and for subsequent offenses, shall forfeit the license or, if license-exempt, the privilege to perform the acts authorized by the license, for one (1) year and shall be fined not less than one thousand dollars (\$1,000) or be imprisoned in the county jail for up to one (1) year, or both. In addition to the penalties prescribed in this subsection, the violator shall be liable to the landowner or tenant for the replacement cost of any property which was damaged or destroyed by his actions. Damages assessed under this subsection shall be ordered to be paid directly to the landowner or the tenant. The court shall not direct that the damages be paid through the circuit clerk.
- (16) *(a) Any person who knowingly violates Section 2 of this Act shall for a first offense be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned in the county jail for not more than six (6) months, or both.*
 - (b) Any person who knowingly violates Section 2 of this Act shall for a second or subsequent offense be fined not less than five hundred dollars (\$500) nor more than one thousand five hundred dollars (\$1,500) or be imprisoned in the county jail for not more than six (6) months, or both.*
 - (c) In addition to the penalties specified in paragraphs (a), (b), and (d) of this subsection, a person knowingly violating Section 2 of this Act shall forfeit his or her hunting license or, if license-exempt, the privilege to perform the acts authorized by the license for a period of not less than one (1) nor more than three (3) years.*
 - (d) In addition to the penalties specified in paragraphs (a), (b), and (c) of this subsection any person knowingly violating Section 2 of this Act shall be liable to the department in an amount not to exceed the greater of the replacement value of any wildlife killed or wounded in violation of Section 2 of this Act or double the amount of the monetary gain from the knowing violating of Section 2 of this Act.*
 - (e) Wildlife replacement costs or other costs specified in paragraph (d) of this subsection shall be ordered paid directly to the department. The court shall not direct that the replacement costs be paid through the circuit clerk.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

- (1) *Not less than sixty (60) days nor more than ninety (90) days prior to the submission of a proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation to the Administrative Regulation Review Subcommittee which affects property owners or occupants of property adjacent to any lake or other real property owned or controlled by the department, the department shall:*
 - (a) Hold a public hearing at a time and location most convenient to the public at a location within ten (10) miles of the boundary of the lake so that the public can make comments about the proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation. Copies of the proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation shall be distributed to members of the public attending the meeting without cost;*
 - (b) Advertise the hearing in accordance with KRS Chapter 424;*
 - (c) Electronically record the hearing and the comments made at the hearing; and*

- (d) *Within thirty (30) days of the close of the hearing, file a statement of consideration with the Administrative Regulation Review Subcommittee summarizing the comments made at the hearing and the department's response thereto containing the information required by KRS 13A.010.*
- (2) *The Administrative Regulation Review Subcommittee shall find deficient any proposed administrative regulation, proposed amendment to an administrative regulation, or proposed repeal of an administrative regulation covered by this section which does not comply with the provisions of this section.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 150 IS CREATED TO READ AS FOLLOWS:

The department shall promulgate administrative regulations regarding:

- (1) *Specific permitted and prohibited uses of department-owned property and activities on department-owned property;*
- (2) *For a violation of an administrative regulation promulgated under subsection (1), (4), or (5) of this section relating to prohibited uses of department-owned property and prohibited activities thereon, offenses and penalties which do not authorize imprisonment, and for which the offense and the penalty are not established by statute;*
- (3) *The issuance of licenses or permits for the use of and conduct of activities on department-owned property, including but not limited to docks on department-owned lakes;*
- (4) *The revocation or suspension, following a hearing pursuant to KRS Chapter 13B, of a license or permit issued pursuant to this section; and*
- (5) *Specific permitted and prohibited uses of a department-owned or controlled buffer zone on land adjacent to a department-owned lake, including sanctions which do not authorize imprisonment for violation of the administrative regulations where a statute does not provide an offense and does not provide a penalty.*

Signed by Governor April 13, 2010.

CHAPTER 159

(HB 540)

AN ACT relating to teachers' retirement, making an appropriation therefor, and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS 161.222 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The "Kentucky Teachers' Retirement System insurance trust fund" is hereby created. All assets received in the trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Teachers' Retirement System.*
- (b) *The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.*
- (2) *The trust fund is created for the purpose of providing a trust separate from the funds under KRS 161.420. Trust fund assets are dedicated for use for health benefits as provided in KRS 161.675, and as permitted under 26 U.S.C. secs. 105 and 106, for present and future eligible recipients of a retirement allowance from the Kentucky Teachers' Retirement System.*
- (3) *The trust fund shall be administered by the board of trustees established by KRS 161.250, and the board shall serve as trustees of the fund. The board shall manage the assets of the fund in the same general manner in which it administers the retirement funds, except that the asset allocation may differ and separate accounting and financial reporting shall be maintained for the trust fund.*
- (4) *In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.*

- (5) *If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.*
- (6) *The board of trustees may promulgate administrative regulations and adopt procedures and a trust document to implement this section and take all action necessary and appropriate to provide that the income of the trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.*
- (7) *The establishment of the Kentucky Teachers' Retirement System insurance trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.*
- (8) *The trust fund established under this section, at the direction of the board of trustees, shall consist of amounts, excluding those amounts that have been deposited to an account established pursuant to 26 U.S.C. sec. 401(h), that have been accumulated for the purpose of providing benefits as provided in KRS 161.675, including:*
 - (a) *Contributions required under Section 4 of this Act;*
 - (b) *Contributions required under subsection (4)(b) of Section 5 of this Act; and*
 - (c) *Interest income from the investments of the fund from contributions received by the fund and from income earned on those investments.*

➔Section 2. KRS 161.420 is amended to read as follows:

All of the assets of the retirement system are for the exclusive purpose of providing benefits to members and annuitants and defraying reasonable expenses of administering the system. The board of trustees shall be the trustee of all funds of the system and shall have full power and responsibility for administering the funds. It is hereby declared that the restrictions and rights provided herein shall not be subject to reduction or impairment by alteration, amendment, or repeal. All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of the following funds:

- (1) The expense fund shall consist of the funds set aside from year to year by the board of trustees to defray the expenses of the administration of the retirement system. Each fiscal year an amount not greater than four percent (4%) of the dividends and interest income earned from investments during the immediate past fiscal year shall be set aside into the expense fund or expended for the administration of the retirement system;
- (2) The teachers' savings fund shall consist of the contributions paid by members of the retirement system into this fund and regular interest assigned by the board of trustees from the guarantee fund. A member may not borrow any amount of his or her accumulated contributions to this fund, or any interest earned thereon. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim these contributions shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of service or disability;
- (3) The state accumulation fund shall consist of funds appropriated by the state for the purpose of providing annuities and survivor benefits, including any sums appropriated for meeting unfunded liabilities, together with regular interest assigned by the board of trustees from the guarantee fund. At the time of retirement or death of a member there shall be transferred from the state accumulation fund to the allowance reserve fund an amount which together with the sum transferred from the teachers' savings fund will be sufficient to provide the member a retirement allowance and provide for benefits under KRS 161.520 and 161.525;
- (4) The allowance reserve fund shall be the fund from which shall be paid all retirement allowances and benefits provided under KRS 161.520 and 161.525. In addition, whenever a change in the status of a member results in an obligation on this fund, there shall be transferred to this fund from the teachers' savings fund and the state accumulation fund, the amounts as may be held in those funds for the account or benefit of the member;
- (5) (a) The medical insurance fund, *which is an account established according to 26 U.S.C. sec. 401(h)*, shall consist of amounts accumulated for the purpose of providing benefits as provided in KRS 161.675, including:

~~I. (a)~~ For individuals who become members before July 1, 2008, one and one-half percent (1.5%) of the gross annual payroll of all members shall be deposited to this fund. Of this amount, three-

quarters of a percent (0.75%) shall derive from member contributions as provided by KRS 161.540 and three-quarters of a percent (0.75%) from a state appropriation;

2. ~~{(b)}~~ For individuals who become members on or after July 1, 2008, two and one-half percent (2.5%) of the gross annual payroll of all members shall be deposited to this fund. Of this amount, one and three-quarters percent (1.75%) shall derive from member contributions as provided by KRS 161.540 and three-quarters of a percent (0.75%) from a state appropriation;
 3. ***Effective July 1, 2010, the member contributions required under subsection (1)(c) of Section 3 of this Act*** ~~{(c)} The board of trustees may allocate amounts up to three and twenty five hundredths percent (3.25%) of the total salaries of active members that the state appropriates annually as provided under KRS 161.550(1)}~~;
 4. ***Effective July 1, 2010, local board of education, agency and organization contributions required under subsection (3) of Section 4 of this Act, unless the board of trustees establishes a trust fund under 26 U.S.C. sec. 115 for health care purposes, in which case the board may direct those contributions to that trust fund;***
 5. ~~{(d)}~~ Employer medical insurance fund stabilization contributions as set forth in KRS 161.550~~{(2)}~~, ***unless the contributions are made to a trust fund under 26 U.S.C. sec. 115 established by the board for this purpose; and***
 6. ~~{(e)}~~ Interest income from the investments of the fund from contributions received by the fund under ***subparagraphs 1. to 5. of this paragraph*** ~~{paragraphs (a) to (d) of this subsection}~~, and from income earned on those investments.
- (b) All claims for benefits under KRS 161.675 shall be paid from this fund ***or from any trust fund under 26 U.S.C. sec. 115 as established by the board for this purpose.*** Any amounts ***deposited to the fund that are*** not required to meet current costs shall be maintained as a reserve ***in the fund*** for these benefits. ***The board shall take the necessary and appropriate steps, including promulgating administrative regulations and procedures to maintain the status of the medical insurance fund as an account subject to 26 U.S.C. 401(h);***
- (6) The guarantee fund shall be maintained to facilitate the crediting of uniform interest on the amounts of the other funds, except the expense fund, to finance operating expenses directly related to investment management services, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the authorized deposits and investments shall be paid into the guarantee fund. Any funds received from gifts and bequests, which the board is hereby authorized to accept and expend without limitation in a manner either expressed by the donor or deemed to be in the best interest of the membership, shall be credited to the guarantee fund. Any funds transferred from the teachers' savings fund by reason of lack of claimant or because of a surplus in any fund and any other moneys whose disposition is not otherwise provided for, shall also be credited to the guarantee fund. The interest allowed by the board of trustees to each of the other funds shall be paid to these funds from the guarantee fund. Any deficit occurring in any fund that would not be automatically covered shall be met by the payments from the guarantee fund to that fund. ~~The board of trustees may, at any time during a fiscal year, transfer from the guarantee fund to the medical insurance fund an amount not to exceed four percent (4%) of the income earned from investments during the immediate past year;~~
 - (7) The school employee annuity fund shall consist of those funds voluntarily contributed under the provisions of Section 403(b) of the Internal Revenue Code by a retired member of the Teachers' Retirement System with accounts that existed on or after July 1, 1996. The contributions shall not be picked up as provided in KRS 161.540(2). Separate member accounts shall be maintained for each member. The board of trustees may promulgate administrative regulations pursuant to KRS Chapter 13A to manage this program;
 - (8) The supplemental retirement benefit fund shall consist of those funds contributed by the employer for the purpose of constituting a qualified government excess benefit plan as described in Section 415 of the Internal Revenue Code for accounts that existed on or after July 1, 1996. The board of trustees shall promulgate administrative regulations pursuant to KRS Chapter 13A to administer this program; and
 - (9) The life insurance benefit fund shall consist of amounts accumulated for the purpose of providing benefits provided under KRS 161.655. The board of trustees may allocate to this fund a percentage of the employer and

state contributions as provided under KRS 161.550. The allocation to this fund will be in an amount that the actuary determines necessary to fund the obligation of providing the benefits provided under KRS 161.655.

➔Section 3. KRS 161.540 is amended to read as follows:

- (1) (a) Effective July 1, 1988, each individual who ***first*** becomes a member before July 1, 2008, shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation.
- (b) Each individual who ***first*** becomes a member on or after July 1, 2008, shall contribute to the retirement system ten and eight hundred fifty-five thousandths percent (10.855%) of annual compensation, except that university ***employees who participate in the Kentucky Teachers' Retirement System***~~faculty members~~ shall contribute nine and three hundred seventy-five thousandths percent (9.375%) of annual compensation.
- (c) ***Effective July 1, 2010, members shall, in addition to those contributions required under subsection (1)(a) and (b) of this section, make a contribution to the medical insurance fund established under subsection (5) of Section 2 of this Act according to the following schedule:***
 1. ***For each individual who first became a member of the retirement system before July 1, 2008, a total amount of annual compensation equal to and effective on:***

July 1, 2010 Twenty-five hundredths percent (.25%)
July 1, 2011 One-half percent (0.50%)
July 1, 2012 One percent (1.0%)
July 1, 2013 One and one-half percent (1.5%)
July 1, 2014 Two and twenty-five hundredths percent (2.25%)
July 1, 2015 and thereafter Three percent (3.0%) for a total of three and seventy-five hundredths percent (3.75%) when added to the contributions required under subsection (5)(a) of Section 2 of this Act; or
 2. ***For each individual who first becomes a member of the retirement system on or after July 1, 2008, a total amount of annual compensation equal to and effective on:***

July 1, 2013 One-half percent (0.50%)
July 1, 2014 One and twenty-five hundredths percent (1.25%)
July 1, 2015 and thereafter Two percent (2.0%) for a total of three and seventy-five hundredths percent (3.75%) when added to the contributions required under subsection (5)(a) of Section 2 of this Act.
 3. ***Notwithstanding the provisions of subsections (1)(c)1. and 2. of this section, members employed by any employer identified in KRS 161.220(4)(b) or (n) shall contribute, as a percentage of their total annual compensation, the actuarial equivalent of the percentage contributed by members under subsections (1)(c)1. and 2. of this section, not to exceed the percentages established under the schedules set forth in subsections (1)(c)1. and 2. of this section. The actuarial equivalent to be contributed under this subsection shall be determined by the retirement system's actuary. These contributions shall be in lieu of those contributions required under subsections (1)(c)1. and 2. of this section.***
 4. ***When the medical insurance fund established under subsection (5) of Section 2 of this Act achieves a sufficient prefunded status as determined by the retirement system's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under subsections (1)(c)1., 2., and 3. of this section shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.***

- (d) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.
- (2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

➔Section 4. KRS 161.550 is amended to read as follows:

- (1) Beginning with July 1, each employer, except as provided under KRS 161.555, shall contribute annually to the **Kentucky Teachers' Retirement System**~~retirement system~~ a permanent amount equal to that contributed by members of the retirement system it employs *less the amount contributed by employees under subsection (1)(c) of Section 3 of this Act*, plus an additional three and one-fourths percent (3.25%) of the total of salaries of members of the retirement system it employs to discharge the system's unfunded obligations with interest assumed by the state and to provide funding to the medical insurance fund as provided under KRS 161.420(5). *If the board of trustees establishes a trust fund under 26 U.S.C. sec. 115, the board may deposit the employer contribution dedicated to retiree health in that trust fund.*
- (2) In addition to the required contributions in subsection (1) of this section, the state shall contribute annually to the **Kentucky Teachers' Retirement System**~~retirement system~~ a percentage of the total salaries of the state-funded and federally funded members it employs to *pay the cost of health insurance coverage for retirees who are not eligible for Medicare and who retire on or after July 1, 2010, less the amounts that are otherwise required to be paid by the retirees under Section 5 of this Act. The Kentucky Teachers' Retirement System may also request an additional amount necessary to ensure payment of medical insurance cost through fiscal year 2015-2016 which shall not be subject to the limitations of paragraph (c) of the subsection. The board shall deposit funds in the medical insurance fund unless the board of trustees has established a trust fund under 26 U.S.C. sec. 115 for this purpose. In this case, the board may deposit the employer contribution in that trust*~~provide stabilization funding for the medical insurance~~ fund. This contribution shall be known as the state medical insurance fund stabilization contribution. The percentage to be contributed by the state *under this subsection*:
- (a) Shall be determined by the retirement system's actuary for each biennial budget period;~~[- The percentage to be contributed by the state]~~
- (b) May be suspended or adjusted by the General Assembly if in its judgment the welfare of the Commonwealth so demands; *and*
- (c) *Shall not exceed the lesser of the actual benefit cost for retirees not eligible for Medicare who retire on or after July 1, 2010, or the amount contributed by employers under subsection (3) of this section.*
- (3) *Effective July 1, 2010, all local boards of education, agencies, and organizations identified in KRS 161.220(4) with the exception of those institutions identified under paragraphs (b) and (n) of KRS 161.220(4) shall make a contribution for each payroll on behalf of their active employees who participate in the Kentucky Teachers' Retirement System in an amount equal to the percentage of payroll of those active employees, according to the schedule as follows:*

July 1, 2010 Twenty-five hundredths percent (.25%)

July 1, 2011 One-half percent (.50%)

July 1, 2012 One percent (1.0%)

July 1, 2013 One and one-half percent (1.5%)

July 1, 2014 Two and twenty-five hundredths percent (2.25%)

July 1, 2015 and thereafter Three percent (3.0%)

- (4) ***Institutions identified under KRS 161.220(4)(b) and (n) shall make a contribution for each payroll on behalf of their active employees who participate in the Kentucky Teachers' Retirement System of an amount equal to a percentage of these employees' payroll that is actuarially equivalent to the percentage contributed by local boards of education, agencies, and organizations identified under subsection (3) of this section, not to exceed the percentages established under the schedules set forth in subsection (3) of this section. The actuarial equivalent to be contributed under this subsection shall be determined by the Kentucky Teachers' Retirement System's actuary.***
- (5) ***When the medical insurance fund established under subsection (5) of Section 2 of this Act achieves a sufficient prefunded status as determined by the Kentucky Teachers' Retirement System's actuary, the board of trustees shall recommend to the General Assembly that the contributions required under subsections (3) and (4) of this section shall, in an actuarially accountable manner, be either decreased, suspended, or eliminated.***
- (6) Each employer shall remit the required employer contributions to the retirement system under the terms and conditions specified for member contributions under KRS 161.560. The state shall provide annual appropriations based upon estimated funds needed to meet the requirements of KRS 161.155; 161.168; 161.507(4); 161.515; 161.545; 161.553; 161.605; 161.612; and 161.620(1), (3), (5), (6), and (7). In the event an annual appropriation is less than the amount of these requirements, the state shall make up the deficit in the next biennium budget appropriation to the retirement system. Employer contributions to the retirement system are for the exclusive purpose of providing benefits to members and annuitants and these contributions shall be considered deferred compensation to the members.

➔Section 5. KRS 161.675 is amended to read as follows:

- (1) The board of trustees shall arrange by appropriate contract or on a self-insured basis to provide a broad program of group hospital and medical insurance for present and future eligible recipients of a retirement allowance from the Teachers' Retirement System. The board of trustees may also arrange to provide health insurance coverage through an insurer licensed pursuant to Subtitle 38 of KRS Chapter 304 and offering a managed care plan as defined in KRS 304.17A-500 as an alternative to group hospital and medical insurance for persons eligible for hospital and medical benefits under this section. The board of trustees may authorize ~~present and future~~ eligible recipients of a retirement allowance from the Teachers' Retirement System who are less than age sixty-five (65) to be included in the state-sponsored health insurance that is provided to active teachers and state employees under KRS 18A.225. Members who are sixty-five (65) or older and retired for service shall not be eligible to participate in the state employee health insurance program as described in KRS 18A.225.
- (2) (a) The coverage provided shall be as set forth in the contracts and the administrative regulations of the board of trustees. The board of trustees may change the levels of coverage and eligibility conditions to meet the changing needs of the annuitants and, when necessary, to contain the expenses of the insurance program within the funds available to finance the insurance program, except as provided by paragraph (b) of this subsection. The contracts and administrative regulations shall provide for but not be limited to hospital room and board, surgical procedures, doctors' care in the hospital, and miscellaneous hospital costs. An annuitant whose effective date of retirement is July 1, 1974, and thereafter, must have a minimum of five (5) years' creditable Kentucky service in the Teachers' Retirement System or five (5) years of combined creditable service in the state-administered retirement systems if the member is retiring under the reciprocity provisions of KRS 61.680 and 61.702. An annuitant shall not elect coverage through more than one (1) of the state-administered retirement systems. The board of trustees shall offer coverage to the disabled child of an annuitant regardless of the disabled child's age if the annuitant pays the entire premium for the disabled child's coverage. A child shall be considered disabled if he has been determined to be eligible for federal Social Security disability benefits.

- (b) Individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, shall not be eligible for benefits under this section unless the member has at least fifteen (15) or more years of service credited under KRS 161.500 or another state-administered retirement system.
- (3) All expenses for benefits under this section shall be paid from the funding provisions contained in KRS 161.420(5), *from a trust fund established by the board under 26 U.S.C. sec 115*, premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute.
- (4) (a) The board of trustees shall determine the amount of health insurance supplement payments that the Teachers' Retirement System will provide to assist eligible annuitants in paying the cost of their health insurance, based on the funds available in the medical insurance fund *and any trust fund established by the board for this purpose under 26 U.S.C. sec. 115*. The board of trustees shall establish the maximum monthly amounts of health insurance supplement payments that will be made by the *Kentucky Teachers' Retirement System*~~retirement system~~ for eligible annuitants. The board of trustees shall annually establish the percentage of the maximum monthly health insurance supplement payment that will be made, based on age and years of service credit of eligible recipients of a retirement allowance. Monthly health insurance supplement payments made by the retirement system may not exceed the amount of the single coverage insurance premium chosen by the eligible annuitants. In order to qualify for health insurance supplements~~made by the retirement system~~, the annuitant must agree to pay the difference between the insurance premium and the applicable supplement payment, by payroll deduction from his retirement allowance, or by a payment method approved by the retirement system.
- (b) *The board shall, effective July 1, 2010, have the authority to charge retired members who are not paying the Standard Medicare Part B premium an amount equal to the Standard Medicare Part B premium in addition to any other payments determined by the board to be necessary to contain costs within the available funding. If the board determines that retired members who are not paying the Standard Medicare Part B premium, should pay the equivalent of the Standard Medicare Part B premium, the board shall phase-in the premium according to the following schedule:*
 - July 1, 2010 Thirty-three percent (33%)*
 - July 1, 2011 Sixty-seven percent (67%)*
 - July 1, 2012*
 - and thereafter One hundred percent (100%)**Nothing in this paragraph shall limit the board's authority to change the levels of coverage, eligibility conditions, or level of health insurance supplement for retirees in order to contain costs within available funding.*
- (c) The board of trustees may offer, on a full-cost basis, health care insurance coverage provided by the retirement system to spouses and dependents of eligible annuitants not otherwise eligible for regular coverage. Recipients of a retirement allowance from the retirement system must agree to pay the cost of this coverage by payroll deduction from their retirement allowance or by a payment method approved by the retirement system.
- ~~(d)(e)~~ The board of trustees shall offer, on a full-cost basis, health insurance coverage provided by the retirement system to the disabled child of an annuitant, regardless of the age of the disabled child. A child shall be considered disabled for purposes of this section if the child has been determined to be eligible for federal Social Security disability benefits.
- (5) The board of trustees is empowered to require the annuitant and the annuitant's spouse to pay a premium charge to assist in the financing of the hospital and medical insurance program. The board of trustees is empowered to pay the expenses for insurance coverage from the medical insurance fund, *from any trust fund established by the board for this purpose under 26 U.S.C. sec. 115*, from the premium charges received from the annuitants and the spouses, and from funds that may be appropriated or allocated by statute. The board may provide insurance coverage by making payment to insurance carriers including health insurance plans that are available to active and retired state employees and active teachers, institutions, and individuals for services performed, or the board of trustees may elect to provide insurance on a "self-insurance" basis or a combination of these provisions.

- (6) The board of trustees may approve health insurance supplement payments to eligible annuitants who are less than sixty-five (65) years of age, as reimbursement for hospital and medical insurance premiums made by annuitants for their individual coverage. Eligible annuitants or recipients are those annuitants who are not eligible for Medicare and who do not reside in Kentucky or in an area outside of Kentucky where comparable coverage is available. The reimbursement payments shall not exceed the minimum supplement payment that would have been made had the annuitant lived in Kentucky. Eligible annuitants or recipients shall submit proof of payment to the retirement system for hospital and medical insurance that they have obtained. Reimbursement payments shall be made on a quarterly basis.
- (7) Contracts negotiated may include the provision that a stated amount of hospital cost or period of hospitalization shall incur no obligation on the part of the insurance carrier or the retirement system ***or any trust fund established for this purpose by the board.***
- (8) The board of trustees is empowered to promulgate administrative regulations to assure efficient operation of the hospital and medical insurance program.
- (9) Premiums paid for hospital and medical insurance coverage procured under authority of this section shall be exempt from any premium tax which might otherwise be required under KRS Chapter 136. The payment of premiums by the ***medical*** insurance fund ***or another trust fund established by the board for this purpose*** shall not constitute taxable income to an insured recipient.
- (10) In the event that a member is providing services on less than a full-time basis under KRS 161.605, the retirement system may pay the full cost of the member's health insurance coverage for the full fiscal year that the member is providing those services, at the conclusion of which, the retirement system may then bill the active employer and the active employer shall reimburse the retirement system for the cost of the health insurance coverage incurred by the retirement system on a pro rata basis for the time that the member was employed by the active employer.

➔Section 6. Whereas, the provisions of this Act are to be implemented at the beginning of the fiscal year, an emergency is declared to exist, and this Act takes effect July 1, 2010.

Signed by Governor April 13, 2010.

CHAPTER 160

(SB 107)

AN ACT relating to crimes and punishments and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of trafficking in salvia when he or she knowingly and unlawfully traffics in salvia for human consumption.***
- (2) ***Trafficking in salvia is a Class A misdemeanor.***

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of possession of salvia when he or she knowingly and unlawfully possesses salvia for human consumption.***
- (2) ***Possession of salvia is a Class B misdemeanor.***

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 218A IS CREATED TO READ AS FOLLOWS:

- (1) ***A person is guilty of salvia cultivation when he or she knowingly and unlawfully plants, cultivates, or harvests salvia with the intent to sell or transfer it for human consumption.***
- (2) ***Salvia cultivation is a Class A misdemeanor.***

➔Section 4. KRS 218A.010 is amended to read as follows:

As used in this chapter:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:
 - (a) A practitioner or by his authorized agent under his immediate supervision and pursuant to his order; or
 - (b) The patient or research subject at the direction and in the presence of the practitioner;
- (2) "Anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone that promotes muscle growth and includes those substances listed in KRS 218A.090(5) but does not include estrogens, progestins, and anticosteroids;
- (3) "Cabinet" means the Cabinet for Health and Family Services;
- (4) "Child" means any person under the age of majority as specified in KRS 2.015;
- (5) "Controlled substance" means methamphetamine, or a drug, substance, or immediate precursor in Schedules I through V and includes a controlled substance analogue;
- (6) (a) "Controlled substance analogue," except as provided in subparagraph (b) of this subsection, means a substance:
 1. The chemical structure of which is substantially similar to the structure of a controlled substance in Schedule I or II; and
 2. Which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
 3. With respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II.
- (b) Such term does not include:
 1. Any substance for which there is an approved new drug application;
 2. With respect to a particular person, any substance if an exemption is in effect for investigational use for that person pursuant to federal law to the extent conduct with respect to such substance is pursuant to such exemption; or
 3. Any substance to the extent not intended for human consumption before the exemption described in subparagraph 2. of this paragraph takes effect with respect to that substance;
- (7) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance;
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling, or compounding necessary to prepare the substance for that delivery;
- (9) "Dispenser" means a person who lawfully dispenses a Schedule II, III, IV, or V controlled substance to or for the use of an ultimate user;
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance;
- (11) "Drug" means:
 - (a) Substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;
 - (b) Substances intended for use in the diagnosis, care, mitigation, treatment, or prevention of disease in man or animals;

- (c) Substances (other than food) intended to affect the structure or any function of the body of man or animals; and
- (d) Substances intended for use as a component of any article specified in this subsection.

It does not include devices or their components, parts, or accessories;

- (12) "Good faith prior examination," as used in KRS Chapter 218A and for criminal prosecution only, means an in-person medical examination of the patient conducted by the prescribing practitioner or other health-care professional routinely relied upon in the ordinary course of his or her practice, at which time the patient is physically examined and a medical history of the patient is obtained. "In-person" includes telehealth examinations. This subsection shall not be applicable to hospice providers licensed pursuant to KRS Chapter 216B;
- (13) "Hazardous chemical substance" includes any chemical substance used or intended for use in the illegal manufacture of a controlled substance as defined in this section or the illegal manufacture of methamphetamine as defined in KRS 218A.1431, which:
 - (a) Poses an explosion hazard;
 - (b) Poses a fire hazard; or
 - (c) Is poisonous or injurious if handled, swallowed, or inhaled;
- (14) "Immediate precursor" means a substance which is the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance or methamphetamine, the control of which is necessary to prevent, curtail, or limit manufacture;
- (15) "Intent to manufacture" means any evidence which demonstrates a person's conscious objective to manufacture a controlled substance or methamphetamine. Such evidence includes but is not limited to statements and a chemical substance's usage, quantity, manner of storage, or proximity to other chemical substances or equipment used to manufacture a controlled substance or methamphetamine;
- (16) "Isomer" means the optical isomer, except as used in KRS 218A.050(3) and 218A.070(1)(d). As used in KRS 218A.050(3), the term "isomer" means the optical, positional, or geometric isomer. As used in KRS 218A.070(1)(d), the term "isomer" means the optical or geometric isomer;
- (17) "Manufacture," except as provided in KRS 218A.1431, means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include activities:
 - (a) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice;
 - (b) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale; or
 - (c) By a pharmacist as an incident to his dispensing of a controlled substance in the course of his professional practice;
- (18) "Marijuana" means all parts of the plant *Cannabis* sp., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin or any compound, mixture, or preparation which contains any quantity of these substances;
- (19) "Medical history," as used in KRS Chapter 218A and for criminal prosecution only, means an accounting of a patient's medical background, including but not limited to prior medical conditions, prescriptions, and family background;
- (20) "Medical order," as used in KRS Chapter 218A and for criminal prosecution only, means a lawful order of a specifically identified practitioner for a specifically identified patient for the patient's health-care needs. "Medical order" may or may not include a prescription drug order;

- (21) "Medical record," as used in KRS Chapter 218A and for criminal prosecution only, means a record, other than for financial or billing purposes, relating to a patient, kept by a practitioner as a result of the practitioner-patient relationship;
- (22) "Methamphetamine" means any substance that contains any quantity of methamphetamine, or any of its salts, isomers, or salts of isomers;
- (23) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
 - (a) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate;
 - (b) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (a) of this subsection, but not including the isoquinoline alkaloids of opium;
 - (c) Opium poppy and poppy straw;
 - (d) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives of ecgonine or their salts have been removed;
 - (e) Cocaine, its salts, optical and geometric isomers, and salts of isomers;
 - (f) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; and
 - (g) Any compound, mixture, or preparation which contains any quantity of any of the substances referred to in paragraphs (a) to (f) of this subsection;
- (24) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under KRS 218A.030, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms;
- (25) "Opium poppy" means the plant of the species *papaver somniferum* L., except its seeds;
- (26) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity;
- (27) "Physical injury" has the same meaning it has in KRS 500.080;
- (28) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing;
- (29) "Pharmacist" means a natural person licensed by this state to engage in the practice of the profession of pharmacy;
- (30) "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator, optometrist as authorized in KRS 320.240, advanced registered nurse practitioner as authorized under KRS 314.011, or other person licensed, registered, or otherwise permitted by state or federal law to acquire, distribute, dispense, conduct research with respect to, or to administer a controlled substance in the course of professional practice or research in this state. "Practitioner" also includes a physician, dentist, podiatrist, veterinarian, or advanced registered nurse practitioner authorized under KRS 314.011 who is a resident of and actively practicing in a state other than Kentucky and who is licensed and has prescriptive authority for controlled substances under the professional licensing laws of another state, unless the person's Kentucky license has been revoked, suspended, restricted, or probated, in which case the terms of the Kentucky license shall prevail;
- (31) "Practitioner-patient relationship," as used in KRS Chapter 218A and for criminal prosecution only, means a medical relationship that exists between a patient and a practitioner or the practitioner's designee, after the practitioner or his designee has conducted at least one (1) good faith prior examination;
- (32) "Prescription" means a written, electronic, or oral order for a drug or medicine, or combination or mixture of drugs or medicines, or proprietary preparation, signed or given or authorized by a medical, dental, chiropody, veterinarian, optometric practitioner, or advanced registered nurse practitioner, and intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

- (33) "Prescription blank," with reference to a controlled substance, means a document that meets the requirements of KRS 218A.204 and 217.216;
- (34) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance;
- (35) *"Salvia" means Salvia divinorum or Salvinorin A and includes all parts of the plant presently classified botanically as Salvia divinorum, whether growing or not, the seeds thereof, any extract from any part of that plant, and every compound, manufacture, derivative, mixture, or preparation of that plant, its seeds, or its extracts, including salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation of that plant, its seeds, or extracts. The term shall not include any other species in the genus salvia;*
- (36) "Second or subsequent offense" means that for the purposes of this chapter an offense is considered as a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this chapter, or under any statute of the United States, or of any state relating to substances classified as controlled substances or counterfeit substances, except that a prior conviction for a nontrafficking offense shall be treated as a prior offense only when the subsequent offense is a nontrafficking offense. For the purposes of this section, a conviction voided under KRS 218A.275 or 218A.276 shall not constitute a conviction under this chapter;
- ~~(37)~~~~(36)~~ "Sell" means to dispose of a controlled substance to another person for consideration or in furtherance of commercial distribution;
- ~~(38)~~~~(37)~~ "Serious physical injury" has the same meaning it has in KRS 500.080;
- ~~(39)~~~~(38)~~ "Telehealth" has the same meaning it has in KRS 311.550;
- ~~(40)~~~~(39)~~ "Tetrahydrocannabinols" means synthetic equivalents of the substances contained in the plant, or in the resinous extractives of the plant Cannabis, sp. or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:
1. Delta 1 cis or trans tetrahydrocannabinol, and their optical isomers;
 2. Delta 6 cis or trans tetrahydrocannabinol, and their optical isomers; and
 3. Delta 3, 4 cis or trans tetrahydrocannabinol, and its optical isomers;
- ~~(41)~~~~(40)~~ "Traffic," except as provided in KRS 218A.1431, means to manufacture, distribute, dispense, sell, transfer, or possess with intent to manufacture, distribute, dispense, or sell a controlled substance;
- ~~(42)~~~~(41)~~ "Transfer" means to dispose of a controlled substance to another person without consideration and not in furtherance of commercial distribution; and
- ~~(43)~~~~(42)~~ "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

➔Section 5. KRS 218A.050 is amended to read as follows:

Unless otherwise rescheduled by regulation of the Cabinet for Health and Family Services, the controlled substances listed in this section are included in Schedule I:

- (1) Any material, compound, mixture, or preparation which contains any quantity of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, or salts is possible within the specific chemical designation: Acetylmethadol; Allylprodine; Alphacetylmethadol; Alphameprodine; Alphamethadol; Benzethidine; Betacetylmethadol; Betameprodine; Betamethadol; Betaprodine; Clonitazene; Dextromoramide; Dextrorphan; Diampromide; Diethylthiambutene; Dimenoxadol; Dimepheptanol; Dimethylthiambutene; Dioxaphetyl butyrate; Dipipanone; Ethylmethylthiambutene; Etonitazene; Etoxidine; Furethidine; Hydroxypethidine; Ketobemidone; Levomoramide; Levophenacymorphan; Morpheridine; Noracymethadol; Norlevorphanol; Normethadone; Norpipanone; Phenadoxone; Phenampromide; Phenomorphan; Phenoperidine; Piritramide; Proheptazine; Properridine; Propiram; Racemoramide; Trimeperidine.
- (2) Any material, compound, mixture, or preparation which contains any quantity of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation:

Acetorphine; Acetyldihydrocodeine; Benzylmorphine; Codeine methylbromide; Codeine-N-Oxide; Cyprenorphine; Desomorphine; Dihydromorphine; Etorphine; Heroin; Hydromorphenol; Methyl-desorphine; Methyldihydromorphine; Morphine methylbromide; Morphine methylsulfonate; Morphine-N-Oxide; Myrophine; Nicocodeine; Nicomorphine; Normorphine; Pholcodine; Thebacon.

- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, or salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation: 3, 4-methylenedioxyamphetamine; 5-methoxy-3, 4-methylenedioxy amphetamine; 3, 4, 5-trimethoxyamphetamine; Bufotenine; Diethyltryptamine; Dimethyltryptamine; 4-methyl-2, 5-dimethoxyamphetamine; Ibogaine; Lysergic acid diethylamide; Marijuana; Mescaline; Peyote; N-ethyl-3-piperidyl benzilate; N-methyl-3-piperidyl benzilate; Psilocybin; Psilocyn; Tetrahydrocannabinols; Hashish; Phencyclidine, 2 Methylamino-1-phenylpropan-1-one (including, but not limited to, Methcathinone, Cat, and Ephedrone); *salvia*.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, or salts of isomers is possible within the specific chemical designation: gamma hydroxybutyric acid.

➔Section 6. KRS 217.065 is amended to read as follows:

Except for violations of KRS 218A.350, a drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular;
- (2) If in package form unless it bears a label containing:
 - (a) The name and place of business of the manufacturer, packer, or distributor, except that, in the case of a prescription drug, it shall bear the name and place of business of the manufacturer, and the name and place of business of the packer, or distributor, if other than the manufacturer; and
 - (b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the secretary;
- (3) If any word, statement, or other information required by or under authority of KRS 217.005 to 217.215 to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, *salvia*, morphine, opium, paraldehyde, peyote, or sulfonmethane, or any chemical derivative of such substance, which derivative has been by the secretary after investigation, found to be, and by regulations under KRS 217.005 to 217.215 designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit-forming";
- (5) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears:
 - (a) The common or usual name of the drug, if such there be; and
 - (b) In case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including whether active or not the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein; provided that to the extent that compliance with this subsection is impracticable, exemptions shall be established by regulations promulgated by the secretary;
- (6) Unless its labeling bears:
 - (a) Adequate directions for use; and

- (b) Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users; provided that where any requirement of subsection (a) of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirements;
 - (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein; provided that the method of packing may be modified with a consent of the cabinet. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia;
 - (8) If it has been found by the cabinet to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the secretary shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the secretary shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements;
 - (9)
 - (a) If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - (b) If it is an imitation of another drug; or
 - (c) If it is offered for sale under the name of another drug;
 - (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;
 - (11) If:
 - (a) It is a drug intended for use by man which is a habit forming drug to which subsection (4) of this section applies; or because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner, and is not dispensed upon a prescription unless prior to dispensing its label bears the statement "Caution: Federal law prohibits dispensing without prescription"; or
 - (b) It is a drug or device and its label (as originally packed) directs that it is to be dispensed or sold only on prescription, unless it is dispensed or sold on a prescription of an authorized practitioner and its label (as dispensed) bears the name and place of business of the dispenser or seller, the serial number and date of such prescription, and the name of such licensed practitioner. Such prescriptions shall not be refilled except on the specific authorization of the prescribing practitioner; provided that where any requirement of this subsection, as applied to any drug or device, is not necessary for the protection of the public health, the secretary shall promulgate regulations exempting such drug or device from such requirement;
 - (12) A drug sold on a prescription of a practitioner (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if:
 - (a) Such practitioner is licensed by law to administer such drug; and
 - (b) Such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such practitioner.
 - (13) It is not the intention of subsection (2)(a) of this section as amended herein to require the name and place of business of the wholesaler to appear upon the label of the package unless otherwise required by this section.
- ➔Section 7. KRS 218A.1401 is amended to read as follows:
- (1) A person is guilty of selling controlled substances to a minor when he, being eighteen (18) years of age or older, knowingly and unlawfully sells or transfers any quantity of a controlled substance *other than salvia* to any person under eighteen (18) years of age.

- (2) Selling controlled substances to a minor is a Class C felony for a first offense, and a Class B felony for each subsequent offense, unless a more severe penalty for trafficking in controlled substances is applicable, in which case the higher penalty shall apply.

➔Section 8. KRS 218A.141 is amended to read as follows:

Any person convicted of, pleading guilty to, or entering an Alford plea to any offense involving trafficking in a controlled substance, *trafficking in salvia*, or trafficking in marijuana shall, in addition to any other penalty authorized by law, be sentenced to:

- (1) Pay the costs of disposal of the controlled substances;
- (2) Pay the costs of disposal of all equipment, chemicals, materials, or other items used in or in furtherance of the trafficking offense;
- (3) Pay the costs involved with environmental clean-up and remediation required for the real property and personal property used for or in furtherance of the trafficking offenses; and
- (4) Pay the costs of protecting the public from dangers from chemicals, materials, and other items used for or in furtherance of the trafficking offense from the time of the arrest until the time that the clean-up or remediation of the real and personal property is concluded. The Commonwealth shall have a lien on all of the assets of the defendant until the amount specified by the court under this subsection is paid in full. The Commonwealth's attorney shall file the lien.

➔Section 9. KRS 218A.1411 is amended to read as follows:

- (1) Any person who unlawfully traffics in a controlled substance classified in Schedules I, II, III, IV or V, or a controlled substance analogue in any building used primarily for classroom instruction in a school or on any premises located within one thousand (1,000) yards of any school building used primarily for classroom instruction shall be guilty of a Class D felony, unless a more severe penalty is set forth in this chapter, in which case the higher penalty shall apply. The measurement shall be taken in a straight line from the nearest wall of the school to the place of violation.
- (2) *The provisions of subsection (1) of this section shall not apply to any misdemeanor offense relating to salvia.*

➔Section 10. KRS 218A.1413 is amended to read as follows:

- (1) A person is guilty of trafficking in a controlled substance in the second degree when:
 - (a) He knowingly and unlawfully traffics in a controlled substance classified in Schedules I and II which is not a narcotic drug; or specified in KRS 218A.1412; or a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, *salvia*, or marijuana; or
 - (b) He knowingly and unlawfully prescribes, orders, distributes, supplies, or sells an anabolic steroid for:
 1. Enhancing performance in an exercise, sport, or game; or
 2. Hormonal manipulation intended to increase muscle mass, strength, or weight in the human species without a medical necessity.
- (2) Any person who violates the provisions of subsection (1) of this section shall:
 - (a) For the first offense be guilty of a Class D felony.
 - (b) For a second or subsequent offense be guilty of a Class C felony.

➔Section 11. KRS 218A.1416 is amended to read as follows:

- (1) A person is guilty of possession of a controlled substance in the second degree when he knowingly and unlawfully possesses: a controlled substance classified in Schedules I or II which is not a narcotic drug; or specified in KRS 218A.1415; or, a controlled substance classified in Schedule III; but not lysergic acid diethylamide, phencyclidine, *salvia*, or marijuana.
- (2) Possession of a controlled substance in the second degree is:
 - (a) For a first offense a Class A misdemeanor.

(b) For a second or subsequent offense a Class D felony.

➔Section 12. KRS 218A.276 is amended to read as follows:

- (1) Any person found guilty of possession of marijuana pursuant to KRS 218A.1422 *or possession of salvia pursuant to Section 2 of this Act* may be ordered to a facility designated by the secretary of the Cabinet for Health and Family Services where a program of education, treatment, and rehabilitation not to exceed ninety (90) days in duration may be prescribed. The person ordered to the designated facility shall present himself for registration and initiation of a treatment program within five (5) days of the date of sentencing. If without good cause, the person fails to appear at the designated facility within the specified time, or if any time during the program of treatment prescribed, the authorized clinical director of the facility finds that the person is unwilling to participate in his treatment and rehabilitation, the director shall notify the sentencing court. Upon receipt of notification, the court shall cause the person to be brought before it and may continue the order of treatment and rehabilitation, or may order confinement in the county jail for not more than ninety (90) days or a fine of not more than two hundred fifty dollars (\$250), or both. Upon discharge of the person from the facility by the secretary of the Cabinet for Health and Family Services, or his designee, prior to the expiration of the ninety (90) day period or upon satisfactory completion of ninety (90) days of treatment, the person shall be deemed finally discharged from sentence. The secretary, or his designee, shall notify the sentencing court of the date of such discharge from the facility.
- (2) The secretary of the Cabinet for Health and Family Services, or his designee, shall inform each court of the identity and location of the facility to which a person sentenced by that court under this chapter shall be initially ordered.
- (3) In the case of a person ordered to a facility for treatment and rehabilitation pursuant to this chapter, transportation to the facility shall be provided by order of the court when the court finds the person unable to convey himself to the facility within five (5) days of sentencing by reason of physical infirmity or financial incapability.
- (4) The sentencing court shall immediately notify the designated facility of the sentence and its effective date.
- (5) The secretary of the Cabinet for Health and Family Services, or his designee, may authorize transfer of the person from the initially designated facility to another facility for therapeutic purposes. The sentencing court shall be notified of termination of treatment by the terminating facility.
- (6) Responsibility for payment for treatment services rendered to persons pursuant to this section shall be as under the statutes pertaining to payment by patients and others for services rendered by the Cabinet for Health and Family Services, unless the person and the facility shall arrange otherwise.
- (7) None of the provisions of this chapter shall be deemed to preclude the court from exercising its usual discretion with regard to ordering probation or conditional discharge.
- (8) In the case of any person who has been convicted of possession of marijuana *or possession of salvia*, the court may set aside and void the conviction upon satisfactory completion of treatment, probation, or other sentence, and issue to the person a certificate to that effect. A conviction voided under this subsection shall not be deemed a first offense for purposes of this chapter or deemed a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime.

➔Section 13. KRS 218A.410 is amended to read as follows:

- (1) The following are subject to forfeiture:
 - (a) Controlled substances listed in Schedule I that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state.
 - (b) Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.
 - (c) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state. The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

- (d) All substances, machinery, or devices used for the manufacture, packaging, repackaging, or marking, and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale, or transfer of substances in violation of KRS 218A.350 shall be seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband.
 - (e) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held, or acquired in violation of this chapter.
 - (f) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter.
 - (g) All property which is used, or intended for use, as a container for property described in paragraph (e) or (f) of this subsection.
 - (h) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in paragraph (e) or (f) of this subsection, but:
 - 1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it is proven beyond a reasonable doubt that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;
 - 2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;
 - 3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to the act or omission;
 - 4. The forfeiture provisions of this paragraph shall not apply to any misdemeanor offense relating to marijuana *or salvia*.
 - (i) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.
 - (j) Everything of value furnished, or intended to be furnished, in exchange for a controlled substance in violation of this chapter, all proceeds, including real and personal property, traceable to the exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to facilitate any violation of this chapter; except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by him to have been committed or omitted without his knowledge or consent. It shall be a rebuttable presumption that all moneys, coin, and currency found in close proximity to controlled substances, to drug manufacturing or distributing paraphernalia, or to records of the importation, manufacture, or distribution of controlled substances, are presumed to be forfeitable under this paragraph. The burden of proof shall be upon claimants of personal property to rebut this presumption by clear and convincing evidence. The burden of proof shall be upon the law enforcement agency to prove by clear and convincing evidence that real property is forfeitable under this paragraph.
 - (k) All real property, including any right, title, and interest in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this chapter excluding any misdemeanor offense relating to marijuana *or salvia*, except that property shall be forfeited under this paragraph, to the extent of an interest of an owner, by reason of any act or omission established by the Commonwealth to have been committed or omitted with the knowledge or consent of the owner.
- (2) Title to all property, including all interests in the property, forfeit under this section vests in the Commonwealth on the commission of the act or omission giving rise to forfeiture under this section together with the proceeds of the property after the time. Any property or proceeds subsequently transferred to any person shall be subject to forfeiture and thereafter shall be ordered forfeited, unless the transferee establishes in

the forfeiture proceeding that he is a subsequent bona fide purchaser for value without actual or constructive notice of the act or omission giving rise to the forfeiture.

- (3) If any of the property described in this section cannot be located; has been transferred to, sold to, or deposited with a third party; has been placed beyond the jurisdiction of the court; has been substantially diminished in value by any act or omission of the defendant; or, has been commingled with any property which cannot be divided without difficulty, the court shall order the forfeiture of any other property of the defendant up to the value of any property subject to forfeiture under this section.

➔Section 14. KRS 218A.500 is amended to read as follows:

As used in this section and KRS 218A.510:

- (1) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:
- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
 - (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
 - (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
 - (d) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
 - (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
 - (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
 - (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining marijuana;
 - (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
 - (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
 - (j) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
 - (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
 - (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as: metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls; water pipes; carburetion tubes and devices; smoking and carburetion masks; roach clips which mean objects used to hold burning material, such as marijuana cigarettes, that have become too small or too short to be held in the hand; miniature cocaine spoons, and cocaine vials; chamber pipes; carburetor pipes; electric pipes; air-driven pipes; chillums; bongs; ice pipes or chillers.
- (2) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter.

- (3) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.
- (4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.
- (5) Any person who violates any provision of this section shall be guilty of a Class A misdemeanor ~~for the first offense and a Class D felony for subsequent offenses~~.

➔Section 15. KRS 218A.992 is amended to read as follows:

- (1) Other provisions of law notwithstanding, any person who is convicted of any violation of this chapter who, at the time of the commission of the offense and in furtherance of the offense, was in possession of a firearm, shall:
 - (a) Be penalized one (1) class more severely than provided in the penalty provision pertaining to that offense if it is a felony; or
 - (b) Be penalized as a Class D felon if the offense would otherwise be a misdemeanor.
- (2) The provisions of this section shall not apply to a violation of KRS 218A.210 *or Section 1, 2, or 3 of this Act*.

➔Section 16. KRS 530.064 is amended to read as follows:

- (1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:
 - (a) Illegal sexual activity; or
 - (b) Illegal controlled substances activity other than activity involving marijuana *or salvia as defined in Section 4 of this Act*;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

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

➔Section 17. KRS 514.040 is amended to read as follows:

- (1) A person is guilty of theft by deception when the person obtains property or services of another by deception with intent to deprive the person thereof. A person deceives when the person intentionally:
 - (a) Creates or reinforces a false impression, including false impressions as to law, value, intention, or other state of mind;
 - (b) Prevents another from acquiring information which would affect judgment of a transaction;
 - (c) Fails to correct a false impression which the deceiver previously created or reinforced or which the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship;
 - (d) Fails to disclose a known lien, adverse claim, or other legal impediment to the enjoyment of property which the person transfers or encumbers in consideration for the property obtained, whether the impediment is or is not valid or is or is not a matter of official record; or

- (e) Issues or passes a check or similar sight order for the payment of money, knowing that it will not be honored by the drawee.
- (2) The term "deceive" does not, however, include falsity as to matters having no pecuniary significance or puffing by statements unlikely to deceive ordinary persons in the group addressed.
- (3) Deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise.
- (4) For purposes of subsection (1) of this section, a maker of a check or similar sight order for the payment of money is presumed to know that the check or order, other than a postdated check or order, would not be paid, if:
 - (a) The maker had no account with the drawee at the time the check or order was issued; or
 - (b) Payment was refused by the drawee for lack of funds, upon presentation within thirty (30) days after issue, and the maker failed to make good within ten (10) days after receiving notice of that refusal. Notice of the refusal may include a citation to this section and a description of this section's criminal penalties and shall be deemed properly addressed when mailed to the address printed or written on the check or sight order or provided by the drawer or maker upon issuance of the check or sight order. The notice, if mailed, shall be deemed received by the addressee seven (7) days after it is placed in the United States mail. The notice may be sent by first-class mail if supported by an affidavit of service setting out the contents of the notice, the address to which the notice was mailed, that correct postage was applied, and the date the notice was placed in the United States mail. A maker makes good on a check or similar sight order for the payment of money by paying to the holder the face amount of the instrument, together with any merchant's posted ~~reasonable~~ bad check handling fee not to exceed fifty dollars (\$50) and any fee imposed pursuant to subsection (5) of this section.
- (5) If a county attorney issues notice to a maker that a drawee has refused to honor an instrument due to a lack of funds as described in subsection (4)(b) of this section, the county attorney may charge a fee to the maker of fifty dollars (\$50), if the instrument is paid. Money paid to the county attorney pursuant to this section shall be used only for payment of county attorney office operating expenses. Excess fees held by the county attorney on June 30 of each year shall be turned over to the county treasurer before the end of the next fiscal year for use by the fiscal court of the county.
- (6) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of any tax payable to the Commonwealth knowing that it will not be honored by the drawee.
- (7) A person is guilty of theft by deception when the person issues a check or similar sight order in payment of all or any part of a child support obligation knowing that it will not be honored by the drawee.
- (8) Theft by deception is a Class A misdemeanor unless the value of the property, service, or the amount of the check or sight order referred to in subsection (6) or (7) of this section is:
 - (a) Five hundred dollars (\$500) or more but less than ten thousand dollars (\$10,000), in which case it is a Class D felony; or
 - (b) Ten thousand dollars (\$10,000) or more, in which case it is a Class C felony.

➔Section 18. Whereas salvia divinorum is a dangerous hallucinogen that is currently legal to sell and possess in this state, and whereas it is necessary to prohibit the sale or possession of this substance immediately in an effort to prevent stockpiling of salvia divinorum by individuals for future use, an emergency is declared to exist, and Sections 1 to 16 of this Act take effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

Signed by Governor April 26, 2010.

CHAPTER 161

(SB 4)

AN ACT relating to anatomical gifts.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 25 of this Act:

- (1) *"Adult" means an individual who is at least eighteen (18) years of age;*
- (2) *"Agent" means an individual:*
 - (a) *Authorized to make health-care decisions on the principal's behalf by a power of attorney for health care; or*
 - (b) *Expressly authorized to make an anatomical gift on the principal's behalf by any other record signed by the principal;*
- (3) *"Anatomical gift" means a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education;*
- (4) *"Decedent" means a deceased individual whose body or part is or may be the source of an anatomical gift. The term includes a stillborn infant and, subject to restrictions imposed by law other than Sections 1 to 25 of this Act, a fetus, however, the term "fetus" does not include a blastocyst, embryo, or fetus that was the subject of an induced abortion;*
- (5) *"Disinterested witness" means a witness other than the spouse, child, parent, sibling, grandchild, grandparent, or guardian of the individual who makes, amends, revokes, or refuses to make an anatomical gift, or another adult who exhibited special care and concern for the individual. The term does not include a person to which an anatomical gift could pass under Section 10 of this Act;*
- (6) *"Document of gift" means a donor card or other record used to make an anatomical gift. The term includes a statement or symbol on a driver's license, identification card, or donor registry;*
- (7) *"Donor" means an individual whose body or part is the subject of an anatomical gift;*
- (8) *"Donor registry" means a database that contains records of anatomical gifts and amendments to or revocations of anatomical gifts;*
- (9) *"Drivers license" means a license or permit issued by the Transportation Cabinet to operate a vehicle, whether or not conditions are attached to the license or permit;*
- (10) *"Eye bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of human eyes or portions of human eyes;*
- (11) *"Guardian" means a person appointed by a court to make decisions regarding the support, care, education, health, or welfare of an individual. The term does not include a guardian ad litem;*
- (12) *"Hospital" means a facility licensed as a hospital under the law of any state or a facility operated as a hospital by the United States, a state, or a subdivision of a state;*
- (13) *"Identification card" means an identification card issued by the Transportation Cabinet;*
- (14) *"Know" means to have actual knowledge;*
- (15) *"Minor" means an individual who is under eighteen (18) years of age;*
- (16) *"Organ procurement organization" means a person designated by the Secretary of the United States Department of Health and Human Services as an organ procurement organization;*
- (17) *"Parent" means a parent whose parental rights have not been terminated;*
- (18) *"Part" means an organ, an eye, or tissue of a human being. The term does not include the whole body;*
- (19) *"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;*
- (20) *"Physician" means an individual authorized to practice medicine or osteopathy under the law of any state;*
- (21) *"Procurement organization" means an eye bank, organ procurement organization, or tissue bank;*

- (22) *"Prospective donor" means an individual who is dead or near death and has been determined by a procurement organization to have a part that could be medically suitable for transplantation, therapy, research, or education. The term does not include an individual who has made a refusal;*
- (23) *"Reasonably available" means able to be contacted by a procurement organization without undue effort and willing and able to act in a timely manner consistent with existing medical criteria necessary for the making of an anatomical gift;*
- (24) *"Recipient" means an individual into whose body a decedent's part has been or is intended to be transplanted;*
- (25) *"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;*
- (26) *"Refusal" means a record created under Section 6 of this Act that expressly states an intent to bar other persons from making an anatomical gift of an individual's body or part;*
- (27) *"Sign" means, with the present intent to authenticate or adopt a record:*
 - (a) *To execute or adopt a tangible symbol; or*
 - (b) *To attach to or logically associate with the record an electronic symbol, sound, or process;*
- (28) *"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;*
- (29) *"Technician" means an individual determined to be qualified to remove or process parts by an appropriate organization that is licensed, accredited, or regulated under federal or state law. The term includes an ocular enucleator;*
- (30) *"Tissue" means a portion of the human body other than an organ or an eye. The term does not include:*
 - (a) *Blood unless the blood is donated for the purpose of research or education; or*
 - (b) *An ovum or sperm for the purpose of creating an embryo to be used in therapy, research, or education;*
- (31) *"Tissue bank" means a person that is licensed, accredited, or regulated under federal or state law to engage in the recovery, screening, testing, processing, storage, or distribution of tissue; and*
- (32) *"Transplant hospital" means a hospital that furnishes organ transplants and other medical and surgical specialty services required for the care of transplant patients.*

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 25 of this Act apply to an anatomical gift or amendment to, revocation of, or refusal to make an anatomical gift, whenever made.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Subject to Section 7 of this Act, an anatomical gift of a donor's body or part may be made during the life of the donor for the purpose of transplantation, therapy, research, or education in the manner provided in Section 4 of this Act by:

- (1) *The donor, if the donor is an adult or if the donor is a minor and is:*
 - (a) *Emancipated; or*
 - (b) *Authorized under state law to apply for a driver's license because the donor is at least sixteen (16) years of age;*
- (2) *An agent of the donor, unless the power of attorney for health care or other record prohibits the agent from making an anatomical gift;*
- (3) *A parent of the donor, if the donor is an unemancipated minor; or*
- (4) *The donor's guardian.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A donor may make an anatomical gift:*

- (a) *By authorizing a statement or symbol indicating that the donor has made an anatomical gift to be imprinted on the donor's driver's license or identification card;*
 - (b) *In a will;*
 - (c) *During a terminal illness or injury of the donor, by any form of communication addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness; or*
 - (d) *As provided in subsection (2) of this section.*
- (2) *A donor or other person authorized to make an anatomical gift under Section 3 of this Act may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has made an anatomical gift be included on a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall:*
- (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and*
 - (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift.*
- (4) *An anatomical gift made by will takes effect upon the donor's death whether or not the will is probated. Invalidation of the will after the donor's death does not invalidate the gift.*
- (5) *The making of an anatomical gift shall not under any circumstances be construed to authorize or direct the denial of health care or hydration and nourishment when the withholding or withdrawal of health care or hydration and nourishment will result in or hasten death.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to Section 7 of this Act, a donor or other person authorized to make an anatomical gift under Section 3 of this Act may amend or revoke an anatomical gift by:*
- (a) *A record signed by:*
 - 1. *The donor;*
 - 2. *The other person; or*
 - 3. *Subject to subsection (2) of this section, another individual acting at the direction of the donor or the other person if the donor or other person is physically unable to sign; or*
 - (b) *A later-executed document of gift that amends or revokes a previous anatomical gift or portion of an anatomical gift, either expressly or by inconsistency.*
- (2) *A record signed pursuant to subsection (1)(a)3. of this section shall:*
- (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the donor or the other person; and*
 - (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *Subject to Section 7 of this Act, a donor or other person authorized to make an anatomical gift under Section 3 of this Act may revoke an anatomical gift by the destruction or cancellation of the document of gift, or the portion of the document of gift used to make the gift, with the intent to revoke the gift.*
- (4) *A donor may amend or revoke an anatomical gift that was not made in a will by any form of communication during a terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.*
- (5) *A donor who makes an anatomical gift in a will may amend or revoke the gift in the manner provided for amendment or revocation of wills or as provided in subsection (1) of this section.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An individual may refuse to make an anatomical gift of the individual's body or part by:*

- (a) *A record signed by:*
 - 1. *The individual; or*
 - 2. *Subject to subsection (2) of this section, another individual acting at the direction of the individual if the individual is physically unable to sign;*
- (b) *The individual's will, whether or not the will is admitted to probate or invalidated after the individual's death; or*
- (c) *Any form of communication made by the individual during the individual's terminal illness or injury addressed to at least two (2) adults, at least one (1) of whom is a disinterested witness.*
- (2) *A record signed pursuant to subsection (1)(a)2. of this section shall:*
 - (a) *Be witnessed by at least two (2) adults, at least one (1) of whom is a disinterested witness, who have signed at the request of the individual; and*
 - (b) *State that it has been signed and witnessed as provided in paragraph (a) of this subsection.*
- (3) *An individual who has made a refusal may amend or revoke the refusal:*
 - (a) *In the manner provided in subsection (1) of this section for making a refusal;*
 - (b) *By subsequently making an anatomical gift pursuant to Section 4 of this Act that is inconsistent with the refusal; or*
 - (c) *By destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.*
- (4) *Except as otherwise provided in subsection (8) of Section 7 of this Act, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.*

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (7) of this section and subject to subsection (6) of this section, in the absence of an express, contrary indication by the donor, a person other than the donor is barred from making, amending, or revoking an anatomical gift of a donor's body or part if the donor made an anatomical gift of the donor's body or part under Section 4 of this Act or an amendment to an anatomical gift of the donor's body or part under Section 5 of this Act.*
- (2) *A donor's revocation of an anatomical gift of the donor's body or part under Section 5 of this Act is not a refusal and does not bar another person specified in Section 3 or 8 of this Act from making an anatomical gift of the donor's body or part under Section 4 or 9 of this Act.*
- (3) *If a person other than the donor makes an unrevoked anatomical gift of the donor's body or part under Section 4 of this Act or an amendment to an anatomical gift of the donor's body or part under Section 5 of this Act, another person may not make, amend, or revoke the gift of the donor's body or part under Section 9 of this Act.*
- (4) *A revocation of an anatomical gift of a donor's body or part under Section 5 of this Act by a person other than the donor does not bar another person from making an anatomical gift of the body or part under Section 4 or 9 of this Act.*
- (5) *In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 3 of this Act, an anatomical gift of a part is neither a refusal to give another part nor a limitation on the making of an anatomical gift of another part at a later time by the donor or another person.*
- (6) *In the absence of an express, contrary indication by the donor or other person authorized to make an anatomical gift under Section 3 of this Act, an anatomical gift of a part for one (1) or more of the purposes set forth in Section 3 of this Act is not a limitation on the making of an anatomical gift of the part for any of the other purposes by the donor or any other person under Section 4 or 9 of this Act.*
- (7) *If a donor who is an unemancipated minor dies, a parent of the donor who is reasonably available may revoke or amend an anatomical gift of the donor's body or part.*

- (8) *If an unemancipated minor who signed a refusal dies, a parent of the minor who is reasonably available may revoke the minor's refusal.*

➔SECTION 8. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Subject to subsections (2) and (3) of this section and unless barred by Section 6 or 7 of this Act, an anatomical gift of a decedent's body or part for purpose of transplantation, therapy, research, or education may be made by any member of the following classes of persons who is reasonably available, in the order of priority listed:*
- (a) *An agent of the decedent at the time of death who could have made an anatomical gift under subsection (2) of Section 3 of this Act immediately before the decedent's death;*
 - (b) *The spouse of the decedent;*
 - (c) *Adult children of the decedent;*
 - (d) *Parents of the decedent;*
 - (e) *Adult siblings of the decedent;*
 - (f) *Adult grandchildren of the decedent;*
 - (g) *Grandparents of the decedent; and*
 - (h) *The persons who were acting as the guardians of the person of the decedent at the time of death.*
- (2) *If there is more than one (1) member of a class listed in paragraph (a), (c), (d), (e), (f), (g), or (h) of subsection (1) of this section entitled to make an anatomical gift, an anatomical gift may be made by a member of the class unless that member or a person to which the gift may pass under Section 10 of this Act knows of an objection by another member of the class. If an objection is known, the gift may be made only by a majority of the members of the class who are reasonably available.*
- (3) *A person may not make an anatomical gift if, at the time of the decedent's death, a person in a prior class under subsection (1) of this section is reasonably available to make or to object to the making of an anatomical gift.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person authorized to make an anatomical gift under Section 8 of this Act may make an anatomical gift by a document of gift signed by the person making the gift or by that person's oral communication that is electronically recorded or is contemporaneously reduced to a record and signed by the individual receiving the oral communication.*
- (2) *Subject to subsection (3) of this section, an anatomical gift by a person authorized under Section 8 of this Act may be amended or revoked orally or in a record by any member of a prior class who is reasonably available. If more than one (1) member of the prior class is reasonably available, the gift made by a person authorized under Section 8 of this Act may be:*
- (a) *Amended only if a majority of the reasonably available members agree to the amending of the gift;*
or
 - (b) *Revoked only if a majority of the reasonably available members agree to the revoking of the gift or if they are equally divided as to whether to revoke the gift.*
- (3) *A revocation under subsection (2) of this section is effective only if, before an incision has been made to remove a part from the donor's body or before invasive procedures have begun to prepare the recipient, the procurement organization, transplant hospital, or physician or technician knows of the revocation.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *An anatomical gift may be made to the following persons named in the document of gift:*
- (a) *A hospital; accredited medical school, dental school, college, or university; organ procurement organization; or other appropriate person, for research or education;*
 - (b) *Subject to subsection (2) of this section, an individual designated by the person making the anatomical gift if the individual is the recipient of the part; or*

- (c) *An eye bank or tissue bank.*
- (2) *If an anatomical gift to an individual under paragraph (b) of subsection (1) of this section cannot be transplanted into the individual, the part passes in accordance with subsection (7) of this section in the absence of an express, contrary indication by the person making the anatomical gift.*
- (3) *If an anatomical gift of one (1) or more specific parts or of all parts is made in a document of gift that does not name a person described in subsection (1) of this section but identifies the purpose for which an anatomical gift may be used, the following rules apply:*
- (a) *If the part is an eye and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate eye bank;*
- (b) *If the part is tissue and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate tissue bank;*
- (c) *If the part is an organ and the gift is for the purpose of transplantation or therapy, the gift passes to the appropriate organ procurement organization as custodian of the organ; or*
- (d) *If the part is an organ, an eye, or tissue and the gift is for the purpose of research or education, the gift passes to the appropriate procurement organization.*
- (4) *For the purpose of subsection (3) of this section, if there is more than one (1) purpose of an anatomical gift set forth in the document of gift but the purposes are not set forth in any priority, the gift shall be used for transplantation or therapy, if suitable. If the gift cannot be used for transplantation or therapy, the gift may be used for research or education.*
- (5) *If an anatomical gift of one (1) or more specific parts is made in a document of gift that does not name a person described in subsection (1) of this section and does not identify the purpose of the gift, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.*
- (6) *If a document of gift specifies only a general intent to make an anatomical gift by words such as “donor”, “organ donor”, or “body donor”, or by a symbol or statement of similar import, the gift may be used only for transplantation or therapy, and the gift passes in accordance with subsection (7) of this section.*
- (7) *For purposes of subsections (2), (5), and (6) of this section the following rules apply:*
- (a) *If the part is an eye, the gift passes to the appropriate eye bank;*
- (b) *If the part is tissue, the gift passes to the appropriate tissue bank, except that a tissue bank shall not receive an ovum or sperm for the purpose of creating an embryo to be used in therapy, research, or education; or*
- (c) *If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.*
- (8) *An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (b) of subsection (1) of this section, passes to the organ procurement organization as custodian of the organ.*
- (9) *If an anatomical gift does not pass pursuant to subsections (1) to (8) of this section or the decedent’s body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.*
- (10) *A person may not accept an anatomical gift if the person knows that the gift was not effectively made under Section 4 or 9 of this Act or if the person knows that the decedent made a refusal under Section 6 of this Act that was not revoked. For purposes of the subsection, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.*
- (11) *Except as otherwise provided in paragraph (b) of subsection (1) of this section, nothing in Sections 1 to 25 of this Act affects the allocation of organs for transplantation or therapy.*

➔SECTION 11. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *The following persons shall make a reasonable search of an individual who the person reasonably believes is dead or near death for a document of gift or other information identifying the individual as a donor or as an individual who made a refusal:*
 - (a) *A law enforcement officer, firefighter, paramedic, or other emergency rescuer finding the individual; and*
 - (b) *If no other source of the information is immediately available, a hospital, as soon as practical after the individual's arrival at the hospital.*
- (2) *If a document of gift or a refusal to make an anatomical gift is located by the search required by paragraph (a) of subsection (1) of this section, and the individual or deceased individual to whom it relates is taken to a hospital, the person responsible for conducting the search shall send the document of gift or refusal to the hospital.*
- (3) *A person is not subject to criminal or civil liability for failing to discharge the duties imposed by this section but may be subject to administrative sanctions.*

➔SECTION 12. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A document of gift need not be delivered during the donor's lifetime to be effective.*
- (2) *Upon or after an individual's death, a person in possession of a document of gift or a refusal to make an anatomical gift with respect to the individual shall allow examination and copying of the document of gift or refusal by a person authorized to make or object to the making of an anatomical gift with respect to the individual or by a person to which the gift could pass under Section 10 of this Act.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *When a hospital refers an individual at or near death to a procurement organization, the organization shall make a reasonable search of the records of the Transportation Cabinet, the registry created under Section 19 of this Act, and any donor registry that it knows exists for the geographical area in which the individual resides to ascertain whether the individual has made an anatomical gift.*
- (2) *A procurement organization shall be allowed reasonable access to information in the records of the registries listed in subsection (1) of this section to ascertain whether an individual at or near death is a donor.*
- (3) *When a hospital refers an individual at or near death to a procurement organization, the organization may conduct any reasonable examination of records necessary to ensure the medical suitability of a part that is or could be the subject of an anatomical gift for transplantation, therapy, research, or education from a donor or a prospective donor. During the examination period, measures necessary to ensure the medical suitability of the part may not be withdrawn unless the hospital or procurement organization knows that the individual expressed a contrary intent. Measures necessary to ensure the medical suitability of the part from a prospective donor may be administered unless it is determined that the administration of those measures would not provide the prospective donor with appropriate end-of-life care, or it can be anticipated by reasonable medical judgment that such measures would result in or hasten the prospective donor's death.*
- (4) *Unless prohibited by law other than Sections 1 to 25 of this Act, at any time after a donor's death, the person to which a part passes under Section 10 of this Act may conduct any reasonable examination necessary to ensure the medical suitability of the body or part for its intended purpose.*
- (5) *Unless prohibited by law other than Sections 1 to 25 of this Act, an examination under subsection (3) or (4) of this section may include an examination of all medical and dental records of the donor or prospective donor.*
- (6) *Upon the death of a minor who was a donor or had signed a refusal, unless a procurement organization knows the minor is emancipated, the procurement organization shall conduct a reasonable search for the parents of the minor and provide the parents with an opportunity to revoke or amend the anatomical gift or revoke the refusal.*
- (7) *Upon referral by a hospital under subsection (1) of this section, a procurement organization shall make a reasonable search for any person listed in Section 8 of this Act having priority to make an anatomical gift on behalf of a prospective donor. If a procurement organization receives information that an anatomical*

gift to any other person was made, amended, or revoked, it shall promptly advise the other person of all relevant information.

- (8) *Subject to subsection (9) of Section 10 of this Act and Section 22 of this Act, the rights of the person to which a part passes under Section 10 of this Act are superior to the rights of all others with respect to the part. The person may accept or reject an anatomical gift in whole or in part. Subject to the terms of the document of gift and Sections 1 to 25 of this Act, a person that accepts an anatomical gift of an entire body may allow embalming, burial, or cremation, and use of remains in a funeral service. If the gift is of a part, the person to which the part passes under Section 10 of this act, upon the death of the donor and before embalming, burial, or cremation, shall cause the part to be removed without unnecessary mutilation.*
- (9) *Neither the physician who attends the decedent at death nor the physician who determines the time of the decedent's death may participate in the procedures for removing or transplanting a part from the decedent.*
- (10) *A physician or technician may remove a donated part from the body of a donor that the physician or technician is qualified to remove.*

➔SECTION 14. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Each hospital in this state shall enter into agreements or affiliations with procurement organizations for coordination of procurement and use of anatomical gifts.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Except as otherwise provided in subsection (2) of this section, a person that for valuable consideration, knowingly purchases or sells a part for transplantation or therapy if removal of a part from an individual is intended to occur after the individual's death shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years or be fined not more than fifty thousand dollars (\$50,000), or both.*
- (2) *A person may charge a reasonable amount for the removal, processing, preservation, quality control, storage, transportation, implantation, or disposal of a part.*

➔SECTION 16. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

A person that, in order to obtain a financial gain, intentionally falsifies, forges, conceals, defaces, or obliterates a document of gift, an amendment or revocation of a document of gift, or a refusal shall be imprisoned in the penitentiary for not less than one (1) nor more than five (5) years or be fined not more than fifty thousand dollars (\$50,000), or both.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A person that acts in accordance with Sections 1 to 25 of this Act or with the applicable anatomical gift law of another state, or attempts in good faith to do so, is not liable for the act in a civil action, criminal prosecution, or administrative proceeding.*
- (2) *Neither the person making an anatomical gift nor the donor's estate is liable for any injury or damage that results from the making or use of the gift.*
- (3) *In determining whether an anatomical gift has been made, amended, or revoked under Sections 1 to 25 of this Act, a person may rely upon representations of an individual listed in paragraph (b), (c), (d), (e), (f), or (g) of subsection (1) of Section 8 of this Act relating to the individual's relationship to the donor or prospective donor unless the person knows that the representation is untrue.*

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A document of gift is valid if executed in accordance with:*
 - (a) *Sections 1 to 25 of this Act;*
 - (b) *The laws of the state or country where it was executed; or*
 - (c) *The laws of the state or country where the person making the anatomical gift was domiciled, has a place of residence, or was a national at the time the document of gift was executed.*
- (2) *If a document of gift is valid under this section, the law of this state governs the interpretation of the document of gift.*
- (3) *A person may presume that a document of gift or amendment of an anatomical gift is valid unless that person knows that it was not validly executed or was revoked.*

➔Section 19. KRS 194A.750 is repealed and reenacted as a new section of KRS Chapter 311 to read as follows:

- (1) Contingent upon the availability of funding, the Cabinet for Health and Family Services shall facilitate the establishment of a statewide electronic registry for organ and tissue donation for transplantation purposes. The cabinet may contract with a public or private nonprofit entity to perform gatekeeper functions of the registry that include but are not limited to the operation, maintenance, privacy, and security of the registry.
- (2) An ongoing collaboration shall be established among the Transportation Cabinet, the Cabinet for Health and Family Services, the Kentucky Circuit Court Clerks Trust for Life, the Kentucky Hospital Association, the Kentucky Medical Association, and the federally certified organ and tissue procurement organizations that operate in Kentucky to develop strategies for the operation of the registry. Strategies shall include but not be limited to:
 - (a) Donor designation at the time of application or renewal of a driver's license;
 - (b) Online registration as a donor;
 - (c) Removal or exit from the registry;
 - (d) Timely access to the registry by relevant parties in accordance with federal laws and regulations relating to organ and tissue donation and procurement for transplantation purposes; and
 - (e) Evaluation of the effectiveness of the registry.
- (3) The cabinet may promulgate administrative regulations pursuant to KRS Chapter 13A to implement the provisions of this section.

➔SECTION 20. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Advance health-care directive" means a power of attorney for health care or a record signed or authorized by a prospective donor containing the prospective donor's direction concerning a health-care decision for the prospective donor;*
- (b) *"Declaration" means a record signed by a prospective donor specifying the circumstances under which a life support system may be withheld or withdrawn from the prospective donor; and*
- (c) *"Health-care decision" means any decision regarding the health care of the prospective donor.*

- (2) *If a prospective donor has a declaration or advance health-care directive and the terms of the declaration or directive and the express or implied terms of a potential anatomical gift are in conflict with regard to the administration of measures necessary to ensure the medical suitability of a part for transplantation or therapy, the prospective donor's attending physician and prospective donor shall confer to resolve the conflict. If the prospective donor is incapable of resolving the conflict, an agent acting under the prospective donor's declaration or directive, or, if none or the agent is not reasonably available, another person authorized by law other than Sections 1 to 25 of this Act to make health-care decisions on behalf of the prospective donor, shall act for the donor to resolve the conflict. Information relevant to the resolution of the conflict may be obtained from the appropriate procurement organization and any other person authorized to make an anatomical gift for the prospective donor under Section 8 of this Act. Before the resolution of the conflict, measures necessary to ensure the medical suitability of the part from a prospective donor may be administered unless it is determined that the administration of those measures would not provide the prospective donor appropriate end-of-life care, or it can be anticipated by reasonable medical judgment that such measures would result in or hasten the prospective donor's death. If the conflict is not resolved expeditiously, the direction of the declaration or advance directive controls.*

➔SECTION 21. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *A medical examiner, coroner, and organ and tissue procurement organizations shall cooperate with each other to maximize the opportunity to recover anatomical gifts for the purpose of transplantation and therapy.*
- (2) *If a medical examiner or coroner receives notice from a procurement organization that an anatomical gift might be available or was made with respect to a decedent whose body is under the jurisdiction of the*

medical examiner or coroner and a postmortem examination is going to be performed, unless the medical examiner or coroner denies recovery in accordance with Section 22 of this Act, the medical examiner or coroner or designee shall conduct, when practicable, a postmortem examination of the body or the part in a manner and within a period compatible with its preservation for the purposes of the gift.

- (3) *A part may not be removed from the body of a decedent under the jurisdiction of a medical examiner or coroner for transplantation and therapy unless the part is the subject of an anatomical gift of organs or tissues for transplantation.*

➔SECTION 22. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

- (1) *Upon request of a procurement organization, a medical examiner or coroner shall release to the procurement organization the name, contact information, and available medical and social history of a decedent whose body is under the jurisdiction of the medical examiner or coroner. If the decedent's body or part is medically suitable for transplantation or therapy, the medical examiner or coroner may release relevant postmortem examination results to the procurement organization. The procurement organization may make a subsequent disclosure of the postmortem examination results or other information received from the medical examiner or coroner only if relevant to transplantation or therapy.*
- (2) *The medical examiner or coroner may conduct a medicolegal investigation by reviewing all medical records, laboratory test results, X-rays, other diagnostic results, and other information that any person possesses about a donor or prospective donor whose body is under the jurisdiction of the medical examiner or coroner that the medical examiner or coroner determines may be relevant to the investigation.*
- (3) *A person that has any information requested by a medical examiner or coroner pursuant to subsection (2) of this section shall provide that information as expeditiously as possible to allow the medical examiner or coroner to conduct the medicolegal investigation within a period compatible with the preservation of parts for the purpose of transplantation or therapy.*
- (4) *If an anatomical gift has been or might be made of a part of a decedent whose body is under the jurisdiction of the medical examiner or coroner and a postmortem examination is not required, or the medical examiner or coroner determines that a postmortem examination is required but that the recovery of the part that is the subject of an anatomical gift will not interfere with the examination, the medical examiner or coroner and the procurement organization shall cooperate in the timely removal of the part from the decedent for the purpose of transplantation or therapy.*
- (5) *The medical examiner and procurement organizations shall enter into an agreement setting forth protocols and procedures to govern relations between the parties when an anatomical gift of a part from a decedent under the jurisdiction of the medical examiner has been or might be made, but the medical examiner believes that the recovery of the part could interfere with the postmortem investigation into the decedent's cause or manner of death. Decisions regarding the recovery of organs, tissue, and eyes from such a decedent shall be made in accordance with the agreement. In the event that the medical examiner or coroner denies recovery of an anatomical gift, the procurement organization may request the chief medical examiner to reconsider the denial and to permit the recovery to proceed. The parties shall evaluate the effectiveness of the protocols and procedures at regular intervals.*
- (6) *If the medical examiner or coroner or designee allows recovery of a part under subsection (4) or (5) of this section, the procurement organization, upon request, shall cause the physician or technician who removes the part to provide the medical examiner or coroner with a record describing the condition of the part, a biopsy, a photograph, and any other information and observations that would assist in the postmortem examination.*
- (7) *If the chief medical examiner or coroner determines that a medical examiner or designee is required to be present at a removal procedure under subsection (5) of this section, upon request the procurement organization requesting the recovery of the part shall reimburse the medical examiner, or coroner, or designee for the additional cost incurred in complying with subsection (5) of this section.*

➔SECTION 23. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

In applying and construing the Revised Uniform Anatomical Gift Act, Sections 1 to 25 of this Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

➔SECTION 24. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

The Revised Uniform Anatomical Gift Act, Sections 1 to 25 of this Act, modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. secs. 7001 et seq., but does not modify, limit, or supersede sec. 101(a) of that act, 15 U.S.C. sec. 7001, or authorize electronic delivery of any of the notices described in sec. 103(b) of that act, 15 U.S.C. sec. 7003(b).

➔SECTION 25. A NEW SECTION OF KRS CHAPTER 311 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 25 of this Act may be cited as the Revised Uniform Anatomical Gift Act.

➔Section 26. KRS 311.187 is repealed, reenacted, and amended as a new section of KRS Chapter 311 to read as follows:

- (1) In any case in which a patient is in need of a cornea or corneal tissue for a transplant, the coroner, medical examiner, or his appropriately qualified designee with training in ophthalmologic techniques may, upon the request of any person authorized under *Section 10 of this Act*~~[KRS 311.185]~~, provide or authorize the removal of the cornea or corneal tissue by a qualified physician under the following conditions:
 - (a) The decedent has been defined as a "coroner's case" as set forth by KRS 72.405(2), an autopsy has been ordered pursuant to KRS 72.410, and the cornea or corneal tissue are suitable for transplant;
 - (b) No objection by the next of kin is known by the coroner or medical examiner; and
 - (c) The removal of the cornea or corneal tissue will not interfere with the subsequent course of an investigation or autopsy or alter the postmortem facial appearance.
- (2) The medical examiner, coroner, or his appropriately qualified designee or any persons authorized under *Section 10 of this Act*~~[KRS 311.185]~~ shall not be held liable in any civil or criminal action for failure to obtain consent of the next of kin.
- (3) An individual certified by a department of ophthalmology in an accredited school of medicine as having received competent training, may remove corneas for gift after proper certification of death by a physician and in compliance with the provisions of *Sections 3, 8, 10, and 13 of this Act*~~[KRS 311.175]~~.

➔Section 27. KRS 311.243 is repealed and reenacted as a new section of KRS Chapter 311 to read as follows:

The family of any individual whose organ is donated for transplantation shall not be financially liable for any cost related to the evaluation of donor organ suitability and any cost of retrieval of the organ.

➔Section 28. KRS 194A.030 is amended to read as follows:

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

- (1) Office of the Secretary. Within the Office of the Secretary, there shall be an Office of Legislative and Public Affairs, an Office of Legal Services, and an Office of Inspector General.
 - (a) The Office of Legislative and Public Affairs shall be responsible for the development and implementation of the major legislative and policy initiatives of the cabinet, and shall include oversight of administrative hearings, legislative affairs, and communications with internal and external audiences of the cabinet. The Office of Legislative and Public Affairs shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050.
 - (b) The Office of Legal Services shall provide legal advice and assistance to all units of the cabinet in any legal action in which it may be involved. The Office of Legal Services shall employ all attorneys of the cabinet who serve the cabinet in the capacity of attorney, giving legal advice and opinions concerning the operation of all programs in the cabinet. The Office of Legal Services shall be headed by a general counsel who shall be appointed by the secretary with the approval of the Governor under KRS 12.050 and 12.210. The general counsel shall be the chief legal advisor to the secretary and shall be directly responsible to the secretary. The Attorney General, on the request of the secretary, may designate the general counsel as an assistant attorney general under the provisions of KRS 15.105.
 - (c) The Office of Inspector General shall be responsible for:
 1. The conduct of audits and investigations for detecting the perpetration of fraud or abuse of any program by any client, or by any vendor of services with whom the cabinet has contracted; and

the conduct of special investigations requested by the secretary, commissioners, or office heads of the cabinet into matters related to the cabinet or its programs;

2. Licensing and regulatory functions as the secretary may delegate;
3. Review of health facilities participating in transplant programs, as determined by the secretary, for the purpose of determining any violations of *Sections 1 to 25, 26, and 27 of this Act* ~~[KRS 311.165 to 311.235, 311.241, 311.243, 311.245, and 311.247]~~; and
4. The notification and forwarding of any information relevant to possible criminal violations to the appropriate prosecuting authority.

The Office of Inspector General shall be headed by an inspector general who shall be appointed by the secretary with the approval of the Governor. The inspector general shall be directly responsible to the secretary;

- (2) Department for Medicaid Services. The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act. The Department for Medicaid Services shall be headed by a commissioner for Medicaid services, who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for Medicaid services shall be a person who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner for Medicaid services shall exercise authority over the Department for Medicaid Services under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (3) Department for Public Health. The Department for Public Health shall develop and operate all programs of the cabinet that provide health services and all programs for assessing the health status of the population for the promotion of health and the prevention of disease, injury, disability, and premature death. This shall include but not be limited to oversight of the Division of Women's Physical and Mental Health. The Department for Public Health shall be headed by a commissioner for public health who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for public health shall be a duly licensed physician who by experience and training in administration and management is qualified to perform the duties of this office. The commissioner shall advise the head of each major organizational unit enumerated in this section on policies, plans, and programs relating to all matters of public health, including any actions necessary to safeguard the health of the citizens of the Commonwealth. The commissioner shall serve as chief medical officer of the Commonwealth. The commissioner for public health shall exercise authority over the Department for Public Health under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (4) Department for Mental Health and Mental Retardation Services. The Department for Mental Health and Mental Retardation Services shall develop and administer programs for the prevention of mental illness, mental retardation, brain injury, developmental disabilities, and substance abuse disorders and shall develop and administer an array of services and support for the treatment, habilitation, and rehabilitation of persons who have a mental illness or emotional disability, or who have mental retardation, brain injury, developmental disability, or a substance abuse disorder. The Department for Mental Health and Mental Retardation Services shall be headed by a commissioner for mental health and mental retardation who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for mental health and mental retardation shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for mental health and mental retardation shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (5) Commission for Children with Special Health Care Needs. The duties, responsibilities, and authority set out in KRS 200.460 to 200.490 shall be performed by the commission. The commission shall advocate the rights of children with disabilities and, to the extent that funds are available, shall provide the services and facilities for children with disabilities as are deemed appropriate by the commission. The commission shall be composed of seven (7) members appointed by the Governor to serve a term of office of four (4) years. The commission may promulgate administrative regulations under KRS Chapter 13A as may be necessary to implement and administer its responsibilities. The duties, responsibilities, and authority of the Commission for Children with Special Health Care Needs shall be performed through the office of the executive director of the commission. The executive director shall be appointed by the Governor under KRS 12.040, and the commission may at any time recommend the removal of the executive director upon filing with the Governor a full written statement of

its reasons for removal. The executive director shall report directly to the Commission for Children with Special Health Care Needs and serve as the commission's secretary;

- (6) Office of Health Policy. The Office of Health Policy shall lead efforts to coordinate health care policy, including Medicaid, mental health and mental retardation services, public health, certificate of need, health insurance, and the state employee health insurance program. The duties, responsibilities, and authority pertaining to the certificate of need functions and the licensure appeal functions, as set out in KRS Chapter 216B, shall be performed by this office. The Office of Health Policy shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor pursuant to KRS 12.050;
- (7) Department for Human Support Services. The Department for Human Support Services shall streamline the various responsibilities associated with the human services programs for which the cabinet is responsible. This shall include, but not be limited to, oversight of the Division of Child Abuse and Domestic Violence Services, the Division of Family Resource and Youth Services Centers, and the Kentucky Commission on Community Volunteerism and Services. The Department for Human Support Services shall be headed by a commissioner for human support services who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The commissioner for human support services shall be by training and experience in administration and management qualified to perform the duties of the office. The commissioner for human support services shall exercise authority over the department under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (8) Office of the Ombudsman. The Office of the Ombudsman shall provide professional support in the evaluation of programs, including but not limited to quality improvement and information analysis and reporting, including contract monitoring, program monitoring, and the development of quality service delivery, and a review and resolution of citizen complaints about programs or services of the cabinet when those complaints are unable to be resolved through normal administrative remedies. The Office of the Ombudsman shall place an emphasis on research and best practice and program accountability and shall monitor federal compliance. The Office of the Ombudsman shall be headed by an executive director who shall be appointed by the secretary with the approval of the Governor under KRS 12.050;
- (9) Office of Technology. The Office of Technology shall develop and maintain technology, technology infrastructure, and information management systems in support of all units of the cabinet. The Office of Technology shall be headed by a chief information officer who shall be appointed by the secretary with the approval of the Governor under KRS 12.050. The chief information officer shall exercise authority over the Office of Technology under the direction of the secretary and shall only fulfill those responsibilities as delegated by the secretary;
- (10) Office of Human Resource Management. The Office of Human Resource Management shall coordinate, oversee, and execute all personnel, training, and management functions of the cabinet. The office shall focus on the oversight, development, and implementation of quality personnel services; curriculum development and delivery of instruction to staff; the administration, management, and oversight of training operations; health, safety, and compliance training; and equal employment opportunity compliance functions. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (11) Office of Fiscal Services. The Office of Fiscal Services shall coordinate, oversee, and execute the accounting, treasury, and financial reporting functions of the cabinet. The office shall be headed by a chief financial officer appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (12) Office of Contract Oversight. The Office of Contract Oversight shall coordinate, oversee, and execute the contracting and procurement processes of the cabinet and shall maintain these processes in compliance with all applicable laws, rules, regulations, and procedures. The office shall ensure that the cabinet executes its contracting and procurement processes within the highest ethical standards and with the utmost integrity. The office shall oversee existing contracts to assure that the cabinet receives those services for which it has contracted or receives funds in payment for services that it has provided by contract, and shall have responsibility for determining that the cabinet maximizes the value of dollars spent by the cabinet for commodities and services. The office shall be headed by an executive director appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (13) Department for Community Based Services. The Department for Community Based Services shall administer and be responsible for child and adult protection, foster care and adoption, permanency, and services to

enhance family self-sufficiency, including child care, social services, public assistance, and family and child support. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;

- (14) Department for Disability Determination Services. The Department for Disability Determination Services shall serve as the state unit as required by Title II and Title XVI of the Social Security Act, and shall have responsibility for determining eligibility for disability for those citizens of the Commonwealth who file applications for disability with the Social Security Administration. The department shall also make determinations for citizens of the Commonwealth who make application for the Kentucky Transitional Assistance Program and determine medical exemptions for participants in the Kentucky Works Program. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050;
- (15) Department for Aging and Independent Living. The Department for Aging and Independent Living shall serve as the state unit as designated by the Administration on Aging Services under the Older Americans Act and shall have responsibility for administration of the federal community support services, in-home services, meals, family and caregiver support services, elder rights and legal assistance, senior community services employment program, the state health insurance assistance program, state home and community based services including home care, Alzheimer's respite services and the personal care attendant program, certifications of adult day care and assisted living facilities, the state Council on Alzheimer's Disease and other related disorders, and the Institute on Aging. The department shall also administer the Long-Term Care Ombudsman Program and the Medicaid Home and Community Based Waivers Consumer Directed Option (CDO) Program. The department shall serve as the information and assistance center for aging and disability services and administer multiple federal grants and other state initiatives. The department shall be headed by a commissioner appointed by the secretary with the approval of the Governor in accordance with KRS 12.050; and
- (16) The Governor's Office of Wellness and Physical Activity shall be responsible for establishing and implementing a health, wellness, and fitness program for Kentucky and to promote a healthy lifestyle for all citizens of the Commonwealth as defined in KRS 194A.085.

➔Section 29. KRS 216.267 is amended to read as follows:

- (1) The duties and responsibilities of the board shall be to implement and oversee the operation of an electronic health network in this Commonwealth, to be known as the Ke-HN.
- (2) The board shall:
 - (a) Exercise all of the administrative functions of the board;
 - (b) Appoint an advisory group that shall meet at least quarterly for the purpose of collaborating with health-care providers and payors, computer technology companies, telecommunication companies, and other affected entities to ensure input into the implementation of the Ke-HN;
 - (c) Review models for an electronic health network;
 - (d) Oversee the development of comparative business cases for the models reviewed and choose a model to be implemented in this Commonwealth. In selecting a model for implementation, the board shall consider the following elements:
 - 1. Various models and configurations for Ke-HN, either as developed from the board's research or as recommended by public and private experts. Each model or configuration shall be capable of supporting administrative and clinical functions listed in subsection (4) of this section, including the capability to integrate with an electronic Medicaid management information system, provide immediate health alerts to health-care providers across the state, support health-care provider education related to the identification and treatment of rare and unusual diseases, serve as a registry of the existence and location of advance directives related to health care or mental health treatment, and serve as a registry of organ donations. The model chosen may be implemented in phases, as determined by the board;
 - 2. Projected costs of the network, indicating those which would be allocated to state government, health-care providers, insurers, or others;

3. Options for financing the start-up, administrative, and maintenance costs, projected returns on investments, a timetable for realizing those returns, and any proposed subscription or transaction fees associated with the Ke-HN;
 4. Procedures intended to secure protected health information in accordance with HIPAA;
 5. Timetables for implementation of the Ke-HN, whether as a fully established network, in phases, or through the use of a pilot project or regional approach to the Ke-HN;
 6. Suggested incentives to promote the use of Ke-HN by health care providers and payors, and the Medicaid program; and
 7. Incentives, including but not limited to tax credits, low-interest loans, and grants, under Subchapters 22, 23, 24, 26, and 28 of KRS Chapter 154 for a company that develops or manufactures software necessary for the development of the Ke-HN, if the company meets all the eligibility requirements under the respective subchapter in KRS Chapter 154;
- (e) Receive comments from the advisory group created in paragraph (b) of this subsection;
- (f) Submit a description of the model chosen for implementation to the Legislative Research Commission for the opportunity for any comments;
- (g) If state funds are required for implementation of the model chosen, seek funding through the appropriations process;
- (h) Oversee the implementation of the model chosen subject to the appropriation of funds. Oversight shall include the following:
1. Developing any central interchange, including any central server and software;
 2. Developing the Ke-HN of providers and payors who participate in the network, which shall be on a voluntary basis;
 3. Making recommendations regarding the features and functions which shall be included in the distributed components of the network; and
 4. Performing an outcomes assessment of the benefits achieved by the network;
- (i) Identify and adopt standards for all computer systems communicating with the Ke-HN, including but not limited to:
1. The HIPAA standards for electronic transactions as the federal regulations become final, or more stringent standards for content and networking as determined by the board;
 2. Medical lexicon for administrative billing and clinical purposes;
 3. Procedure and billing codes; and
 4. Prevalent health care industry standards for software and networking that ensure that applications work on all types of computer systems and equipment;
- (j) Establish procedures to ensure that Ke-HN transactions are in compliance with HIPAA guidelines;
- (k) Facilitate the implementation of the federal HIPAA guidelines, and identify any additional variables specific to Kentucky that are required to be in transactions within the HIPAA guidelines;
- (l) Oversee the operations of the Ke-HN, including but not limited to making recommendations for financing the central interchange for the network and making recommendations to organizations about implementing the network in their respective organizations;
- (m) Oversee the development of the central interchange that supports communication between components of the Medicaid management information system;
- (n) Implement educational efforts about the Ke-HN;
- (o) Develop incentives for providers and payors to use the Ke-HN;

- (p) Identify options for, adopt, and implement approaches to various aspects of the Ke-HN necessary for its creation and operation, including but not limited to technology architecture, governance and oversight, development and implementation plans, and other areas identified by the board relating to its charge;
 - (q) Facilitate the development of private and public partnerships to build the Ke-HN;
 - (r) Assign priority in phasing in the network to geographical locations that are critical to homeland security and protection of the Commonwealth's energy production;
 - (s) Collaborate with federal agencies in the development and implementation of the Ke-HN as a demonstration model for the nation;
 - (t) Collaborate with the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
 - (u) Assist with the securing of state, federal, or private funding for the Kentucky Health Care Infrastructure Authority created under KRS 216.261;
 - (v) Stimulate the development of state and local population health information capacities;
 - (w) Promulgate administrative regulations in accordance with KRS Chapter 13A necessary to carry out the responsibilities of the board;
 - (x) Receive and dispense funds appropriated for its use by the General Assembly or may solicit, apply for, and receive any funds, property, or services from any person, governmental agency, or organization to carry out its statutory responsibilities;
 - (y) Report to the Governor, secretary of the Cabinet for Health and Family Services, commissioner of the Department of Commercialization and Innovation, Legislative Research Commission, Interim Joint Committee on Health and Welfare, and Interim Joint Committee on Banking and Insurance annually on the development of the Ke-HN and the impact on quality and cost of health care; and
 - (z) Collaborate with the Telehealth Board to link functions of the telehealth network to the Ke-HN, as determined by the Telehealth Board.
- (3) The board may:
- (a) Use any software program or expand any Medicaid management information system or electronic provider and payor network developed by the Medicaid program to support electronic health transactions between payors, insurers, health-care providers, and patients that are not Medicaid-related, unless prohibited by federal law or regulation;
 - (b) Contract, in accordance with KRS Chapter 45A, with an independent third party or a public or nonprofit e-health corporation for any service necessary to carry out the responsibilities of the board subject to the appropriation of funds;
 - (c) Award grants to health-care providers and payors to implement projects related to health informatics, with highest priority given to health-care providers and payors that serve rural and inner-city areas of this Commonwealth;
 - (d) Enter into an agreement with the University of Kentucky or the University of Louisville to develop comparative business models or implement any phase of the Ke-HN, using private or federal funds received by the university for the purpose designated in the agreement;
 - (e) Create a public or nonprofit e-health corporation to facilitate public-private collaboration in development and implementation of the Ke-HN.
 - 1. A public or nonprofit e-health organization may receive and expend funds appropriated by the General Assembly and may solicit, apply for, and receive any funds, grants, contracts, contributions, property, or services from any person, governmental agency, or other organization to carry out the responsibilities given to it by the Ke-HN Board.
 - 2. Funds appropriated to a public or nonprofit e-health corporation shall not lapse at the end of a state fiscal year and shall be used solely for the purposes for which the funds were appropriated.
 - 3. A public or nonprofit e-health corporation created under this paragraph shall:
 - a. Follow standard accounting practices;

- b. Submit to an annual financial audit by an independent auditor;
 - c. Submit a quarterly report of receipts and expenditures to the secretary of the Cabinet for Health and Family Services and the Ke-HN Board no later than sixty (60) days after the end of a quarter; and
 - d. Submit an annual financial and progress report to the Governor, the secretary of the Finance and Administration Cabinet, and the Interim Joint Committees on Appropriations and Revenue and Health and Welfare by September 30 following the end of each state fiscal year. The annual report shall include a report of receipts and expenditures, the financial audit, and a report on the status and progress of the corporation's initiatives; and
- (f) Promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of paragraph (e) of this subsection.
- (4) In its fully implemented form, the Kentucky e-Health Network is envisioned to support or encourage the following types of electronic transactions or activities that would be phased in over time:
 - (a) Automatic drug-drug interaction and allergy alerts;
 - (b) Automatic preventive medicine alerts;
 - (c) Electronic access to the results of laboratory, X-ray, or other diagnostic examinations;
 - (d) Disease management;
 - (e) Disease surveillance and reporting;
 - (f) Educational offerings for health-care providers;
 - (g) Health alert system and other applications related to homeland security;
 - (h) Links to drug formularies and cost information;
 - (i) Links to evidence-based medical practice;
 - (j) Links to patient educational materials;
 - (k) Medical record information transfer to other providers with the patient's consent;
 - (l) Physician order entry;
 - (m) Prescription drug tracking;
 - (n) Registries for vital statistics, cancer, case management, immunizations, and other public health registries;
 - (o) Registry of the existence and location of advance directives related to health care and mental health treatment;
 - (p) Registry of organ donations executed under *Sections 1 to 25 of this Act* ~~[KRS 311.165 to 311.235]~~;
 - (q) Secured electronic consultations between providers and patients;
 - (r) A single-source insurance credentialing system for health care providers; and
 - (s) The following transactions covered by HIPAA:
 - 1. Electronic health-care claims submission;
 - 2. Electronic payment;
 - 3. Coordination of benefits;
 - 4. Health-care claim status;
 - 5. Enrollment and disenrollment in a health plan;
 - 6. Eligibility for a health plan;
 - 7. Health plan premium payments;

8. Referral certification and authorization;
9. First report of injury; and
10. Health claims attachments.

➔Section 30. KRS 311.623 is amended to read as follows:

- (1) An adult with decisional capacity may make a written living will directive that does any or all of the following:
 - (a) Directs the withholding or withdrawal of life-prolonging treatment; or
 - (b) Directs the withholding or withdrawal of artificially provided nutrition or hydration; or
 - (c) Designates one (1) or more adults as a surrogate or successor surrogate to make health care decisions on behalf of the grantor. During any period in which two (2) or more surrogates are serving, all decisions shall be by unanimous consent of all the acting surrogates unless the advance directive provides otherwise; or
 - (d) Directs the giving of all or any part of the adult's body upon death for any purpose specified in *Section 10 of this Act* ~~[KRS 311.185]~~.
- (2) Except as provided in KRS 311.633, a living will directive made pursuant to this section shall be honored by a grantor's family, regular family physician or attending physician, and any health care facility of or in which the grantor is a patient.
- (3) For purposes of KRS 311.621 to 311.643, notification to any emergency medical responder as defined by KRS Chapter 211 or any paramedic as defined by KRS Chapter 311, of a person's authentic wish not to be resuscitated shall be recognized only if on a standard form or identification approved by the Kentucky Board of Medical Licensure, in consultation with the Cabinet for Health and Family Services.

➔Section 31. KRS 311.625 is amended to read as follows:

- (1) A living will directive made pursuant to KRS 311.623 shall be substantially in the following form, and may include other specific directions which are in accordance with accepted medical practice and not specifically prohibited by any other statute. If any other specific directions are held by a court of appropriate jurisdiction to be invalid, that invalidity shall not affect the directive.

"Living Will Directive

My wishes regarding life-prolonging treatment and artificially provided nutrition and hydration to be provided to me if I no longer have decisional capacity, have a terminal condition, or become permanently unconscious have been indicated by checking and initialing the appropriate lines below. By checking and initialing the appropriate lines, I specifically:

Designate as my health care surrogate(s) to make health care decisions for me in accordance with this directive when I no longer have decisional capacity. If refuses or is not able to act for me, I designate as my health care surrogate(s).

Any prior designation is revoked.

If I do not designate a surrogate, the following are my directions to my attending physician. If I have designated a surrogate, my surrogate shall comply with my wishes as indicated below:

Direct that treatment be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical treatment deemed necessary to alleviate pain.

DO NOT authorize that life-prolonging treatment be withheld or withdrawn.

Authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

DO NOT authorize the withholding or withdrawal of artificially provided food, water, or other artificially provided nourishment or fluids.

Authorize my surrogate, designated above, to withhold or withdraw artificially provided nourishment or fluids, or other treatment if the surrogate determines that withholding or withdrawing is in my best interest; but I do not mandate that withholding or withdrawing.

Authorize the giving of all or any part of my body upon death for any purpose specified in *Section 10 of this Act* ~~[KRS 311.185]~~.

DO NOT authorize the giving of all or any part of my body upon death.

In the absence of my ability to give directions regarding the use of life-prolonging treatment and artificially provided nutrition and hydration, it is my intention that this directive shall be honored by my attending physician, my family, and any surrogate designated pursuant to this directive as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of the refusal.

If I have been diagnosed as pregnant and that diagnosis is known to my attending physician, this directive shall have no force or effect during the course of my pregnancy.

I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed this day of, 19...

Signature and address of the grantor.

In our joint presence, the grantor, who is of sound mind and eighteen (18) years of age, or older, voluntarily dated and signed this writing or directed it to be dated and signed for the grantor.

Signature and address of witness.

Signature and address of witness.

OR

STATE OF KENTUCKY)

County)

Before me, the undersigned authority, came the grantor who is of sound mind and eighteen (18) years of age, or older, and acknowledged that he voluntarily dated and signed this writing or directed it to be signed and dated as above.

Done this day of, 19...

Signature of Notary Public or other officer.

Date commission expires:.....

Execution of this document restricts withholding and withdrawing of some medical procedures. Consult Kentucky Revised Statutes or your attorney."

- (2) An advance directive shall be in writing, dated, and signed by the grantor, or at the grantor's direction, and either witnessed by two (2) or more adults in the presence of the grantor and in the presence of each other, or acknowledged before a notary public or other person authorized to administer oaths. None of the following shall be a witness to or serve as a notary public or other person authorized to administer oaths in regard to any advance directive made under this section:
 - (a) A blood relative of the grantor;
 - (b) A beneficiary of the grantor under descent and distribution statutes of the Commonwealth;
 - (c) An employee of a health care facility in which the grantor is a patient, unless the employee serves as a notary public;
 - (d) An attending physician of the grantor; or
 - (e) Any person directly financially responsible for the grantor's health care.
- (3) A person designated as a surrogate pursuant to an advance directive may resign at any time by giving written notice to the grantor; to the immediate successor surrogate, if any; to the attending physician; and to any health care facility which is then waiting for the surrogate to make a health care decision.

- (4) An employee, owner, director, or officer of a health care facility where the grantor is a resident or patient shall not be designated or act as surrogate unless related to the grantor within the fourth degree of consanguinity or affinity or a member of the same religious order.

➔Section 32. KRS 186.412 is amended to read as follows:

- (1) (a) A person who was under the age of eighteen (18) years at the time of application for an instruction permit and is eighteen (18) years of age or older may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days and has completed a driver training program under KRS 186.410(4).
- (b) A person who has attained the age of eighteen (18) years and is under the age of twenty-one (21) at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least one hundred eighty (180) days.
- (c) A person who is at least twenty-one (21) years of age at the time of application for an instruction permit may apply for an operator's license to operate a motor vehicle, motorcycle, or moped if the person has possessed the valid instruction permit for at least thirty (30) days.
- (2) Except as provided in subsection (4) of this section, a person shall apply for an operator's license in the office of the circuit clerk of the county where the person lives. The application form shall require the person's:
- (a) Full legal name and signature;
- (b) Date of birth;
- (c) Social Security number, federal tax identification number, a letter from the Social Security Administration declining to issue a Social Security number, or a notarized affidavit from the applicant to the Transportation Cabinet swearing that the person either does not have a Social Security number, or refuses to divulge his or her Social Security number, based upon religious convictions;
- (d) Sex;
- (e) Present Kentucky resident address, exclusive of a post office box address alone;
- (f) Other information necessary to permit the application of United States citizens to also serve as an application for voter registration;
- (g) A brief physical description of the applicant;
- (h) A statement if the person has previously been licensed as an operator in another state;
- (i) Proof of the person's Kentucky residency, including but not limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement; and
- (j) Other information the cabinet may require by administrative regulation promulgated under KRS Chapter 13A.
- (3) A permanent resident shall present one (1) of the following documents issued by the United States Department of Justice, Immigration and Naturalization Service:
- (a) An I-551 card with a photograph of the applicant; or
- (b) A form with the photograph of the applicant or a passport with a photograph of the applicant on which the United States Department of Justice, Immigration and Naturalization Service has stamped the following: "Processed for I-551. Temporary evidence of lawful admission for permanent residence. Valid until ----. Employment authorized."
- (4) If the person is not a United States citizen and has not been granted status as a permanent resident of the United States, the person's application for an original operator's license shall be submitted to either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (a) The application form shall be accompanied by the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, authorizing the person to be in the United States and, if applicable, the person's international driving permit. The application form of a special status individual with a K-1 status shall be accompanied by an original or certified copy of the person's completed marriage license signed by the official who presided over the marriage ceremony

and two (2) witnesses. The application form of a special status individual with a K-1 status shall also include the person's petition to enter the United States for the purpose of marriage that contains the name of the prospective spouse. If the name of the prospective spouse on the petition does not match the name of the spouse on the marriage license, the Transportation Cabinet shall not be required to issue an operator's license.

- (b) The Transportation Cabinet shall, within fifteen (15) days of receipt of the application, review the person's documentation and determine if the person will be issued a Kentucky operator's license. If the review of an application will take longer than fifteen (15) days, the cabinet shall continue the review, but the cabinet shall be required to make a determination in all cases within thirty (30) days of receipt of the application.
 - (c) If the cabinet determines the person may be issued an operator's license, the cabinet shall issue the person an official form that the person shall take to the office of the circuit clerk of the county where the person resides. The circuit clerk shall review the person's documentation and the official form issued by the Transportation Cabinet. If the documentation is verified as accurate, and if the person successfully completes the examinations required under KRS 186.480, the circuit clerk shall issue the person a Kentucky operator's license.
 - (d) Except as provided in paragraphs (e) and (f) of this subsection, a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States shall apply to renew an operator's license, or obtain a duplicate operator's license, in the office of the circuit clerk in the county in which the person resides.
 - (e) If a person is renewing an operator's license or is applying for a duplicate license after July 15, 2002, and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, has not been reviewed by either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office under the provisions of this subsection, the person shall be required to apply for the renewal or duplicate with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
 - (f) If a person has any type of change in the person's immigration status, the person shall apply to renew an operator's license with either the Transportation Cabinet in Frankfort or a Transportation Cabinet field office.
- (5) The circuit clerk shall issue an operator's license bearing a color photograph of the applicant and other information the cabinet may deem appropriate. The photograph shall be taken by the circuit clerk so that one (1) exposure will photograph the applicant and the application simultaneously. When taking the photograph, the applicant shall be prohibited from wearing sunglasses or any other attire that obscures any features of the applicant's face as determined by the clerk. The clerk shall require an applicant to remove sunglasses or other obscuring attire before taking the photograph required by this subsection. Any person who refuses to remove sunglasses or other attire prohibited by this section as directed by the clerk shall be prohibited from receiving an operator's license. The operator's license issued by the cabinet shall not contain the applicant's Social Security number. The cabinet shall promulgate administrative regulations pursuant to KRS Chapter 13A that develop a numbering system that uses an identification system other than Social Security numbers. If an applicant does not have a Social Security number, or the applicant has submitted a notarized affidavit refusing to divulge his or her Social Security number based upon religious convictions, the Transportation Cabinet shall assign the applicant a unique identifying number. The license shall also designate by color coding and use the phrase "under 21" if the licensee is under the age of twenty-one (21); "CDL" if the license is issued pursuant to KRS Chapter 281A; or "under 21 CDL" if the licensee holds a commercial driver's license issued pursuant to KRS Chapter 281A and is under the age of twenty-one (21).
- (6) Every applicant shall make oath to the circuit clerk as to the truthfulness of the statements contained in the form.
- (7) (a) Except as provided in subsection (8) of this section, the circuit clerk shall issue a color photo personal identification card to any person who is a Kentucky resident and who resides in the county who complies with the provisions of this section and who applies in person in the office of the circuit clerk. An application for a personal identification card shall be accompanied by the same information as is required for an operator's license under subsection (2) of this section, except if a person does not have a fixed, permanent address, the person may use as proof of residency a signed letter from a homeless

- shelter, health care facility, or social service agency currently providing the person treatment or services and attesting that the person is a resident of Kentucky.
- (b) It shall be permissible for the application form for a personal identification card to include as a person's most current resident address a mailing address, post office box, or an address provided on a voter registration card.
 - (c) Every applicant for a personal identification card shall make an oath to the circuit clerk as to the truthfulness of the statements contained on the application form. If the applicant is not the legal owner or possessor of the address provided on the application form, the applicant shall swear that he or she has permission from the legal owner, authorized agent for the legal owner or possessor to use the address for purposes of obtaining the personal identification card. The personal identification card shall designate by color coding and by use of the phrase "under 21" if the applicant is under the age of twenty-one (21).
 - (d) A personal identification card shall be valid for a period of four (4) years from the date of issuance. Except as provided in this subsection, an initial or renewal personal identification card issued to a person who is not a United States citizen and who has not been granted status as a permanent resident of the United States and who is not a special status individual, but who is a Kentucky resident, shall be valid for a period equal to the length of time the person's documentation from the United States Department of Justice, Immigration and Naturalization Service is issued, or four (4) years, whichever time period is shorter. An initial or renewal personal identification card shall be valid for a period of two (2) years if the person is not a special status individual and the person's documentation issued by the United States Department of Justice, Immigration and Naturalization Service, is issued for an indefinite period of time and does not have an expiration date. The fee shall be the same as for a regular personal identification card.
 - (e) A personal identification card may be suspended or revoked if the person who was issued the card presents false or misleading information to the cabinet when applying for the card.
- (8) A person may be issued a personal identification card if the person currently holds a valid Kentucky instruction permit or operator's license. If a person's instruction permit or operator's license has been suspended or revoked, the person may be issued a temporary personal identification card. A temporary personal identification shall be renewed annually and may be surrendered when the person applies to have his or her instruction permit or operator's license reinstated.
 - (9) The Transportation Cabinet shall implement a voluntary statewide child identification program. The program shall issue a color photo personal identification card to a child two (2) to fifteen (15) years of age. Application for a child identification card shall be accompanied by a Social Security card and a birth certificate for the child or other proof of the child's date of birth as provided under subsection (2) of this section. The card shall contain the child's name and the toll-free number of the Kentucky Missing Persons Clearinghouse, Department of Kentucky State Police. The card shall not contain the child's Social Security number. The cabinet shall set a four dollar (\$4) fee for the child identification card. Two dollars (\$2) of the fee shall be used to cover the cabinet's cost for equipment and supplies. Two dollars (\$2) of the fee shall be an administrative fee of the circuit clerk for issuing the card which shall be deposited by the Administrative Office of the Courts into a trust and agency account for the circuit clerks and used for the purposes of hiring additional deputy clerks and providing salary adjustments to deputy clerks. The card shall expire every four (4) years on the child's birthday. Within the time period that the child identification card is valid, the card may be updated with a new photograph and information. The fee for an updated card shall be four dollars (\$4), with two dollars (\$2) of the fee going to the cabinet and two dollars (\$2) going to the Administrative Office of the Courts in the same manner as the fee for an initial card as described in this subsection. The descriptive data and a photo image of the child shall be stored in the Kentucky Driver's License Information System and may be retrieved and used by public agencies subject to the provisions of the Driver Privacy Protection Act, 18 U.S.C. sec. 2721, and may also be used by the Kentucky Missing Persons Clearinghouse.
 - (10) If a citizen of the Commonwealth currently serving in the United States military is stationed or assigned to a base or other location outside the boundaries of the Commonwealth, the citizen may renew a Class D operator's license issued under this section by mail. If the citizen was issued an "under 21" operator's license, upon the date of his or her twenty-first birthday, the "under 21" operator's license may be renewed for an operator's license that no longer contains the outdated reference to being "under 21."
 - (11) A citizen of the Commonwealth renewing an operator's license by mail under subsection (10) of this section may have a personal designee apply to the circuit clerk on behalf of the citizen to renew the citizen's operator's

license. An operator's license being renewed by mail under subsection (10) of this section shall be issued a license without a photograph. The license shall show in the space provided for the photograph the legend "valid without photo and signature."

- (12) (a) If a citizen of the Commonwealth has been serving in the United States military stationed or assigned to a base or other location outside the boundaries of the Commonwealth and has allowed his or her operator's license to expire, he or she shall, within ninety (90) days of returning to the Commonwealth, be permitted to renew his or her license without having to take a written test or road test.
- (b) A citizen who meets the criteria in paragraph (a) of this subsection shall not be convicted or cited for driving on an expired license prior to license renewal during the ninety (90) days after the person's return to the Commonwealth if the person can provide proof of his or her out-of-state service and dates of assignment.
- (c) A citizen who meets the criteria in paragraph (a) of this subsection and who does not renew his or her license within ninety (90) days of returning to the Commonwealth shall be required to comply with the provisions of this chapter governing renewal of a license that has expired.
- (d) If a citizen of the Commonwealth has been issued an "under 21" or "under 21 CDL" operator's license and the person is unable to renew the license on the date of his twenty-first birthday, the "under 21" or "under 21 CDL" operator's license shall be valid for ninety (90) days beyond the date of the person's twenty-first birthday.
- (13) The cabinet shall provide on each license to operate motor vehicles, motorcycles, and mopeds a space for the licensed driver's:
 - (a) Blood type;
 - (b) Medical insignia if the person provides evidence that a medical identification bracelet noting specific physical ailments or a drug allergy is being worn or other proof as may be required by the cabinet; and
 - (c) A statement whereby the owner of the license may certify in the presence of two (2) witnesses his willingness to make an anatomical gift under **Section 4 of this Act** ~~[KRS 311.195]~~.
- (14) If the motor vehicle operator denotes a physical ailment or drug allergy on the operator's license, he may apply for and shall receive, for a fee of one dollar (\$1) paid to the circuit clerk, a medical insignia decal that may be affixed to the lower left side of the front windshield of a motor vehicle.
- (15) An operator's license pursuant to this section shall be designated a Class D license.
- (16) A person shall not have more than one (1) license.
- (17) Upon marriage, a woman applying for an operator's license or a color photo personal identification card shall provide the circuit clerk with her marriage license and complete an affidavit form provided by the circuit court clerk. She shall have the following choices in regard to her full legal name as required in subsections (2) and (7) of this section:
 - (a) Use her husband's last name;
 - (b) Retain her maiden name;
 - (c) Use her maiden name hyphenated with her husband's last name;
 - (d) Use her maiden name as a middle name and her husband's last name as her last name; or
 - (e) In the case of a previous marriage, retain that husband's last name.
- (18) Upon issuing an operator's license or personal identification card, the clerk shall draw the recipient's attention to the location on the license relating to anatomical gifts under subsection (13)(c) of this section and offer to allow personnel in the clerk's office to serve as the witnesses to the recipient's certification of willingness to make an anatomical gift if the recipient is the person to whom the license is issued.

➔Section 33. KRS 216B.300 is amended to read as follows:

As used in KRS 216B.300 to 216B.320 and KRS 216B.990(5)~~(7)~~, unless the context requires otherwise:

- (1) "Cabinet" means the Cabinet for Health and Family Services or its designee. "Designee" means any agency established under KRS Chapter 211 or KRS 147A.050 whose duties related to this chapter shall be set forth in administrative regulation;
- (2) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (3) "Boarder" means a person who does not require supervision or assistance related to medication, activities of daily living, or a supervised plan of care; and
- (4) "Boarding home" means any home, facility, institution, lodging, or other establishment, however named, which accommodates three (3) or more adults not related by blood or marriage to the owner, operator, or manager, and which offers or holds itself out to offer room and board on a twenty-four (24) hour basis for hire or compensation. It shall not include any facility which is otherwise licensed and regulated by the cabinet or any hotel as defined in KRS 219.011(3).

➔Section 34. KRS 216B.990 is amended to read as follows:

- (1) Any person who, in willful violation of this chapter, operates a health facility or abortion facility without first obtaining a license or continues to operate a health facility or abortion facility after a final decision suspending or revoking a license shall be fined not less than five hundred dollars (\$500) nor more than ten thousand dollars (\$10,000) for each violation.
- (2) Any person who, in willful violation of this chapter, acquires major medical equipment, establishes a health facility, or obligates a capital expenditure without first obtaining a certificate of need, or after the applicable certificate of need has been withdrawn, shall be fined one percent (1%) of the capital expenditure involved but not less than five hundred dollars (\$500) for each violation.
- (3) Any hospital acting by or through its agents or employees which violates any provision of KRS 216B.400 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
- ~~[(4) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).]~~
- ~~[(5) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of this chapter.]~~
- ~~[(4) [(6)] Any health facility which willfully violates KRS 216B.250 shall be fined one hundred dollars (\$100) per day for failure to post required notices and one hundred dollars (\$100) per instance for willfully failing to provide an itemized statement within the required time frames.~~
- ~~[(5) [(7)] In addition to the civil penalties established under KRS 216B.306(1) and (4), any person who advertises, solicits boarders, or operates a boarding home without first obtaining a registration as required by KRS 216B.305 and any person who aids or abets the operation of a boarding home that is not registered shall be imprisoned for no more than twelve (12) months.~~
- ~~[(6) [(8)] Any person or entity establishing, managing, or operating an abortion facility or conducting the business of an abortion facility which otherwise violates any provision of this chapter or any administrative regulation promulgated thereunder regarding abortion facilities shall be subject to revocation or suspension of the license of the abortion facility. In addition, any violation of any provision of this chapter regarding abortion facilities or any administrative regulation related thereto by intent, fraud, deceit, unlawful design, willful and deliberate misrepresentation, or by careless, negligent, or incautious disregard for the statute or administrative regulation, either by persons acting individually or in concert with others, shall constitute a violation and shall be punishable by a fine not to exceed one thousand dollars (\$1,000) for each offense. Each day of continuing violation shall be considered a separate offense. The venue for prosecution of the violation shall be in any county of the state in which the violation, or any portion thereof, occurred.~~
- ~~[(7) [(9)] Any hospital acting by or through its agents or employees that violates any provision of KRS 216B.150 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for each violation.~~

➔Section 35. KRS 311.992 is amended to read as follows:

- ~~(1) Any hospital acting by or through its agents or employees which violates any provision of KRS 311.241 to 311.245 shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).~~
- ~~(2) Any hospital violating the provisions of KRS 311.241 may be denied a license to operate under the provisions of KRS Chapter 216B.~~
- ~~(3) Any person who intentionally or recklessly violates KRS 311.715 shall be guilty of a Class A misdemeanor.~~

➔ Section 36. The following KRS sections are repealed:

- 311.165 Definitions for KRS 311.165 to 311.235.
- 311.171 Prohibitions and restrictions relating to transplantable organs.
- 311.175 Persons who may execute an anatomical gift.
- 311.185 Persons who may become donees -- Purposes for which anatomical gifts may be made.
- 311.195 Manner of executing anatomical gifts.
- 311.205 Delivery of document of gift.
- 311.215 Amendment or revocation of the gift.
- 311.225 Rights and duties at death.
- 311.235 Uniformity of interpretation.
- 311.236 Disposition of organs given as anatomical gifts for which no donee is specified -- Reciprocal agreements among organ procurement organizations -- Restrictions upon out-of-state organ transfers.
- 311.237 Requirement to honor donor's wishes unless revoked.
- 311.241 Hospitals to establish organ-procurement protocol -- Notification to federally certified organ-procurement organization of potential availability of organ and identity of potential donor -- Reporting of information on sale, purchase, or brokering of transplantable organs.
- 311.245 Duty of hospital and allied health personnel to make known patient's intent to donate organ.
- 311.247 Duty of law enforcement and medical personnel in accident and coroners' cases.

Signed by Governor April 26, 2010.

CHAPTER 162

(SB 45)

AN ACT relating to state contracting practices.

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

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

As used in Sections 1 to 3 of this Act:

- (1) *"Contract" means any agreement of a public agency, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item; and*
- (2) *"Public agency" has the same meaning as in KRS 61.805.*

➔ SECTION 2. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

The General Assembly declares:

- (1) *A public purpose of the Commonwealth is served by providing preference to Kentucky residents in contracts by public agencies; and*
- (2) *Providing preference to Kentucky residents equalizes the competition with other states that provide preference to their residents.*

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to a contract being awarded to the lowest responsible and responsive bidder on a contract by a public agency, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder.*
- (2) *A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the contract is first advertised or announced as available for bidding:*
 - (a) *Is authorized to transact business in the Commonwealth; and*
 - (b) *Has for one (1) year prior to and through the date of the advertisement, filed Kentucky corporate income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.*
- (3) *A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.*
- (4) *If a procurement determination results in a tie between a resident bidder and a nonresident bidder, preference shall be given to the resident bidder.*
- (5) *This section shall apply to all contracts funded or controlled in whole or in part by a public agency.*
- (6) *The Finance and Administration Cabinet shall maintain a list of states that give to or require a preference for their own resident bidders, including details of the preference given to such bidders to be used by public agencies in determining resident bidder preferences. The cabinet shall also promulgate administrative regulations in accordance with KRS Chapter 13A establishing the procedure by which the preferences required by this section shall be given.*
- (7) *The preference for resident bidders shall not be given if the preference conflicts with federal law.*
- (8) *Any public agency soliciting or advertising for bids for contracts shall make the provisions of Sections 1 to 3 of this Act part of the solicitation or advertisement for bids.*

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

As used in this section:

- (1) *"Local government" means city, county, urban-county, consolidated local government, charter county, unified county, or special district.*
- (2) *For all contracts awarded by a local government, the local government shall apply the reciprocal preference for resident bidders described in Section 3 of this Act.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 176 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to a contract being awarded for the construction phase of a project, a resident bidder of the Commonwealth shall be given a preference against a nonresident bidder registered in any state that gives or requires a preference to bidders from that state. The preference shall be equal to the preference given or required by the state of the nonresident bidder and shall be applied after the opening of the bids.*
- (2) *A resident bidder is an individual, partnership, association, corporation, or other business entity that, on the date the department advertises for bids:*
 - (a) *Is authorized to transact business in the Commonwealth; and*
 - (b) *Has for one (1) year prior to and through the date of advertisement, filed Kentucky corporate or other business income taxes, made payments to the Kentucky unemployment insurance fund established in KRS 341.490, and maintained a Kentucky workers' compensation policy in effect.*
- (3) *A nonresident bidder is an individual, partnership, association, corporation, or other business entity that does not meet the requirements of subsection (2) of this section.*
- (4) *The department shall use the list and administrative regulations described in subsection (6) of Section 3 of this Act to determine the preferences to be given in awarding a contract.*
- (5) *The preference shall not be given if the preference conflicts with federal law.*

➔Section 6. KRS 45A.050 is amended to read as follows:

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

➔Section 7. KRS 45A.070 is amended to read as follows:

As used in KRS 45A.070 to 45A.180, unless the context in which they are used clearly requires a different meaning:

- (1) ***"Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and the reciprocal preference for a resident bidder required under Section 3 of this Act that have been communicated to the offerors as set forth in the invitation for bids.***
- (2) "Cost-reimbursement contract" means a contract under which the Commonwealth reimburses the contractor for those contract costs, within a stated ceiling, which are allowable and allocable in accordance with cost principles as provided in KRS 45A.215, and a fee, if any.
- (3)~~(2)~~ "Established catalogue price" means the price included in the most current catalogue, price list, schedule, or other form that:
 - (a) Is regularly maintained by the manufacturer or vendor of an item;
 - (b) Is either published or otherwise available for inspection by customers; and

- (c) States prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for that item.

~~{(3) "Best value" means a procurement in which the decision is based on the primary objective of meeting the specific business requirements and best interests of the Commonwealth. These decisions shall be based on objective and quantifiable criteria that shall include price and that have been communicated to the offerors as set forth in the invitation for bids.}~~

- (4) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in KRS 45A.080 of this code.
- (5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in KRS 45A.085, 45A.090, 45A.095, 45A.100, or 45A.180.
- (6) "Responsible bidder or offeror" means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- (7) "Responsive bidder" means a person who has submitted a bid under KRS 45A.080 which conforms in all material respects to the invitation for bids, so that all bidders may stand on equal footing with respect to the method and timeliness of submission and as to the substance of any resulting contract.

➔Section 8. KRS 45A.085 is amended to read as follows:

- (1) When, under administrative regulations promulgated by the secretary or under KRS 45A.180, the purchasing officer determines in writing that the use of competitive sealed bidding is not practicable, and except as provided in KRS 45A.095 and 45A.100, a contract may be awarded by competitive negotiation.
- (2) Adequate public notice of the request for proposals shall be given in the same manner and circumstances as provided in KRS 45A.080(3).
- (3) Contracts other than contracts for projects utilizing an alternative project delivery method under KRS 45A.180 may be competitively negotiated when it is determined in writing by the purchasing officer that the bids received by competitive sealed bidding either are unreasonable as to all or part of the requirements, or were not independently reached in open competition, and for which each competitive bidder has been notified of the intention to negotiate and is given reasonable opportunity to negotiate.
- (4) Contracts for projects utilizing an alternative project delivery method shall be processed in accordance with KRS 45A.180.
- (5) The request for proposals shall indicate the relative importance of price and other evaluation factors.
- (6) Award shall be made to the responsible *and responsive* offeror whose proposal is determined in writing to be the most advantageous to the Commonwealth, taking into consideration price and the evaluation factors set forth in the request for proposals *and the reciprocal preference for resident bidders required under Section 3 of this Act*.
- (7) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
- With respect to prices, where the prices are fixed by law or administrative regulation, except that consideration shall be given to competitive terms and conditions;
 - Where time of delivery or performance will not permit discussions; or
 - Where it can be clearly demonstrated and documented from the existence of adequate competition or prior experience with the particular supply, service, or construction item, that acceptance of an initial offer without discussion would result in fair and reasonable best value procurement, and the request for proposals notifies all offerors of the possibility that award may be made on the basis of the initial offers.

➔Section 9. KRS 45A.090 is amended to read as follows:

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.080 result in bid prices in excess of the funds available for the purchase, and the chief purchasing officer determines in writing:

- (a) That there are no additional funds available from any source so as to permit an award to the responsive and responsible bidder whose bid offers the best value; and
 - (b) The best interest of the state will not permit the delay attendant to a resolicitation under revised specifications, or for revised quantities, under competitive sealed bidding as provided in KRS 45A.080, then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.085(3) shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing to be the most responsive and responsible bidders, based on criteria contained in the bid invitation ***and the reciprocal preference for resident bidders under Section 3 of this Act.*** Such competitive negotiations shall be conducted under the following restrictions:
- (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
 - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of best value.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.095.

➔Section 10. KRS 45A.180 is amended to read as follows:

- (1) The secretary of the Finance and Administration Cabinet shall promulgate administrative regulations by October 15, 2003, providing for as many alternative methods of management of construction contracting as he ***or she*** may determine to be feasible; setting forth criteria to be used in determining which method of management of construction is to be used for a particular project; establishing a model process parallel to the selection committee procedures established in 45A.810 for the procurement of alternative project services of "construction management-at-risk" and "design-build," and for a "construction manager-agency;" and providing that the chief purchasing officer shall execute and include in the contract file a written statement setting forth the facts recommending that a particular method of management of construction contracting be used. The administrative regulations shall include the establishment of:
 - (a) The relative weighing between qualifications and price, ***including the reciprocal preference for resident bidders required under Section 3 of this Act;*** and
 - (b) The level of stipend, if any, available for the various types of projects.
- (2) When a request for proposal for a project utilizing an alternative project delivery method is issued, the contracting body shall transmit a copy of the request for proposal to the Capital Projects and Bond Oversight Committee staff.
- (3) Upon issuance of the contract for a project utilizing an alternative project delivery method, the contracting body shall submit the contract to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725. The contracting body shall insure the contract clearly identifies to the committee that an alternative project delivery method is being utilized. Upon disapproval of or objection to the contract by the committee, the contracting body shall determine whether the contract shall be revised to comply with the objections of the committee, be canceled, or remain in effect. Subsequent contract amendments relating to change orders shall not be required to be submitted to the Government Contract Review Committee.
- (4) A request for proposal for a project utilizing an alternative project delivery method under this section shall specifically state the evaluation factors and the relative weight of each to be used in the scoring of awards.
- (5) Any governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall adhere to the regulations promulgated under this section when utilizing an alternative project delivery method for capital projects, and shall report to legislative committees as specified in this section.
- (6) Any corporation as described by KRS 45.750(2)(c) or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth that manages its capital construction program

shall adhere to the regulations promulgated under this section when utilizing an alternative project delivery method for capital projects, and shall report to legislative committees as specified in this section.

➔Section 11. KRS 45A.182 is amended to read as follows:

- (1) When a capital project is to be constructed utilizing the design-build method in accordance with KRS 45A.180, a process parallel to the selection committee procedures established in KRS 45A.810 shall apply when procuring a design-build team and shall incorporate the following:
 - (a) The evaluation process may include a multiple phased proposal that is based on qualifications, experience, technical requirements, guaranteed maximum price, and other criteria as set forth in the request for proposal. The guaranteed maximum price component shall be submitted by the offeror independently of other documents and shall be held by the executive director of the Office of Facility Development and Efficiency.
 - (b) Each evaluator shall independently score each phase and indicate a total score for all evaluation factors as set forth in the request for proposal.
 - (c) Final phase proposals from the offerors on the short list shall be evaluated and scored by the evaluation committee members who shall not have knowledge of the guaranteed maximum price component. Each evaluator shall independently score the final phase proposals and indicate a total score. A total average score shall be calculated for each offeror. Then each offeror's respective score for the guaranteed maximum price ***and any reciprocal preference for resident bidders required under Section 3 of this Act*** shall be added. The offeror with the highest point total in the final phase shall receive the contract award unless the guaranteed maximum price proposal is in excess of the authorized budget. If two (2) or more of the offerors achieve the same highest point total at the end of the final phase scoring, the purchasing officer shall request best-and-final proposals from each offeror.
 - (d) If the guaranteed maximum price of the offeror with the highest point total in the final phase is greater than the amount of funds identified in the request for proposal, then competitive negotiations may be conducted with the offerors under the following restrictions:
 1. If discussion pertaining to the revision of the specifications or quantities are held, the offerors shall be afforded an opportunity to take part in such discussions.
 2. Written revisions of the specifications shall be made available to each of the offerors and shall provide for an expeditious response.
 3. Information derived from revised maximum guaranteed price proposals shall not be disclosed to competing offerors.
- (2) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that such action is taken in the best interest of the Commonwealth and approved by the purchasing officer.

➔Section 12. KRS 45A.365 is amended to read as follows:

- (1) All contracts or purchases shall be awarded by competitive sealed bidding, except as otherwise provided by KRS 45A.370 to 45A.385 and for the purchase of wholesale electric power by municipal utilities as provided in KRS 96.901(1).
- (2) The invitation for bids shall state that the award shall be made on the basis of the lowest bid price or the lowest evaluated bid price. If the latter is used, the objective measurable criteria to be utilized shall be set forth in the invitation for bids. ***The invitation for bids shall include the reciprocal preference for resident bidders described in Section 3 of this Act.***
- (3) Adequate public notice of the invitation for bids shall be given prior to the date set forth for the opening of bids. The notice may include posting on the Internet or publication in a newspaper of general circulation in the local jurisdiction not less than seven (7) days before the date set for the opening of the bids. The public notice shall include the time and place the bids will be opened and the time and place where the specifications may be obtained.
- (4) The bids shall be opened publicly at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and be open to public inspection. Electronic bid opening and posting of the required information for public viewing shall satisfy the requirements of this subsection.

- (5) A contract shall be awarded with reasonable promptness by written notice to the responsive and responsible bidder whose bid is either the lowest bid price or the lowest evaluated bid price *after the application of any reciprocal preference for resident bidders required by Section 3 of this Act*.
- (6) The local public agency may allow the withdrawal of a bid where there is a patent error on the face of the bid document, or where the bidder presents sufficient evidence, substantiated by bid worksheets, that the bid was based upon an error in the formulation of the bid price.

➔Section 13. KRS 45A.370 is amended to read as follows:

- (1) A local public agency may contract or purchase through competitive negotiation upon a written finding that:
 - (a) Specifications cannot be made sufficiently specific to permit award on the basis of either the lowest bid price or the lowest evaluated bid price, including, but not limited to, contracts for experimental or developmental research work, or highly complex equipment which requires technical discussions, and other nonstandard supplies, services, or construction; or
 - (b) Sealed bidding is inappropriate because the available sources of supply are limited, the time and place of performance cannot be determined in advance, the price is regulated by law, or a fixed price contract is not applicable; or
 - (c) The bid prices received through sealed bidding are unresponsive or unreasonable as to all or part of the requirements, or are identical or appear to have been the result of collusion; provided each responsible bidder is notified of the intention to negotiate and is given a reasonable opportunity to negotiate, and the negotiated price is lower than the lowest rejected bid by any responsible bidder.
- (2) Proposals shall be solicited through public notice pursuant to KRS 45A.365(3) or any other means which can be demonstrated to notify an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirement of the procurement. The request for proposals shall indicate the factors to be considered in the evaluation, *including the reciprocal preference for resident bidders required by Section 3 of this Act*, and the relative importance of each factor.
- (3) Written or oral discussions shall be conducted with all responsible offerors who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offerors. Discussions need not be conducted:
 - (a) With respect to prices, where such prices are fixed by law or regulation except that consideration shall be given to competitive terms and conditions; or
 - (b) Where time of delivery or performance will not permit discussions; or
 - (c) Where it can be clearly demonstrated and documented from the existence of adequate competition or accurate prior cost experience with that particular supply, service, or construction item that acceptance of an initial offer without discussion would result in fair and reasonable prices and the request for proposal notifies all offerors of the possibility that award may be made on the basis of initial offers.
- (4) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions. A request for proposals based on revised specifications or quantities shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price *after application of the reciprocal preference for resident bidders required by Section 3 of this Act* submitted by any responsive and responsible offeror. No discussion shall be conducted with offerors after submission of revised proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that an award is to be made without discussion except as herein provided.
- (5) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the local public agency based upon the evaluation factors set forth in the request for proposals *and the reciprocal preference for resident bidders required by Section 3 of this Act*.

➔Section 14. KRS 45A.375 is amended to read as follows:

- (1) In the event that all bids submitted pursuant to competitive sealed bidding under KRS 45A.365 result in bid prices in excess of the funds available for the purchase, and the local public agency determines in writing:

- (a) That there are no additional funds then available from any source so as to permit an award to the lowest responsive and responsible bidder; and
 - (b) The best interest of the local public agency will not permit the delay attendant to a resolicitation under revised specifications or revised quantities under competitive sealed bidding as provided in KRS 45A.365; then a negotiated award may be made as set forth in subsections (2) or (3) of this section.
- (2) Where there is more than one (1) bidder, competitive negotiations pursuant to KRS 45A.370 shall be conducted with the three (3) (two (2) if there are only two (2)) bidders determined in writing by the local public agency to be the lowest responsive and responsible bidders to the competitive sealed bid invitation ***after application of the reciprocal preference for resident bidders required in Section 3 of this Act***. Such competitive negotiations shall be conducted under the following restrictions:
- (a) If discussions pertaining to the revision of the specifications or quantities are held with any potential offeror, all other potential offerors shall be afforded an opportunity to take part in such discussions; and
 - (b) A request for proposals, based upon revised specifications or quantities, shall be issued as promptly as possible, shall provide for an expeditious response to the revised requirements, and shall be awarded upon the basis of the lowest bid price or lowest evaluated bid price submitted by any responsive and responsible offeror ***after application of the reciprocal preference for resident bidders required in Section 3 of this Act***. No discussion shall be conducted with offerors after submission of proposals except for a compelling reason as determined in writing by the local public agency. The request for proposals shall state that award is to be made without discussions except as herein provided.
- (3) Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder, a noncompetitive negotiated award may be made with such bidder in accordance with KRS 45A.380.
- (4) Where, after invitation for bids has been made in accordance with KRS 45A.365 and no bids have been received from responsive and responsible bidders, the local public agency may proceed to acquire the supplies, services, or construction by noncompetitive negotiations in accordance with KRS 45A.380.

➔Section 15. KRS 45A.695 is amended to read as follows:

- (1) Except as provided in subsection (8) of this section, no one shall begin work on a personal service contract entered into by any contracting body or incur expenditures under a tax incentive agreement until notification of the personal service contract or tax incentive agreement is filed with the committee. Each personal service contract shall have a cancellation clause not to exceed thirty (30) days notice to the contractee.
- (2) Each personal service contract, tax incentive agreement, and memorandum of agreement shall be filed with the committee prior to the effective date and shall be accompanied by a completed proof of necessity form as established by the committee by promulgation of an administrative regulation, or equivalent information if submitted electronically. The proof of necessity form shall document:
 - (a) The need for the service or benefit to the Commonwealth of the tax incentive agreement;
 - (b) For personal service contracts and memoranda of agreement, the unavailability of state personnel or the nonfeasibility of utilizing state personnel to perform the service;
 - (c) The total projected cost of the contract or agreement and source of funding;
 - (d) The total projected duration of the contract or tax incentive agreement;
 - (e) Payment information, in detail;
 - (f) In the case of memoranda of agreement or similar device, the reason for exchanging resources or responsibilities; and
 - (g) Such other information as the committee deems appropriate.
- (3) Adequate notice of the need for a personal service contract shall be given by the contracting body through a request for proposals. The request for proposals shall describe the services required, list the type of information and data required of each offeror, ~~and~~ state the relative importance of particular qualifications, ***and include the reciprocal preference for resident bidders required by Section 3 of this Act***.

- (4) The head of the contracting body or his or her designee may conduct discussions with any offeror who has submitted a proposal to determine the offeror's qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.
- (5) Award shall be made to the offeror determined by the head of the contracting body, or his or her designee, to be the best qualified of all offerors based on the evaluation factors set forth in the request for proposals and the negotiation of fair and reasonable compensation. If compensation cannot be agreed upon with the best qualified offeror and if proposals were submitted by one (1) or more other offerors determined to be qualified, negotiations may be conducted with the other offeror or offerors in the order of their respective qualification ranking. In this case, the contract may be awarded to the next best ranked offeror for a fair and reasonable compensation. All determinations of the qualification rankings of offerors by the head of the contracting body or a designee of the officer based on evaluation factors set forth in the request for proposals shall be made in writing. Written documentation shall be maintained concerning the final results of negotiation with each vendor and reasoning as to why each vendor was chosen.
- (6) The committee shall maintain a record or have readily accessible records of the date on which each personal service contract, tax incentive agreement, and memorandum of agreement was received and shall maintain or have access to electronic or paper files on all personal service contracts, tax incentive agreements, and memoranda of agreement. Except for records exempt from inspection under KRS 61.870 to 61.884, all personal service contracts, tax incentive agreements, and memoranda of agreement shall be made available for public inspection.
- (7) Payment on personal service contracts, tax incentive agreements, and memoranda of agreement submitted to the committee for approval shall not be made for services rendered or projects undertaken after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority by the secretary of the Finance and Administration Cabinet. All personal service contracts, tax incentive agreements, and memoranda of agreement shall contain a provision that stipulates that payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.
- (8) In the event of a governmental emergency as defined under KRS 45A.690, work may begin prior to filing notification of the personal service contract with the committee, if the secretary of the Finance and Administration Cabinet or his designee determines that the time involved in the normal review process would be detrimental to the Commonwealth's ability to act or procure the services and the normal process will not accommodate the governmental emergency. Payment shall not be made until written notification and explanation of the reasons for this action are forwarded to the committee.
- (9) If a governmental emergency exists as defined under KRS 45A.690 and work is authorized to begin on a personal service contract immediately, a copy of a statement, approved by the secretary of the Finance and Administration Cabinet or his designee, setting forth in detail the nature of the emergency shall be filed with the committee, along with a copy of the personal service contract.

➔Section 16. KRS 45A.745 is amended to read as follows:

- (1) A local public agency shall evaluate those firms submitting statements of interest in a proposed project according to the following criteria:
 - (a) Qualifications;
 - (b) Ability of professional personnel;
 - (c) Past record and experience;
 - (d) Performance data on file;
 - (e) Willingness to meet time and budget requirements;
 - (f) Location;
 - (g) Workload; and

- (h) Any other factors that the local public agency has set forth in writing, ***including the reciprocal preference for resident bidders required by Section 3 of this Act.***
- (2) The local public agency may then conduct discussions and require interviews with firms deemed to be the most qualified according to the criteria in subsection (1) of this section. Bids for the cost of the proposed project shall not be a factor in the evaluation of firms until negotiations are begun in accordance with KRS 45A.750.
- (3) The local public agency shall select, on the basis of the evaluations done in subsections (1) and (2) of this section, at least three (3) firms that are judged to be the most qualified and rank them accordingly. If fewer than three (3) firms are judged to be qualified, then those firms that remain shall be ranked in like manner.

➔Section 17. KRS 45A.825 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing architectural, engineering, or engineering-related services to the Finance and Administration Cabinet or engineering or engineering-related services to the Transportation Cabinet unless the relevant procuring agency has prequalified the firm prior to notice of a request for proposals to which that firm intends to respond.
- (b) A firm's prequalification shall remain in effect for twelve (12) months from the date of prequalification.
- (2) (a) The procuring agency shall consult with the user agency or user division before arriving at a request for proposals.
- (b) The request for proposals:
 - 1. Shall include as an evaluation factor whether the work tasks are to be performed in Kentucky or outside Kentucky;
 - 2. Shall indicate the relative weight of evaluation factors, ***including the reciprocal preference for resident bidders required by Section 3 of this Act;*** and
 - 3. Shall establish a timetable for:
 - a. The selection committee's first meeting held pursuant to subsection (6) of this section; and
 - b. The selection committee's activities conducted pursuant to subsection (7)(b) of this section or subsection (8)(b), (d), and (e) of this section, as appropriate.
- (c) The procuring agency shall provide adequate public notice of a request for proposals and notice of the materials that the procuring agency will provide to a firm to assist that firm in responding to a request for proposals. Those materials shall include, but not be limited to, the request for proposals and the project evaluation sheet to be used by the relevant selection committee. The notice shall also set a deadline for filing responses to a request for proposals with the procuring agency. It shall be the intent of this subsection that firms in all regions of the Commonwealth are given an equal opportunity to be selected.
- (3) A firm shall respond to a request for proposals by submitting before the deadline, a completed form, devised by the procuring agency, which states the firm's experience and its qualifications for the project as described in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (4) The employees of a procuring agency and the members of the selection committee shall keep all responses to a request for proposals confidential until the procuring agency has awarded a contract.
- (5) The secretary of the procuring agency shall designate a procuring agency employee to determine which firms have prequalified pursuant to subsection (1) of this section and have filed, in a timely fashion, responses to a request for proposals. He shall create a list of the firms which have done so and certify the list.
- (6) The procuring agency shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
 - (a) Elect from among the voting members of the committee a chairman and a vice chairman who shall hold their positions for the duration of the selection committee's participation in the project;
 - (b) Be provided with:
 - 1. The certified list created pursuant to subsection (5) of this section;

2. The firms' responses to the request for proposals;
 3. The request for proposals;
 4. The notice of request for proposals; and
 5. The project evaluation sheets; and
- (c) Discuss the future conduct of its affairs.
- (7) (a) When the Transportation Cabinet procures any engineering or engineering-related services, or when the Finance and Administration Cabinet procures architectural services for an estimated fee of less than fifty thousand dollars (\$50,000) or engineering or engineering-related services for an estimated fee of less than one hundred thousand dollars (\$100,000), this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
1. Evaluate the materials with which it has been provided;
 2. Select the three (3) most qualified firms and rank them in order of preference, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the ranking.
- (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
1. The three (3) finalists;
 2. Their ranking; and
 3. The rest of the procedure that will be followed in the awarding of the contract.
- (d) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (8) (a) When the Finance and Administration Cabinet is procuring architectural services for an estimated fee of fifty thousand dollars (\$50,000) or more or engineering or engineering-related services for an estimated fee of one hundred thousand dollars (\$100,000) or more, this subsection and subsection (9) of this section shall govern the procurement process.
- (b) The selection committee shall meet in executive session to:
1. Evaluate the materials with which it has been provided;
 2. Select, but not rank, the three (3) most qualified firms, based upon the weighted evaluation factors established in the request for proposals; and
 3. Notify the procuring agency of the three (3) finalists.
- (c) The procuring agency shall notify each firm which responded to the request for proposals, informing the firm of:
1. The three (3) finalists; and
 2. The rest of the procedure that will be followed in the awarding of the contract.
- (d) The selection committee shall interview the three (3) finalists, preferably on the same day. The finalists shall be interviewed one (1) at a time, and each interview shall be attended only by representatives of the finalist and members of the selection committee. Members of the selection committee shall keep confidential the substance of an interview until the procuring agency has awarded a contract.
- (e) The selection committee shall meet in executive session to:
1. Rank the three (3) finalists based upon the weighted evaluation factors established in the request for proposals; and
 2. Forward the ranking to the procuring agency.

- (f) The procuring agency shall notify each finalist, informing the finalist of:
 - 1. His ranking; and
 - 2. The rest of the procedure that will be followed in the awarding of the contract.
- (g) The procuring agency shall then begin negotiations with the top-ranked firm pursuant to subsection (9) of this section.
- (9) The secretary of the procuring agency shall designate a procuring agency employee as the procuring officer in charge of negotiating a contract with the top-ranked firm, as determined by the selection committee, at compensation which the procuring officer determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the employee shall take into account the estimated value of the services to be rendered, and the scope, complexity, and professional nature thereof. Should the procuring officer be unable to negotiate a satisfactory contract with the top-ranked firm, at a price that he considers fair and reasonable to the Commonwealth, he shall formally terminate negotiations with the firm. The procuring officer shall then undertake negotiations with the second-ranked firm. Failing accord with the second-ranked firm, the purchasing officer shall formally terminate negotiations. The purchasing officer shall then undertake negotiations with the third-ranked firm. Should the purchasing officer be unable to negotiate a satisfactory contract with any of the selected firms, he shall formally terminate negotiations, and the procurement procedure shall start again from the beginning pursuant to KRS 45A.810.
- (10) Once a procuring officer has negotiated a contract, the procuring agency shall notify the other finalists, informing them of:
 - (a) Which firm has successfully negotiated a contract; and
 - (b) The rest of the procedure that will be followed in the awarding of the contract.
- (11) Notwithstanding the provisions of KRS 45A.045, when the Transportation Cabinet is the procuring agency, the negotiated contract shall take effect without the approval of the secretary of the Finance and Administration Cabinet.
- (12) The provisions of this section shall not apply to the procurement of architectural, engineering, or engineering-related services under KRS 45A.837 and 45A.838.

➔Section 18. KRS 45A.853 is amended to read as follows:

- (1) (a) A firm shall not be considered for providing underwriting or bond counsel services unless the office has prequalified the firm prior to the date of issuance of the request for proposals.
- (b) A firm's prequalification shall remain in effect for twenty-four (24) months from the date of prequalification.
- (2) (a) The office shall consult with the bond issuing agency before arriving at a request for proposals. The request for proposals shall include, but not be limited to:
 - 1. The deadline for posing written questions about the request for proposals to the selection committee chairman elected pursuant to subsection (7)(b) of this section. This deadline shall occur before the deadline for filing a written response to a request for proposals;
 - 2. The deadline for filing a written response;
 - 3. A description of the services sought;
 - 4. A description of the skills required to perform the services;
 - 5. A description of evaluation factors and their relative weight, ***including the reciprocal preference for resident bidders required by Section 3 of this Act***; and
 - 6. In the case of a request for proposals from bond counsel firms, a requirement to submit proposed fees and expenses.
- (b) The office shall provide materials to the firms which have prequalified pursuant to subsection (1) of this section. The materials shall include, but not be limited to, the request for proposals and the evaluation sheet to be used by the relevant selection committee.

- (3) Prior to the deadline for posing questions established in the request for proposals, a firm may pose written questions about the request for proposals to the selection committee chairman. The chairman shall respond in writing. If, in the discretion of the chairman, an answer could have a material effect on other respondents' proposals, then both the question and the answer shall be distributed to all firms at the same time prior to the deadline for the filing of responses to the request for proposals.
- (4) A firm shall file a written response to the request for proposals prior to the deadline for filing a written response established in the request for proposals. A firm which fails to meet the deadline shall be barred from the procurement process.
- (5) The employees of the office and the members of the selection committee shall keep all responses to a request for proposals confidential until the contract to the winning firm has been awarded.
- (6) The executive director of the office shall designate an office employee to identify which firms prequalified pursuant to subsection (1) of this section and filed, in a timely fashion, a written response to a request for proposals. He shall create a list of firms which have done so and certify the list.
- (7) The office shall organize the selection committee's first meeting. At that meeting, each selection committee member shall sign a statement of confidentiality. Also, at that meeting, the selection committee shall:
 - (a) Determine whether a majority of the voting members are merit employees of the Commonwealth. If a majority are not merit employees, the selection committee shall disband, and another selection committee shall be selected pursuant to KRS 45A.843. A majority of its voting members shall be merit employees of the Commonwealth;
 - (b) Elect from among the voting members of the committee a chairman and vice chairman who shall hold their positions for the duration of the selection committee's involvement in the bond issuance;
 - (c) Be provided with:
 1. The certified list created pursuant to subsection (6) of this section;
 2. If applicable, an out-of-state firm's preference handicap created pursuant to KRS 45A.873(1);
 3. The request for proposals;
 4. Forms for keeping a log of all contacts with firms which have responded to the request for proposals as well as contacts with persons acting on behalf of those firms. Each committee member shall keep a log which shall summarize the subject of any contact and state the date and place of the contact; and
 5. The selection evaluation sheets; and
 - (d) Discuss the future conduct of its affairs.
- (8) At the second meeting of a selection committee, the committee shall:
 - (a) Be provided with the following:
 1. Written questions and answers produced pursuant to subsection (3) of this section; and
 2. The firms' responses to the request for proposals; and
 - (b) Discuss the future conduct of its affairs.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 160 IS CREATED TO READ AS FOLLOWS:

For all contracts awarded by a local board of education, the board shall apply the reciprocal preference for resident bidders described in Section 3 of this Act.

➔Section 20. KRS 162.070 is amended to read as follows:

The contracts for the erection of new school buildings, additions and repairs to old buildings, except additions or repairs not exceeding seven thousand five hundred dollars (\$7,500), shall be made by the board of education with the lowest and best responsible bidder complying with the terms of the letting, after advertisement for competitive bids pursuant to KRS Chapter 424, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work. The board shall advertise for bids on all supplies and equipment that it desires to

purchase, except where the amount of the purchase does not exceed seven thousand five hundred dollars (\$7,500), and shall accept the bid of the lowest and best bidder *taking into consideration the price and the reciprocal preference for resident bidders under Section 3 of this Act*, but the board may reject any and all bids.

➔Section 21. KRS 164A.575 is amended to read as follows:

- (1) The governing boards of each institution may elect to purchase interest in real property, contractual services, rentals of all types, supplies, materials, equipment, printing, and services, except that competitive bids may not be required for:
 - (a) Contractual services where no competition exists;
 - (b) Food, clothing, equipment, supplies, or other materials to be used in laboratory and experimental studies;
 - (c) Instructional materials available from only one (1) source;
 - (d) Where rates are fixed by law or ordinance;
 - (e) Library books;
 - (f) Commercial items that are purchased for resale;
 - (g) Professional, technical, scientific, or artistic services, but contracts shall be submitted in accordance with KRS 45A.690 to 45A.725;
 - (h) All other commodities, equipment, and services which, in the reasonable discretion of the board, are available from only one (1) source; and
 - (i) Interests in real property.
- (2) Nothing in this section shall deprive the boards from negotiating with vendors who maintain a General Services Administration price agreement with the United States of America or any agency thereof, provided, however, that no contract executed under this provision shall authorize a price higher than is contained in the contract between General Services Administration and the vendor affected.
- (3) The governing board shall require the institution to take and maintain inventories of plant and equipment.
- (4) The governing board shall establish procedures to identify items of common general usage among all departments to foster volume purchasing. It shall establish and enforce schedules for purchasing supplies, materials, and equipment.
- (5) The governing board shall have power to salvage, to exchange, and to condemn supplies, equipment, and real property.
- (6) Upon the approval of the secretary of the Finance and Administration Cabinet, the governing board may purchase or otherwise acquire all real property determined to be needed for the institution's use. The amount paid shall not exceed the appraised value as determined by a qualified appraiser or the value set by the eminent domain procedure. Any real property acquired under this section shall be in name of the Commonwealth for the use and benefit of the institution.
- (7) The governing board shall sell or otherwise dispose of all real or personal property of the institution which is not needed or has become unsuitable for public use, or would be more suitable consistent with the public interest for some other use, as determined by the board. The determination of the board shall be set forth in an order, and shall be reached only after review of a written request by the institution desiring to dispose of the property. Such request shall describe the property and state the reasons why the institution believes disposal should be effected. All instruments required by law to be recorded which convey any interest in any such real property so disposed of shall be executed and signed by the appropriate officer of the board. Unless the board deems it in the best interest of the institution to proceed otherwise, all such real or personal property shall be sold either by invitation of sealed bids or by public auction; provided, however, that the selling price of any interest in real property shall not be less than the appraised value thereof as determined by the Finance and Administration Cabinet or the Transportation Cabinet for such requirements of that department.
- (8) Real property or any interest therein may, subject to the provisions of KRS Chapter 45A, be purchased, leased, or otherwise acquired from any officer or employee of any board of the institution, based upon a written application by the grantor or lessor approved by the board, that the employee has not either himself or through any other person influenced or attempted to influence either the board requesting the purchase of the property.

In any case in which such an acquisition is consummated, the said request and finding shall be recorded and kept by the Secretary of State along with the other documents recorded pursuant to the provisions of KRS Chapter 56.

- (9) (a) As used in this section, "construction manager-agency," "construction management-at-risk," "design-bid-build," and "design-build" shall have the same meaning as in KRS 45A.030.
- (b) For capital construction projects, the procurement may be on a total design-bid-build basis, a design-build basis, or construction management-at-risk basis, whichever in the judgment of the board offers the best value to the taxpayer. ***Best value shall be determined in accordance with Section 7 of this Act.*** Proposals shall be reviewed by the institution's engineering staff to assure quality and value, and compliance with procurement procedures. All specifications shall be written to promote competition. Services for projects delivered on the design-build basis or construction management-at-risk basis shall be procured in accordance with KRS 45A.180 and the regulations promulgated in accordance with KRS 45A.180. Nothing in this section shall prohibit the procurement of construction manager-agency services.
- (10) The governing board shall attempt in every practicable way to insure the institution's supplying its real needs at the lowest possible cost. To accomplish this the board may enter into cooperative agreements with other public or private institutions of education or health care.
- (11) The governing board shall have control and supervision over all purchases of energy consuming equipment, supplies, and related equipment purchased or acquired by the institution, and shall designate by regulation the manner in which an energy consuming item will be purchased so as to promote energy conservation and acquisition of energy efficient products.
- (12) The governing board may negotiate directly for the purchase of contractual services, supplies, materials, or equipment in bona fide emergencies regardless of estimated costs. The existence of the emergency must be fully explained, in writing, by the vice president responsible for business affairs and such explanation must be approved by the university president. The letter and approval shall be filed with the record of all such purchases. Where practical, standard specifications shall be followed in making emergency purchases. A good faith effort shall be made to effect a competitively established price for emergency purchases.
- (13) (a) All governing boards that purchase agricultural products, as defined by KRS 45A.630, shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
- (b) If purchasing agricultural products, a governing board shall encourage the purchase of Kentucky-grown agricultural products in accordance with KRS 45A.645. If a governing board purchases agricultural products through a contract with a vendor or food service provider, the contract shall require that if Kentucky-grown agricultural products are purchased, the products shall be purchased in accordance with KRS 45A.645. Only contracts entered into or renewed after July 15, 2008, shall be required to comply with the provisions of this subsection.
- (c) All governing boards that purchase Kentucky-grown agricultural products shall, on or before January 1 of each year, provide a report to the Legislative Research Commission and to the Department of Agriculture describing the types, quantities, and costs of each product purchased. The report shall be completed on a form provided by the department.
- (14) ***Governing boards shall apply the reciprocal resident bidder preference described in Section 3 of this Act prior to the award of any contract.***

➔Section 22. KRS 164A.590 is amended to read as follows:

- (1) In the procurement of architectural and engineering services, the governing board of the institution shall encourage firms engaged in the lawful practice of their profession to submit an annual statement of qualifications and performance data.
- (2) When the need for architectural and engineering services arise for specific projects, the governing board shall evaluate current statements of qualifications and performance data on file with the Commonwealth, together with those that may be submitted by other firms and shall conduct discussions with no less than three (3) firms regarding anticipated design concepts and the relative utility of alternative methods of approach for furnishing

the required services, and ***after applying the reciprocal preference for resident bidders under Section 3 of this Act***, shall then select therefrom, in order of preference, based upon criteria established and published, no less than three (3) of the firms deemed to be the most highly qualified to provide the services required.

- (3) The governing board shall negotiate a contract with the highest qualified firm for architectural and engineering services at compensation which the governing board determines in writing to be fair and reasonable to the Commonwealth. In making this decision, the governing board shall take into account the estimated value of the services to be rendered, the scope, complexity, and professional nature thereof. Should the governing board be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price it determines to be fair and reasonable to the institution, negotiations with that firm shall be formally terminated. The governing board shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the governing board shall formally terminate negotiations with that firm. The governing board shall then undertake negotiations with the third most qualified firm. Should the governing board be unable to negotiate a satisfactory contract with any of the selected firms, it shall select additional firms in order of their competence and qualification and the governing board shall continue negotiations in accordance with this section until an agreement is reached.

➔Section 23. KRS 176.010 is amended to read as follows:

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

- (1) "Biennial highway construction plan" means the specifically identified individual transportation projects or portions thereof identified for funding during the upcoming biennium, which correspond to the first two (2) years of the six (6) year road plan;
- (2) "Department" means Department of Highways;
- (3) ***"Lowest and best bidder" includes the reciprocal resident bidder preference described in Section 5 of this Act;***
- (4) "Project" means the design, right-of-way, utility, or construction phase of a highway construction project;
- (5)~~[(4)]~~ "Roads" includes highways, bridges, and bridge approaches; and
- (6)~~[(5)]~~ "Six (6) year road plan" means the plan developed under KRS 176.430.

➔Section 24. KRS 45A.470 is amended to read as follows:

- (1) ***Notwithstanding any provision of this chapter to the contrary***, all governmental bodies and political subdivisions of this state shall, when purchasing commodities or services, give first preference to the products made by the Department of Corrections, Division of Prison Industries, as required by KRS 197.210. Second preference shall be given to ~~the Kentucky industries for the blind as described in KRS 163.450 to 163.470 through June 30, 2000, and thereafter to~~ any products produced by Kentucky Industries for the Blind, Incorporated, or any other nonprofit corporation ***that furthers*** ~~[with which the Office for the Blind contracts under KRS 163.480(2) to further]~~ the purposes of KRS Chapter 163, and agencies of individuals with severe disabilities as described in KRS 45A.465.
- (2) The Finance and Administration Cabinet shall make a list of commodities and services provided by these agencies and organizations available to all governmental bodies and political subdivisions. The list shall identify in detail the commodity or service the agency or organization may supply and the price.
- (3) The Finance and Administration Cabinet shall annually determine the current price range for the commodities and services offered from its experience in purchasing these commodities or services on the open market. The prices quoted by these agencies or organizations shall not exceed the current price range.
- (4) The Office for the Blind within the Education and Workforce Development Cabinet and qualified agencies for individuals with severe disabilities shall annually cause to be made available to the Finance and Administration Cabinet, lists of the products or services available.
- (5) If two (2) or more of the agencies or qualified nonprofit organizations wish to supply identical commodities or services, the Finance and Administration Cabinet shall conduct negotiations with the parties to determine which shall be awarded the contract. The decision of the Finance and Administration Cabinet shall be based upon quality of the commodity or service and the ability of the respective agencies to supply the commodity or service within the requested delivery time.

➔Section 25. The following KRS section is repealed:

45A.873 Preference for Kentucky firms.

Signed by Governor April 26, 2010.

CHAPTER 163

(SB 79)

AN ACT relating to licensed occupations.

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

➔Section 1. KRS 325.261 is amended to read as follows:

The license of "certified public accountant" shall be granted by the board to any person who satisfies the following requirements:

- (1) Is no less than eighteen (18) years of age;
- (2) Is of good moral character;
- (3) Has a baccalaureate degree or master's degree conferred by a college or university recognized by the board with a major or concentration~~[-program]~~ in accounting or its equivalent, as defined in administrative regulations promulgated by the board;
- (4) Passes a board-approved examination in accounting, auditing, and other related subjects as the board deems appropriate. To be eligible to apply for the examination, a person shall first satisfy the requirement of subsections (1) to (3) of this section;
- (5) Completes one hundred fifty (150) college semester hours that include a baccalaureate or masters degree conferred by a college or university recognized by the board with a major or concentration in accounting or its equivalent, as defined in administrative regulations promulgated by the board;
- (6) Obtains one (1) year of accounting or attest experience while employed in an accounting or auditing position in public practice, academia, industry, or government that shall be verified by a certified public accountant who, during the time being verified, held an active license to practice from any state. The one (1) year of experience required under this subsection shall be obtained:
 - (a) After the completion of the education requirements established in subsection (3) of this section; *and*
 - (b) ***Effective January 1, 2011, within five (5) years from the last day of the testing window during which the candidate successfully completed the examination;***
- (7) At the time of applying for a license is a United States citizen, a citizen of a foreign country who is legally residing in the United States, or is an employee of a public accounting firm, company, or an institution of postsecondary education located outside the United States, but which has an office or campus located in the United States; and
- (8) Submits a complete application for a license to practice as a certified public accountant in accordance with KRS 325.330.

➔Section 2. KRS 325.270 is amended to read as follows:

- (1) Examinations provided for in this chapter shall be authorized by the board.
- (2) The board may by administrative regulation adopt standards and fees governing the application and all examination policies and procedures.
- (3) The board may accept examination results from other states if:
 - (a) It is established that the examination is the same or substantially similar to the one adopted by the board; and
 - (b) The candidate has met the prerequisite examination requirements of this chapter.
- (4) ***An examination candidate who passes all sections of the examination after January 1, 2011, shall apply for a license within five (5) years from the last day of the testing window during which the examination***

candidate successfully completed the examination. Failure to apply for a license prior to the expiration of the five (5) year period shall result in cancellation of the examination scores unless the candidate completes the requirements to reinstate his or her scores, as established by administrative regulations promulgated by the board.

➔ Section 3. KRS 325.330 is amended to read as follows:

- (1) An applicant for ~~an initial issuance of a~~ license to practice shall:
 - (a) Satisfy all the requirements of KRS 325.261 and the administrative regulations promulgated by the board;
 - (b) Pay a fee not to exceed two hundred dollars (\$200); and
 - (c) Complete the application process established in an administrative regulation promulgated by the board.
- (2) Licenses shall be initially issued and renewed for a period of two (2) years, and shall expire on the first day of July in the year of expiration.
- (3) When an initial license to practice is granted, the board shall issue a nonrenewable document that indicates that the licensee has satisfied all requirements to receive an initial license as a certified public accountant.
- (4) An applicant for renewal of a license to practice who is in good standing shall complete the renewal procedure established in administrative regulations promulgated by the board that show that the applicant has:
 - (a) Fulfilled the requirement of continuing professional education ~~for professional enhancement~~ as defined by the board by administrative regulation, but not to exceed eighty (80) hours during a two (2) year calendar period ending December 31 preceding the July 1 renewal date. Certified public accountants not employed by a firm licensed by the board shall be required to achieve continuing professional education not to exceed sixty (60) hours during the two (2) year calendar period ending December 31 preceding the July 1 renewal date. The board shall provide for lesser, prorated requirements for applicants whose initial permit was issued substantially less than two (2) years prior to the renewal date;
 - (b) Paid a fee not to exceed two hundred dollars (\$200) biennially;
 - (c) Listed a permanent mailing address; and
 - (d) Designated as part of the renewal process whether the applicant is employed by a firm licensed by the board.
- (5) Any license not renewed by the expiration date shall automatically expire and the holder of the expired license shall be prohibited from practicing public accounting or holding himself out as a certified public accountant.
- (6)
 - (a) The holder of a license that from the date of renewal has been expired for a period shorter than six (6) months, and who has not violated any other provision of this chapter, may renew the license by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars (\$100).
 - (b) If the license has expired for a period longer than six (6) months, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for license reissuance, including a late penalty fee not to exceed two hundred dollars (\$200) and additional continuing professional education hours.
 - (c) Failure to receive a renewal notice shall not constitute an adequate reason for failing to renew the license to practice in a timely manner.
- (7)
 - (a) *Effective January 1, 2011, licenses shall expire on August 1 of the year in which they are to be renewed. Odd-numbered licenses shall expire on August 1 of every odd-numbered year and even-numbered licenses shall expire on August 1 of every even-numbered year.*
 - (b) *An applicant for renewal of a license to practice who is in good standing shall complete the renewal procedure, which shall be established by administrative regulation promulgated by the board and shall require the applicant to:*
 1. *Fulfill the continuing professional education requirements, as defined by the board by promulgation of administrative regulation, in accordance with the following:*

- a. *Certified public accountants employed by or operating a firm licensed by the board shall be required to complete no more than eighty (80) hours of continuing professional education during the two (2) year calendar period ending December 31 preceding the August 1 renewal date;*
- b. *Certified public accountants not employed by a firm licensed by the board shall be required to complete no more than sixty (60) hours during the two (2) year calendar period ending December 31 preceding the August 1 renewal date; and*
- c. *The board shall provide for lesser, prorated requirements for applicants whose initial license was issued substantially less than two (2) years prior to the renewal date;*
- 2. *Pay a fee not to exceed two hundred dollars (\$200) biennially;*
- 3. *Provide a permanent mailing address; and*
- 4. *Designate where the applicant is currently practicing.*
- (c) *Any license not renewed by the expiration date shall automatically expire, and the holder of the expired license shall be prohibited from practicing public accounting or holding himself or herself out as a certified public accountant.*
- (d) 1. *The holder of a license that has been expired for a period of less than one (1) month, who has not violated any other provision of this chapter, may renew the license by meeting all of the requirements of this section and paying a late penalty fee not to exceed one hundred dollars (\$100).*
- 2. *If the license has expired for a period longer than one (1) month, the applicant shall apply to the board for reinstatement. The board shall determine the eligibility for license reissuance, including a late penalty fee not to exceed two hundred dollars (\$200) and additional continuing professional education hours.*
- (8) The board may reduce or waive the license to practice renewal requirements upon written request of the licensee showing illness, extreme hardship, or age and complete retirement from practice as prescribed by the board by administrative regulation.
- ~~(9)~~~~(8)~~ A licensee shall notify the board in writing of a change in his or her mailing address within twenty (20) days following the effective date of the change in address.

➔Section 4. KRS 322.030 is amended to read as follows:

KRS 322.020 shall not apply to:

- (1) *The work of an employee or subordinate of:*
 - (a) *A professional engineer if the work is done under the direct supervision of and verified by the professional engineer*~~{pupil or engineer in training engaging in engineering under the direction of a professional engineer, if that practice does not include responsible charge of engineering};~~ or
 - (b) *A professional land surveyor if the work is done under the direct supervision of and verified by the professional land surveyor*~~{pupil or land surveyor in training engaging in land surveying under the direction of a professional land surveyor, if that practice does not include responsible charge of land surveying};~~
- (2) The practice of engineering or land surveying by officers and employees of the United States government while engaged in engineering or land surveying for the government;
- (3) The practice of engineering or land surveying by a person on property he or she leases or owns unless:
 - (a) The practice involves the public safety, health, or welfare; *or*
 - (b) The land surveying relates to the location or determination of any existing or proposed land boundaries;
~~or~~
 - ~~(c) The practice of engineering relates solely to the design or fabrication of manufactured products;~~

- (4) An engineer or land surveyor engaged solely as an officer or employee of a privately owned public utility or of a business entity engaged in interstate commerce as defined in the Interstate Commerce Act (24 Stat. 379) as amended;
- (5) A licensed architect who engages in the practice of engineering incident to the practice of architecture; *or*
- (6) ***The practice of engineering related solely to the design or fabrication of manufactured products. This exemption does not extend to site-specific engineering work for Kentucky locations.***

➔Section 5. KRS 322.050 is amended to read as follows:

- (1) To be eligible for licensure, an applicant shall be:
 - (a) Of good character and reputation; *and*
 - (b) ***Able to competently communicate in the English language.***
- (2) ~~An~~~~No~~ applicant shall ***not*** be eligible ~~for licensure if he or she~~~~who~~:
 - (a)~~[(1)]~~ Has been convicted of any felony ***within the past ten (10) years*** involving ***violence, sexual misconduct***~~moral turpitude~~, fraud, or deceit;
 - (b)~~[(2)]~~ Engages in conduct likely to deceive or defraud the public; or
 - (c)~~[(3)]~~ Is adjudged mentally disabled by a court of competent jurisdiction.

➔Section 6. KRS 322.060 is amended to read as follows:

- (1) (a) A business entity shall not engage in the practice of engineering in this state unless:
 - 1. At least one (1) of its principals ~~or~~~~officers~~, or a designated employee, is a professional engineer who is in responsible charge of the engineering work;~~and~~
 - 2. ***The professional engineer in responsible charge is located at the Kentucky office, if one (1) is maintained; and***
 - 3. The board has issued a permit to the business entity.
 - (b) To apply for a permit, a business entity offering engineering services in this state shall file with the board, on a form prescribed by the board:
 - 1. The names and addresses of all principals and officers;
 - 2. The license number of principals, officers, and employees who are professional engineers in responsible charge of the business entity's practice of engineering in this state; *and*
 - 3. A list of locations of all offices in this state at which the business entity offers professional engineering services;
 - 4. ~~A statement of qualifications for the permit; and~~
 - 5. ~~References as required by administrative regulations promulgated by the board.~~
 - (c) If more than one (1) place of business is maintained in this state, a professional engineer shall be in responsible charge of the engineering work for each office.
 - (d) A professional engineer who renders occasional, part-time, or consulting engineering services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the engineering work ***unless the professional engineer is an officer or owner of the business entity.***
 - (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status in those items listed in paragraph (b) of this subsection.
 - (f) Individual professional engineers providing engineering services ***as sole proprietors in the name listed on their individual license***~~in their own names~~, or architectural firms offering engineering services incident to their practice, shall be excluded from the provisions of this subsection.
- (2) (a) A business entity shall not engage in the practice of land surveying in this state unless:

1. At least one (1) of its principals ~~or~~ officers, or a designated employee, is a professional land surveyor in direct responsible charge of the land surveying work; ~~and~~
 2. ***The professional land surveyor in responsible charge is located at the Kentucky office, if one (1) is maintained; and***
 3. The board has issued a permit to the business entity.
- (b) To apply for a permit, a business entity offering land surveying services in this state shall file with the board, on a form prescribed by the board:
1. The names and addresses of all principals and officers;
 2. The license numbers of the principals, officers, and employees who are professional land surveyors in responsible charge of the practice of land surveying in this state; ***and***
 3. A list of locations of all offices in this state at which the business entity offers professional land surveying services;
 - ~~4. A statement of qualifications for the services relating to the permit; and~~
 - ~~5. References as required by administrative regulations promulgated by the board.~~
- (c) If more than one (1) place of business is maintained in this state, a professional land surveyor shall be in responsible charge of the land surveying work for each office.
- (d) A professional land surveyor who renders occasional, part-time, or consulting services to or for a business entity required to hold a permit from the board under this section shall not be designated as the person in responsible charge of the land surveying ***work unless the professional land surveyor is an officer or owner of the business entity*** ~~activity of the firm~~.
- (e) A business entity holding a permit shall advise the board in writing within thirty (30) days of any change of status.
- (f) Individual professional land surveyors providing land surveying services ***as sole proprietors in the name listed on their individual license*** ~~in their own names~~ shall be excluded from the provisions of this subsection.
- (3) (a) After a business entity applies for a professional engineering or professional land surveying permit and pays the proper fees, the board shall review the application and, upon approval, shall issue a permit.
- (b) The board may suspend, revoke, or refuse to issue a permit for violation of the code of professional practice and conduct.
- (c) The expiration date and renewal period for each permit and renewal procedures shall be established by administrative regulations promulgated by the board.
- (4) (a) No business entity shall be relieved of responsibility for the conduct or acts of its agent, employees, or officers by reason of its compliance with this section.
- (b) No individual practicing professional engineering or professional land surveying shall be relieved of the responsibility for professional services performed by reason of the individual's employment or relationship with a business entity holding a permit under this section.
- (5) Disciplinary action against a business entity holding a permit under this section shall be administered in the same manner and on the same grounds as disciplinary action against an individual professional engineer or professional land surveyor.
- (6) The Secretary of State shall not accept articles of incorporation, articles of organization, statement of qualification or certificate of limited partnership or an application for a certificate of authority to transact business as a foreign corporation, limited liability company or limited partnership or a statement of foreign qualification from a business entity which includes in its name or, among objects for which it is established, any of the words, "engineer," "engineering," "surveyor," "surveying," "land surveying," or any modification or derivation thereof, unless the filing with the Secretary of State includes a certificate or letter from the board.

➔Section 7. KRS 322.070 is amended to read as follows:

Applications for professional engineer or professional land surveyor licenses shall be on forms prescribed and furnished by the board and shall contain:

- (1) Statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical experience;
- (2) Not less than five (5) references, of which at least three (3) shall be from professional engineers or professional land surveyors, as may be appropriate, having personal knowledge of the applicant's engineering or land surveying experience; **and**
- (3) ~~If the primary language of the applicant is not English, evidence of English proficiency shall be included with the license application. The criteria to establish English proficiency shall be determined by administrative regulations promulgated by the board; and~~
- ~~(4)~~ Any other information as the board may require by administrative regulation.

References and employment verifications submitted under this section shall remain confidential records of the board.

➔Section 8. KRS 322.120 is amended to read as follows:

The board may, by promulgation of administrative regulations, establish requirements and fees for licensure by **endorsement**~~(reciprocity)~~ for those applicants who:

- (1) Hold a current license or certificate of registration to engage in the practice of engineering or land surveying issued by any state, territory, or possession of the United States, the District of Columbia, or any foreign country; and
- (2) Submit proof that the requirements and qualifications supporting that license or certificate:
 - (a) Are not in conflict with the provisions of this chapter; and
 - (b) Equal or exceed this state's requirements in effect on the date of issuance. However, the land surveyor applicant may be required to take examinations, as the board deems necessary, to determine the competency to engage in the practice of land surveying in this state. The examination shall include questions on laws, procedures, and practices pertaining to land surveying in this state.

➔Section 9. KRS 322.160 is amended to read as follows:

- (1) Licenses for individuals and permits for business entities shall be valid for not more than two (2) years from the date of issuance, unless renewed.
- (2) The executive director shall notify every licensee and permit holder at least one (1) month in advance of the pending expiration date.
 - (a) ~~Renewal notices shall be mailed to the licensee or permit holder at his or her last known address and state the amount of the renewal fee.~~
 - ~~(b)~~ All license renewals shall be completed on or before June 30 of the year of expiration.
 - ~~(b)(c)~~ All permit renewals shall be completed on or before December 31 of the year of expiration.
 - ~~(c)(d)~~ Each licensee or permit holder is responsible for notifying the board of any address change.
 - (d) *The responsibility for the timely renewal of a license or permit rests with the licensee or permit holder.***
- (3) The failure to renew shall not deprive a licensee or permit holder of the right of renewal, but the fee to be paid for the renewal shall be increased ten percent (10%) for each month or fraction of a month that payment of renewal is delayed. Any licensee or permit holder who fails to renew within one (1) year after expiration shall furnish the board with:
 - (a) Satisfactory evidence of qualification of continued practice. However, the board may require reexamination; and
 - (b) Evidence of completion of continuing education hours as required by KRS 322.290.
- (4) No licensee shall be required to pay renewal fees to the board during the time the licensee is on active duty in the Armed Forces of the United States.

- (a) Any licensee who has previously paid any renewal fee covering a period of time spent on active duty shall, upon filing with the board a copy of his or her discharge, be granted a license renewal without the payment of any fee.
- (b) The free renewal shall be for as many license years as the licensee was on active duty and which were covered in whole or in part by the previous payment of a renewal fee.
- (c) The continuing education requirement under KRS 322.290 shall be waived for those years the licensee was on active duty.

➔Section 10. KRS 322.180 is amended to read as follows:

The board may refuse to issue, refuse to renew, suspend, or revoke a license, may reprimand, place on probation, or admonish a licensee, may impose a fine on a licensee not to exceed one thousand dollars (\$1,000), or may impose any combination of these penalties when it finds that an applicant or licensee:

- (1) Engaged in any practice of fraud or deceit in obtaining a license;
- (2) Engaged in gross negligence, incompetence, or misconduct in the practice of engineering or land surveying;
- (3) Violated any provision of this chapter, the administrative regulations promulgated by the board, or the code of professional practice and conduct adopted by the board and incorporated in administrative regulations;
- (4) Employed, procured, or induced a person not licensed to practice engineering or land surveying in this state;
- (5) Aided or abetted a person not licensed to practice engineering or land surveying in this state;
- (6) Been granted a license upon a mistake of material fact;
- (7) Been convicted by a court of law of a felony ~~involving moral turpitude~~;
- (8) Become a chronic or persistent alcoholic or has become drug-addicted so that continued practice is dangerous to clients or to the public safety;
- (9) Developed a physical or mental disability or other condition so that continued practice is dangerous to clients or to the public safety;
- (10) Violated any order of suspension or the terms or conditions of any order of probation issued by the board;
- (11) Had a license or registration certificate to practice as an engineer or land surveyor denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause licensure to be denied, limited, suspended, probated, or revoked in this state;
- (12) Engaged in conduct likely to deceive or defraud the public;
- (13) Presented or attempted to use as his or her own the license, seal, or stamp of another;
- (14) Falsely impersonated any other licensee;
- (15) Attempted to use an expired, suspended, or revoked license;
- (16) Provided certification for any plan, specification, plat, report, or physical description not prepared by him or her or under his or her direct supervision; or
- (17) Applied the seal, stamp, signature, or title block of another professional engineer or professional land surveyor to a plan, specification, plat, report, or physical description that was not prepared by the other professional engineer or land surveyor.

➔Section 11. KRS 322.260 is amended to read as follows:

~~{(1) —}~~Every year the board shall elect a **chair**~~{chairman}~~, a vice **chair**~~{chairman}~~, and a secretary-treasurer.

~~{(2) — The secretary treasurer or any other officer or designee required to handle expenditures or disburse funds of the board shall give a surety bond to the board in a sum determined by the board. The premium on the bond shall be paid as a proper, necessary expense of the board.}~~

➔Section 12. KRS 322.330 is amended to read as follows:

The secretary-treasurer, or any other officer or designee properly authorized by the board, shall:

- (1) Receive and account for all money collected under this chapter and pay it into the State Treasury; and
- (2) ***Provide in an electronic format on the board's Web site***~~[Publish every two (2) years, and at other intervals as established by the board by promulgation of administrative regulations,]~~ a roster showing the names and~~[business]~~ addresses of all professional engineers, professional land surveyors, and business entities holding permits to practice engineering or land surveying in this state.~~[Copies of the roster shall be distributed to each professional engineer and professional land surveyor, filed with the Secretary of State, and distributed or sold to the public.]~~

➔Section 13. KRS 322.420 is amended to read as follows:

All fees paid to and collected by the board under~~[the provisions of]~~ this ***chapter***~~[section]~~ shall be deposited in a depository designated by the board and disbursed only at the direction of the board.~~[The officer or employee of the board who shall be designated to collect and disburse the funds represented by such fees shall be required to execute a bond, with corporate surety, in an amount to be determined by the board and reasonably calculated to cover the aggregate of such fees for a period of one (1) year.]~~

➔Section 14. KRS 322.450 is amended to read as follows:

The provisions of this chapter relating to the necessity of licensure to engage in the practice of land surveying shall not apply to:

- (1)~~—~~ any employee or employees of the Kentucky ***Transportation Cabinet***~~[Department of Highways]~~, or any other subdivision of the government of the Commonwealth of Kentucky, working under the direct supervision and control of a professional engineer or professional land surveyor;
- (2)~~—~~ Any person or persons engaged in the practice of land surveying which is limited to the measurement of crops or agricultural land area under any agricultural program sponsored by an agency of the federal government or of the State of Kentucky; or
- (3)~~—~~ Any employee or subordinate of a professional land surveyor whose work is done while under the direct supervision of, and is verified by, the professional land surveyor.

➔Section 15. KRS 322.550 is amended to read as follows:

- (1) ***Except as otherwise provided in this section, the following buildings, or additions to existing buildings, classified by use group shall require the services of an architect licensed in the Commonwealth of Kentucky:***
 - (a) ***Assembly use group having a capacity of one hundred (100) persons or more, except church buildings having a capacity of four hundred (400) persons or less or six thousand (6,000) square feet or less;***
 - (b) ***Business use group having a capacity of one hundred (100) persons or more;***
 - (c) ***Institutional use group, regardless of capacity;***
 - (d) ***Mercantile use group having a capacity of one hundred (100) persons or more;***
 - (e) ***Residential use group of more than twelve (12) dwelling units or having a capacity of fifty (50) persons or more;***
 - (f) ***Educational use groups, regardless of capacity; and***
 - (g) ***Mixed use group containing one (1) or more of the use group classifications and capacities listed under paragraphs (a) to (f) of this subsection.***
- (2) ***Alterations or new construction requiring compliance with the Kentucky Building Code for any building containing one (1) or more of the use group classifications and capacities listed under subsection (1) of this section shall require the services of an architect licensed in the Commonwealth of Kentucky, but if alterations or new construction predominately involve primarily structural components or mechanical or electrical systems, then services may be performed by one (1) or more licensed professional engineers.***
- (3) ***Buildings or additions to existing buildings, which contain one (1) or more of the use group classifications and capacities listed under subsection (1) of this section, shall require, in addition to the services of an architect, the services of one (1) or more licensed engineers.***

- (4) *The following buildings and additions to existing buildings, classified by use group, shall require the services of either a professional engineer or architect licensed in the Commonwealth of Kentucky:*
- (a) *Factory and industrial use group having a capacity of one hundred (100) persons or more;*
 - (b) *High hazard use group, regardless of capacity;*
 - (c) *Storage use group having a capacity of one hundred (100) persons or more; and*
 - (d) *Utility and miscellaneous use groups having a capacity of one hundred (100) persons or more.*
- (5) *The services required in subsections (1) to (4) of this section shall include the administration of construction contracts.*

~~If the drawings and specifications are signed by the authors with the true titles of their occupations as may be required by law, the following buildings and additions to buildings, classified by use group, shall require the services of a professional engineer or architect registered in this state:~~

- ~~(1) Factory and industrial use group having a capacity of one hundred (100) persons or more;~~
- ~~(2) High hazard use group, regardless of capacity;~~
- ~~(3) Storage use group having a capacity of one hundred (100) persons or more; and~~
- ~~(4) Miscellaneous use groups having a capacity of one hundred (100) persons or more.]~~

➔Section 16. The following KRS sections are repealed:

322.015 Effect of changes on existing registered engineers and registered land surveyors.

322.200 Hearing on charges.

322.310 Board to report annually to Governor.

➔Section 17. One professional land surveyor who is appointed under KRS 322.230 to fill a position on the State Board of Licensure for Professional Engineers and Land Surveyors after the previous term for that position has expired on December 31, 2010, shall serve a term of three years, after which appointments to this board position shall be for a term of four years.

Signed by Governor April 26, 2010.

CHAPTER 164

(HB 545)

AN ACT relating to the Kentucky teachers' retirement system and declaring an emergency.

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

➔SECTION 1. A NEW SECTION OF KRS 161.220 TO 161.716 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *The "Kentucky Teachers' Retirement System insurance trust fund is hereby created." All assets received in the trust fund shall be deemed trust funds to be held and applied solely as provided in this section. Assets of the trust fund shall not be used for any other purpose and shall not be used to pay the claims of creditors or any individual, person, or employer participating in the Kentucky Teachers' Retirement System.*
- (b) *The trust fund is intended to be established as a trust exempt from taxation under 26 U.S.C. sec. 115.*
- (2) *The trust fund is created for the purpose of providing a trust separate from the funds under KRS 161.420. Trust fund assets are dedicated for use for health benefits as provided in KRS 161.675, and as permitted under 26 U.S.C. secs. 105 and 106, for present and future eligible recipients of a retirement allowance from the Kentucky Teachers' Retirement System.*
- (3) *The trust fund shall be administered by the board of trustees established by KRS 161.250, and the board shall serve as trustees of the fund. The board shall manage the assets of the fund in the same general manner in which it administers the retirement funds, except that the asset allocation may differ and separate accounting and financial reporting shall be maintained for the trust fund.*

- (4) *In addition to the requirements of subsection (2) of this section, the employers participating in the trust fund are limited to the Commonwealth, political subdivisions of the Commonwealth, and entities whose income is exempt from taxation under 26 U.S.C. sec. 115. No other entity may participate in the trust fund.*
- (5) *If the trust fund is terminated, the assets in the trust fund may revert, after the payment of all liabilities, to the participating employers as determined by the board of trustees.*
- (6) *The board of trustees may promulgate administrative regulations and adopt procedures, and a trust document to implement this section and take all action necessary and appropriate to provide that the income of the trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.*
- (7) *The establishment of the Kentucky Teachers' Retirement System insurance trust fund shall not diminish or expand the rights of any recipients, employees, or dependents to health benefits.*
- (8) *The trust fund established under this section, at the direction of the board of trustees, shall consist of amounts, excluding those amounts that have been deposited to an account established pursuant to 26 U.S.C. sec. 401(h), that have been accumulated for the purpose of providing benefits as provided in KRS 161.675, including:*
 - (a) *Contributions required under KRS 161.550; and*
 - (b) *Interest income from the investments of the fund from contributions received by the fund, and from income earned on those investments.*

➔Section 2. KRS 161.155 is amended to read as follows:

- (1) As used in this section:
 - (a) "Teacher" shall mean any person for whom certification is required as a basis of employment in the common schools of the state;
 - (b) "Employee" shall mean any person, other than a teacher, employed in the public schools, whether on a full or part-time basis;
 - (c) "Immediate family" shall mean the teacher's or employee's spouse, children including stepchildren and foster children, grandchildren, daughters-in-law and sons-in law, brothers and sisters, parents and spouse's parents, and grandparents and spouse's grandparents, without reference to the location or residence of said relative, and any other blood relative who resides in the teacher's or employee's home;
 - (d) "Sick leave bank" shall mean an aggregation of sick leave days contributed by teachers or employees for use by teachers or employees who have exhausted all sick leave and other available paid leave days; and
 - (e) "Assault" shall mean an act that intentionally causes injury so significant that the victim is determined to be, by certification of a physician or surgeon duly qualified under KRS Chapter 342, incapable of performing the duties of his or her job.
- (2) Each district board of education shall allow to each teacher and full-time employee in its common school system not less than ten (10) days of sick leave during each school year, without deduction of salary. Sick leave shall be granted to a teacher or employee if he or she presents a personal affidavit or a certificate of a physician stating that the teacher or employee was ill, that the teacher or employee was absent for the purpose of attending to a member of his or her immediate family who was ill, or for the purpose of mourning a member of his or her immediate family. The ten (10) days of sick leave granted in this subsection may be taken by a teacher or employee on any ten (10) days of the school year and shall be granted in addition to accumulated sick leave days that have been credited to the teacher or employee under the provisions of subsection (4) of this section.
- (3) A school district shall coordinate among the income and benefits from workers' compensation, temporary disability retirement, and district payroll and benefits so that there is no loss of income or benefits to a teacher or employee for work time lost because of an assault while performing the teacher's or employee's assigned duties for a period of up to one (1) year after the assault. In the event a teacher or employee suffers an assault while performing his or her assigned duties that results in injuries that qualify the teacher or employee for workers' compensation benefits, the district shall provide leave to the teacher or employee for up to one (1) year after the assault with no loss of income or benefits under the following conditions:

- (a) The district shall pay the salary of the teacher or employee between the time of the assault and the time the teacher's or employee's workers' compensation income benefits take effect, or the time the teacher or employee is certified to return to work by a physician or surgeon duly qualified under KRS Chapter 342, whichever is sooner;
 - (b) The district shall pay, for up to one (1) year from the time of the assault, the difference between the salary of the teacher or employee and any workers' compensation income benefits received by the teacher or employee resulting from the assault. Payments by the district shall include payments for intermittent work time missed as a result of the assault during the one (1) year period. If the teacher's or employee's workers' compensation income benefits cease during the one (1) year period after the assault, the district shall also cease to make payments under this paragraph;
 - (c) The Commonwealth, through the Kentucky Department of Education, shall make the employer's health insurance contribution during the period that the district makes payments under paragraphs (a) and (b) of this subsection;
 - (d) The Commonwealth, through the Kentucky Department of Education, shall make the employer's contribution to the retirement system in which the teacher or employee is a member during the period that the district makes payments under paragraphs (a) and (b) of this subsection; and
 - (e) Payments to a teacher or employee under paragraphs (a) and (b) of this subsection shall be coordinated with workers' compensation benefits under KRS Chapter 342, disability retirement benefits for teachers under KRS 161.661 to 161.663, and disability retirement benefits for employees under KRS 61.600 to 61.621 and 78.545 so that the teacher or employee receives income equivalent to his or her full contracted salary, but in no event shall the combined payments exceed one hundred percent (100%) of the teacher's or employee's full contracted salary.
- (4) Days of sick leave not taken by an employee or a teacher during any school year shall accumulate without limitation and be credited to that employee or teacher. Accumulated sick leave may be taken in any school year. Any district board of education may, in its discretion, allow employees or teachers in its common school system sick leave in excess of the number of days prescribed in this section and may allow school district employees and teachers to use up to three (3) days' sick leave per school year for emergency leave pursuant to KRS 161.152(3). Any accumulated sick leave days credited to an employee or a teacher shall remain so credited in the event he or she transfers his or her place of employment from one (1) school district to another within the state or to the Kentucky Department of Education or transfers from the Department of Education to a school district.
- (5) Accumulated days of sick leave shall be granted to a teacher or employee if, prior to the opening day of the school year, an affidavit or a certificate of a physician is presented to the district board of education, stating that the teacher or employee is unable to commence his or her duties on the opening day of the school year, but will be able to assume his or her duties within a period of time that the board determines to be reasonable.
- (6) Any school teacher or employee may repurchase previously used sick leave days with the concurrence of the local school board by paying to the district an amount equal to the total of all costs associated with the used sick leave.
- (7) A district board of education may adopt a plan for a sick leave bank. The plan may include limitations upon the number of days a teacher or employee may annually contribute to the bank and limitations upon the number of days a teacher or employee may annually draw from the bank. Only those teachers or employees who contribute to the bank may draw upon the bank. Days contributed will be deducted from the days available to the contributing teacher or employee. The sick leave bank shall be administered in accordance with a policy adopted by the board of education.
- (8) (a) A district board of education shall establish a sick leave donation program to permit teachers or employees to voluntarily contribute sick leave to teachers or employees in the same school district who are in need of an extended absence from school. A teacher or employee who has accrued more than fifteen (15) days' sick leave may request the board of education to transfer a designated amount of sick leave to another teacher or employee who is authorized to receive the sick leave donated. A teacher or employee may not request an amount of sick leave be donated that reduces his or her sick leave balance to less than fifteen (15) days.
- (b) A teacher or employee may receive donations of sick leave if:

1. a. The teacher or employee or a member of his or her immediate family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused or is likely to cause the teacher or employee to be absent for at least ten (10) days; or
 - b. The teacher or employee suffers from a catastrophic loss to his or her personal or real property, due to either a natural disaster or fire, that either has caused or will likely cause the employee to be absent for at least ten (10) consecutive working days;
 2. The teacher's or employee's need for the absence and use of leave are certified by a licensed physician for leave requested under subparagraph 1.a. of this subsection;
 3. The teacher or employee has exhausted his or her accumulated sick leave, personal leave, and any other leave granted by the school district; and
 4. The teacher or employee has complied with the school district's policies governing the use of sick leave.
- (c) While a teacher or employee is on sick leave provided by this section, he or she shall be considered a school district employee, and his or her salary, wages, and other employee benefits shall not be affected.
 - (d) Any sick leave that remains unused, is not needed by a teacher or employee, and will not be needed in the future shall be returned to the teacher or employee donating the sick leave.
 - (e) The board of education shall adopt policies and procedures necessary to implement the sick leave donation program.
- (9) A teacher or employee may use up to thirty (30) days of sick leave following the birth or adoption of a child or children. Additional days may be used when the need is verified by a physician's statement.
 - (10) (a) After July 1, 1982, a district board of education may compensate, at the time of retirement or upon the death of a member in active contributing status at the time of death who was eligible to retire by reason of service, an employee or a teacher, or the estate of an employee or teacher, for each unused sick leave day. The rate of compensation for each unused sick leave day shall be based on a percentage of the daily salary rate calculated from the employee's or teacher's last annual salary, not to exceed thirty percent (30%). Payment for unused sick leave days shall be incorporated into the annual salary of the final year of service for inclusion in the calculation of ~~only~~ the employee's or teacher's ~~initial~~ retirement allowance **only at the time of his or her initial retirement**; provided that the member makes the regular retirement contribution for members on the sick leave payment. The accumulation of these days includes unused sick leave days held by the employee or teacher at the time of implementation of the program.
 - (b) For a teacher or employee who begins employment with a local school district on or after July 1, 2008, the maximum amount of unused sick leave days a district board of education may recognize in calculating the payment of compensation to the teacher or employee under this subsection shall not exceed three hundred (300) days.
 - (11) Any statute to the contrary notwithstanding, employees and teachers who transferred from the Department of Education to a school district, from a school district to the Department of Education, or from one (1) school district to another school district after July 15, 1981, shall receive credit for any unused sick leave to which the employee or teacher was entitled on the date of transfer. This credit shall be for the purposes set forth in subsection (10) of this section.
 - (12) The death benefit provided in subsection (10) of this section may be cited as the Baughn Benefit.

➔Section 3. KRS 161.220 is amended to read as follows:

As used in KRS 161.220 to 161.716 and 161.990:

- (1) "Retirement system" means the arrangement provided for in KRS 161.220 to 161.716 and 161.990 for payment of allowances to members;
- (2) "Retirement allowance" means the amount annually payable during the course of his natural life to a member who has been retired by reason of service;
- (3) "Disability allowance" means the amount annually payable to a member retired by reason of disability;

- (4) "Member" means the commissioner of education, deputy commissioners, associate commissioners, and all division directors in the State Department of Education, and any full-time teacher or professional occupying a position requiring certification or graduation from a four (4) year college or university, as a condition of employment, and who is employed by public boards, institutions, or agencies as follows:
- (a) Local boards of education;
 - (b) Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Western Kentucky University, and any community colleges established under the control of these universities;
 - (c) State-operated secondary area vocational education or area technology centers, Kentucky School for the Blind, and Kentucky School for the Deaf;
 - (d) The Education Professional Standards Board, other public education agencies as created by the General Assembly, and those members of the administrative staff of the Teachers' Retirement System of the State of Kentucky whom the board of trustees may designate by administrative regulation;
 - (e) Regional cooperative organizations formed by local boards of education or other public educational institutions listed in this subsection, for the purpose of providing educational services to the participating organizations;
 - (f) All full-time members of the staffs of the Kentucky Association of School Administrators, Kentucky Education Association, Kentucky Vocational Association, Kentucky High School Athletic Association, Kentucky Academic Association, and the Kentucky School Boards Association who were members of the Kentucky Teachers' Retirement System or were qualified for a position covered by the system at the time of employment by the association in the event that the board of directors of the respective association petitions to be included. The board of trustees of the Kentucky Teachers' Retirement System may designate by resolution whether part-time employees of the petitioning association are to be included. The state shall make no contributions on account of these employees, either full-time or part-time. The association shall make the employer's contributions, including any contribution that is specified under KRS 161.550. The provisions of this paragraph shall be applicable to persons in the employ of the associations on or subsequent to July 1, 1972;
 - (g) Employees of the Council on Postsecondary Education who were employees of the Department for Adult Education and Literacy and who were members of the Kentucky Teachers' Retirement System at the time the department was transferred to the council pursuant to Executive Order 2003-600;
 - (h) The Office of Career and Technical Education, except that the executive director shall not be a member;
 - (i) The Office of Vocational Rehabilitation;
 - (j) The Kentucky Educational Collaborative for State Agency Children;
 - (k) The Governor's Scholars Program;
 - (l) Any person who is retired for service from the retirement system and is reemployed by an employer identified in this subsection in a position that the board of trustees deems to be a member;
 - (m) Employees of the former Cabinet for Workforce Development who are transferred to the Kentucky Community and Technical College System and who occupy positions covered by the Kentucky Teachers' Retirement System shall remain in the Teachers' Retirement System. New employees occupying these positions, as well as newly created positions qualifying for Teachers' Retirement System coverage that would have previously been included in the former Cabinet for Workforce Development, shall be members of the Teachers' Retirement System;
 - (n) Effective January 1, 1998, employees of state community colleges who are transferred to the Kentucky Community and Technical College System shall continue to participate in federal old age, survivors, disability, and hospital insurance, and a retirement plan other than the Kentucky Teachers' Retirement System offered by Kentucky Community and Technical College System. New employees occupying positions in the Kentucky Community and Technical College System as referenced in KRS 164.5807(5) that would not have previously been included in the former Cabinet for Workforce Development, shall participate in federal old age, survivors, disability, and hospital insurance and have a choice at the time of employment of participating in a retirement plan provided by the Kentucky Community and

Technical College System, including participation in the Kentucky Teachers' Retirement System, on the same basis as faculty of the state universities as provided in KRS 161.540 and 161.620;

- (o) Employees of the Office of General Counsel, the Office of Budget and Administrative Services, and the Office of Quality and Human Resources within the Office of the Secretary of the former Cabinet for Workforce Development and the commissioners of the former Department for Adult Education and Literacy and the former Department for Technical Education who were contributing to the Kentucky Teachers' Retirement System as of July 15, 2000; and
 - (p) Employees of the Kentucky Department of Education only who are graduates of a four (4) year college or university, notwithstanding a substitution clause within a job classification, and who are serving in a professional ~~job classification~~~~position~~ as defined by the department.
- (5) "Present teacher" means any teacher who was a teacher on or before July 1, 1940, and became a member of the retirement system created by 1938 (1st Extra. Sess.) Ky. Acts ch. 1, on the date of the inauguration of the system or within one (1) year after that date, and any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and continued to be a member of the system until he, with the membership of the local retirement system, became a member of the state Teachers' Retirement System or who becomes a member under the provisions of KRS 161.470(4);
- (6) "New teacher" means any member not a present teacher;
- (7) "Prior service" means the number of years during which the member was a teacher in Kentucky prior to July 1, 1941, except that not more than thirty (30) years' prior service shall be allowed or credited to any teacher;
- (8) "Subsequent service" means the number of years during which the teacher is a member of the Teachers' Retirement System after July 1, 1941;
- (9) "Final average salary" means the average of the five (5) highest annual salaries which the member has received for service in a covered position and on which the member has made contributions, or on which the public board, institution, or agency has picked-up member contributions pursuant to KRS 161.540(2), or the average of the five (5) years of highest salaries as defined in KRS 61.680(2)(a), which shall include picked-up member contributions. Additionally, the board of trustees may approve a final average salary based upon the average of the three (3) highest salaries for members who are at least fifty-five (55) years of age and have a minimum of twenty-seven (27) years of Kentucky service credit. However, if any of the five (5) or three (3) highest annual salaries used to calculate the final average salary was paid within the three (3) years immediately prior to the date of the member's retirement, the amount of salary to be included for each of those three (3) years for the purpose of calculating the final average salary shall be limited to the lesser of:
- (a) The member's actual salary; or
 - (b) The member's annual salary that was used for retirement purposes during each of the prior three (3) years, plus a percentage increase equal to the percentage increase received by all other members employed by the public board, institution, or agency, or for members of school districts, the highest percentage increase received by members on any one (1) rank and step of the salary schedule of the school district. The increase shall be computed on the salary that was used for retirement purposes.

This limitation shall not apply if the member receives an increase in salary in a percentage exceeding that received by the other members, and this increase was accompanied by a corresponding change in position or in length of employment. This limitation shall also not apply to the payment to a member for accrued annual leave if the individual becomes a member before July 1, 2008, or accrued sick leave which is authorized by statute and which shall be included as part of a retiring member's annual compensation for the member's last year of active service;

- (10) "Annual compensation" means the total salary received by a member as compensation for all services performed in employment covered by the retirement system during a fiscal year. Annual compensation shall not include payment for any benefit or salary adjustments made by the public board, institution, or agency to the member or on behalf of the member which is not available as a benefit or salary adjustment to other members employed by that public board, institution, or agency. Annual compensation shall not include the salary supplement received by a member under KRS 157.197(2)(c), 158.6455, or 158.782 on or after July 1, 1996. Under no circumstances shall annual compensation include compensation that is earned by a member while on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section. In the event that federal law requires that a member continue membership in the

retirement system even though the member is on assignment to an organization or agency that is not a public board, institution, or agency listed in subsection (4) of this section, the member's annual compensation for retirement purposes shall be deemed to be the annual compensation, as limited by subsection (9) of this section, last earned by the member while still employed solely by and providing services directly to a public board, institution, or agency listed in subsection (4) of this section. The board of trustees shall determine if any benefit or salary adjustment qualifies as annual compensation. For an individual who becomes a member on or after July 1, 2008, annual compensation shall not include lump-sum payments upon termination of employment for accumulated annual or compensatory leave;

- (11) "Age of member" means the age attained on the first day of the month immediately following the birthdate of the member. This definition is limited to retirement eligibility and does not apply to tenure of members;
- (12) "Employ," and derivatives thereof, means relationships under which an individual provides services to an employer as an employee, as an independent contractor, as an employee of a third party, or under any other arrangement as long as the services provided to the employer are provided in a position that would otherwise be covered by the Kentucky Teachers' Retirement System and as long as the services are being provided to a public board, institution, or agency listed in subsection (4) of this section;
- (13) "Regular interest" means interest at three percent (3%) per annum, except for an individual who becomes a member on or after July 1, 2008, "regular interest" means interest at two and one-half percent (2.5%) per annum for purposes of crediting interest to the teacher savings account or any other contributions made by the employee that are refundable to the employee upon termination of employment;
- (14) "Accumulated contributions" means the contributions of a member to the teachers' savings fund, including picked-up member contributions as described in KRS 161.540(2), plus accrued regular interest;
- (15) "Annuitant" means a person who receives a retirement allowance or a disability allowance;
- (16) "Local retirement system" means any teacher retirement or annuity system created in any public school district in Kentucky in accordance with the laws of Kentucky;
- (17) "Fiscal year" means the twelve (12) month period from July 1 to June 30. The retirement plan year is concurrent with this fiscal year. A contract for a member employed by a local board of education may not exceed two hundred sixty-one (261) days in the fiscal year;
- (18) "Public schools" means the schools and other institutions mentioned in subsection (4) of this section;
- (19) "Dependent" as used in KRS 161.520 and 161.525 means a person who was receiving, at the time of death of the member, at least one-half (1/2) of the support from the member for maintenance, including board, lodging, medical care, and related costs;
- (20) "Active contributing member" means a member currently making contributions to the Teachers' Retirement System, who made contributions in the next preceding fiscal year, for whom picked-up member contributions are currently being made, or for whom these contributions were made in the next preceding fiscal year;
- (21) "Full-time" means employment in a position that requires services on a continuing basis equal to at least seven-tenths (7/10) of normal full-time service on a fiscal year basis;
- (22) "Full actuarial cost," when used to determine the payment that a member must pay for service credit means the actuarial value of all costs associated with the enhancement of a member's benefits or eligibility for benefit enhancements, including health insurance supplement payments made by the retirement system. The actuary for the retirement system shall determine the full actuarial value costs and actuarial cost factor tables as provided in KRS 161.400; and
- (23) "Last annual compensation" means the annual compensation, as defined by subsection (10) of this section and as limited by subsection (9) of this section, earned by the member during the most recent period of contributing service, either consecutive or nonconsecutive, that is sufficient to provide the member with one (1) full year of service credit in the Kentucky Teachers' Retirement System, and which compensation is used in calculating the member's initial retirement allowance, excluding bonuses, retirement incentives, payments for accumulated sick, annual, personal and compensatory leave, and any other lump-sum payment. For an individual who becomes a member on or after July 1, 2008, payments for annual or compensatory leave shall not be included in determining the member's last annual compensation.

➔Section 4. KRS 161.340 is amended to read as follows:

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- (1) The board of trustees shall elect from its membership a chairperson and a vice chairperson on an annual basis as prescribed by the administrative regulations of the board of trustees. The board of trustees shall employ an executive secretary by means of a contract not to exceed a period of four (4) years and fix the compensation and other terms of employment for this position without limitation of the provisions of KRS Chapters 18A, 45A, 56, and KRS 64.640. The executive secretary shall be the chief administrative officer of the board. The executive secretary, at the time of employment, shall be a graduate of a four (4) year college or university, and shall possess qualifications as the board of trustees may require. The executive secretary shall not have held by appointment or election an elective public office within the five (5) year period next preceding the date of employment.
- (2) The board shall employ clerical, administrative, and other personnel as are required to transact the business of the retirement system. The compensation of all persons employed by the board shall be paid at the rates and in amounts as the board approves. Anything in the Kentucky Revised Statutes to the contrary notwithstanding, the power over and the control of determining and maintaining an adequate complement of employees in the system shall be under the exclusive jurisdiction of the board of trustees.
- (3) The board shall contract for actuarial, auditing, legal, medical, investment counseling, and other professional or technical services, **and commodities**, as are required to carry out the obligations of the board in accordance with the provisions of this chapter without limitations, including KRS Chapters 12, 13B, 45, 45A, 56, and 57, and shall provide for legal counsel and other legal services as may be required in defense of trustees, officers, and employees of the system who may be subjected to civil action arising from the performance of their legally assigned duties if counsel and services are not provided by the Attorney General.
- (4) The board shall require the trustees, executive secretary, and employees it determines proper to execute bonds for the faithful performance of their duties notwithstanding the limitations of KRS Chapter 62.
- (5) The board of trustees may expend funds from the expense fund as necessary to insure the trustees, employees, and officials of the Teachers' Retirement System against any liability arising out of an act or omission committed in the scope and course of performing legal duties.
- (6) Notwithstanding any statute to the contrary, employees shall not be considered legislative agents as defined in KRS 6.611.
- (7) Notwithstanding any statute to the contrary, the executive branch of government shall accept from the Kentucky Teachers' Retirement System all accrued annual and sick leave balances and service credits of employees leaving the Kentucky Teachers' Retirement System and accepting appointments within the executive branch. These leave balances shall be attested to by the Kentucky Teachers' Retirement System and shall not exceed those limits established by statute or administrative regulation for employees of the executive branch.

➔Section 5. KRS 161.480 is amended to read as follows:

Each person, upon becoming a member of the retirement system, shall file a detailed statement as required by the board of trustees and shall designate a primary beneficiary or two (2) or more cobeneficiaries to receive any benefits accruing from the death of the member. A contingent beneficiary may be designated in addition to the primary beneficiary or cobeneficiaries. The member may name more than one (1) contingent beneficiary. Any beneficiary designation made by the member, **including the estate should the estate become the beneficiary by default**, shall remain in effect until changed by the member on forms prescribed by the Kentucky Teachers' Retirement System, except in the event of subsequent marriage or divorce. Subsequent marriage by the member shall void the primary beneficiary and any cobeneficiary designation, **even that of a trust**, and the spouse of the member at death shall be considered as the primary beneficiary, unless the member subsequent to marriage designates another beneficiary. A final divorce decree shall terminate an ex-spouse's status as either primary beneficiary, cobeneficiary, or contingent beneficiary, unless subsequent to divorce the member redesignates the former spouse as primary beneficiary, cobeneficiary, or contingent beneficiary. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of a member's contributions to the retirement system as provided under KRS 161.470(7). A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust. In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. The provisions of this section shall be retroactive as they relate to election of beneficiaries by members still in active status on the effective date of this section. The provisions of this section shall not apply to any account from which a member is drawing a retirement allowance or to the life insurance benefit available under KRS 161.655.

➔Section 6. KRS 161.540 is amended to read as follows:

- (1) (a) Effective July 1, 1988, each individual who becomes a member before July 1, 2008, shall contribute to the retirement system nine and eight hundred fifty-five thousandths percent (9.855%) of annual compensation, except that university employees who participate in the Kentucky Teachers' Retirement System shall contribute eight and three hundred seventy-five thousandths percent (8.375%) of annual compensation.
- (b) Each individual who becomes a member on or after July 1, 2008, shall contribute to the retirement system ten and eight hundred fifty-five thousandths percent (10.855%) of annual compensation, except that university *employees who participate in the Kentucky Teachers' Retirement System* ~~faculty members~~ shall contribute nine and three hundred seventy-five thousandths percent (9.375%) of annual compensation.
- (c) Payments authorized by statute that are made to retiring members, who became members of the system before July 1, 2008, for not more than sixty (60) days of unused accrued annual leave shall be considered as part of the member's annual compensation, and shall be used only for the member's final year of active service. The contribution of members shall not exceed these applicable percentages on annual compensation. When a member retires, if it is determined that he has made contributions on a salary in excess of the amount to be included for the purpose of calculating his final average salary, any excess contribution shall be refunded to him in a lump sum at the time of the payment of his first retirement allowance. In the event a member is awarded a court-ordered back salary payment the employer shall deduct and remit the member contribution on the salary payment, plus interest to be paid by the employer, to the retirement system unless otherwise specified by the court order.
- (2) Each public board, institution, or agency listed in KRS 161.220(4) shall, solely for the purpose of compliance with Section 414(h) of the United States Internal Revenue Code, pick up the member contributions required by this section for all compensation earned after August 1, 1982, and the contributions so picked up shall be treated as employer contributions in determining tax treatment under the United States Internal Revenue Code and KRS 141.010(10). The picked-up member contribution shall satisfy all obligations to the retirement system satisfied prior to August 1, 1982, by the member contribution, and the picked-up member contribution shall be in lieu of a member contribution. Each employer shall pay these picked-up member contributions from the same source of funds which is used to pay earnings to the member. The member shall have no option to receive the contributed amounts directly instead of having them paid by the employer to the system. Member contributions picked-up after August 1, 1982, shall be treated for all purposes of KRS 161.220 to 161.714 in the same manner and to the same extent as member contributions made prior to August 1, 1982.

➔Section 7. KRS 161.553 is amended to read as follows:

- (1) The cost of providing statutory benefit improvements for annuitants may be funded by annual appropriations from the state on an actuarial amortized basis over the lifetime of the annuitants. The schedules in paragraphs (a), (b), and (c) of this subsection are the annual appropriations which shall be made by the state for benefit improvements approved in the respective fiscal years or bienniums prior to July 1, 2010:

(a) Cost-of-Living 2010-2011 [2008-2009] Allowance		Each Succeeding Fiscal Year
	1994-1996	[\$6,142,000 through 2010-2011]
	1996-1998	[\$4,459,000 through 2010-2011]
	1998-2000	\$15,333,900 through 2012-2013
		\$7,938,600 in 2013-2014
	2000-2002	\$12,511,400 through 2014-2015 and \$7,227,700 in 2015-2016
	2002-2004	\$21,405,700 through 2021-2022 and \$11,204,100 in 2022-2023
	2004-2006	\$15,413,700 through 2023-2024

			and \$7,421,400 in 2024-2025 \$15,730,200 through 2025-2026 and \$7,104,600 in 2026-2027; Each Succeeding Fiscal Year
(b)	Minimum Value 2010-2011 [2008-2009] Annuities	2006-2008 \$15,730,200	
		[1994-1996 \$2,126,000] 2002-2004 \$3,375,900	\$3,375,900 through 2016-2017 and \$2,027,800 in 2017-2018; and Each Succeeding Fiscal Year
(c)	Sick Leave 2010-2011 [2008-2009] Allowance	1998-2000 \$4,660,300	\$4,660,300 through 2012-2013 and \$2,425,900 in 2013-2014
		2000-2002 \$6,167,100	\$6,167,100 through 2014-2015 and \$3,579,100 in 2015-2016
		2002-2004 \$5,337,000	\$5,337,000 through 2021-2022 and \$3,022,800 in 2022-2023
		2004-2006 \$5,480,300	\$5,480,300 through 2023-2024 and \$2,558,700 in 2024-2025
		2006-2008 \$5,814,400 [\$7,232,400]	\$5,814,400 [\$7,232,400] through 2025-2026 and \$3,499,200 [\$4,917,200] in 2026- 2027
		2008-2010 \$8,969,000 [\$5,684,000]	\$8,969,000 [\$11,965,300] through 2027-2028 and \$6,281,300 in 2028-2029.
		2010-2012 \$6,516,600	\$13,674,800 through 2029-2030 and \$7,158,200 in 2030-2031
(2)	The cost of providing the transitional funding for the state medical insurance fund stabilization contribution as provided by KRS 160.550(2) may be funded by annual appropriations from the state on an amortized basis. The schedule in this subsection is the annual appropriation which shall be made by the state in the respective fiscal years or biennium prior to July 1, 2010 [2008] :		
	Amortization of 2010-2011 [2008-2009] Transitional Funding		Each Succeeding Fiscal Year
	2004-2006 \$13,325,100		\$13,325,100 through 2014-2015 and \$9,075,500 in 2015-2016
	2006-2008 \$28,487,400 [\$28,438,200]		\$28,487,400 [\$28,438,200] through 2016-2017 and \$18,280,000 in 2017-2018

2008-2010	\$36,554,100	\$36,554,100 through 2018-2019
	and	
		\$18,266,100 in 2019-2020
Amortization of	2010-2011	Each Succeeding Fiscal Year
Medical Subsidy		
2008-2010	\$2,574,100	\$2,574,100 through 2018-2019
	and	
		\$1,345,200 in 2019-2020

- (3) The present values of providing statutory cost-of-living increases for annuitants not included in subsection (1) of this section are to be assigned to the unfunded obligations of the retirement system and are identified as follows:

1986-1988	\$34,689,893
1990-1992	\$68,107,473
1992-1994	\$15,749,976

➔Section 8. KRS 161.585 is amended to read as follows:

- (1) *For purposes of this section, the term "records" shall include retirement estimates, affidavits and other documents prepared by the Kentucky Teachers' Retirement system in response to information requested in a lawful subpoena or order issued by a court of law.*
- (2) Each member's account shall be administered in a confidential manner and specific data regarding a member shall not be released for publication unless authorized by the member; however, the board of trustees may release member account information to the employer or to other state and federal agencies as it deems necessary *or in response to a lawful subpoena or order issued by a court of law.*
- (3)~~(2)~~ Medical records which are included in a member's file maintained by the Teachers' Retirement System are confidential and shall not be released unless authorized by the member in writing or as otherwise provided by law *or in response to a lawful subpoena or order issued by a court of law.*
- (4) (a) *When a subpoena is served upon any employee of the Kentucky Teachers' Retirement System requiring the production of any data, information or records, it is sufficient if the employee of the Kentucky Teachers' Retirement System charged with the responsibility of being custodian of the original, or his or her designated staff, delivers within five (5) working days by certified mail or by personal delivery to the person specified in the subpoena either of the following:*
 1. *Legible and durable copies of records certified by the employee or designated staff; or*
 2. *An affidavit stating the information required by the subpoena.*
- (b) *The production of documents or an affidavit shall be in lieu of any personal testimony of any employee of the Kentucky Teachers' Retirement System unless, after the production of documents or affidavit, a separate subpoena is served upon the retirement system specifically directing the testimony of an employee of the retirement system. When a subpoena is served on any employee of the retirement system requiring the employee to give testimony or produce records for any purpose, in the absence of a court order requiring the testimony of or production of documents by a specific employee, the systems may designate an employee to give testimony or produce documents upon the matter referred to in the subpoena. The board of trustees may promulgate an administrative regulation for the recovery of reasonable travel and administrative expenses for those occasions when an employee of the retirement system is required to travel from his or her home or office to provide testimony or records. Recoverable expenses may include the wages, salary, and overtime paid to the employee by the retirement system for the period of time that the employee is away from the office. The cost of these expenses shall be borne by the party issuing the subpoena compelling the employee's travel. The board of trustees may also promulgate an administrative regulation establishing a reasonable fee for the copying, compiling and mailing of requested records.*

- (5) *The certification shall be signed before a notary public by the employee and shall include the full name of the member, the member identification number assigned to the member by the retirement system, and a legend substantially to the following effect: "The records are true and complete reproductions of the original, microfiche, or electronically stored records which are housed in the retirement system's office. This certification is given in lieu of the undersigned's personal appearance."*
- (6) *When an affidavit or copies of records are personally delivered, a receipt shall be presented to the person receiving the records for his or her signature and shall be immediately signed and returned to the person delivering the records. When an affidavit or copies of records are sent via certified mail, the receipt used by the postal authorities shall be sufficient to prove receipt of the affidavit or copies of records.*
- (7) *When the affidavit or copies of records are delivered to a party for use in deposition they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending.*
- (8) *Upon completion of delivery by the retirement system of copies of records by their deposit in the mail or by their personal delivery to the requesting party, the retirement system shall cease to have any responsibility or liability for the records and their continued maintenance in a confidential manner.*
- (9) *Records of the Kentucky Teachers' Retirement System that are susceptible to reproduction may be proved as to foundation, identity, and authenticity without preliminary testimony, by use of legible and durable copies, certified in accordance with the provisions of this section.*
- (10) *The provisions of this section shall not be construed to prohibit the Kentucky Teachers' Retirement System from asserting any exemption, exception or relief provided under the Kentucky Rules of Civil Procedure or other applicable law.*

➔Section 9. KRS 161.605 is amended to read as follows:

Any member retired by reason of service may return to work in a position covered by the Kentucky Teachers' Retirement System and continue to receive his or her retirement allowance under the following conditions:

- (1) Any member who is retired with thirty (30) or more years of service may return to work in a full-time or a part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of seventy-five percent (75%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is seventy-five percent (75%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered. Members who were retired on or before June 30, 2002, shall be entitled to return to work under the provisions of this section as if they had retired with thirty (30) years of service. Nonqualified service credit purchased under the provisions of KRS 161.5465 or elsewhere with any state-administered retirement system shall not be used to meet the thirty (30) year requirement set forth in this subsection. Out-of state teaching service provided in public schools for kindergarten through grade twelve (12) may count toward the thirty (30) year requirement set forth in this subsection even if it is not purchased as service credit, if the member obtains from his or her out-of-state employer certification of this service on forms prescribed by the retirement system;
- (2) Any member who is retired with less than thirty (30) years of service after June 30, 2002, may return to work in a full-time or part-time position covered by the Kentucky Teachers' Retirement System and earn up to a maximum of sixty-five percent (65%) of the member's last annual compensation measured on a daily rate to be determined by the board of trustees. For purposes of determining whether the salary of a member returning to work is sixty-five percent (65%) or less of the member's last annual compensation, all remuneration paid and benefits provided to the member, on an actual dollar or fair market value basis as determined by the retirement system, shall be considered;
- (3) Reemployment of a retired member under subsection (1) or (2) of this section in a full-time teaching or nonteaching position in a local school district shall be permitted only if the employer certifies to the Kentucky Teachers' Retirement System that there are no other qualified applicants available to fill the teaching or nonteaching position. The employer may use any source considered reliable including but not limited to data provided by the Education Professional Standards Board and the Department of Education to determine whether other qualified applicants are available to fill the teaching or nonteaching position. The Kentucky Board of Education shall promulgate administrative regulations to establish procedures to determine whether other qualified applicants are available to fill a teaching or nonteaching position and, if not, for filling the

position with a retired member who will then be permitted to return to work in that position under subsection (1) or (2) of this section. The administrative regulations shall assure that a retired member shall not be hired in a teaching or nonteaching position by a local school district until the superintendent of the school district assures the Kentucky Teachers' Retirement System that every reasonable effort has been made to recruit other qualified applicants for the position on an annual basis;

- (4) Under this section, an employer may employ full-time a number of retired members not to exceed three percent (3%) of the membership actively employed full-time by that employer. The board of trustees may reduce this three percent (3%) cap upon recommendation of the retirement system's actuary if a reduction is necessary to maintain the actuarial soundness of the retirement system. The board of trustees may increase the three percent (3%) cap upon a determination that an increase is warranted to help address a shortage in the number of available teachers and upon the determination of the retirement system's actuary that the proposed cap increase allows the actuarial soundness of the retirement system to be maintained. For purposes of this subsection, "full-time" means the same as defined by KRS 161.220(21). A local school district may exceed the quota established by this subsection by making an annual written request to the Kentucky Department of Education which the department may approve on a year-by-year basis if the statewide quota has not been met. A district's written request to exceed its quota shall be submitted no sooner than two (2) weeks after the start of the school year;
- (5) A member returning to work in a full-time or part-time position under subsection (1) or (2) of this section will contribute to an account with the retirement system that will be administered independently from and with no reciprocal impact with the member's original retirement account, or any other account from which the member is eligible to draw a retirement allowance. A member returning to work under subsection (1) or (2) of this section shall make contributions to the retirement system at the rate provided under KRS 161.540. The new account shall independently meet the five (5) year vesting requirement as well as all other conditions set forth in KRS 161.600(1) before any retirement allowance is payable from this account. The retirement allowance accruing under this new account shall be calculated pursuant to KRS 161.620(1)(b). This new account shall not entitle the member to a duplication of the benefits offered under KRS 161.620(7) or 161.675, nor shall this new account provide the benefits offered by KRS 161.520, 161.525, 161.620(3), 161.655, 161.661, or 161.663. A member returning to work under subsection (1) or (2) of this section shall waive his or her medical insurance with the Kentucky Teachers' Retirement System during the period of reemployment and shall receive the medical insurance coverage that is generally provided by the member's active employer to the other members of the retirement system that the active employer employs. If medical insurance coverage is not available from the employer, the Kentucky Teachers' Retirement System may provide coverage for the member. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit for any service provided after the member's effective date of retirement but prior to the date that the member returns to work. A member returning to work under subsection (1) or (2) of this section shall not be eligible to purchase service credit that the member would have otherwise been eligible to purchase prior to the member's initial retirement. A member who returns to work under subsection (1) or (2) of this section, or in the event of the death of the member, the member's estate or applicably designated beneficiary, shall be entitled, within ninety (90) days of the posting of the annual report submitted by the employer, to a refund of contributions as permitted and limited by KRS 161.470;
- (6) The board of trustees may annually, on July 1, adjust the current daily rate of a member's last annual compensation, for each full twelve (12) month period that has elapsed subsequent to the member earning his or her last annual compensation, by the percentage increase in the annual average of the consumer price index for all urban consumers for the calendar year preceding the adjustment as published by the Federal Bureau of Labor Statistics, not to exceed five percent (5%) annually. Each annual adjustment shall become part of the member's daily rate base. Failure to comply with the salary limitations set forth in subsections (1) and (2) of this section as may be adjusted by this subsection shall result in a reduction of the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar that the member exceeds these salary limitations. Notwithstanding any other provision of law to the contrary, a member retiring from a local school district who returns to work for a local school district under subsection (1) or (2) of this section shall be entitled, without any reduction to his or her retirement allowance or any other retirement benefit, to earn a minimum amount equal to **one hundred seventy dollars (\$170) per day** [the base contract salary for a beginning Rank III teacher on the certified teachers' salary schedule effective at the school district for which the retiree returns to work];

- (7) (a) A retired member returning to work under subsection (1) or (2) of this section shall have separated from service for a period of at least one (1) year if returning to work for the same employer on a full-time basis, and at least three (3) months if returning to work for a different employer on a full-time basis. A retired member returning to work under subsection (1) or (2) of this section on a part-time basis shall have separated from service for a period of at least three (3) months before returning to work for any employer.
- (b) As an alternative to the separation-from-service requirements in paragraph (a) of this subsection, a retired member who is returning to work for the same employer in a full-time position under subsections (1) and (2) of this section may elect a separation-from-service of not less than two (2) months followed by a forfeiture of the retired member's retirement allowance on a month-to-month basis for each month that the member has separated from service for less than twelve (12) full months. A retired member returning to work for the same employer in a part-time position, or for a different employer in a full-time position, may elect an alternative separation-from-service requirement of at least two (2) months followed by a forfeiture of the member's retirement allowance for one (1) month. During the period that the member forfeits his or her retirement allowance and thereafter, member and employer contributions shall be made to the retirement system as a result of employment in any position subject to membership in the retirement system. The member shall contribute to an account with the retirement system subject to the conditions set forth in subsection (5) of this section. For purposes of measuring the separation-from-service requirements set forth throughout this section, a member's separation-from-service begins on the first day following the last day of paid employment for the member prior to retirement.
- (c) Failure to comply with the separation-from-service requirements in this subsection voids a member's retirement and the member shall be required to return all the retirement benefits he or she received, with interest, for the period of time that the member returned to work without a sufficient separation from service;
- (8) (a) Effective July 1, 2004, local school districts may employ retired members in full-time or part-time teaching or administrative positions without limitation on the compensation of the retired members that is otherwise required by subsections (1) and (2) of this section. Under provisions of this subsection, a local school district may only employ retired members to fill critical shortage positions for which there are no other qualified applicants as determined by the local superintendent. The number of retired members that a local school district may employ under this subsection shall be no more than two (2) members per local school district or one percent (1%) of the total active members employed by the local school district on a full-time basis as defined under KRS 161.220(21), whichever number is greater. Retired members returning to work under this subsection shall be subject to the separation-from-service requirements set forth in subsection (7) of this section. Retired members returning to work under this subsection shall waive their medical insurance coverage with the retirement system during their period of reemployment and receive medical insurance coverage that is offered to other full-time members employed by the local school district. Retired members returning to work under this subsection shall contribute to an account subject to the conditions set forth in subsection (5) of this section. Retired members returning to work under this subsection shall make contributions to the retirement system at the rate provided under KRS 161.540. The employer shall make contributions at the rate provided under KRS 161.550. Local school districts shall make annual payments to the retirement system on the compensation paid to the reemployed retirees at the rates determined by the retirement system's actuary that reflect any accrued liability resulting from the reemployment of these members.
- (b) The Department of Education may employ retired members in full-time or part-time teaching or nonteaching positions without the limitations on compensation otherwise required by subsections (1) and (2) of this section to fill critical shortage areas in the schools it operates, including the Kentucky School for the Blind, the Kentucky School for the Deaf, and the Kentucky Virtual High School, *and* to serve on ~~scholastic~~ audit teams ~~and to provide technical assistance to schools and districts required under federal law~~. The department shall be subject to the same requirements as local school districts as provided in paragraph (a) of this subsection, except the Kentucky Teachers' Retirement System shall determine the maximum number of employees that may be employed under this paragraph;
- (9) The return to work limitations set forth in this section shall apply to retired members who are returning to work in the same position from which they retired, or a position substantially similar to the one from which they retired, or a position described in KRS 161.046 or any position listed in KRS 161.220(4) which requires membership in the retirement system. Positions which generally require certification or graduation from a four

- (4) year college or university as a condition of employment which are created, or changed to remove the position from coverage under KRS 161.220(4) are also subject to the return to work limitations set forth in this section. The board of trustees shall determine whether employment in a nonteaching position is subject to this subsection;
- (10) The provisions of subsections (1) to (8) of this section are not subject to KRS 161.714;
- (11) Any member retired by reason of service may waive his or her annuity and return to full-time employment in a position covered by the Kentucky Teachers' Retirement System under the following conditions:
- (a) The member shall receive no annuity payments while employed in a covered position, shall waive his or her medical insurance coverage with the Kentucky Teachers' Retirement System during the period of reemployment, and shall receive the medical insurance coverage that is generally offered by the member's active employer to the other members of the retirement system employed by the active employer. The member's estate or, if there is a beneficiary applicably designated by the member, then the beneficiary, shall continue to be eligible for life insurance benefits as provided in KRS 161.655. Service subsequent to retirement shall not be used to improve an annuity, except as provided in paragraphs (b) and (c) of this subsection;
 - (b) Any member who waives regular annuity benefits and returns to teaching or covered employment shall be entitled to make contributions on the salaries received for this service and have his retirement annuity recalculated as provided in the regular retirement formula in KRS 161.620(1), less any applicable actuarial discount applied to the original retirement allowance due to the election of a joint and last survivor option. Retirement option and beneficiary designation on original retirement shall not be altered by postretirement employment, and dependents and spouses of the members shall not become eligible for benefits under KRS 161.520, 161.525, or 161.661 because of postretirement employment;
 - (c) When a member returns to full-time teaching or covered employment as provided in subsection (b) of this section, the employer is required to withhold and remit regular retirement contributions. The member must be employed full-time for at least one (1) consecutive contract year to be eligible to improve an annuity. The member shall be returned to the annuity rolls on July 1 following completion of the contract year or on the first day of the month following the month of termination of service if full-time employment exceeds one (1) consecutive contract year. Any discounts applied at the time of the original retirement due to service or age may be reduced or eliminated due to additional employment if full-time employment is for one (1) consecutive contract year or longer; and
 - (d) A member retired by reason of service who has been employed the equivalent of twenty-five (25) days or more during a school year under KRS 161.605 may waive the member's retirement annuity and return to regular employment covered by the Kentucky Teachers' Retirement System during that school year a maximum of one (1) time during any five (5) year period, beginning with that school year;
- (12) Retired members may be employed in a part-time teaching capacity by an agency described in KRS 161.220(4)(b) or (n), not to exceed the equivalent of twelve (12) teaching hours in any one (1) fiscal year. Retired members may be employed for a period not to exceed the equivalent of one hundred (100) days in any one (1) fiscal year in a part-time administrative or nonteaching capacity by an agency described in KRS 161.220(4)(b) or (n) in a position that would otherwise be covered by the retirement system. The return to work provisions set forth in subsections (1) to (8) of this section shall not apply to retired members who return to work solely for an agency described in KRS 161.220(4)(b) or (n). Calculation of the number of days and teaching hours for part-time teaching, substitute teaching, or part-time employment in a nonteaching capacity under this section shall not exceed the ratio between a school year and the actual months of retirement for the member during that school year. The board of trustees by administrative regulation may establish fractional equivalents of a day of teaching service. Any member who exceeds the twelve (12) hour or one hundred (100) day limitations of this subsection shall be subject to having his or her retirement voided and be required to return all retirement allowances and other benefits paid to the member or on the member's behalf since the effective date of retirement. In lieu of voiding a member's retirement, the system may reduce the member's retirement allowance or any other benefit to which the member would otherwise be entitled on a dollar-for-dollar basis for each dollar of compensation that the member earns in employment exceeding twelve (12) hours, one hundred (100) days, or any apportionment of the two (2) combined;
- (13) When a retired member returns to employment in a part-time teaching capacity or in a nonteaching capacity as provided in subsection (12) of this section, the employer shall contribute annually to the retirement system on

the compensation paid to the retired member at rates determined by the retirement system actuary that reflect accrued liability for retired members who return to work under subsection (12) of this section; and

- (14) For retired members who return to work during any one (1) fiscal year in both a position described in KRS 161.220(4)(b) or (n) and in a position described under another provision under KRS 161.220(4), and for retired members who return to work in a position described under KRS 161.220(4)(b) or (n) in both a teaching and an administrative or nonteaching capacity, the board of trustees shall adopt a methodology for a pro rata apportionment of days and hours that the retired member may work in each position.

➔Section 10. KRS 161.620 is amended to read as follows:

- (1) The retirement allowance, in the form of a life annuity with refundable balance, of a member retiring for service shall be calculated as follows:
- (a) For retirements effective July 1, 1998, and thereafter, except as otherwise provided by this section, the annual allowance for each year of service shall be two percent (2%) of the final average salary for service performed prior to July 1, 1983, and two and one-half percent (2.5%) of the final average salary for service performed after July 1, 1983, for all members not employed by a state college or university. The annual retirement allowance for each year of service performed by members of the Teachers' Retirement System who are members under the provisions of KRS 161.220(4)(b) or (n) shall be two percent (2%) of the final average salary. Actuarial discounts due to age or service credit at retirement may be applied as provided in this section;
 - (b) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned less than ten (10) full years of service credit, the retirement allowance shall be two percent (2%) of the member's final average salary for each year of service. For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2002, and before July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), and who upon retirement have earned at least ten (10) full years of service credit, the annual allowance for each year of service shall be two and one-half percent (2.5%) of the member's final average salary;
 - (c) The board of trustees may approve for members who initially retire on or after July 1, 2004, and who become members before July 1, 2008, except those persons who are members under KRS 161.220(4)(b) or (n), a retirement allowance of three percent (3%) of the member's final average salary for each year of service credit earned in excess of thirty (30) years. This three percent (3%) factor shall be in lieu of the two and one-half percent (2.5%) factor provided for in paragraph (b) of this subsection for every year or fraction of a year of service in excess of thirty (30) years. Upon approval of this three percent (3%) retirement factor, the board of trustees may establish conditions of eligibility regarding the type of service credit that will qualify for meeting the requirements of this subsection. This subsection is optional with the board of trustees and shall not be subject to KRS 161.714;
 - (d) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, except those persons who become members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:
 - 1. a. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
 - b. Two percent (2%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
 - c. Two and three-tenths percent (2.3%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but no more than twenty-six (26) years of service at retirement; or
 - d. Two and one-half percent (2.5%) of the member's final average salary for each year of service if the member has earned greater than twenty-six (26) but no more than thirty (30) years of service at retirement; and

2. Three percent (3%) of the member's final average salary for each year of service earned in excess of thirty (30) years of service at retirement *subject to the same terms and conditions as set forth in paragraph (c) of this subsection*;
- (e) For individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008, who are members under KRS 161.220(4)(b) or (n), the retirement allowance shall be:
 1. One and one-half percent (1.5%) of the member's final average salary for each year of service if the member has earned ten (10) or less years of service at retirement;
 2. One and seven-tenths percent (1.7%) of the member's final average salary for each year of service if the member has earned greater than ten (10) but no more than twenty (20) years of service at retirement;
 3. One and eighty-five hundredths percent (1.85%) of the member's final average salary for each year of service if the member has earned greater than twenty (20) but less than twenty-seven (27) years of service at retirement; or
 4. Two percent (2%) of the member's final average salary for each year of service if the member has earned twenty-seven (27) or more years of service at retirement; and
- (f) The retirement allowance of a member at retirement, as measured on a life annuity, shall not exceed the member's last yearly salary or the member's final average salary, whichever is the greater amount. For purposes of this section, "yearly salary" means the compensation earned by a member during the most recent period of contributing service, either consecutive or nonconsecutive, preceding the member's effective retirement date and shall be subject to the provisions of KRS 161.220(9) and (10).
- (2) Effective July 1, 2002, and annually on July 1 thereafter, the retirement allowance of each retired member and of each beneficiary of a retirement option shall be increased in the amount of one and one-half percent (1.5%), provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase.
- (3) Any member qualifying for retirement under a life annuity with refundable balance shall be entitled to receive an annual allowance amounting to not less than four hundred dollars (\$400) effective July 1, 2002, and not less than four hundred forty dollars (\$440) effective July 1, 2003, multiplied by the service credit years of the member. These minimums shall apply to the retired members receiving annuity payments and to those members retiring on or subsequent to the effective dates listed in this subsection. This subsection and subsection (4) of this section shall not apply to individuals who become members of the Kentucky Teachers' Retirement System on or after July 1, 2008.
- (4) The minimum retirement allowance provided in this section shall apply in the case of members retired or retiring under an option other than a life annuity with refundable balance in the same proportion to the benefits of the member and his beneficiary or beneficiaries as provided in the duly-adopted option tables at the time of the member's retirement.
- (5) Effective July 1, 2008, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed three and one-half percent (3.5%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.
- (6) Effective July 1, 2009, the monthly allowance of each retired member and each recipient of a retirement option of the retired member may be increased in an amount not to exceed seven-tenths of one percent (0.7%) of the monthly allowance in effect the previous month, provided the retired member had been retired for at least the full twelve (12) months immediately preceding the date that the increase is effective. In the event that the

retired member had been retired for less than the full twelve (12) months immediately preceding the date that the increase is effective, then the increase shall be reduced on a pro rata basis by each month that the retired member had not been retired for the full twelve (12) months immediately preceding the effective date of the increase. The level of increase provided for in this subsection shall be determined by the funding provided in the 2008-2010 biennium budget appropriation.

- (7) Effective July 1, 1990, monthly payments of two hundred dollars (\$200) shall be payable for the benefit of an adult child of a member retired for service when the child's mental or physical condition is sufficient to cause dependency on the member at the time of retirement. Eligibility for this payment shall continue for the life of the child or until the time the mental or physical condition creating the dependency no longer exists or the child marries. Benefits under this subsection shall apply to legally adopted survivors provided the proceedings for the adoption were initiated at least one (1) year prior to the death of the member. The board of trustees shall be the sole judge of eligibility or dependency and may require formal application or information relating thereto.
- (8) Members of the Teachers' Retirement System shall be subject to the annuity income limitations imposed by Section 415 of the Internal Revenue Service Code.
- (9) Compensation in excess of the limitations imposed by Section 401(a)(17) of the Internal Revenue Code shall not be used in determining a member's retirement annuity. The limitation on compensation for eligible members shall not be less than the amount which was allowed to be taken into account by the retirement system in effect on July 1, 1993. For this purpose, an eligible member is an individual who was a member of the retirement system before the first plan year beginning after December 31, 1995.

➔Section 11. KRS 161.630 is amended to read as follows:

- (1) A member, upon retirement, shall receive a retirement allowance in the form of a life annuity, with refundable balance, as provided in KRS 161.620, unless an election is made before the effective date of retirement to receive actuarially equivalent benefits under options which the board of trustees approves. No option shall provide for a benefit with an actuarial value at the age of retirement greater than that provided in KRS 161.620. This section does not apply to disability allowances as provided in KRS 161.661(1).
- (2) The retirement option chosen by a retiree at the time of service retirement shall remain in force unless the retiree elects to make a change under the following conditions:
 - (a) A divorce, annulment, or marriage dissolution following retirement shall, at the election of the retiree, cancel any optional plan selected at retirement that provides continuing benefits to a spousal beneficiary and return the retiree to a single lifetime benefit equivalent as determined by the board; or
 - (b) Following marriage or remarriage, or the death of the designated beneficiary, a retiree may elect a new optional plan of payment based on the actuarial equivalent of a single lifetime benefit at the time of the election, as determined by the board. The plan shall become effective the first of the month following receipt of an application on a form approved by the board.
- (3) Except as otherwise provided in this section, a beneficiary designation shall not be changed after the effective date of retirement except for retirees who elect the life annuity with refundable balance~~[option]~~ or the predetermined years certain and life thereafter option. A member may remove a beneficiary at any time, but shall not designate a substitute beneficiary. If a member elects to remove a beneficiary, the member's retirement allowance shall not change regardless of the retirement option selected by the member, even if the removed beneficiary predeceases the member.
- (4) A member who experiences a qualifying event under subsection (2) of this section and who elects a new optional plan of payment shall make that election within sixty (60) days of the qualifying event.

➔Section 12. KRS 161.655 is amended to read as follows:

- (1) Effective July 1, 2000, the Teachers' Retirement System shall:
 - (a) Provide a life insurance benefit in a minimum amount of five thousand dollars (\$5,000) for its members who are retired for service or disability. This life insurance benefit shall be payable upon the death of a member retired for service or disability to the member's estate or to a party designated by the member on a form prescribed by the retirement system; and
 - (b) Provide a life insurance benefit in a minimum amount of two thousand dollars (\$2,000) for its active contributing members. This life insurance benefit shall be payable upon the death of an active

contributing member to the member's estate or to a party designated by the member on a form prescribed by the retirement system.

- (2) The member may name one (1) primary and one (1) contingent beneficiary for receipt of the life insurance benefit. To the extent permitted by the Internal Revenue Code, a trust may be designated as beneficiary for receipt of the life insurance benefit. Members may designate as beneficiaries only presently identifiable and existing individuals, or trusts where otherwise permitted, without contingency instructions, on forms prescribed by the retirement system. In the event that a member fails to designate a beneficiary, or all designated beneficiaries predecease the member, the member's estate shall be deemed to be the beneficiary. Any beneficiary designation made by the member, ***including the estate should the estate become the beneficiary by default***, shall remain in effect until changed by the member on forms prescribed by the retirement system, except in the event of subsequent ***marriage or*** divorce. ***A valid marriage license shall terminate any previously designated beneficiary, even that of a trust, and establish the spouse as beneficiary unless, subsequent proof of the marriage, the member or retired member redesignates someone other than the new spouse as the beneficiary.*** A final divorce decree shall terminate the beneficiary status of an ex-spouse unless, subsequent to divorce, the member redesignates the former spouse as a beneficiary. A final divorce decree shall not terminate the designation of a trust as beneficiary regardless of who is designated as beneficiary of the trust.
- (3) Application for payment of life insurance proceeds shall be made to the Teachers' Retirement System together with acceptable evidence of death and eligibility. The reciprocal provisions of KRS 61.680(2)(a) shall not apply to the coverage and payment of proceeds by the life insurance benefit under this section.
- (4) Suit or civil action shall not be required for the collection of the proceeds of the life insurance benefit provided for by this section, but nothing in this section shall prevent the maintenance of suit or civil action against the beneficiary or legal representative receiving the proceeds of the life insurance benefit.

➔Section 13. Whereas, retirement annuity adjustments are implemented at the beginning of the fiscal year, an emergency is declared to exist, and this Act takes effect July 1, 2010.

Signed by Governor April 26, 2010.

CHAPTER 165

(HB 278)

AN ACT relating to local government premium taxes.

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

➔Section 1. KRS 91A.0804 is amended to read as follows:

- (1) The provisions of this section shall provide the sole and exclusive method for the filing of amended returns and requests or assessments by any insurance company, local government, or policyholder for nonpayment, underpayment, or overpayment of any license fees or taxes imposed pursuant to KRS 91A.080 and the appeals from the denial or refusal thereof.
- (2) For tax periods beginning after December 31, 2008, all amended returns, requests for refunds or credits, and assessments shall be made within two (2) years of the due date of the annual reconciliation provided for in KRS 91A.080(8) for the tax period during which the error was made, except that in the case of fraudulent failure to file a return or the filing of a fraudulent return, the underpayment may be assessed at any time. The provisions of this subsection shall not apply to any refund or credit to an insurance company or policyholder or assessment by a local government that is affected by litigation pending on July 15, 2008.
- ~~(3)~~~~(2)~~ (a) Any insurance company that has paid a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for any overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection ~~(2)~~~~(4)~~ of this section.
- (b) A request for a refund or credit by an insurance company shall be made by mailing an amended return and supporting documentation to the local government to which the fee or tax was paid. A complete refund request shall include the amended return and supporting documentation showing the total amount of overpayment of license fee or tax that the insurance company believes was erroneously paid and a

breakdown of information for each policy upon which a refund or credit is requested, including the location of the risk by street address or, if a street address is unavailable, another appropriate identifier of the physical location, the amount of the erroneous payment, the premium charged, the amount of tax or fee actually collected, the type or types of risk insured, and the period the policy was in force during the taxable year or years.

- (c) For refund and credit requests submitted for payments made during tax periods after December 31, 2009, the insurance company shall produce proof that it employed risk location systems or programs meeting the requirements of KRS 91A.0806 during the time for which the refund or credit is requested or a copy of an Office of Insurance order issued pursuant to the administrative regulation promulgated under KRS 91A.0806(3). If the insurance company fails or is unable to produce such proof or a copy of the Office of Insurance order, the local government shall be entitled to keep a penalty in the amount of ten percent (10%) of the refund or credit that would have otherwise been due the insurance company. Any dispute regarding the imposition of a penalty shall be resolved under paragraph (d) of this subsection.
- (d) If a local government fails to accept the completed amended return or refuses to issue the requested refund or credit within ninety (90) days of its receipt, the insurance company may make application to the Office of Insurance to review the claim. The application shall be filed with the Office of Insurance within thirty (30) days of receipt of the response from the local government or, in the case of a local government's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The Office of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The executive director of the Office of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the Office of Insurance within sixty (60) days of the issuance of the order.
- (e) No insurance company shall apply a credit to taxes or fees imposed by KRS 91A.080 without written agreement from the local government, without an order of final agency action from the Office of Insurance order that the refund is due, or without an administrative ruling from the Office of Insurance order that a refund is due. Each violation of this paragraph shall be punishable as provided in KRS 91A.080(7)(b) and (c).
- ~~(4)(3)~~ (a) Any policyholder who has paid to an insurance company a license fee or tax imposed by a local government pursuant to KRS 91A.080 may request a refund or credit for an overpayment of a license fee or tax or any payment when no tax was due within the time provided in subsection ~~(2)(1)~~ of this section.
- (b) A request for a refund or credit by a policyholder shall be made by mailing the request to the insurance company to which the fee or tax was paid. The request shall include the name of the policyholder, the address of the location of the risk insured, the amount of overpayment of license fee or tax that was erroneously paid, the dates of coverage, the amount of the fee or tax that was paid, and the type of risk insured.
- (c) If an insurance company fails to make payment or to grant credit to a policyholder as requested within ninety (90) days of its receipt, the policyholder may make application to the Office of Insurance to review the request. The application shall be filed with the Office of Insurance within thirty (30) days of receipt of the response from the insurance company or, in the case of an insurance company's failure to respond, within thirty (30) days of the end of the ninety (90) day period provided in this paragraph. The Office of Insurance shall, within sixty (60) days of the receipt of the complete application, issue an order of final agency action that the request for refund or credit is or is not warranted in whole or in part. The executive director of the Office of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the Office of Insurance within sixty (60) days of the issuance of the order.
- ~~(5)(4)~~ (a) If a local government has a reasonable basis to believe that a license fee or tax imposed by it in accordance with KRS 91A.080 has not been paid or has been underpaid, the local government shall request the Office of Insurance to conduct an audit pursuant to the provisions of KRS 91A.080(7) within the time provided in subsection ~~(2)(1)~~ of this section.

- (b) If the findings of the audit show that an insurance company did not pay or underpaid the local government, the local government may send an assessment by mail to the insurance company. The notice of assessment shall state the total amount of payment due from the insurance company based upon the findings of the audit conducted pursuant to KRS 91A.080(7), the geographic area affected, and the applicable license fee or tax rate.
 - (c) The insurance company may respond to the assessment by either paying the assessment in full within ninety (90) days of its receipt or by filing an appeal of the findings of the audit and the assessment with the Office of Insurance within ninety (90) days of the receipt of the assessment. An insurance company appealing the audit findings and assessment shall make application to the Office of Insurance and provide notice of the challenge to the local government by certified mail. The Office of Insurance shall, within sixty (60) days of the receipt of the completed application, issue an order of final agency action upon the findings of the audit and a determination that the assessment is or is not warranted in whole or in part. The executive director of the Office of Insurance may grant one (1) extension of thirty (30) days for the issuance of the order. As provided in KRS 304.2-310, either party may file an administrative appeal from the order of the Office of Insurance within sixty (60) days of the issuance of the order.
 - (d) If the insurance company fails to make the full payment as requested by the local government or fails to file an application of appeal with the Office of Insurance within ninety (90) days of receipt of the assessment, the findings of the audit and the assessment shall be deemed final, and the local government may provide notification to the Office of Insurance to impose a penalty in accordance with KRS 91A.080(7)(c). Any penalty imposed because of an insurance company's failure to timely pay the assessment shall be in addition to any penalties imposed as a result of the audit. The notification shall be filed with the Office of Insurance within thirty (30) days of the end of the ninety (90) day period provided in paragraph (c) of this subsection. The Office of Insurance shall issue an order to the insurance company to pay the assessment and any additional penalties imposed within thirty (30) days of the order, or the Office of Insurance may revoke the license of the insurance company under the provisions of KRS 91A.080(7) and KRS Chapter 304.
 - (e) The Office of Insurance may determine the scope of any audit requested under this subsection and KRS 91A.080. Nothing in this chapter shall preclude the Office of Insurance from exercising its discretion to conduct an audit or examination of any insurance company under its authority as otherwise provided in KRS Chapter 304.
- ~~(6)(5)}~~ An administrative hearing held pursuant to this section shall be conducted pursuant to KRS Chapter 13B. The hearing officer may compel any information necessary to make a determination. Information concerning rates, the names and addresses as of policyholders, and the expiration date of policies shall be proprietary and confidential, shall not be divulged to any person or organization not a party to the hearing, shall not be subject to disclosure or to the provisions of KRS 61.870 to 61.884, and the record shall be sealed at the conclusion of the hearing.
- ~~(7)(6)}~~ If a refund or credit is received by an insurance company that passed the fee or tax on to the policyholder, and the amount refunded or credited is not owed to another local government, the insurance company shall pass the full amount of the refund or credit, including any collection fee that has been retained by the insurance company pursuant to KRS 91A.080(4), on to the policyholder from whom the fee or tax was collected within ninety (90) days of receipt of the refund or credit. For a refund or credit received by an insurance company for tax periods after December 31, 2009, that is not owed to another local government, the insurance company shall pay a penalty fee of ten percent (10%) of the total amount of the refund or credit due to the policyholder if the insurance company is unable to produce proof of the use of a risk location system as required under subsection ~~(3)(2)(c)~~ of this section.
- ~~(8)(7)}~~ No legal action shall be filed by any party prior to the exhaustion of all administrative remedies provided under this section.
- ~~(9)(8)}~~ (a) Information on specific policies and policyholders provided to local governments pursuant to subsection ~~(3)(2)~~ of this section shall be considered confidential and proprietary information of an insurance company and shall not be disclosed or subject to disclosure under KRS 61.870 to 61.884. No present or former official or employee of a local government or any other person shall, intentionally and without authorization, inspect or divulge any information acquired by him or her of the affairs of any insurance company, or information regarding specific policies, policyholders, tax schedules, returns, or

reports required to be filed with a local government, or any information produced by a hearing or investigation, insofar as the information may have to do with the proprietary information of the insurance company. All county judges/executive, mayors, local government legislative body members, and local government employees whose duties include the fiscal affairs of their local government, shall be deemed to have the necessary authorization to inspect such information. Any person who violates the provisions of this paragraph shall be guilty of a Class A misdemeanor for each offense and the disclosure of information on each policyholder shall constitute a separate offense.

- (b) Except for local governments that have been certified by the Internal Revenue Service or its agent as being in compliance with IRS safeguard requirements and authorized to receive federal tax information, any proprietary information provided to a local government for the purposes of compliance with subsection (3)~~(2)~~ of this section and all copies or other records related to such information shall be destroyed in an irreversible, secure, and confidential manner in accordance with KRS 171.410 to 171.740 and the administrative regulations promulgated or approved thereunder. A local government failing to destroy proprietary information in accordance with this paragraph shall be subject to a civil penalty payable to the insurance company of five hundred dollars (\$500) for each offense, and the disclosure of information on each policyholder shall constitute a separate offense. An insurance company may commence a civil action in a court of competent jurisdiction for payment of the civil penalty. The total civil penalty shall not exceed ten thousand dollars (\$10,000) per incident.
- (c) This subsection shall not preclude the disclosure of information to the Office of Insurance or to the legal representative of the local government for purposes of administrative hearings or legal appeals therefrom, nor shall it prohibit the local government from verifying the accuracy of the information with an individual policyholder to whom the information pertains.

~~(10)(9)~~ The filing of amended returns, requests for refunds or credits, assessments, and all applications and notification by any party to the Office of Insurance for review under this section, shall be sent to the designated party or parties by certified mail, return receipt requested.

➔Section 2. KRS 304.10-180 is amended to read as follows:

- (1) Each broker shall pay the following taxes:
 - (a) A tax at the rate of three percent (3%) on the premiums, assessments, fees, charges, or other consideration deemed part of the premium as defined in KRS 304.14-030, on surplus lines insurance subject to tax transacted by him or her with unauthorized insurers during the preceding calendar quarter as shown by his or her quarterly statement filed with the executive director in accordance with KRS 304.10-170. The tax shall not be assessed on the premium surcharge tax, the local government premium tax, or any other state or federal tax. The tax shall be remitted to the executive director within thirty (30) days of the end of each calendar quarter. When collected the tax shall be credited to the insurance regulatory trust fund, as established by KRS 304.2-400;
 - (b) The premium surcharge tax, to be remitted to the Kentucky Department of Revenue, in accordance with KRS 136.392; and
 - (c) The local government premium tax, to be remitted to the appropriate city, county, or urban-county government taxing authority, in accordance with KRS 91A.080. Each broker shall be subject to the provisions of this section and KRS 91A.080 and 91A.0802 to ~~91A.0810~~~~(91A.0808)~~ as an insurance company.
- (2) If a surplus lines policy covers risks or exposures only partially in this state the tax so payable shall be computed upon the proportion of the premium which is properly allocable to the risks or exposures located in this state.

➔Section 3. KRS 91A.0810 is amended to read as follows:

- (1) Effective December 31, 2008, if the local government premium tax is included in the premium charge to the policyholder, the insurance company shall include~~on either the renewal certificates or billings~~ the amount of the local government tax charged for the period and the name of the taxing jurisdiction to which the local premium tax is due *for*:

(a) *Newly issued policies on the:*

1. *Policy;*

2. *Declaration sheet; or*
3. *Initial billing instruments; and*
- (b) *Renewed policies on the:*
 1. *Renewal certificate; or*
 2. *Billing instrument for each period for which premium or additional premium is charged to a policyholder by the insurance company.*
- (2) Before December 31, 2008, each insurance company shall cause each current policyholder to be notified of the policyholder's rights under this chapter. The one (1) time notice may be sent to the policyholder under any mode of communication normally used between the insurance company and the policyholder and may be sent as a separate notice or included as an additional item within routine statements, billings, or other notices. The Kentucky Office of Insurance shall promulgate by administrative regulation the text of such notice, which shall include:
 - (a) A statement that past and future premium charges may include a local insurance premium tax; and
 - (b) A statement that a policyholder who has been erroneously charged or overcharged the local insurance premium tax may obtain information for requesting a refund or credit by contacting the insurance company to which the local insurance premium tax was erroneously paid.
- (3) Any insurance company contacted by a policyholder under subsection (2) of this section shall, within thirty (30) days of the contact, provide the policyholder the full text of KRS 91A.0804(3) to inform the policyholder of the procedural requirements for requesting a refund or a credit. The insurance company may, at its option, include a summary or explanation of the procedural requirements in addition to providing the text.

➔Section 4. KRS 91A.080 is amended to read as follows:

- (1) The legislative body of each local government which elects to impose and collect license fees or taxes upon insurance companies for the privilege of engaging in the business of insurance may enact or change its license fee or rate of tax to be effective July 1 of each year on a prospective basis only and shall file with the executive director of insurance at least one hundred (100) days prior to the effective date, a copy of all ordinances and amendments which impose a license fee or tax. No less than eighty-five (85) days prior to the effective date, the executive director of insurance shall promptly notify each insurance company engaged in the business of insurance in the Commonwealth of those local governments which have elected to impose the license fees or taxes and the current amount of the license fee or rate of tax.
- (2) Any license fee or tax imposed by a local government upon an insurance company with respect to life insurance policies, may be based upon the first year's premiums, and, if so based, shall be applied to the amount of the premiums actually collected within each calendar quarter upon the lives of persons residing within the corporate limits of the local government.
- (3) Any license fee or tax imposed by a local government upon any insurance company with respect to any policy which is not a life insurance policy shall be based upon the premiums actually collected by the insurance company within each calendar quarter on risks located within the corporate limits of the local government on those classes of business which the insurance company is authorized to transact, less all premiums returned to policyholders. In determining the amount of license fee or tax to be collected and to be paid to the local government, the insurance company shall use the tax rate effective on the first day of the policy term. When an insurance company collects a premium as a result of a change in the policy during the policy term, the tax rate used shall be the rate in effect on the effective date of the policy change. With respect to premiums returned to policyholders, the license fee or tax shall be returned by the insurance company to the policyholder pro rata on the unexpired amount of the premium at the same rate at which it was collected and shall be taken as a credit by the insurance company on its next quarterly report to the local government.
- (4) The Office of Insurance shall, by administrative regulation, provide for a reasonable collection fee to be retained by the insurance company or its agent as compensation for collecting the tax, except that the collection fee shall not be more than fifteen percent (15%) of the fee or tax collected and remitted to the local government or two percent (2%) of the premiums subject to the tax, whichever is less. To facilitate computation, collection, and remittance of the fee or tax and collection fee provided in this section, the fees or taxes set out in

subsection (1), (2), or (3) of this section, together with the collection fee in this section, may be rounded off to the nearest dollar amount.

- (5) Pursuant to KRS 304.3-270, if any other state retaliates against any Kentucky domiciliary insurer because of the requirements of this section, the executive director of insurance shall impose an equal tax upon the premiums written in this state by insurers domiciled in the other state.
- (6) Accounting and reporting procedures for collection and reporting of the fees or taxes and the collection fee herein provided shall be determined by administrative regulations promulgated by the Office of Insurance.
- (7)
 - (a) Upon written request of the legislative body of any local government, at the expense of the requesting local government, which shall be paid in advance by the local government to the Office of Insurance, the Office of Insurance shall audit, or cause to be audited by contract with qualified auditors, the books or records of the insurance companies or agents subject to the fee or tax to determine whether the fee or tax is being properly collected and remitted, and the findings of the audit shall be reported to the local government and the insurance company subject to the audit. An insurance company may appeal the findings of the audit conducted under this subsection and any assessment issued pursuant to the audit findings in accordance with the provisions of KRS 91A.0804(5)~~[(4)]~~.
 - (b) Willful failure to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section shall constitute grounds for the revocation of the license issued to an insurance company or agent under the provisions of KRS Chapter 304.
 - (c) If the Office of Insurance finds that an insurance company has willfully engaged in a pattern of business conduct that fails to properly collect and remit the fee or tax imposed by a local government pursuant to the authority granted by this section, the Office of Insurance may assess the responsible insurance company an appropriate penalty fee no greater than ten percent (10%) of the additional license fees or taxes determined to be owed to the local government. The penalty fee shall be paid to the local government owed the license fee or tax less any administrative costs of the Office of Insurance in enforcing this section. Any insurance company or agent held responsible for a penalty fee may request a hearing with the Office of Insurance to be conducted pursuant to KRS 304.2-310 to 304.2-370 regarding the finding of a willful violation and the subsequent penalty fee.
- (8) The license fees or taxes provided for by subsections (2) and (3) of this section shall be due thirty (30) days after the end of each calendar quarter. Annually, by March 31, each insurance company shall furnish each local government to which the tax or fee is remitted with a breakdown of all collections in the preceding calendar year for the following categories of insurance:
 - (a) Casualty;
 - (b) Automobile;
 - (c) Inland marine;
 - (d) Fire and allied perils;
 - (e) Health; and
 - (f) Life.
- (9) Any license fee or tax not paid on or before the due date shall bear interest at the tax interest rate as defined in KRS 131.010(6) from the date due until paid. Such interest payable to the local government is separate of penalties provided for in subsection (7) of this section. In addition, the local government may assess a ten percent (10%) penalty for a tax or fee not paid within thirty (30) days after the due date.
- (10) No license fee or tax imposed under this section shall apply to premiums received on:
 - (a) Policies of group health insurance provided for state employees under KRS 18A.225;
 - (b) Policies insuring employers against liability for personal injuries to their employees or the death of their employees caused thereby, under the provisions of KRS Chapter 342;
 - (c) Health insurance policies issued to individuals;
 - (d) Policies issued through Kentucky Access created in Subtitle 17B of KRS Chapter 304; or
 - (e) Policies for high deductible health plans as defined in 26 U.S.C. sec. 223(c)(2).

- (11) No county may impose the tax authorized by this section upon the premiums received on policies issued to public service companies which pay ad valorem taxes.
- (12) Insurance companies which pay license fees or taxes pursuant to this section shall credit city license fees or taxes against the same license fees or taxes levied by the county, when the license fees or taxes are levied by the county on or after July 13, 1990. For purposes of this subsection, a consolidated local government, urban-county government, charter county government, or unified local government shall be considered a county.
- (13) No license fee or tax imposed under this section shall apply to premiums paid to insurers of municipal bonds, leases, or other debt instruments issued by or on behalf of a city, county, charter county government, urban-county government, consolidated local government, special district, nonprofit corporation, or other political subdivision of the Commonwealth. However, this exemption shall not apply if the bonds, leases, or other debt instruments are issued for profit or on behalf of for-profit or private organizations.
- (14) A county may impose a license fee or tax covering the entire county or may limit the application of the fee or tax to the unincorporated portions of the county.

➔Section 5. KRS 91A.0806 is amended to read as follows:

- (1) Before January 1, 2009, the Office of Insurance shall by administrative regulation establish criteria for the verification of risk location systems and programs. The criteria for verification shall include but not be limited to a requirement that the municipal and county boundary information of a risk location system or program uses the municipal and county boundary data available from the Commonwealth Office of Technology that is based upon municipal and other filings with the Secretary of State.
- (2) Upon application of a vendor or insurance company for verification and payment of a two thousand five hundred dollar (\$2,500) application fee to the Office of Insurance, the office shall test the risk location system or program to determine whether the program shall be verified as meeting the criteria promulgated in the administrative regulation required by subsection (1) of this section. The Office of Insurance shall maintain a list of verified risk location systems or programs and shall make the list available to insurance companies and the public. The verification of a risk location system or program shall remain valid for a period of three (3) years unless revoked by the Office of Insurance.
- (3) The Office of Insurance shall, by administrative regulation, provide an option for an insurance company to apply for a written order by the executive director of the Office of Insurance that the insurance company has a limited number of risk locations, not exceeding two hundred (200), in the Commonwealth that may be located by other means with an equivalent level of accuracy. Such an order shall remain valid for a period of three (3) years and as long as the insured risk of the insurance company does not exceed two hundred (200) in any calendar year.
- (4) An insurance company shall be deemed to perform due diligence in the location of risks if the insurance company employs a verified risk location system or program in its collection of a tax or fee imposed pursuant to KRS 91A.080 and:
 - (a) Expends reasonable resources to accurately and reliably implement such method to collect and to remit the proper tax or fee due to the local government that has imposed a tax or fee pursuant to KRS 91A.080;
 - (b) Maintains adequate internal controls to correctly include in its database of policyholders the location of the risk insured, in the proper address format, so that matching with the database is accurate;
 - (c) Corrects errors in the assignment of addresses to local taxing jurisdictions within the next renewal period after the insurance company discovers the errors, and, if applicable, reports such errors to the provider of the risk location system or program; and
 - (d) In the case of insurance companies that issue policies covering multiple locations, maintains adequate internal controls and employs an accurate and consistent methodology to correctly prorate multilocation policies to assign risks to appropriate addresses or, if a street address is unavailable, through another appropriate identifier of physical location, and tax jurisdictions.
- (5) Upon the presentation of proof that an insurance company has complied with the provisions of subsection (4) of this section or has received an order of the Office of Insurance under the administrative regulation promulgated pursuant to subsection (3) of this section, the insurance company:

- (a) Shall not be subject to penalties for failure to comply with KRS 91A.080 that may otherwise be imposed pursuant to KRS Chapter 304 or KRS 91A.080(7) for failure of a risk location system to properly locate risks;
 - (b) Shall be held harmless from any liability including but not limited to liability for penalties, except for the tax that is due and interest on the tax that an insurance company has failed to timely remit, that would otherwise be due solely as a result of a failure to properly collect and remit the tax or fee levied pursuant to KRS 91A.080 because of the failure of a risk location system to properly locate risks; and
 - (c) Shall not be subject to penalties under KRS 91A.0804(3)~~(2)~~(c).
- (6) On and after January 1, 2010, an insurance company shall use a verified risk location system or program during the calendar year if the total policies issued and renewed by the insurance company in Kentucky in the preceding calendar year is more than two thousand (2,000).

➔Section 6. KRS 91A.0810 is amended to read as follows:

- (1) Effective December 31, 2008, if the local government premium tax is included in the premium charge to the policyholder, the insurance company shall include on either the renewal certificates or billings the amount of the local government tax charged for the period and the name of the taxing jurisdiction to which the local premium tax is due.
- (2) Before December 31, 2008, each insurance company shall cause each current policyholder to be notified of the policyholder's rights under this chapter. The one (1) time notice may be sent to the policyholder under any mode of communication normally used between the insurance company and the policyholder and may be sent as a separate notice or included as an additional item within routine statements, billings, or other notices. The Kentucky Office of Insurance shall promulgate by administrative regulation the text of such notice, which shall include:
 - (a) A statement that past and future premium charges may include a local insurance premium tax; and
 - (b) A statement that a policyholder who has been erroneously charged or overcharged the local insurance premium tax may obtain information for requesting a refund or credit by contacting the insurance company to which the local insurance premium tax was erroneously paid.
- (3) Any insurance company contacted by a policyholder under subsection (2) of this section shall, within thirty (30) days of the contact, provide the policyholder the full text of KRS 91A.0804(4)~~(3)~~ to inform the policyholder of the procedural requirements for requesting a refund or a credit. The insurance company may, at its option, include a summary or explanation of the procedural requirements in addition to providing the text.

➔Section 7. **License Tax on Insurance Companies:** Notwithstanding any other statutory provision to the contrary, no license fee or tax imposed under KRS 91A.080 shall apply to premiums paid to insurance companies or surplus lines brokers by non-profit self-insurance groups whose membership consists of cities, counties, charter county governments, urban-county governments, consolidated local governments, school districts, or any other political subdivisions of the Commonwealth.

➔Section 8. Section 7 of this Act is effective for and applies to the fiscal year beginning July 1, 2010, and ending June 30, 2011, and the fiscal year beginning July 1, 2011, and ending June 30, 2012, and shall expire at the end of June 30, 2012.

Signed by Governor April 26, 2010.

CHAPTER 166

(HB 284)

AN ACT relating to insurance.

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

➔Section 1. KRS 304.11-020 is amended to read as follows:

- (1) Other than KRS 304.11-050, the provisions of KRS 304.11-020 to 304.11-050, shall not apply to any insurance company or underwriter issuing contracts of insurance to industrial insureds, government entity

insureds, and exempt commercial policyholders, nor to any contract of insurance issued to any one (1) or more industrial insureds.

(2) For the purpose of this section:

(a) An "industrial insured" is:

1. An insured who procures the insurance of any risk or risks other than life and annuity contracts by use of the services of a full-time employee acting as an insurance manager or buyer or the services of a regularly and continuously retained qualified insurance consultant; and
2. An insured whose aggregate annual premiums for insurance on all risks total at least twenty-five thousand dollars (\$25,000); and
3. An insured having at least twenty-five (25) full-time employees; and
4. All entities that have qualified as industrial insureds as of July 1, 1999.

(b) A "government entity insured" is an insured:

1. That is a government entity, municipal corporation, or public agency located in a city or county having a population of less than fifty thousand (50,000); and
2. That procures the insurance of any risk or risks, other than life and annuity contracts, by use of the services of a full-time employee acting as an insurance manager or buyer, or by the use of the services of a regularly and continuously retained qualified insurance consultant; and
3. Whose aggregate annual premiums for insurance on all risks total at least one hundred thousand dollars (\$100,000), exclusive of life, health, medical, or annuity premiums; and
4. That has at least fifty (50) full-time employees; and
5. That satisfies the criteria the executive director promulgates by administrative regulation.

(c) 1. An "exempt commercial policyholder" means an insured that employs the services of an insurance agent or broker, procures commercial insurance with the services of a full-time risk manager, or a licensed insurance consultant, pursuant to Subtitle 9 of this chapter and:

- a. Is a city, county, or urban-county with a population of at least fifty thousand (50,000) persons, or the Commonwealth, or a not-for-profit organization or a public entity with an annual budget of at least twenty-five million dollars (\$25,000,000) or assets of at least twenty-five million dollars (\$25,000,000) in the preceding fiscal year; or
- b. Certifies that it meets all four (4) of the following criteria:
 - i. Possesses a net worth of more than twenty-five million dollars (\$25,000,000) at the time the policy of insurance is issued;
 - ii. Generated net revenue or sales of more than fifty million dollars (\$50,000,000) in the preceding fiscal year;
 - iii. Employs more than one hundred (100) employees per individual company or two hundred (200) employees per holding company aggregate at the time the policy of insurance is issued; and
 - iv. Paid annual aggregate insurance premiums of more than five hundred thousand dollars (\$500,000) in the preceding fiscal year.
2. As used in this subsection, "risk manager" means a person qualified to assess an exempt commercial policyholder's insurance needs and analyze and negotiate a policy of insurance on behalf of an exempt commercial policyholder. A risk manager shall be:
 - a. A full-time employee of an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder; or

- b. A person retained by an exempt commercial policyholder who holds a professional designation relevant to the type of insurance to be purchased by the exempt commercial policyholder.
- ~~[(d) The requirements of this section shall not apply to a policy of insurance sold to an exempt commercial policyholder.~~
- ~~(e) Policies issued to an exempt commercial policyholder shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of this section."~~
- ~~(f) The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.]~~
- (3) (a) Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders are exempt from the rate and policy form requirements of this chapter.
- (b) *Policies issued to industrial insureds, government entity insureds, and exempt commercial policyholders shall contain a disclaimer in language similar to the following: "The rate provided for in this policy is exempt from the filing and approval requirements of Subtitle 13 of KRS Chapter 304. The forms which make up this policy contract are exempt from the filing and approval requirements of Subtitle 14 of KRS Chapter 304."*
- (c) *The exemption of commercial policyholders under this section shall not apply to Subtitle 39 of this chapter, KRS Chapter 342, sections in Subtitle 13 of this chapter that pertain to workers' compensation insurance, and KRS 304.12-230.*
- (4) All industrial insureds, government entity insureds, and exempt commercial policyholders shall reapply to the executive director for their respective insured status every three (3) years, on a form the executive director shall promulgate by administrative regulation.
- (5) KRS 304.11-020 to 304.11-050, inclusive, shall not apply to any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts directly from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions, nor to any policy or contract which it issues; but this exemption shall be conditioned upon any such company complying with the following requirements:
 - (a) Payment of an annual registration fee;
 - (b) Filing a copy of any policy or contract issued to Kentucky residents with the executive director;
 - (c) Filing a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, with the executive director; and
 - (d) Providing, in such form as may be acceptable for the appointment of the Secretary of State as its true and lawful attorney upon whom may be served all lawful process in any action or proceeding against such company arising out of any policy or contract it has issued to, or which is currently held by, a Kentucky citizen and process so served against such company shall have the same force and validity as if served upon the company.

➔Section 2. KRS 304.13-053 is amended to read as follows:

- ~~(1) Within sixty (60) days of December 12, 1996, the licensed workers' compensation advisory organizations shall file with the executive director an estimate of changes in prospective workers' compensation losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1. Within sixty (60) days of receipt of the workers' compensation filing, the executive director shall approve or disapprove the filing. Insurers may incorporate these approved estimates in the filings made pursuant to subsection (2) of this section.~~
- ~~(2) Insurers shall file workers' compensation rates incorporating an actuarially justified estimate of changes in prospective losses attributable to any net savings under 1996 (1st Extra. Sess.) Ky. Acts ch. 1 for use with workers' compensation policies issued or renewed after May 1, 1997. Workers' compensation rates shall be filed with and approved by the executive director as provided in KRS 304.13-051(2).~~

~~(3)}~~ Unless the executive director enters an order pursuant to KRS 304.13-041 declaring workers' compensation to be a noncompetitive market, rates filed for use after December 31, 1998, shall be filed pursuant to KRS 304.13-051(1).

~~(2){(4)}~~ Notwithstanding the provisions of KRS 304.13-051 to the contrary, after December 31, 1998, no insurer providing workers' compensation insurance shall place into effect any rates, manuals, or underwriting rules for workers' compensation insurance which it proposes to use pursuant to KRS 304.13-051(1) or (4) if the rates, manuals, or underwriting rules will result in an increase or decrease of more than fifteen percent (15%) from the workers' compensation insurer's then-existing workers' compensation insurance rates for any classification of risks within a twelve (12) month period of time.

~~(3){(5)}~~ After December 31, 1998, any workers' compensation insurer which proposes to change its then-existing rates, manuals, or underwriting rules so as to effectively increase or decrease the rates of any classification of risks more than fifteen percent (15%) within a twelve (12) month period shall file all the rates and supplemental rating information which shall not become effective until approved by the executive director pursuant to the provisions of KRS 304.13-051.

➔Section 3. KRS 304.14-435 is amended to read as follows:

- (1) All policy forms filed with the office, and any other insurance policy or claim-related information, shall be written in the English language.
- (2) ***An insurer may provide applicants and insureds with a policy, application or claim-related information in a language other than English if the conditions of subsection (3) of this section have been satisfied.***~~Applications required to be filed with the office may also be filed in a language other than English.~~
- (3) The non-English version of the ***policy, application or claim-related information*** shall:
 - (a) Be ***a certified translation of a policy, application or claim-related information that has been*** filed with ***and approved by*** the office;
 - (b) Be accompanied by a certification written in English that the non-English version is a complete and accurate translation of the English form filed;
 - (c) Be in the same format as the English version;~~and~~
 - (d) Contain ***a disclosure, both in the non-English language and in English, that is attached to the front of the policy, application or claim-related information, including a statement indicating that:***
 1. ***The policy, application or claim-related information is a translation that has not been approved by the office; and***
 2. ***The English version of the policy, application or claim-related information shall control in any disputes, complaints or litigation; and***
 - (e) ***Identify the English form number that corresponds to the non-English version.***
- (4) ***If an insurer offers a non-English policy, application or claim-related information in accordance with subsections (2) and (3) of this section, the insurer shall file the translator certification and disclosure required by paragraph (d) of subsection (3) with the office as an information filing***~~[all items in English immediately followed in parenthesis with the non-English translation].~~

~~(5){(3)}~~ This section shall not prohibit an insurer from advertising or providing information related to the policy or claims with translations to consumers in a language other than English.

~~(6){(4)}~~ If there is a dispute between the English version and the non-English version, the English version shall control and the non-English version shall carry a disclaimer in the non-English language to this effect. The insurance policy is controlling and any advertisements or informational materials used by an insurer shall not be construed to modify or change the insurance policy.

➔Section 4. KRS 304.14-545 is amended to read as follows:

If an individually marketed~~individual~~ Medicare supplement insurance policy~~issued, delivered, or renewed on or after July 12, 2006,~~ is canceled, the insurer shall return promptly the unearned portion of any premium paid beyond

the month in which the cancellation is effective. ~~[Cancellation shall be without prejudice to any claim originating prior to July 12, 2006.]~~

➔ Section 5. KRS 304.14-615 is amended to read as follows:

- (1) The executive director shall promulgate administrative regulations that include standards for full and fair disclosure setting forth the manner, content, and require disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, pre-existing conditions, incidental benefits, lapse of insurance, termination of insurance, continuation of conversion, probationary periods, limitations, exceptions, reductions, elimination periods, premium rating practices and rating increases, requirements for replacement, recurrent conditions, and definitions of terms.
- (2) A long-term care insurance policy shall not:
 - (a) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;
 - (b) Contain a provision establishing a new waiting period in the event existing coverage is covered to or replaced by a new or other form within the same insurer, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder; or
 - (c) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care.
- (3)
 - (a) A long-term care insurance policy or certificate, other than a policy or certificate thereunder issued to a group defined in KRS 304.14-600(5)(a), shall not use a definition of "pre-existing condition" which is more restrictive than the following: "Pre-existing condition means a condition for which medical services or treatment was recommended by, or received from, a provider of health care services within six (6) months preceding the effective date of coverage of an insured person."
 - (b) A long-term care insurance policy or certificate, other than a policy or certificate under a policy issued to a group as defined in KRS 304.14-600(5)(a), shall not exclude coverage for a loss or confinement which is the result of a pre-existing condition unless that loss or confinement begins within six (6) months following the effective date of coverage of an insured person.
 - (c) The executive director may extend the limitation periods set forth in subsection (3)(a) and (b) of this section as to specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.
 - (d) The definition of "pre-existing condition" does not prohibit an insurer from using an application form designed to elicit the complete health history of an applicant, and, on the basis of the answers on that application, from underwriting in accordance with that insurer's established underwriting standards. Unless otherwise provided in the policy or certificate, a pre-existing condition, regardless of whether it is disclosed on the application, need not be covered until the waiting period described in paragraph (b) of this subsection expires. A long-term care insurance policy or certificate shall not exclude or use waivers or riders of any kind to exclude, limit, or reduce coverage or benefits for specifically named or described pre-existing diseases or physical conditions beyond the waiting period described in paragraph (b) of this subsection.
- (4)
 - (a) A long-term care insurance policy shall not be delivered or issued for delivery in this Commonwealth if the policy:
 1. Conditions eligibility for any benefits on a prior hospitalization requirement;
 2. Conditions eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care; or
 3. Conditions eligibility for any benefits other than waiver of premium, post-confinement, post-acute care, or recuperative benefits on a prior institutionalization requirement.
 - (b)
 1. A long-term care insurance policy containing post-confinement, post-acute care, or recuperative benefits shall clearly label in a separate paragraph of the policy or certificate entitled "limitations or conditions on eligibility for benefits" the limitations or conditions, including any required number of days of confinement.

2. A long-term care insurance policy or rider which conditions eligibility of noninstitutional benefits on the prior receipt of institutional care shall not require a prior institutional stay of more than thirty (30) days.
- (5) The executive director may promulgate administrative regulations establishing loss ratio standards for long-term care insurance policies if a specific reference to long-term care insurance policies is contained in the administrative regulations.
- (6) Long-term care insurance applicants shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the applicant is not satisfied for any reason. Long-term care insurance policies and certificates shall have a notice prominently printed on the first page or attached thereto stating in substance that the applicant shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, other than a certificate issued pursuant to a policy issued to a group defined in KRS 304.14-600(5)(a), the applicant is not satisfied for any reason.
- (7) (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.
 1. The executive director shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage.
 2. In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.
 3. In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.(b) The outline of coverage shall include:
 1. A description of the principal benefits and coverage provided in the policy;
 2. A statement of the principal exclusions, reductions, and limitations contained in the policy;
 3. A statement of the terms under which the policy or certificate, or both, may be continued in force or discontinued, including any reservation in the policy of a right to change premium. Continuation or conversion provisions of group coverage shall be specifically described;
 4. A statement that the outline of coverage is a summary only, not a contract of insurance, and that the policy or group master policy contains governing contractual provisions;
 5. A description of the terms under which the policy or certificate may be returned and premium refunded; and
 6. A brief description of the relationship of the cost of care and benefits.
- (8) A certificate issued pursuant to a group long-term care insurance policy which is delivered or issued for delivery in this Commonwealth or a certificate subject to approval by the executive director shall include:
 - (a) A description of the principal benefits and coverage provided in the policy;
 - (b) A statement of the principal exclusions, reductions, and limitations contained in the policy; and
 - (c) A statement that the group master policy determine governing contract provisions.
- (9) At the time of policy delivery, a policy summary shall be delivered for an individual life insurance policy which provides long-term care benefits within the policy or by rider. In the case of direct response solicitations, the insurer shall deliver the policy summary upon the applicant's request, but regardless of any request, the insurer shall deliver the policy summary no later than at the time of policy delivery. In addition to complying with all applicable requirements, the summary shall also include:
 - (a) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from death benefits;

- (b) An illustration of the amount of benefits, the length of benefit, and the guaranteed lifetime benefits, if any, for each covered person;
 - (c) Any exclusions, reductions, and limitations on benefits of long-term care insurance; and
 - (d) If applicable to the policy type, the summary shall also include:
 - 1. A disclosure of the effects of exercising other rights under the policy;
 - 2. A disclosure of guarantees related to long-term care *costs* of insurance charges; and
 - 3. Current and projected maximum lifetime benefits.
- (10) When a long-term care benefit funded through a life insurance vehicle by the acceleration of the death benefit is in benefit payment status, a monthly report shall be provided to the policyholder by the insurer. The report shall include:
- (a) Any long-term care benefits paid out during the month;
 - (b) An explanation of any changes in the policy, such as death benefits or cash values, due to long-term care benefits being paid out; and
 - (c) The amount of long-term care benefits existing or remaining.
- (11) Any policy or rider advertised or marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of KRS 304.14-600 to 304.14-625.

➔Section 6. KRS 304.14-622 is amended to read as follows:

If an individually marketed individual long-term care insurance policy~~[issued, delivered, or renewed on or after July 12, 2006,]~~ is canceled, the insurer shall return promptly the unearned portion of any premium paid beyond the month in which the cancellation is effective.~~[Cancellation shall be without prejudice to any claim originating prior to July 12, 2006.]~~

➔Section 7. KRS 304.15-350 is amended to read as follows:

- (1) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in KRS 304.15-320 to 304.15-340 and in KRS 304.15-342, may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death. The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide such additions. Notwithstanding KRS ~~304.15-320~~~~[304.15-330]~~, additional benefits payable:
- (a) In the event of death or dismemberment by accident or accidental means;
 - (b) In the event of total and permanent disability;
 - (c) As reversionary annuity or deferred reversionary annuity benefits;
 - (d) As term insurance benefits provided by a rider or supplemental policy provisions to which, if issued as a separate policy, KRS 304.15-310 to 304.15-360, inclusive, would not apply;
 - (e) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six (26), and is uniform in amount after the child's age is one (1);
 - (f) As other policy benefits additional to life insurance and endowment benefits;
- and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by KRS 304.15-310 to 304.15-360, inclusive, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

- (2) Contrary provisions. Any condition or stipulation in the policy of insurance or elsewhere contrary to the provisions of KRS 304.15-310 to 304.15-360, and any waiver of such provisions by the insured, shall be void.

➔Section 8. KRS 304.15-717 is amended to read as follows:

- (1) It is unlawful for any person:

- (a) To knowingly or intentionally enter into a life settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;
- (b) To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;
- (c) To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements as defined in KRS 304.15-020(5);
- (d) To commit a fraudulent life settlement act;
- (e) To misrepresent that the life settlement provider, life settlement broker, other licensee, or any other person has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof;
- (f) To act as a life settlement broker if the person is acting as a life settlement provider in the same life settlement contract;
- (g) For any person to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee;
- (h) To engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of KRS 304.15-020 and 304.15-700 to 304.15-720;
- (i) To engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;
- (j) To issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the sole purpose of or with a primary emphasis on settling the policy;
- (k) To enter into a life settlement contract on a policy that was the subject of a premium finance agreement as described in KRS 304.15-020(17)(b)2.;
- (l) With respect to any life settlement contract or life insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust, or any insurer that is controlling, controlled by, or under common control with such broker unless disclosed to the owner;
- (m) With respect to any life settlement contract or life insurance policy and a provider, to knowingly enter into a life settlement contract with an owner if, in connection with such life settlement contract, anything of value will be paid to a broker or provider that is controlling, controlled by, or under common control with such provider, the financing entity, or related provider trust that is involved in such life settlement, or any insurer unless disclosed to the owner;
- (n) With respect to a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by administrative regulation, have been filed with the executive director. Marketing materials shall not expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of KRS 304.15-700 to 304.15-720;
- (o) With respect to any insurance company, insurance producer, broker, or provider, or any other person, to make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or
- (p) If an insurer, to:
 - 1. Engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled policy;

2. Make any false or misleading statement as to the business of life settlements or financing premiums due for a policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a life settlement contract; or
3. Engage in any transaction, act, practice, or course of business, or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented.

- (2) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent life settlement act.

- (3)
 - (a) A person engaged in the business of life settlements who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed shall provide the information required to the executive director, in a manner prescribed by the executive director.
 - (b) Any person who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed may provide the information required to the executive director, in a manner prescribed by the executive director in administrative regulations.
- (4)
 - (a) Civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent life settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
 1. The executive director or the executive director's employees, agents, or representatives;
 2. Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;
 3. A person involved in the prevention and detection of fraudulent life settlement acts or that person's agents, employees, or representatives;
 4. The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or life settlement contracts;
 5. The insurer that issued the policy covering the life of the insured; or
 6. The licensee and any agents, employees, or representatives.
 - (b) This subsection shall not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.
 - (c) A person who furnishes information concerning fraudulent life settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.
 - (d) This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.

- (e) This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent life settlement acts or suspected, anticipated, or completed fraudulent insurance acts.
- (5) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the executive director in an investigation of suspected or actual fraudulent life settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action, except that:
 - (a) This subsection shall not prohibit release by the executive director of documents and evidence obtained in an investigation of suspected or actual fraudulent life settlement acts:
 - 1. In administrative or judicial proceedings to enforce laws administered by the executive director;
 - 2. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent life settlement acts, or to the National Association of Insurance Commissioners (NAIC); or
 - 3. At the discretion of the executive director, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.
 - (b) The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.
- (6) This section shall not:
 - (a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;
 - (b) Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent life settlement acts to a law enforcement or regulatory agency other than the Office of Insurance;
 - (c) Limit the powers granted elsewhere by the laws of this state to the executive director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers; or
 - (d) Preempt, supersede, or limit any provision of any state securities law or any rule, order, administrative regulation, or notice issued thereunder.
- (7) A life settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. The executive director may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:
 - (a) Fraud investigators, who may be life settlement providers or employees or independent contractors of those life settlement providers; and
 - (b) An antifraud plan ***that shall be filed with*** ~~submitted to~~ the executive director ***and*** that shall include but is not limited to the following:
 - 1. The procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 - 2. The procedures for reporting possible fraudulent life settlement acts to the executive director;
 - 3. The plan for antifraud education and training of underwriters and other personnel; and
 - 4. A chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

Antifraud plans **filed with** ~~submitted to~~ the executive director shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

➔ Section 9. KRS 304.17-415 is amended to read as follows:

If an individually marketed ~~individual~~ health insurance policy ~~issued, delivered, or renewed on or after July 12, 2006,~~ is canceled, the insurer shall return promptly the unearned portion of any premium paid beyond the month in which the cancellation is effective. ~~Cancellation shall be without prejudice to any claim originating prior to July 12, 2006.~~

➔ Section 10. KRS 304.33-430 is amended to read as follows:

The order of distribution of claims from the insurer's estate shall be as stated in this section. The first fifty dollars (\$50) of the amount allowed on each claim in the classes under subsections (3) to (7), inclusive, of this section, shall be deducted from the claim and included in the class under subsection (9) of this section. Claims may not be cumulated by assignment to avoid application of the fifty dollars (\$50) deductible provision. Subject to the fifty dollars (\$50) deductible provision, every claim in each class shall be paid in full or adequate funds retained for the payment before the members of the next class receive any payment. No subclasses shall be established within any class. No claim by a shareholder, policyholder, or other creditor shall be permitted to circumvent the priority classes through the use of equitable remedies.

- (1) Administration costs. The costs and expenses of administration, including but not limited to the following: the actual and necessary costs of preserving or recovering the assets of the insurer; compensation for all services rendered in the liquidation; any necessary filing fees; the fees and mileage payable to witnesses; and reasonable attorney's fees.
- (2) Health maintenance organization and limited health service organization out-of-network claims. In a liquidation of a health maintenance organization or limited health service organization, any claims for health plan benefits or for limited health service contract benefits for out-of-network claims that would have otherwise been covered.
- (3) Loss and unearned premium claims. Claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and liability claims against insureds which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, and claims of guaranty associations or foreign guaranty associations. Notwithstanding the foregoing, the following claims shall be excluded from Class 2 priority:
 - (a) Obligations of the insolvent insurer arising out of reinsurance contracts;
 - (b) Obligations incurred after the expiration date of the insurance policy or after the policy has been replaced by the insured or canceled at the insured's request or after the policy has been canceled as provided in this chapter. Notwithstanding this subsection, earned premium claims on policies, other than reinsurance agreements, shall not be excluded;
 - (c) Obligations to insurers, insurance pools, or underwriting associations and their claims for contribution, indemnity, or subrogation, equitable or otherwise;
 - (d) Any claim which is in excess of any applicable limits provided in the insurance policy issued by the insolvent insurer;
 - (e) Any amount accrued as punitive or exemplary damages unless expressly covered under the terms of the policy; and
 - (f) Tort claims of any kind against the insurer, and claims against the insurer for bad faith or wrongful settlement practices.
- (4) Claims of the federal government other than those claims included in Class 2.
- (5) Wages.
 - (a) Debts due to employees for services performed, not to exceed one thousand dollars (\$1,000) to each employee which have been earned within one (1) year before the filing of the petition for liquidation. Officers shall not be entitled to the benefit of this priority.

- (b) This priority shall be in lieu of any other similar priority authorized by law as to wages or compensation of employees.
- (6) Residual classification. All other claims including claims of the federal or any state or local government, not falling within other classes under this section. Claims, including those of any governmental body, for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby. The remainder of such claims shall be postponed to the class of claims under subsection (9) of this section.
- (7) Judgments. Claims based solely on judgments. If a claimant files a claim and bases it both on the judgment and on the underlying facts, the claim shall be considered by the liquidator who shall give the judgment such weight as he deems appropriate. The claim as allowed shall receive the priority it would receive in the absence of the judgment. If the judgment is larger than the allowance on the underlying claim, the remaining portion of the judgment shall be treated as if it were a claim based solely on a judgment.
- (8) Interest on claims already paid. Interest at the legal rate compounded annually on all claims in the classes under subsections (1) to (7) of this section, inclusive, from the date of the petition for liquidation or the date on which the claim becomes due, whichever is later, until the date on which the dividend is declared. The liquidator, with the approval of the court, may make reasonable classifications of claims for purposes of computing interest, may make approximate computations, and may ignore certain classifications and time periods as de minimis.
- (9) Miscellaneous subordinated claims. The remaining claims or portions of claims not already paid, with interest as in subsection (8) of this section:
- (a) The first fifty dollars (\$50) of each claim in the classes under subsections ~~(3)~~~~(2)~~ to (7), inclusive, of this section, subordinated under this section;
 - (b) Claims under subsection (2) of KRS 304.33-380;
 - (c) Claims subordinated by KRS 304.33-600;
 - (d) Claims filed late;
 - (e) Portions of claims subordinated under subsection (6) of this section; and
 - (f) Claims or portions of claims, payment of which is provided by other benefits or advantages recovered or recoverable by the claimant.
- (10) Preferred ownership claims. Surplus or contribution notes, or similar obligations, and premium refunds on assessable policies. Interest at the legal rate shall be added to each claim, as in subsections (8) and (9) of this section.
- (11) Proprietary claims. The claims of shareholders or other owners.
- ➔Section 11. KRS 304.39-060 is amended to read as follows:
- (1) Any person who registers, operates, maintains or uses a motor vehicle on the public roadways of this Commonwealth shall, as a condition of such registration, operation, maintenance or use of such motor vehicle and use of the public roadways, be deemed to have accepted the provisions of this subtitle, and in particular those provisions which are contained in this section.
 - (2)
 - (a) Tort liability with respect to accidents occurring in this Commonwealth and arising from the ownership, maintenance, or use of a motor vehicle is "abolished" for damages because of bodily injury, sickness or disease to the extent the basic reparation benefits provided in this subtitle are payable therefor, or that would be payable but for any deductible authorized by this subtitle, under any insurance policy or other method of security complying with the requirements of this subtitle, except to the extent noneconomic detriment qualifies under paragraph (b) of this subsection.
 - (b) In any action of tort brought against the owner, registrant, operator or occupant of a motor vehicle with respect to which security has been provided as required in this subtitle, or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish and inconvenience because of bodily injury, sickness or disease arising out of the ownership, maintenance, operation or use of such motor vehicle only in the event that the

benefits which are payable for such injury as "medical expense" or which would be payable but for any exclusion or deductible authorized by this subtitle exceed one thousand dollars (\$1,000), or the injury or disease consists in whole or in part of permanent disfigurement, a fracture to a bone, a compound, comminuted, displaced or compressed fracture, loss of a body member, permanent injury within reasonable medical probability, permanent loss of bodily function or death. Any person who is entitled to receive free medical and surgical benefits shall be deemed in compliance with the requirements of this subsection upon a showing that the medical treatment received has an equivalent value of at least one thousand dollars (\$1,000).

- (c) Tort liability is not so limited for injury to a person who is not an owner, operator, maintainer or user of a motor vehicle within subsection (1) of this section, nor for injury to the passenger of a motorcycle arising out of the maintenance or use of such motorcycle.
- (3) For purposes of this section and the provisions on reparation obligor's rights of reimbursement, subrogation, and indemnity, a person does not intentionally cause harm merely because his act or failure to act is intentional or done with his realization that it creates a grave risk of harm.
- (4) Any person may refuse to consent to the limitations of his tort rights and liabilities as contained in this section. Such rejection must be **completed** in writing **or electronically** in a form to be prescribed by the Office of Insurance and must have been executed and filed with the office at a time prior to any motor vehicle accident for which such rejection is to apply. ~~Such rejection form together with a reasonable explanation thereof shall be furnished by the reparation obligor with each policy to each prospective insurance applicant.~~ Such rejection form shall affirmatively state in bold print that acceptance of this form of insurance denies the applicant the right to sue a negligent motorist unless certain requirements contained in the policy of insurance are met. Rejection by a person who is under legal disability shall be made on behalf of such person by his legal guardian, conservator or his natural parent. The failure of such guardian or a natural parent of a person under legal disability to file a rejection, within six (6) months from the date that this subtitle would otherwise become applicable to such person, shall be deemed to be an affirmative acceptance of all provisions of this subtitle. Provided, however, any person who, at the time of an accident, does not have basic reparation insurance but has not formally rejected such limitations of his tort rights and liabilities and has at such time in effect security equivalent to that required by KRS 304.39-110 shall be deemed to have fully rejected such limitations within meaning of this section for that accident only.
- (5)
 - (a) Any rejection must be filed with the Office of Insurance and shall become effective on the date of its filing until revoked. ***Nothing in this section shall require a new rejection to be filed for each new motor vehicle policy issued;***
 - (b) Any rejection filed prior to June 30, 1980, shall be deemed to be effective from the date of its filing until revoked; and
 - (c) Any revocation shall be in writing and shall become effective upon the date of its filing with the Office of Insurance.
- (6) Every insurance company when issuing an automobile policy to a resident of this Commonwealth must inform the buyer in writing in a form to be prescribed by the insurance executive director of his right to reject the limitations of his tort rights and liabilities under this subtitle in the manner provided in subsections (4) and (7) of this section.
- (7) Any rejection shall result in the full retention by the individual of his tort rights and his tort liabilities. Any person injured by a motor vehicle operator who has such rejection on file may claim his full damages, including nonpecuniary damages, or, if such injured person has not rejected his own tort limitations, he may also claim basic reparation benefits from the appropriate security on the vehicle as established under KRS 304.39-050. If such provider of security is other than the one providing security for the operator who has rejected the limitations, such provider shall be subrogated to the rights of the injured person to the extent of reparation benefits paid against the owner and operator of the vehicle.
- (8) No person who has rejected the tort limitations under this section, except as provided in subsection (9) of this section or KRS 304.39-140(5), may collect basic reparation benefits.
- (9) Any owner or operator of a motorcycle, as defined in Kentucky Revised Statutes, may file a rejection as described in subsections (4) and (5) of this section, which will apply solely to the ownership and operation of a motorcycle but will not apply to injury resulting from the ownership, operation or use of any other type of motor vehicle.

➔Section 12. KRS 304.40-075 is amended to read as follows:

- (1) As used in this section, unless the context requires otherwise:
 - (a) "Charitable health care provider" means any person, agency, clinic, or facility licensed or certified by the Commonwealth, or under a comparable provision of law of another state, territory, district, or possession of the United States, engaged in the rendering of medical care or dentistry without compensation or charge, and without expectation of compensation or charge, to the individual, without payment or reimbursement by any governmental agency or insurer. "Charitable health care provider" means those persons, agencies, clinics, or facilities providing primary care medicine and performing no invasive or surgical procedures, and those persons, agencies, clinics, or facilities providing services within the dentist's scope of practice under KRS Chapter 313;
 - (b) "Medical malpractice insurer" means every person or entity engaged as principal and as indemnitor, surety, or contractor in the business of entering into contracts to provide medical professional liability insurance, except an entity in the business of providing such medical professional liability insurance only to itself or its affiliated subsidiary, or parent corporation, or subsidiaries of its parent corporations; and
 - (c) "Medical professional liability insurance" means insurance to cover liability incurred as a result of the hands-on providing of medical professional services directly to patients by an insured in the treatment, diagnosis, or prevention of patient illness, disease, or injury.
- (2) Insurers offering medical professional liability insurance in the Commonwealth shall make available, as a condition of doing business in the Commonwealth pursuant to this chapter, medical professional liability insurance for charitable health care providers and persons volunteering to perform medical services for charitable health care providers, with the same coverage limits made available to its other insureds.
- (3)
 - (a) Premiums for policies issued under subsection (2) of this section shall be paid by the Commonwealth from the general fund upon written application for payment of the premium by the health care provider wishing to offer charitable services. ***A health care provider shall submit an application for payment of premium to the Office of Insurance no later than one (1) year from the expiration of the policy for which payment is being requested.***
 - (b) The Office of Insurance shall, through promulgation of administrative regulations pursuant to KRS Chapter 13A, establish reasonable guidelines for the registration of charitable health care providers. The guidelines shall require the provider to supply, at a minimum, the following information:
 1. Name and address of the charitable health care provider;
 2. Number of employees of the charitable health care provider who will be rendering medical care without compensation or charge and without expectation of compensation or charge, and who will be covered under the policy issued under subsection (2) of this section;
 3. The expected number of patients to be provided charitable health care services in the year for which the insurer will offer malpractice coverage;
 4. The charitable health care provider's acknowledgment that the insurer's risk management and loss prevention policies shall be followed;
 5. A copy of the registration filed with the Cabinet for Health and Family Services under KRS 216.941; and
 6. A copy of the medical malpractice policy, declaration page, and any other documentation the executive director may deem necessary to determine the proper amount of premiums and taxes to be reimbursed.
 - (c) Persons insured under this section shall be required to comply with the same risk management and loss prevention policies which the insurer imposes upon its other insureds.
 - (d) Any premium refund for medical professional liability insurance issued under subsection (2) of this section received for any reason by the charitable health care provider shall be promptly remitted to the office for transmittal to the general fund.

- (4) This section shall only apply to charitable health care providers and persons volunteering to perform medical services for charitable health care providers who are not otherwise covered by any policy of medical professional liability insurance for the charitable health care services provided, and that meet the terms for eligibility established pursuant to this section.
- (5) Coverage offered to charitable health care providers and persons volunteering at charitable health care providers shall be at least as broad as the coverage offered by the insurer to other noncharitable health care providers or facilities and to medical professionals working at noncharitable health care facilities.
- (6) The Office of Insurance shall retrospectively review on an annual basis the premiums paid pursuant to this section as opposed to the expenses incurred by the insurers covering risks under this section to determine if the profits made for those risks were consistent with reasonable loss ratio guidelines. If the determination is made that the profits were not consistent with reasonable loss ratio guidelines, the Office of Insurance shall determine the amount of the premiums to be refunded to the Commonwealth.
- (7) The Cabinet for Health and Family Services shall make available to the Office of Insurance information on its registration of charitable health care providers for the purpose of obtaining medical malpractice insurance.
- (8) The Office of Insurance shall not provide medical malpractice insurance as specified in subsection (3)(a) of this section to a charitable health care provider who has not registered with the Cabinet for Health and Family Services under KRS 216.941.

➔Section 13. KRS 304.45-050 is amended to read as follows:

Any purchasing group meeting the criteria established under the provisions of the Liability Risk Retention Act, 15 U.S.C. secs. 3901 et seq., shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance, the countersignature requirement as provided in KRS ~~304.3-240~~~~{304.3-250}~~, prohibition of group purchasing of insurance, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state which prohibits providing, or offering to provide, to a purchasing group or its members advantages based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages, or other matters. A purchasing group shall be subject to all other applicable laws of this state.

➔Section 14. KRS 304.47-020 is amended to read as follows:

- (1) For the purposes of this subtitle, a person or entity commits a "fraudulent insurance act" if he or she engages in any of the following, including but not limited to matters relating to workers' compensation:
 - (a) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, Special Fund, or any agent thereof, any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy or from a "self-insurer" as defined by KRS Chapter 342, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
 - (b) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to an insurer, Board of Claims, or any agent thereof, any statement as part of, or in support of, an application for an insurance policy, for renewal, reinstatement, or replacement of insurance, or in support of an application to a lender for money to pay a premium, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the application;
 - (c) Knowingly and willfully transacts any contract, agreement, or instrument which violates this title;
 - (d) Knowingly and with intent to defraud or deceive, receives money for the purpose of purchasing insurance, and fails to obtain insurance;
 - (e) Knowingly and with intent to defraud or deceive, fails to make payment or disposition of money or voucher as defined in KRS 304.17A-750, as required by agreement or legal obligation, that comes into his or her possession while acting as a licensee under this chapter;
 - (f) Issues or knowingly presents fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, insurance binders, or any other documents that purport to evidence insurance;

- (g) Makes any false or fraudulent representation as to the death or disability of a policy or certificate holder in any written statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer;
 - (h) Engages in unauthorized insurance, as defined in KRS 304.11-030;
 - (i) Knowingly and with intent to defraud or deceive, presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or to the executive director, any statement, knowing that the statement contains any false, incomplete, or misleading information concerning any material fact or thing, as part of, or in support of one (1) or more of the following:
 - 1. The rating of an insurance policy;
 - 2. The financial condition of an insurer;
 - 3. The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one (1) or more lines of insurance in all or part of this Commonwealth by an insurer; or
 - 4. A document filed with the executive director;
 - (j) Knowingly and with intent to defraud or deceive, engages in any of the following:
 - 1. Solicitation or acceptance of new or renewal insurance risks on behalf of an insolvent insurer; or
 - 2. Removal, concealment, alteration, tampering, or destruction of money, records, or any other property or assets of an insurer; or
 - (k) Assists, abets, solicits, or conspires with another to commit a fraudulent insurance act in violation of this subtitle.
- (2) (a) Except as provided in paragraphs (b) and (c) of this subsection, a person convicted of a violation of subsection (1) of this section shall be guilty of a misdemeanor where the aggregate of the claim, benefit, or money referred to in subsection (1) of this section is less than or equal to **five hundred dollars (\$500)**~~three hundred dollars (\$300)~~, and shall be punished by:
- 1. Imprisonment for not more than one (1) year;
 - 2. A fine, per occurrence, of not more than one thousand dollars (\$1,000) per individual nor five thousand dollars (\$5,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 - 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (b) Except as provided in paragraph (c) of this subsection, where the claim, benefit, or money referred to in subsection (1) of this section exceeds an aggregate of **five hundred dollars (\$500)**~~three hundred dollars (\$300)~~, a person convicted of a violation of subsection (1) of this section shall be guilty of a felony and shall be punished by:
- 1. Imprisonment for not less than one (1) nor more than five (5) years;
 - 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation or twice the amount of gain received as a result of the violation, whichever is greater; or
 - 3. Both imprisonment and a fine as set forth in subparagraphs 1. and 2. of this paragraph.
- (c) Any person, with the purpose to establish or maintain a criminal syndicate, or to facilitate any of its activities, as set forth in KRS 506.120(1), shall be guilty of engaging in organized crime, a Class B felony, and shall be punished by:
- 1. Imprisonment for not less than ten (10) years nor more than twenty (20) years;
 - 2. A fine, per occurrence, of not more than ten thousand dollars (\$10,000) per individual nor one hundred thousand dollars (\$100,000) per corporation, or twice the amount of gain received as a result of the violation; whichever is greater; or
 - 3. Both imprisonment and a fine, as set forth in subparagraphs 1. and 2. of this paragraph.

- (d) In addition to imprisonment, the assessment of a fine, or both, a person convicted of a violation of paragraph (a), (b), or (c) of subsection (2) of this section may be ordered to make restitution to any victim who suffered a monetary loss due to any actions by that person which resulted in the adjudication of guilt, and to the division for the cost of any investigation. The amount of restitution shall equal the monetary value of the actual loss or twice the amount of gain received as a result of the violation, whichever is greater.
- (3) Any person damaged as a result of a violation of any provision of this section when there has been a criminal adjudication of guilt shall have a cause of action to recover compensatory damages, plus all reasonable investigation and litigation expenses, including attorneys' fees, at the trial and appellate courts.
- (4) The provisions of this section shall also apply to any agent, unauthorized insurer or its agents or representatives, or surplus lines carrier who, with intent, injures, defrauds, or deceives any claimant with regard to any claim. The claimant shall have the right to recover the damages provided in subsection (3) of this section.

➔Section 15. KRS 342.817 is amended to read as follows:

- (1) The authority, through its board and manager, shall establish separate rating plans, rates, and underwriting standards for different classes of risks for the authority.
- (2) The rating plans, rates, and underwriting standards developed for the categories of risk shall be based on generally-accepted actuarial practices and procedures as set forth in the Statement of Principles Regarding Property and Casualty Ratemaking of the Casualty Actuarial Society, in accordance with the actuarial standards of practice and compliance guidelines of the Actuarial Standards Board. The rates shall be actuarially sound for both the voluntary market and the market of last resort and set at levels which are expected, in the aggregate, to be sufficient to pay all workers' compensation claims incurred by the participating employer risks and other permitted expenses of the authority. ***The rates for the voluntary market and the market of last resort shall be filed individually with the executive director of the Office of Insurance on forms prescribed by the executive director by the promulgation of administrative regulations.***
- (3) Multitiered premium or rating plans may be developed to provide workers' compensation coverage to insureds in the Commonwealth.
- (4) The manager shall develop statistical and other information as necessary to distinguish its writings in the voluntary market, and its writings as a market of last resort.
- (5) The rates established by the authority for its policyholders shall be based only on Kentucky loss experience data, except that other loss experience data may be utilized as a supplement to Kentucky data if supplemental or additional data are necessary to establish statistical credibility of an employment classification.
- (6) Any and all rates, whether for the voluntary market or the market of last resort, established by the board are deemed competitive and shall be filed with the executive director of insurance in accordance with KRS Chapter 304 in the same manner as any other mutual insurance company writing workers' compensation in the Commonwealth.
- (7) Notwithstanding any provision of KRS Chapter 304 to the contrary, the surplus requirements for mutual insurance companies in the Commonwealth shall not apply to the authority until the authority has been in operation for eighty-four (84) months, unless modified by the General Assembly. In addition to other reporting requirements in KRS 342.809 and 342.821, the authority shall report to the Labor and Industry Committee of the General Assembly, no later than October 31 of each year, on the status of its efforts to build and maintain a surplus as required by KRS Chapter 304.

➔Section 16. The following KRS section is repealed:

- 304.17A-071 Discontinuance of operation of Kentucky Health Purchasing Alliance -- Executive director to terminate alliance activities by June 30, 1999.

Signed by Governor April 26, 2010.

CHAPTER 167**(HB 295)**

AN ACT relating to the Building Inspectors' Financial Incentive Training Program Fund.

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

➔Section 1. KRS 198B.095 is amended to read as follows:

- (1) The Board of Housing, Buildings and Construction may establish a building inspectors training program through the promulgation of administrative regulations in accordance with the provisions of KRS Chapter 13A. The program shall provide training to encourage local governments to establish and improve building code enforcement programs and to encourage all building inspectors to upgrade their skills.
- (2) If the board chooses to establish the program authorized in subsection (1) of this section, there shall be created in the Office of Housing, Buildings and Construction, under the Board of Housing, Buildings and Construction, a trust and agency fund to be known as the "Building Inspectors' Financial Incentive Training Program fund". ~~{The fund shall be funded annually with a maximum of one hundred fifty thousand dollars (\$150,000) by increasing the office's plan review fees collected for each occupancy classification under KRS 198B.060 by one half cent (\$.005) per calculated square foot. Any funds collected annually in excess of one hundred fifty thousand dollars (\$150,000) shall be used solely for the administration of the office's building inspection program. Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in this section.}~~
- (3) *If the board establishes the Building Inspectors' Financial Incentive Training Program fund:*
 - (a) *The fund shall be funded annually with a maximum of one hundred twenty-five thousand dollars (\$125,000) at a rate of one-half cent (\$.005) per calculated square foot from the office's plan review fees collected;*
 - (b) *Any funds annually resulting from plan review fees in excess of one hundred twenty-five thousand dollars (\$125,000) shall be used solely for the operating costs of the office's building inspection program;*
 - (c) *Moneys deposited annually into the Building Inspectors' Financial Incentive Training Program fund shall be available for use by the board to support the training program established pursuant to subsection (1) of this section; and*
 - (d) *No moneys shall be deposited into the Building Inspectors' Financial Incentive Training Program fund causing the balance to exceed one hundred twenty-five thousand dollars (\$125,000).*
- (4) *Any unused fund balance at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year, and moneys in the fund shall be available only for the purposes specified in subsection (1) of this section. The established fund shall not be subject to the provisions of KRS 45.229.*
- (5) *Any interest earnings of the trust fund shall become part of the fund and shall not lapse.*

Signed by Governor April 26, 2010.

CHAPTER 168**(HB 72)**

AN ACT relating to the Colon Cancer Screening Program.

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

➔Section 1. KRS 214.542 is amended to read as follows:

- (1) The program shall provide colon cancer screening for uninsured individuals who are age fifty (50) to sixty-four (64) and other uninsured individuals determined to be at high risk for developing colon cancer.

- (2) Services provided under the program may be undertaken by private contract for services or operated by the department. The program may also provide referral services for the benefit of individuals for whom further examination or treatment is indicated by the colon cancer screening.
- (3) *The department may adopt a schedule of income-based fees to be charged for colon cancer screening. The schedule adopted shall be such that the screening is affordable and accessible to the largest possible number of individuals throughout the Commonwealth.*
- ~~(4)(3)}~~ The department may accept any grant or award of funds from federal or private sources for carrying out the provisions of this section.
- ~~(5)(4)}~~ The department shall establish a data collection system to document the number of individuals screened, the demographic characteristics of the individuals screened, and the types of colon cancer screening tests performed under the program.
- ~~(6)(5)}~~ The department shall promulgate administrative regulations to implement the provisions of this section.

➔SECTION 2. A NEW SECTION OF KRS 214.540 TO 214.544 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *There is hereby created a restricted fund to be known as the Kentucky Colon Cancer Screening Program fund.*
- (b) *The fund shall be administered by the Finance and Administration Cabinet.*
- (c) *The fund shall include moneys appropriated by the General Assembly for the purpose of the Colon Cancer Screening Program and moneys collected under Section 1 of this Act.*
- (2) *Moneys in the fund shall be used by the department to administer KRS 214.540 to 214.544.*
- (3) *Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year to be used in accordance with subsection (2) of this section.*
- (4) *Interest earned on any moneys in the fund shall accrue to the fund.*
- (5) *Moneys in the fund are hereby appropriated for the purposes set forth in KRS 214.540 to 214.544.*

➔Section 3. The provisions of this Act shall be in memory of Richard "Butch" Stewart.

Signed by Governor April 26, 2010.

CHAPTER 169

(HB 454)

AN ACT relating to liens.

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

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 376 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, unless context requires otherwise:*
 - (a) *"Charges" means all rates, charges and other amounts payable for services rendered by municipal utility, including and without limitation, penalties and interest and reasonable attorney's fees and other costs of enforcing the lien;*
 - (b) *"Municipal utility" means any public agency that owns or operates a system or facilities for the provision of gas, electric, sewer, water, or telecommunications service to retail customers.*
 - (c) *"Public agency" has the same meaning as specified in KRS 65.230.*
 - (d) *"Retail business ratepayer" means any nonresidential ratepayer of a municipal utility that is in arrears on the utility bill in an amount in excess of ten thousand dollars (\$10,000);*
 - (e) *"Service" means gas, electric, sewer, or water service provided by the municipal utility;*
- (2) *Any municipal utility shall have a lien on the real property of a retail business ratepayer served by the municipal utility. The lien shall be for the collection of rates and charges for retail utility service provided to*

the retail business ratepayer. In no instance shall this lien attach to the real property of an owner who has leased the property to a retail business ratepayer unless the property owner is responsible for paying the utility charges under the lease agreement.

- (3) *The lien shall arise and attach as services are provided to the retail business ratepayer and shall remain in place until the rates and charges for the services are paid in full. The lien is deemed a statutory lien within the meaning of 11 U.S.C. sec. 101(53).*
- (4) *The rights to a lien under this section:*
 - (a) *Are in addition to any other rights or remedies a municipal utility may have under the law or pursuant to a contract; and*
 - (b) *Are not intended to impair or alter any of the municipal utility's other rights or remedies, including the ability to require an additional deposit or to shut off and discontinue service.*
- (5) *The lien may take priority over a mortgage, a contract lien, or a bona fide conveyance for value if:*
 - (a) *The municipal utility files notice which is duly recorded or lodged for record according to law;*
 - (b) *The utility claiming the prior lien files a statement of lien in the office of the county clerk of the county where the service has been furnished before the recording of the mortgage, the contract lien, or the conveyance; and*
 - (c) *The statement of lien is in the form prescribed in subsections (6) and (7) of this section.*
- (6) *The statement of lien shall be subscribed and sworn to by an authorized representative of the municipal utility and shall identify the following:*
 - (a) *The municipal utility claiming the lien, including an address and a contact person;*
 - (b) *The property, by legal description, against which the lien is claimed;*
 - (c) *The nature of the service provided;*
 - (d) *The contract, if any, pursuant to which the services were provided; and*
 - (e) *The amounts, if any, due for services provided.*
- (7)
 - (a) *The statement of lien shall be recorded in the office of the county clerk of the county where the service is furnished or the property or some portion of the property serviced by the municipal utility is situated. The utility shall send a copy of the statement of lien by regular mail, postage prepaid, to the owner of the property at the owner's last known address or to the address associated with the tax bill for the property. The copy of the statement of lien shall be sent within ten (10) business days of its filing in the office of the county clerk.*
 - (b) *At any time, a municipal utility may supplement the statement of lien by recording the supplement in the same manner as the original statement of lien. Any supplement to the statement of lien shall relate back to the date of the original recording of the statement of lien.*
- (8) *The county clerk shall endorse each statement of lien on the date of its filing and the clerk shall make an abstract of the statement, endorse the abstract, and place it in a book to be kept by the clerk for that purpose. The book shall contain the following:*
 - (a) *The endorsed and indexed abstracts;*
 - (b) *The date of filing the statement;*
 - (c) *The name of the municipal utility;*
 - (d) *The name of the person against whose property the lien is filed; and*
 - (e) *A description of the property charged with the lien.*
- (9) *The clerk shall receive a fee pursuant to KRS 64.012 from the person filing the statement as full compensation, which shall be taxed and collected as other costs.*
- (10) *An action to enforce the lien under this section shall be by equitable proceedings and conducted as other proceedings in equity in similar cases. The petition shall allege the facts necessary to secure a lien, describe*

the property charged, and the plaintiff's interest in enforcing the lien. Lien-holders may unite in the action to enforce the lien as plaintiffs, and those who are not plaintiffs shall be made defendants. The debtor or the debtor's personal representative, heirs, devisees, and all other persons having liens on or interests in the property sought to be subjected shall be made defendants.

- (11) *The clerk of the court in which the petition is filed shall issue the proper process against the defendants. After the expiration of ten (10) days from the filing of the petition, the clerk of the court in which the petition was filed shall:*
 - (a) *Draw up an order referring the action to the master commissioner of the court and file it with the petition;*
 - (b) *Deliver the pleadings and papers of the action to the commissioner; and*
 - (c) *Make a memorandum of the action in the minute book.*
- (12) *If, for any cause, it should be improper to refer the case to the master commissioner, the master commissioner is directed to select some suitable person to act as a new commissioner for the case and refer the case to him or her. However, before proceeding to act on the case, the new commissioner shall take an oath before the clerk and execute bond with sufficient surety. The bond shall be preserved by the clerk and reported to the court.*
- (13) *The owner or claimant of property against which a lien has been asserted may file a bond for double the amount of the lien claimed with the county clerk in the county where the lien was filed. Bond may be asserted at any time before a judgment is rendered enforcing the lien and the bond shall have good sureties approved by the clerk and conditioned upon the obligors satisfying any judgment that may be rendered in favor of the person asserting the lien. The bond shall be preserved by the clerk, and upon its execution the lien upon the property shall be discharged. The person asserting the lien may make the obligors in the bond parties to any action to enforce its claim. Any judgment recovered may be against all or any of the obligors on the bond.*

Signed by Governor April 26, 2010.

CHAPTER 170

(HB 1)

AN ACT relating to public safety.

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

➔Section 1. KRS 403.720 is amended to read as follows:

As used in KRS 403.715 to 403.785:

- (1) "Domestic violence and abuse" means physical injury, serious physical injury, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- (2) "Family member" means a spouse, including a former spouse, **a grandparent**, a parent, a child, a stepchild, or any other person **living in the same household as a child if the child is the alleged victim;**~~related by consanguinity or affinity within the second degree; and~~
- (3) **"Global positioning monitoring system" means a system that electronically determines a person's location through global positioning satellite technology, radio frequency technology, or a combination thereof and reports the location of an individual through the use of a transmitter or similar device worn by that individual and that transmits latitude and longitude data to a monitoring entity. The term does not include any system that contains or operates global positioning system technology, or any other similar technology, that is implanted or otherwise invades or violates the individual's body; and**
- (4) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together.

➔Section 2. KRS 403.740 is amended to read as follows:

- (1) If, upon review of the petition, as provided for in KRS 403.735, the court determines that the allegations contained therein indicate the presence of an immediate and present danger of domestic violence and abuse, the court shall issue, upon proper motion, ex parte, an emergency protective order:
 - (a) Restraining the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restraining the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restraining the adverse party from disposing of or damaging any of the property of the parties;
 - (d) ***Restraining the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;***
 - (e) Directing the adverse party to vacate the residence shared by the parties to the action;
 - ~~(f)(e)~~ Utilizing the criteria set forth in KRS 403.270, 403.320, and KRS 403.822, grant temporary custody;~~for~~
 - (g) ***Restraining the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or***
 - ~~(h)(f)~~ Enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse; or any combination thereof, ***except that the use of a global positioning monitoring system shall not be ordered.***
- (2) Except as provided in KRS 403.036, if the court issues an emergency protective order pursuant to subsection (1) of this section, the court shall not order or refer the parties to mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.735.
- (3) An emergency protective order issued in accordance with this section shall be issued without bond being required of the petitioner.
- (4) An emergency protective order issued in accordance with this section shall be effective ***until the full hearing provided for in this subsection or in KRS 403.745, or until withdrawn by the court***~~for a period of time fixed in the order, but not to exceed fourteen (14) days~~. Upon the issuance of an emergency protective order, ***the court shall set a date and time for a full hearing, within fourteen (14) days as provided for in KRS 403.745, and shall summon the adverse party to appear. If, at the hearing, the adverse party is not present and has not been served, the emergency protective order shall remain in place, and the court shall direct the issuance of a new summons for a hearing set not more than fourteen (14) days in the future.***~~shall be fixed not later than the expiration date of the emergency protective order. An emergency protective order shall be reissued for a period not to exceed fourteen (14) days~~ If service has not been made on the adverse party ***prior to seventy-two (72) hours before that hearing or a subsequent hearing, the emergency protective order shall remain in place and the court shall continue the hearing and issue a new summons with a new date and time for the hearing to occur, which shall be within fourteen (14) days of the originally scheduled date for the continued hearing. Before issuing the new summons, the court shall note the length of time that has passed since the issuance of the emergency protective order, during which the adverse party has not been served. The court shall repeat the process of continuing the hearing and reissuing a new summons after noting the lapse of time since the issuance of the emergency protective order until the adverse party is served at least seventy-two (72) hours in advance of the scheduled hearing. In issuing the summons, the court shall simultaneously transmit a copy of the summons or notice of its issuance and provisions to the petitioner***~~by the fixed court date and time or as the court determines is necessary for the protection of the petitioner~~.
- (5) The adverse party shall be personally served with a copy of the emergency protective order, a copy of the ~~summons~~~~notice~~ setting the full hearing, and a copy of the petition. Service may be made in the manner and by the persons authorized to serve subpoenas under the provisions of Rule 45.03 of the Rules of Civil Procedure. No service fee shall be assessed to the petitioner.
- (6) (a) ***The provisions of this section permitting the continuance of an emergency protective order shall be limited to six (6) months from the issuance of the initial emergency protective order.***

- (b) *If the respondent has not been served within the six (6) month period, the emergency protective order shall be rescinded without prejudice. Prior to the expiration of the emergency protective order, the court shall provide notice to the petitioner stating that if the petitioner does not file a new petition the order shall be rescinded without prejudice.*
- (c) *A new emergency protective order shall not be issued by the court unless the petitioner files a new petition, which shall start the six (6) month process again.*
- (d) *The total length of time that a series of emergency protective orders may remain in effect without the respondent being served shall not exceed two (2) years.*

➔SECTION 3. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

- (1) *Prior to a hearing on a domestic violence order, the petitioner or the respondent may request the court to obtain the information specified in this subsection, or the court on its own motion may obtain the information specified in this subsection:*
 - (a) *Obtain the respondent's Kentucky criminal history from the Department of Kentucky State Police or the Administrative Office of the Courts; and*
 - (b) *Obtain the history of any Kentucky emergency protective orders or domestic violence orders relating to the respondent, and the record of compliance with those orders from the Administrative Office of the Courts.*
- (2) *After obtaining the information requested in subsection (1) of this section, the court shall review the documents which have been received and shall:*
 - (a) *Consider the respondent's criminal history, paying particular attention to the respondent's record of past violence, threats of violence, and danger to others;*
 - (b) *Consider the record of any past emergency protective orders or domestic violence orders entered by any Kentucky court relating to the respondent and the record of the respondent's compliance or noncompliance with those orders; and*
 - (c) *Utilize that information at any hearing required by KRS 403.740 or 403.745 to assess which sanctions may protect against danger to the petitioner or a family member or member of an unmarried couple for whom protection is being sought.*
- (3) *The court shall provide a copy of the respondent's criminal history information, emergency protective order history information, and domestic violence order history information to the petitioner and to the respondent or counsel for the petitioner and counsel for the respondent in accordance with the provisions of CR 26, including CR 26.03, of the Rules of Civil Procedure.*

➔SECTION 4. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

- (1) (a) *Based upon the information which the court has received as required by Section 3 of this Act, including but not limited to the respondent's Kentucky criminal history, the respondent's domestic violence order history, domestic violence order compliance history, and the information contained in the petition, the court may, if the court deems it appropriate, suggest that the petitioner contact the county attorney.*
 - (b) *If the court decides to refer the petitioner to the county attorney, the court shall explain to the petitioner that the purpose of the meeting is so that the county attorney can explain to the petitioner the options that the petitioner may have with regard to the filing of criminal charges regarding any alleged act of domestic violence within the purview of KRS 403.715 to 403.785.*
 - (c) *The court shall explain to the petitioner that contacting the county attorney is voluntary and not mandatory.*
- (2) *If the petitioner decides to contact the county attorney, the court shall notify the county attorney and assist in facilitating a meeting between the petitioner and the county attorney.*
- (3) *At a meeting with the petitioner, the county attorney shall:*
 - (a) *Ascertain from the petitioner the facts of the incident;*
 - (b) *Determine which criminal offenses may have been committed by the respondent;*

- (c) *Advise the petitioner of the statutes which may have been violated, the potential penalties involved, the details of bringing a criminal action, and the standard of proof required in a criminal action; and*
- (d) *Such other information as the county attorney deems appropriate.*
- (4) (a) *At the meeting, the county attorney shall answer, in the fullest manner possible, any questions relating to filing and prosecution of criminal charges which the petitioner may have.*
- (b) *The county attorney shall explain to the petitioner that the petitioner is not obligated to file criminal charges and may continue with the civil domestic violence order process.*
- (5) *If the petitioner desires to file criminal charges, the county attorney shall assist the petitioner in filing a criminal complaint and obtaining a summons or warrant of arrest for the respondent.*

➔Section 5. KRS 403.750 is amended to read as follows:

- (1) Following the hearing provided for under KRS 403.740 and 403.745, the court, if it finds from a preponderance of the evidence that an act or acts of domestic violence and abuse have occurred and may again occur, may:
 - (a) Restrain the adverse party from any contact or communication with the petitioner except as directed by the court;
 - (b) Restrain the adverse party from committing further acts of domestic violence and abuse;
 - (c) Restrain the adverse party from disposing of or damaging any of the property of the parties;
 - (d) *Restrain the adverse party from going to or within a specified distance of a specifically described residence, school, or place of employment of the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order;*
 - (e) Direct the adverse party to vacate the residence shared by the parties to the action;
 - ~~(f)(e)~~ Utilizing the criteria set forth in KRS 403.270, 403.320, and 403.822, award temporary custody;
 - ~~(g)(f)~~ Utilizing the criteria set forth in KRS 403.211, 403.212, and 403.213, award temporary support;
 - ~~(h)(g)~~ Direct that either or both parties receive counseling services available in the community, except that the court shall not order or refer the parties to participate in mediation for resolution of the issues alleged in the petition filed pursuant to KRS 403.715 to 403.785;~~or~~
 - (i) *Restrain the adverse party from approaching the petitioner or a minor child of the petitioner within a distance specified in the order, not to exceed five hundred (500) feet; or*
 - ~~(j)(h)~~ *Except for ordering the use of a global positioning monitoring system, which shall not be utilized until after a court determines that a substantial violation of a domestic violence order has occurred,* enter other orders the court believes will be of assistance in eliminating future acts of domestic violence and abuse.
- (2) Any order entered pursuant to this section shall be effective for a period of time, fixed by the court, not to exceed three (3) years and may be reissued upon expiration for an additional period of up to three (3) years. The number of times an order may be reissued shall not be limited. With respect to whether an order should be reissued, any party may present to the court testimony relating to the importance of the fact that acts of domestic violence or abuse have not occurred during the pendency of the order.
- (3) Upon proper filing of a motion, either party may seek to amend a domestic violence order.
- (4) When temporary child support is granted under the provisions of this section, the court shall enter an order detailing how the child support is to be paid and collected. The enforcement procedures for child support orders, entered pursuant to KRS 403.211, 403.212, and 403.213, including but not limited to 403.215, shall be available to temporary child support orders issued under KRS 403.715 to 403.785.
- (5) Any order entered pursuant to this section restraining a party or parties to an action shall be issued without bond being required of the petitioner.

➔SECTION 6. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

- (1) *Testimony taken at any hearing or other proceeding authorized by KRS 403.715 to 403.785 shall be taken under oath.*
- (2)
 - (a) *Before imposing a condition described in subsection (1)(d) of Section 2 or subsection (1)(d) of Section 5 of this Act, the court shall afford the petitioner an opportunity to provide the court with a list of specified areas from which the petitioner would like the respondent excluded and shall consider the petitioner's request, if any, in determining the locations the respondent will be ordered to refrain from going to or near. The petitioner shall provide the court with an explanation of the reasons for and the benefits of ordering the respondent to be excluded from each location.*
 - (b) *Before imposing a condition described in subsection (1)(d) of Section 5 of this Act, a court shall afford the respondent an opportunity to provide the court with any objections or concerns relating to areas which the petitioner has requested that the respondent be ordered to refrain from going to or near. The respondent shall provide the court with an explanation of the reasons for or the benefits of denying the petitioner's request that the respondent be excluded from each location. If the respondent or counsel for the respondent fails to appear for the hearing, the respondent is deemed to waive, until and unless another hearing is set, any objection to the petitioner's request.*
- (3) *If the court imposes a condition described in subsection (1)(d) of Section 2 or subsection (1)(d) of Section 5 of this Act, the court shall specifically describe the locations that the respondent has been ordered to refrain from going to or near and the minimum distances, if any, that the respondent shall maintain from those locations. The court may consider whether the respondent may pass a prohibited location when going to or from any other location and the times of and necessity for modifying any order to accommodate this travel, provided that the respondent does not interrupt his or her travel to harass, harm, or attempt to harm the petitioner.*
- (4) *The court shall not order the respondent to refrain from going to or near a location where there is not a specific, demonstrable danger to the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.*

➔SECTION 7. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "substantial violation" means a violation of a domestic violence order that has resulted in one (1) or more of the following acts by the respondent against the petitioner, minor child of a petitioner, family member, or member of an unmarried couple protected in the order:*
 - (a) *An assault prohibited by KRS Chapter 508;*
 - (b) *Menacing as prohibited by KRS 508.050;*
 - (c) *Terroristic threatening as prohibited by KRS Chapter 508;*
 - (d) *Stalking as prohibited by KRS Chapter 508;*
 - (e) *Wanton endangerment as prohibited by KRS Chapter 508;*
 - (f) *Kidnapping or a related offense as prohibited by KRS Chapter 509;*
 - (g) *A sexual offense as prohibited by KRS Chapter 510 other than indecent exposure;*
 - (h) *Burglary as prohibited by KRS Chapter 511;*
 - (i) *Destruction or damage to property as prohibited by KRS Chapter 512;*
 - (j) *Theft as prohibited by KRS Chapter 514;*
 - (k) *Harassment or harassing communications as prohibited by KRS Chapter 525; or*
 - (l) *Any felony offense against the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order.*
- (2) *Following a report of an alleged substantial violation of a domestic violence order by a respondent and prior to any civil hearing on the alleged violation of the order, the court shall obtain an updated report of the respondent's Kentucky criminal history from the Administrative Office of the Courts or the Department of Kentucky State Police and shall obtain from the Administrative Office of the Courts the history of Kentucky Emergency Protective Orders and Domestic Violence Orders against the respondent, together with any violations of those orders.*

- (3) *Following an alleged substantial violation of a domestic violence order, the court shall hold a hearing to determine if the violation occurred, and if the violation occurred, what sanctions the court may apply. At the hearing the court shall explain the sanctions which may be imposed to the petitioner and the respondent. The court shall explain to the petitioner that the court may require a respondent who has committed a substantial violation of the domestic violence order to wear a global positioning monitoring system device in lieu of imprisoning the respondent and, except as provided in this section, to pay the costs associated with operating that system in relation to the respondent and the costs associated with operating the system in relation to the petitioner if the petitioner elects to participate.*
- (4) *Before imposing global positioning monitoring, the court shall provide to the petitioner information regarding:*
 - (a) *The petitioner's right to participate in a global positioning monitoring system or to refuse to participate in that system and the procedure for requesting that the court terminate the petitioner's participation;*
 - (b) *The manner in which the global positioning monitoring system technology functions and the risks and limitations of that technology, and the extent to which the system will track and record the respondent's location and movements;*
 - (c) *Any locations that the respondent is ordered to refrain from going into or near and the minimum distances, if any, that the respondent shall maintain from those locations;*
 - (d) *Any sanctions that the court may impose on the respondent for violating, in the future, a condition of the domestic violence order imposed under this section;*
 - (e) *The procedure that the petitioner is to follow, and support services available to assist the petitioner, including but not limited to a designated person or office to notify if the respondent violates a condition of the domestic violence order or if the global positioning monitoring equipment of the respondent or of the petitioner fails; and*
 - (f) *Community services available to assist the petitioner in obtaining shelter, counseling, education, child care, legal representation, and other assistance available to address the consequences of domestic violence.*
- (5) *Prior to ordering the respondent to wear a global positioning monitoring system device the court shall provide the respondent an opportunity to controvert the information provided by the petitioner or any other source and to provide to the court the respondent's reasons why the respondent should not be ordered to wear a global positioning monitoring system device.*
- (6) *If the court orders the respondent to wear a global positioning monitoring system device, in addition to the information described in subsection (4) of this section, the court shall provide to the petitioner who participates in a global positioning monitoring system under this section, the name and telephone number of an appropriate local law enforcement agency in the county in which the order is issued whom the petitioner may call to request immediate assistance if the respondent violates a condition of the domestic violence order imposed pursuant to Section 5 of this Act and this section. If the local law enforcement agency does not provide service twenty-four (24) hours per day, seven (7) days per week, the petitioner shall be instructed to call the local public safety answering point using the 911 telephone number.*
- (7) *If the petitioner has requested that the respondent be ordered to wear a global positioning monitoring system device, the court shall, prior to ordering the respondent to wear a global positioning monitoring system device under this section:*
 - (a) *Consider the likelihood that without the utilization of a global positioning monitoring system the respondent will seek to kill, assault, stalk, harass, menace, or otherwise threaten the petitioner, minor child of the petitioner, family member, or member of an unmarried couple protected in the order; and*
 - (b) *Enter a determination of findings of fact and reasons as to why the petitioner's request for the respondent to be ordered to participate in global positioning monitoring is being granted or denied.*
- (8) *A petitioner may request that the court terminate the petitioner's participation in a global positioning monitoring system at any time.*

- (9) (a) *When a court determines that the respondent shall wear a global positioning monitoring system device, the court shall notify the respondent, the petitioner, and the entity providing global positioning monitoring system services of:*
1. *The fact that global positioning monitoring system participation has been ordered;*
 2. *The cost that the respondent is to pay to the entity providing the global positioning monitoring system services, including but not limited to the amount to be paid, the frequency of the payments, the location to which the payments shall be sent, and the duration of the payments;*
 3. *The cost of the administrative fee that the respondent is to pay to the county or counties providing the monitoring service;*
 4. *The restrictions on the respondent with regard to locations which the respondent is not to go into or near and the specific distances contained in the order;*
 5. *The permitted exceptions to the restrictions on the respondent which relate to permitted travel by the respondent which may bring the respondent near or into a location where the respondent normally would be prohibited from going into or near;*
 6. *The duration of time that the respondent shall wear the device which shall not exceed the duration of the underlying domestic violence order but which may be shorter than the underlying domestic violence order. The date of expiration of the requirement to wear the device shall be specified in the order;*
 7. *The notifications to be made in the event that the respondent violates the domestic violence order; and*
 8. *Such other information as the court deems appropriate.*
- (b) *If the court determines that a respondent is indigent, the court may, based on a sliding scale established by the Supreme Court of Kentucky by rule, require the respondent to pay the costs imposed under this section in an amount that is less than the full amount of the costs associated with operating the global positioning monitoring system in relation to the respondent or providing the petitioner with an electronic receptor device.*
- (c) *If a respondent pays to an entity that operates a global positioning monitoring system the amount ordered by the court under this subsection, the entity shall accept the amount as payment in full. Neither the Commonwealth, nor the Court of Justice nor the county, urban county, charter county, or consolidated local government shall be responsible for payment of any costs associated with operating the global positioning monitoring system in relation to an indigent respondent or petitioner.*
- (d) *A court that imposes a condition described by this section shall order the entity that operates the global positioning monitoring system to immediately notify the petitioner, the court, and the appropriate local law enforcement agency named in the order if a respondent violates a condition of the domestic violence order imposed under this section or Section 5 of this Act.*
- (10) *The provisions of this section do not limit the authority of a court to impose any other reasonable conditions authorized by Section 2, 5, or 6 of this Act.*
- (11) (a) *A respondent who has been ordered by a court to wear a global positioning monitoring system monitoring device pursuant to this section shall not, without written permission from the court issuing the order or a higher court to which the issuance of the order has been appealed:*
1. *Fail to wear the device;*
 2. *Remove a device that the respondent has been ordered to wear; or*
 3. *Tamper with or destroy a device that the respondent has been ordered to wear.*
- (b) *A respondent who violates paragraph (a) of this subsection shall be guilty of a Class D felony.*
- (c) *The provisions of this section shall not apply to a respondent who, upon the expiration of the order that required the respondent to wear the global positioning monitoring system device, permits the entity providing the monitoring to remove the device.*

- (12) *A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in this section.*
- (13) (a) *The provisions of this section shall not prohibit a court from imposing any other authorized sanction for a substantial violation of a domestic violence order.*
- (b) *The provisions of this section shall not prohibit a court from imposing any authorized sanction, other than ordering the respondent to wear a global positioning system monitoring device, for a violation of a domestic violence order which does not constitute a substantial violation as defined in this section.*

➔SECTION 8. A NEW SECTION OF KRS 403.715 TO 403.785 IS CREATED TO READ AS FOLLOWS:

- (1) *At any time following three (3) months since the entry of the order requiring the respondent to wear a global positioning monitoring system device, the respondent may apply to the court issuing the order for a modification shortening the duration of the order or rescinding the order.*
- (2) *Prior to acting on the respondent's request, the court shall conduct a hearing during which the opinions of both the respondent and petitioner and the evidence supporting or controverting the respondent's request shall be heard and considered by the court.*
- (3) *If the respondent has not violated the order requiring that the respondent wear a global positioning monitoring system device, the court may shorten the duration which the respondent shall be required to wear the global positioning monitoring system device or may vacate the order.*
- (4) *If the court denies a respondent's application to shorten the time for wearing a global positioning monitoring system device or to vacate the order, the respondent shall not make another application to the court for a period of six (6) months from the date of the denial of the previous application.*

➔SECTION 9. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

Any county or combination of counties may operate a global positioning monitoring system program subject to the following conditions:

- (1) *The program shall be assigned by ordinance to a county department or county agency that agrees to operate or supervise the program continuously, twenty-four (24) hours per day, seven (7) days per week;*
- (2) *Each county shall identify a law enforcement agency or agencies with jurisdiction in the county to assist a petitioner, victim, or witness when a person ordered to wear a monitoring device violates the provisions of the court's order and is in need of assistance;*
- (3) *A county or counties electing to contract with an entity providing a global positioning monitoring system and devices shall meet not less than all of the requirements of this section and Section 7 of this Act;*
- (4) *Each county shall monitor the performance of the entity providing the global positioning system and devices and shall have a provision in the contract with the monitoring entity agreeing to the termination of the contract in the event of serious or continued violations of the contract;*
- (5) *Any system chosen shall use the most appropriate global positioning technology to track the person ordered to wear the monitoring device and shall include technology that:*
 - (a) *In a domestic violence case under KRS 403.715 to 403.785:*
 - 1. *Notifies law enforcement or other monitors of any breach of the court-ordered boundaries;*
 - 2. *Notifies the petitioner in a timely manner of any breach; and*
 - 3. *Allows monitors to communicate directly with the person ordered to wear the monitoring device; and*
 - (b) *In other situations in which monitoring is authorized by Sections 8, 10, 11, 12, 13, 14, and 15 of this Act the contracting county or combination of counties shall, in the contract, specify the type and level of global positioning monitoring system services desired;*
- (6) *The monitoring entity shall agree to a price for monitoring during the duration of the contract which shall not be increased but may be reduced during the duration of the contract. The contract shall provide that reduced payments shall be accepted by the vendor as a full payment for all purposes from persons*

determined to be indigent by a court or other authority ordering the use of monitoring. In bidding for the contract the vendor may take into account that some monitored persons will not be able to pay the full cost of the monitoring or may not be able to pay any cost for the monitoring. The contract shall specify that no unit of state or local government and no public officer or employee shall be liable for the costs of monitoring under the contract. Notwithstanding the provisions of this subsection, a county or counties may agree to pay all or a part of the monitoring fee to the monitoring entity if the county would have otherwise been required by a court to place a person in jail at county expense and the cost of the monitoring is less than the cost of placing the person in jail;

- (7) Agreements between counties for monitoring services may, with the approval of their governing bodies, be consummated by a contract signed by all counties party thereto or by an interlocal cooperation agreement;*
- (8) A county utilizing a global positioning monitoring system program may charge an administrative fee to a person ordered to participate in a global positioning monitoring program to provide for the county's cost in administering the monitoring program. The fee shall be set by ordinance and shall be in addition to the fee charged by the entity contracted to provide the monitoring; and*
- (9) The provisions of Sections 1, 2, 3, 4, 5, 6, 7, and 8 of this Act shall not apply to a person ordered to participate in a global positioning monitoring system under Sections 11, 12, 13, 14, and 15 of this Act. The provisions of a court order that relate to a person ordered to participate in a global positioning monitoring system pursuant to Sections 11, 12, 13, 14, and 15 of this Act shall govern that person's conduct and any reporting or other requirements ordered by the court.*

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 67 IS CREATED TO READ AS FOLLOWS:

- (1) "Global positioning monitoring system" has the same meaning as in Section 1 of this Act.*
- (2) A county or combination of counties electing to participate in a global positioning monitoring system program shall, by ordinance, set other requirements for global positioning monitoring system devices and for the operation of the global positioning monitoring system which shall include, at a minimum, the requirements contained in KRS 403.715 to 403.785 and the provisions of this section and Section 9 of this Act.*
- (3) A county or combination of counties electing to participate in a global positioning monitoring system program shall, through a public bid process, select an entity or entities to provide the best available technology with regard to global positioning monitoring system devices that meet the requirements of this section and Sections 1, 5, 6, 7, and 9 of this Act and a system that meets those same requirements, including but not limited to the acceptance of reduced fees for petitioners and indigent persons ordered to wear a monitoring device.*
- (4) A person, county, or combination of counties electing to participate in a global positioning monitoring system program shall continuously monitor the performance of successful bidders, receive complaints regarding service, and conduct hearings pursuant to KRS Chapter 13B which may result in penalties as set out in the contract against an entity providing global positioning monitoring system services or which may result in cancellation of the contract with the provider of the service, or both. The provisions of this subsection shall be part of any bid offering and any contract entered into between the county or combination of counties and an entity providing global positioning monitoring system services.*
- (5) A county or combination of counties electing to operate a global positioning monitoring system program may utilize that program for:*
 - (a) Monitoring a domestic violence respondent and petitioner pursuant to KRS 403.715 to 403.785;*
 - (b) Monitoring the pretrial release of a person charged with a crime pursuant to KRS 431.515 to 431.550;*
 - (c) Monitoring a person assigned to a pretrial diversion program pursuant to KRS 533.250 to 533.262; and*
 - (d) Monitoring a person granted probation or conditional discharge pursuant to KRS Chapter 533.*
- (6) Information obtained by a global positioning monitoring system shall not be a public record.*
- (7) Information obtained by a global positioning monitoring system shall be used only for the purpose of verifying the location of the monitored person. Global positioning monitoring system information obtained from persons subject to monitoring pursuant to KRS 403.715 to 403.785 shall not be utilized for any*

criminal investigation, prosecution, or other criminal justice related purpose without a valid search warrant or order issued by a court of competent jurisdiction. Information obtained in violation of this subsection or without a valid search warrant or court order shall be inadmissible in court for any purpose.

- (8) *Any person or organization who knowingly or wantonly divulges global positioning monitoring system information about any person in violation of subsection (6) or (7) of this section shall be guilty of a Class A misdemeanor.*

➔Section 11. KRS 431.517 is amended to read as follows:

- (1) *Except as provided in this section, home incarceration may be ordered as a form of pretrial release, subject to the conditions imposed by the provisions of KRS 532.200 to 532.250.*
- (2) *A court ordering home incarceration as a form of pretrial release pursuant to this section may order the defendant to participate in a global positioning monitoring system program during all or part of the time of pretrial release through the use of a county-operated program pursuant to Sections 9 and 10 of this Act and not a program operated by the Department of Corrections pursuant to KRS 532.210 to 532.250.*
- (3) *A court ordering global positioning monitoring system program participation for a defendant pursuant to this section shall:*
 - (a) *Require the defendant to pay all or the part of the monitoring costs based on the sliding scale adopted by the Supreme Court of Kentucky as specified in Section 7 of this Act and administrative costs for participating in the system;*
 - (b) *Provide the monitoring system with a written or electronic copy of the conditions of release; and*
 - (c) *Provide the monitoring system with a contact at the office of the circuit clerk, Commonwealth's attorney, or county attorney, as appropriate, or pretrial release services for reporting violations of the monitoring order.*
- (4) *A person, county, or other organization may voluntarily agree to pay all or a portion of a defendant's monitoring costs specified in Section 7 of this Act.*

➔Section 12. KRS 431.518 is amended to read as follows:

When considering the pretrial release of a person charged with a felony offense under KRS Chapter 218A or a person charged with a felony offense whose criminal record indicates a history of recent and relevant substance abuse, the court considering the release shall cause the court's pretrial release investigation and services office to have the person screened for recent and relevant substance abuse risk factors. A person's refusal to participate in the screening shall not disqualify the person from being granted pretrial release. If this screening indicates the presence of recent and relevant substance abuse risk factors, the court may order as a condition of pretrial release that the person:

- (1) Undertake any testing ordered by the court under KRS 431.520 or 431.525;
- (2) Participate in an additional assessment of the person's condition;
- (3) Participate in a secular or faith-based treatment or recovery program if one (1) is identified as appropriate to the person as a result of the person's initial assessment or an additional assessment performed under subsection (2) of this section;~~and~~
- (4) Appear at any subsequent hearing ordered by the court where the person's conditions of pretrial release may be reviewed and modified as the result of any testing performed under subsection (1) of this section, any additional assessment performed under subsection (2) of this section, any additional assessment of the defendant performed by a qualified mental health professional which the defendant may offer for the court's consideration, or the person's compliance with any treatment or recovery plan ordered by the court under subsection (3) of this section; *and*
- (5) *Participate in a global positioning monitoring system program operated by a county pursuant to Sections 9 and 10 of this Act under the same terms and conditions as provided in Section 11 of this Act, during all or part of the person's period of release pursuant to this section.*

➔Section 13. KRS 431.520 is amended to read as follows:

Any person charged with an offense shall be ordered released by a court of competent jurisdiction pending trial on his personal recognizance or upon the execution of an unsecured bail bond in an amount set by the court or as fixed by

the Supreme Court as provided by KRS 431.540, unless the court determines in the exercise of its discretion that such a release will not reasonably assure the appearance of the person as required. When such a determination is made, the court shall, either in lieu of or in addition to the above methods of release, impose any of the following conditions of release:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise him;
- (2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
- (3) Require the execution of a bail bond:
 - (a) With sufficient personal surety or sureties acceptable to the court; in determining the sufficiency of such surety, or sureties, the court shall consider his character, his place of residence, his relationship with the defendant, and his financial and employment circumstances; or
 - (b) With the 10% deposit as provided in KRS 431.530; or
 - (c) With the deposit of cash equal to the amount of the bond or in lieu thereof acceptable security as provided in KRS 431.535;
- (4) If the person's record indicates a history of controlled substance or alcohol abuse, order the person to submit to periodic testing for use of controlled substances or alcohol and pay a reasonable fee, not to exceed the actual cost of the test and analysis, as determined by the court with the fee to be collected by the circuit clerk, held in an agency account, and disbursed, on court order, solely to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis performed under this subsection. If the person is declared indigent, the testing fee may be waived by the court. The Administrative Office of the Courts shall establish pilot projects to implement the provisions of this subsection;
- (5)
 - (a) ***During all or part of a person's period of release pursuant to this section, order the person to participate in a global positioning monitoring system program operated by a county pursuant to Sections 9 and 10 of this Act under the same terms and conditions provided under Section 11 of this Act.***
 - (b) If the person is charged with a sex crime as defined in KRS 17.500, consider requiring that he or she be monitored electronically, and shall consider requiring the person be subject to home incarceration;
- (6) Impose any other condition deemed reasonably necessary to assure appearance as required, including a condition requiring that the person return to custody after specified hours;
- (7) A court authorizing the release of a person pursuant to this section shall cause the issuance of an appropriate order containing a statement of the conditions imposed, if any, shall cause such person to be informed of the penalties applicable to violations of the conditions of his release, and shall cause him to be informed that a warrant for his arrest will be issued immediately upon any such violation;
- (8) A person for whom conditions of release are imposed and who after twenty-four (24) hours from the time of the imposition of said conditions continues to be detained as a result of his inability to meet the conditions of release shall, upon written application or upon the court's own motion, be entitled to have the conditions reviewed by the court which imposed them. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon written application or upon the court's own motion, be entitled to a review by the court which imposed the condition;
- (9) If at any time following release of a defendant and before he is required to appear for trial, the court is advised of a material change in the defendant's circumstances or that he has not complied with all conditions imposed upon his release, the court having jurisdiction may:
 - (a) Order the arrest of the defendant;
 - (b) Enter an order requiring the defendant, his surety or sureties to appear and show cause why the bail bond should not be forfeited or the conditions of his release be changed; or
 - (c) Both.

A copy of said order shall be served upon the defendant, his surety or sureties. If the defendant fails to appear before the court as ordered or if, after hearing, the court finds the conditions of release have not been complied with, the court may change the conditions imposed or forfeit the bail bond or any portion thereof and enter a

judgment for the Commonwealth against the defendant and his surety or sureties for the amount of the bail bond or any portion thereof and cost of the proceedings.

➔Section 14. KRS 533.250 is amended to read as follows:

- (1) A pretrial diversion program shall be operated in each judicial circuit. The chief judge of each judicial circuit, in cooperation with the Commonwealth's attorney, shall submit a plan for the pretrial diversion program to the Supreme Court for approval on or before December 1, 1999. The pretrial diversion program shall contain the following elements:
 - (a) The program may be utilized for a person charged with a Class D felony offense who has not, within ten (10) years immediately preceding the commission of this offense, been convicted of a felony under the laws of this state, another state, or of the United States, or has not been on probation or parole or who has not been released from the service of any felony sentence within ten (10) years immediately preceding the commission of the offense;
 - (b) The program shall not be utilized for persons charged with offenses for which probation, parole, or conditional discharge is prohibited under KRS 532.045;
 - (c) No person shall be eligible for pretrial diversion more than once in a five (5) year period;
 - (d) No person shall be eligible for pretrial diversion who has committed a sex crime as defined in KRS 17.500. A person who is on pretrial diversion on July 12, 2006, may remain on pretrial diversion if the person continues to meet the requirements of the pretrial diversion and the registration requirements of KRS 17.510;
 - (e) Any person charged with an offense not specified as precluding a person from pretrial diversion under paragraph (b) of this subsection may apply in writing to the trial court and the Commonwealth's attorney for entry into a pretrial diversion program;
 - (f) Any person shall be required to enter an Alford plea or a plea of guilty as a condition of pretrial diversion;
 - (g) The provisions of KRS 533.251 shall be observed; and
 - (h) The program may include as a component referral to the intensive secured substance abuse treatment program developed under KRS 196.285 for persons charged with a felony offense under KRS Chapter 218A and persons charged with a felony offense whose record indicates a history of recent and relevant substance abuse who have not previously been referred to the program under KRS 533.251.
- (2) *Upon the request of the Commonwealth's attorney, a court ordering pretrial diversion may order the person to participate in a global positioning system monitoring system program through the use of a county-operated program pursuant to Sections 9 and 10 of this Act for all or part of the time during which a pretrial diversion agreement is in effect.*
- (3) *A court ordering global positioning monitoring system for a person pursuant to this section shall:*
 - (a) *Require the person to pay all or a part of the monitoring costs based upon the sliding scale determined by the Supreme Court of Kentucky pursuant to Section 7 of this Act and administrative costs for participating in the system;*
 - (b) *Provide the monitoring system with a written or electronic copy of the conditions of release; and*
 - (c) *Provide the monitoring system with a contact at the office of the Commonwealth's attorney for reporting violations of the monitoring order.*
- (4) *A person, county, or other organization may voluntarily agree to pay all or a portion of a person's monitoring costs specified in subsection (3) of this section.*
- (5) *The court shall not order a person to participate in a global positioning monitoring system program unless the person agrees to the monitoring in open court or the court determines that public safety and the nature of the person's crime require the use of a global positioning monitoring system program.*
- (6) The Commonwealth's attorney shall make a recommendation upon each application for pretrial diversion to the Circuit Judge in the court in which the case would be tried. The court may approve or disapprove the diversion.

- (7)~~(3)~~ The court shall assess a diversion supervision fee of a sufficient amount to defray all or part of the cost of participating in the diversion program. Unless the fee is waived by the court in the case of indigency, the fee shall be assessed against each person placed in the diversion program. The fee may be based upon ability to pay.

➔ Section 15. KRS 533.030 is amended to read as follows:

- (1) The conditions of probation and conditional discharge shall be such as the court, in its discretion, deems reasonably necessary to insure that the defendant will lead a law-abiding life or to assist him to do so. The court shall provide as an explicit condition of every sentence to probation or conditional discharge that the defendant not commit another offense during the period for which the sentence remains subject to revocation.
- (2) When imposing a sentence of probation or conditional discharge, the court may, in addition to any other reasonable condition, require that the defendant:
 - (a) Avoid injurious or vicious habits;
 - (b) Avoid persons or places of disreputable or harmful character;
 - (c) Work faithfully at suitable employment as far as possible;
 - (d) Undergo available medical or psychiatric treatment and remain in a specific institution as required for that purpose;
 - (e) Post a bond, without surety, conditioned on performance of any of the prescribed conditions;
 - (f) Support his dependents and meet other family responsibilities;
 - (g) Pay the cost of the proceeding as set by the court;
 - (h) Remain within a specified area;
 - (i) Report to the probation officer as directed;
 - (j) Permit the probation officer to visit him at his home or elsewhere;
 - (k) Answer all reasonable inquiries by the probation officer and promptly notify the probation officer of any change in address or employment;~~and~~
 - (l) Submit to periodic testing for the use of controlled substances or alcohol, if the defendant's record indicates a controlled substance or alcohol problem, and to pay a reasonable fee, as determined by the court, which fee shall not exceed the actual cost of the test and analysis and shall be paid directly to the agency or agencies responsible for testing and analysis as compensation for the cost of the testing and analysis, as specified by written order of the court, performed under this subsection. For good cause shown, the testing fee may be waived by the court; **and**
 - (m) ***During all or part of the period of probation or conditional discharge, participate in a global positioning monitoring system program operated by a county pursuant to Sections 9 and 10 of this Act under the same terms and conditions as provided in Section 11 of this Act.***
- (3) When imposing a sentence of probation or conditional discharge in a case where a victim of a crime has suffered monetary damage as a result of the crime due to his property having been converted, stolen, or unlawfully obtained, or its value substantially decreased as a result of the crime, or where the victim suffered actual medical expenses, direct out-of-pocket losses, or loss of earning as a direct result of the crime, or where the victim incurred expenses in relocating for the purpose of the victim's safety or the safety of a member of the victim's household, or if as a direct result of the crime the victim incurred medical expenses that were paid by the Cabinet for Health and Family Services, the Crime Victims Compensation Board, or any other governmental entity, the court shall order the defendant to make restitution in addition to any other penalty provided for the commission of the offense. Payment of restitution to the victim shall have priority over payment of restitution to any government agency. Restitution shall be ordered in the full amount of the damages, unless the damages exceed one hundred thousand dollars (\$100,000) or twice the amount of the gain from the commission of the offense, whichever is greater, in which case the higher of these two (2) amounts shall be awarded. The court may, in lieu of ordering monetary restitution, order the defendant to make restitution by working for or on behalf of the victim. The court shall determine the number of hours of work necessary by applying the then-prevailing federal minimum wage to the total amount of monetary damage caused by or incidental to the commission of the crime. The court may, with the consent of the agency, order

the defendant to work as specified in KRS 533.070. Any work ordered pursuant to this section shall not be deemed employment for any purpose, nor shall the person performing the work be deemed an employee for any purpose. Where there is more than one (1) defendant or more than one (1) victim, restitution may be apportioned. Restitution shall be subject to the following additional terms and conditions:

- (a) Where property which is unlawfully in the possession of the defendant is in substantially undamaged condition from its condition at the time of the taking, return of the property shall be ordered in lieu of monetary restitution;
 - (b) The circuit clerk shall assess an additional fee of five percent (5%) to defray the administrative costs of collection of payments or property. This fee shall be paid by the defendant and shall inure to a trust and agency account which shall not lapse and which shall be used to hire additional deputy clerks and office personnel or increase deputy clerk or office personnel salaries, or combination thereof;
 - (c) When a defendant fails to make restitution ordered to be paid through the circuit clerk or a court-authorized program run by the county attorney or the Commonwealth's attorney, the circuit clerk or court-authorized program shall notify the court; and
 - (d) An order of restitution shall not preclude the owner of property or the victim who suffered personal physical or mental injury or out-of-pocket loss of earnings or support or other damages from proceeding in a civil action to recover damages from the defendant. A civil verdict shall be reduced by the amount paid under the criminal restitution order.
- (4) When requiring fees for controlled substances or alcohol tests, or other fees and payments authorized by this section or other statute, except restitution, to be paid by the defendant, the court shall not order the payments to be paid through the circuit clerk.
 - (5) When a defendant is sentenced to probation or conditional discharge, he shall be given a written statement explicitly setting forth the conditions under which he is being released.
 - (6) When imposing a sentence of probation or conditional discharge, the court, in addition to conditions imposed under this section, may require as a condition of the sentence that the defendant submit to a period of imprisonment in the county jail or to a period of home incarceration at whatever time or intervals, consecutive or nonconsecutive, the court shall determine. The time actually spent in confinement or home incarceration pursuant to this provision shall not exceed twelve (12) months or the maximum term of imprisonment assessed pursuant to KRS Chapter 532, whichever is the shorter. Time spent in confinement or home incarceration under this subsection shall be credited against the maximum term of imprisonment assessed for the defendant pursuant to KRS Chapter 532, if probation or conditional discharge is revoked and the defendant is sentenced to imprisonment. Any prohibitions against probation, shock probation, or conditional discharge under KRS 533.060(2) or 532.045 shall not apply to persons convicted of a misdemeanor or Class D felony and sentenced to a period of confinement or home incarceration under this section.

➔Section 16. KRS 15.334 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
 - (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
 - (b) The dynamics of domestic violence, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape;
 - (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; and
 - (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin.

- (2) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.
- (3) ***The Justice and Public Safety Cabinet shall provide training on the subjects of domestic violence and abuse and may do so utilizing currently available technology. All certified peace officers shall be required to complete this training at least once every two (2) years.***
- (4) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (5)~~(4)~~ The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

➔Section 17. KRS 431.005 is amended to read as follows:

- (1) A peace officer may make an arrest:
 - (a) In obedience to a warrant; or
 - (b) Without a warrant when a felony is committed in his presence; or
 - (c) Without a warrant when he has probable cause to believe that the person being arrested has committed a felony; or
 - (d) Without a warrant when a misdemeanor, as defined in KRS 431.060, has been committed in his presence; or
 - (e) Without a warrant when a violation of KRS 189.290, 189.393, 189.520, 189.580, 511.080, or 525.070 has been committed in his presence, except that a violation of KRS 189A.010 or KRS 281A.210 need not be committed in his presence in order to make an arrest without a warrant if the officer has probable cause to believe that the person has violated KRS 189A.010 or KRS 281A.210.
- (2)
 - (a) Any peace officer may arrest a person without warrant when the peace officer has probable cause to believe that the person has intentionally or wantonly caused physical injury to a family member or member of an unmarried couple.
 - (b) For the purposes of this subsection, the term "family member" ***has the same meaning as set out in Section 1 of this Act***~~means a spouse, including a former spouse, a parent, a grandparent, a child, a stepchild, or any other person related by consanguinity or affinity within the second degree~~.
 - (c) For the purpose of this subsection, the term "member of an unmarried couple" ***has the same meaning as set out in Section 1 of this Act***~~means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together~~.
- (3) A peace officer may arrest a person without a warrant when the peace officer has probable cause to believe that the person is a sexual offender who has failed to comply with the Kentucky Sex Offender Registry requirements based upon information received from the Law Information Network of Kentucky.
- (4) For purposes of subsections (2) and (3) of this section, a "peace officer" is an officer certified pursuant to KRS 15.380.
- (5) If a law enforcement officer has probable cause to believe that a person has violated a condition of release imposed in accordance with KRS 431.064 and verifies that the alleged violator has notice of the conditions, the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.
- (6) A private person may make an arrest when a felony has been committed in fact and he has probable cause to believe that the person being arrested has committed it.
- (7) If a law enforcement officer has probable cause to believe that a person has violated a restraining order issued under KRS 508.155, then the officer shall, without a warrant, arrest the alleged violator whether the violation was committed in or outside the presence of the officer.

➔SECTION 18. A NEW SECTION OF KRS CHAPTER 511 IS CREATED TO READ AS FOLLOWS:

- (1) *As used in this section, "domestic violence shelter" means a residential facility providing protective shelter services for domestic violence victims.*
- (2) *A person is guilty of domestic violence shelter trespass when:*
 - (a) *The person enters the buildings or premises of a domestic violence shelter that the person knows or should know is a domestic violence shelter or which is clearly marked on the building or premises as being a domestic violence shelter; and*
 - (b) *At the time of the entering, the person is the subject of an order of protection entered under Section 2 or 5 of this Act or a foreign protective order filed under KRS 403.7521.*
- (3) *It shall be a defense to a prosecution under this section that the person entered the shelter with the permission of the operator of the shelter after disclosing to the operator that the person is the subject of an order of protection or a foreign projective order. Authority to enter under this subsection may not be granted by a person taking shelter at the facility.*
- (4) *A person shall not be convicted of a violation of this section and a violation of KRS 511.060, 511.070, or 511.080 arising from the same act of trespass.*
- (5) *Domestic violence shelter trespass is a Class A misdemeanor.*

➔Section 19. KRS 403.735 is amended to read as follows:

- (1) Upon the filing of a petition, as provided for in KRS 403.725, the court, after review of the petition and determining that domestic violence and abuse exists, without a jury, shall utilize one (1) of the alternatives provided for in KRS 403.740 or 403.745.
- (2) A court may issue mutual protective orders only if a separate petition is filed by the respondent. Pursuant to KRS 403.740 and 403.750, the court shall then provide orders, sufficiently specific to apprise any peace officer as to which party has violated the order if there is probable cause to believe a violation of the order has occurred.
- (3)
 - (a) All courts shall provide twenty-four (24) hour access to emergency protective orders.
 - (b) Each court shall submit written procedures for twenty-four (24) hour accessibility to be reviewed and approved by the Kentucky Supreme Court.
 - (c) Each court shall establish the local protocol in domestic violence matters in which there may be joint jurisdiction between District and Circuit Court. Each court shall submit the written procedures to be reviewed and approved by the Kentucky Supreme Court.
 - (d) All amendments or revisions to the local procedures required pursuant to this section shall be submitted to the Kentucky Supreme Court for review and approval.
- (4) If an emergency protective order is not issued, the court shall note on the petition, for the record, any action taken or denied and the reason for it.
- (5) *If the court determines that the petitioner is not eligible for an emergency protective order, the court shall inform the petitioner of the petitioner's ability to contact the county attorney as provided in Section 4 of this Act.*
- ~~(6)~~~~(5)}~~ An order of protection issued under the provisions of KRS 403.715 to 403.785 shall become effective and binding on the respondent at the time of personal service or when the respondent is given notice of the existence and terms of the order by a peace officer or the court, whichever is earlier. After notice of the existence and terms of the order is given to the respondent, a peace officer or the court may enforce the terms of the order, and act immediately upon any violation of the order. After notice of the order, all reasonable efforts shall be made by the peace officer or the court to arrange for personal service of the order upon the respondent.

➔Section 20. This Act shall be known as the "Amanda Ross Domestic Violence Prevention Act."

Signed by Governor April 26, 2010.

CHAPTER 171

(HB 285)

AN ACT relating to pediatric abusive head trauma.

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

➔Section 1. The General Assembly acknowledges the pediatric abusive head trauma parent education pilot program beginning in January, 2010, at three Norton Healthcare campuses. The General Assembly expresses its hope that this pilot program demonstrates positive outcomes in reducing pediatric abusive head trauma and requests that Norton Healthcare share the findings to date of this pilot program with the Interim Joint Committee on Health and Welfare by November of 2010.

➔Section 2. KRS 15.334 is amended to read as follows:

- (1) The Kentucky Law Enforcement Council shall approve mandatory training subjects to be taught to all students attending a law enforcement basic training course that include but are not limited to:
 - (a) Abuse, neglect, and exploitation of the elderly and other crimes against the elderly, including the use of multidisciplinary teams in the investigation and prosecution of crimes against the elderly;
 - (b) The dynamics of domestic violence, ***pediatric abusive head trauma, as defined in Section 16 of this Act***, child physical and sexual abuse, and rape; child development; the effects of abuse and crime on adult and child victims, including the impact of abuse and violence on child development; legal remedies for protection; lethality and risk issues; profiles of offenders and offender treatment; model protocols for addressing domestic violence, rape, ***pediatric abusive head trauma, as defined in Section 16 of this Act***, and child abuse; available community resources and victim services; and reporting requirements. This training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with expertise in domestic violence, child abuse, and rape. ***Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services;***
 - (c) Human immunodeficiency virus infection and acquired immunodeficiency virus syndrome; and
 - (d) Identification and investigation of, responding to, and reporting bias-related crime, victimization, or intimidation that is a result of or reasonably related to race, color, religion, sex, or national origin.
- (2)
 - (a) The council shall develop and approve mandatory professional development training courses to be presented to all certified peace officers. A mandatory professional development training course shall be first taken by a certified peace officer in the training year following its approval by the council and biennially thereafter. A certified peace officer shall be required to take these courses no more than two (2) times in eight (8) years.
 - (b) ***Beginning January 1, 2011, the council shall require that one and one-half (1.5) hours of professional development covering the recognition and prevention of pediatric abusive head trauma be included in the curriculum of all mandatory professional development training courses such that all officers shall receive this training at least once by December 31, 2013. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.***
- (3) The council shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish mandatory basic training and professional development training courses.
- (4) The council shall make an annual report by December 31 each year to the Legislative Research Commission that details the subjects and content of mandatory professional development training courses established during the past year and the subjects under consideration for future mandatory training.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 158 IS CREATED TO READ AS FOLLOWS:

Kentucky schools are encouraged to include a segment concentrating on the prevention of pediatric abusive head trauma, as defined in Section 16 of this Act, during a student's final year of study at Kentucky high schools. Important areas of concentration for this segment would include information related to the prevention and

recognition of pediatric abusive head trauma. This segment should also suggest methods of calming crying infants, techniques for caregivers to use to calm themselves when confronted with an infant that is crying inconsolably, and a discussion relating to selecting responsible care providers for infant children.

➔Section 4. KRS 194A.545 is amended to read as follows:

- (1) The secretary for health and family services shall develop an initial training course and continuing education courses for employees of the Department for Community Based Services concerning the dynamics of domestic violence and elder abuse, neglect, and exploitation; effects of domestic violence and elder abuse, neglect, and exploitation on adult and child victims; legal remedies for protection; lethality and risk issues; model protocols for addressing domestic violence; available community resources and victim services; and reporting requirements. The training shall be developed in consultation with legal, victim services, victim advocacy, and mental health professionals with an expertise in domestic violence.
- (2) Each person employed by the Department for Community Based Services who provides supervisory or direct service at the local, district, or state level shall successfully complete the initial training course and, at least once every two (2) years, the continuing education course developed under subsection (1) of this section.
- (3) *The secretary is encouraged to include an educational component covering the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act, as part of the initial training and continuing education for Department for Community Based Services front-line child protection staff.*

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 197 IS CREATED TO READ AS FOLLOWS:

- (1) *The department shall make available a one and one-half (1.5) hour course for inmates that addresses the prevention of pediatric abusive head trauma, as defined in Section 16 of this Act. In addition to presenting the consequences of vigorously shaking an infant or young child, this course shall suggest methods of calming crying infants, techniques for caregivers to use to calm themselves when confronted with an infant that is crying inconsolably, and discuss selecting appropriate care providers for infant children. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.*
- (2) *The department shall encourage local jails to provide a course similar to that described in subsection (1) of this section.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *A foster parent who receives a child younger than the age of five (5) years for placement shall undergo a one and one-half (1.5) hour continuing education session one (1) time every five (5) years covering the prevention and recognition of pediatric abusive head trauma as defined in Section 16 of this Act. A current qualifying foster parent shall demonstrate completion of this educational session by December 31, 2013.*
- (2) *The educational session required in this section shall address risk factors related to pediatric abusive head trauma, and the methods to reduce the risk of pediatric abusive head trauma in the foster or adoptive home. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.*
- (3) *The Cabinet for Health and Family Services may promulgate an administrative regulation to implement this section.*

➔Section 7. KRS 199.896 is amended to read as follows:

- (1) No person, association, or organization shall conduct, operate, maintain, or advertise any child-care center without obtaining a license as provided in KRS 199.892 to 199.896.
- (2) The secretary may promulgate administrative regulations pursuant to KRS Chapter 13A relating to license fees and may establish standards of care and service for a child-care center, criteria for the denial of a license if criminal records indicate convictions that may impact the safety and security of children in care, and procedures for enforcement of penalties.
- (3) Each initial application for a license shall be made to the cabinet and shall be accompanied by a fee of not more than fifty dollars (\$50) and shall be renewable annually upon expiration and reapplication when

accompanied by a fee of twenty-five dollars (\$25). Regular licenses and renewals thereof shall expire one (1) year from their effective date.

- (4) No child-care center shall be refused a license or have its license revoked for failure to meet standards set by the secretary until after the expiration of a period not to exceed six (6) months from the date of the first official notice that the standards have not been met. If, however, the cabinet has probable cause to believe that an immediate threat to the public health, safety, or welfare exists, the cabinet may take emergency action pursuant to KRS 13B.125. All administrative hearings conducted under authority of KRS 199.892 to 199.896 shall be conducted in accordance with KRS Chapter 13B.
- (5) If, upon inspection or investigation, the inspector general finds that a child-care center licensed under this section has violated the administrative regulations, standards, or requirements of the cabinet, the inspector general shall issue a statement of deficiency to the center containing:
 - (a) A statement of fact;
 - (b) A statement of how an administrative regulation, standard, or requirement of the cabinet was violated; and
 - (c) The time frame, negotiated with the child-care center, within which a violation is to be corrected, except that a violation that poses an immediate threat to the health, safety, or welfare of children in the center shall be corrected in no event later than five (5) working days from the date of the statement of deficiency.
- (6) The Cabinet for Health and Family Services, in consultation with the Office of the Inspector General, shall establish by administrative regulations promulgated in accordance with KRS Chapter 13A an informal dispute resolution process containing at least two (2) separate levels of review through which a child-care provider may dispute licensure deficiencies that have an adverse effect on the child-care provider's license.
- (7) A child-care center shall have the right to appeal to the Cabinet for Health and Family Services under KRS Chapter 13B any action adverse to its license or the assessment of a civil penalty issued by the inspector general as the result of a violation contained in a statement of deficiency within twenty (20) days of the issuance of the action or assessment of the civil penalty. An appeal shall not act to stay the correction of a violation.
- (8) In assessing the civil penalty to be levied against a child-care center for a violation contained in a statement of deficiency issued under this section, the inspector general or the inspector general's designee shall take into consideration the following factors:
 - (a) The gravity of the threat to the health, safety, or welfare of children posed by the violation;
 - (b) The number and type of previous violations of the child-care center;
 - (c) The reasonable diligence exercised by the child-care center and efforts to correct the violation; and
 - (d) The amount of assessment necessary to assure immediate and continued compliance.
- (9) Upon a child-care center's failure to take action to correct a violation of the administrative regulations, standards, or requirements of the cabinet contained in a statement of deficiency, or at any time when the operation of a child-care center poses an immediate threat to the health, safety, or welfare of children in the center, and the child-care center continues to operate after the cabinet has taken emergency action to deny, suspend, or revoke its license, the cabinet or the cabinet's designee shall take at least one (1) of the following actions against the center:
 - (a) Institute proceedings to obtain an order compelling compliance with the administrative regulations, standards, and requirements of the cabinet;
 - (b) Institute injunctive proceedings in Circuit Court to terminate the operation of the center;
 - (c) Institute action to discontinue payment of child-care subsidies; or
 - (d) Suspend or revoke the license or impose other penalties provided by law.
- (10) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of child-care center license of the operator. Identifying information regarding children and their families shall remain confidential.

- (11) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the child-care center within the past year. All information distributed by the cabinet under this subsection shall include a statement indicating that the reports as provided under this subsection from the past five (5) years are available from the child-care center upon the parent's, custodian's, guardian's, or other interested person's request.
- (12) All fees collected under the provisions of KRS 199.892 to 199.896 for license and certification applications shall be paid into the State Treasury and credited to a special fund for the purpose of administering KRS 199.892 to 199.896 including the payment of expenses of and to the participants in child-care workshops. The funds collected are hereby appropriated for the use of the cabinet. The balance of the special fund shall lapse to the general fund at the end of each biennium.
- (13) Any advertisement for child-care services shall include the address of where the service is being provided.
- (14) All inspections of licensed and unlicensed child-care centers by the Cabinet for Health and Family Services shall be unannounced.
- (15) All employees and owners of a child-care center who provide care to children shall demonstrate within the first three (3) months of employment completion of at least a total of six (6) hours of orientation in the following areas:
 - (a) Basic health, safety, and sanitation;
 - (b) Recognizing and reporting child abuse; and
 - (c) Developmentally appropriate child-care practice.
- (16) All employees and owners of a child-care center who provide care to children shall annually demonstrate to the department completion of at least six (6) hours of training in child development. ***These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric head trauma approved by the secretary of the Cabinet for Health and Family Services The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.***
- (17) The Cabinet for Health and Family Services shall make available either through the development or approval of a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (15) of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (15) of this section.
- (18) Child-care centers licensed pursuant to this section and family child-care homes certified pursuant to KRS 199.8982 shall not use corporal physical discipline, including the use of spanking, shaking, or paddling, as a means of punishment, discipline, behavior modification, or for any other reason. For the purposes of this section, "corporal physical discipline" means the deliberate infliction of physical pain and does not include spontaneous physical contact which is intended to protect a child from immediate danger.
- (19) Directors and employees of child-care centers in a position that involves supervisory or disciplinary power over a minor, or direct contact with a minor, shall submit to a criminal record check in accordance with KRS 17.165. The application shall be denied if the applicant has been found by the Cabinet for Health and Family Services or a court to have abused or neglected a child or has been convicted of a violent crime or sex crime as defined in KRS 17.165.
- (20) A director or employee of a child-care center may be employed on a probationary status pending receipt of the criminal background check. Application for the criminal record of a probationary employee shall be made no later than the date probationary employment begins.

➔Section 8. KRS 199.8982 is amended to read as follows:

- (1) (a) The cabinet shall establish a family child-care home certification program which shall be administered by the department. A family child-care provider shall apply for certification of the provider's home if the provider is caring for four (4) to six (6) children unrelated to the provider. A family child-care provider caring for three (3) or fewer children may apply for certification of the provider's home at the discretion

of the provider. Applicants for certification shall not have been found by the cabinet or a court to have abused or neglected a child, and shall meet the following minimum requirements:

1. Submit two (2) written character references;
 2. Provide a written statement from a physician that the applicant is in good health;
 3. Submit to a criminal record check in accordance with KRS 17.165. The application shall be denied if the applicant has been convicted of a violent crime or sex crime as defined in KRS 17.165;
 4. Provide smoke detectors, a telephone, an adequate water supply, sufficient lighting and space, and a safe environment in the residence in which care is provided;
 5. Provide a copy of the results of a tuberculosis risk assessment and the results of any appropriate follow-up with skin testing or chest X-ray for applicants who are determined to be at risk for developing tuberculosis in accordance with the recommendations of the Centers for Disease Control and Prevention within thirty (30) days of the date of application for certification; and
 6. Demonstrate completion of a total of at least six (6) hours of training in the following areas within three (3) months of application for certification:
 - a. Basic health, safety, and sanitation;
 - b. Recognizing and reporting child abuse; and
 - c. Developmentally appropriate child-care practice.
- (b) Initial applications for certification shall be made to the department and shall be accompanied by a ten dollar (\$10) certification fee. The department shall issue a certificate of operation upon inspecting the family child-care home and determining the provider's compliance with the provisions of this section. The inspection shall be unannounced. A certificate of operation issued pursuant to this section shall not be transferable and shall be renewed every two (2) years for a fee of ten dollars (\$10).
- (c) A certified family child-care provider shall display the certificate of operation in a prominent place within the residence in which care is provided. The cabinet shall provide the certified family child-care provider with written information explaining the requirements for a family day-care provider and instructions on the method of reporting violations of the requirements which the provider shall distribute to parents.
- (d) Upon request of any person, the cabinet shall provide information regarding the denial, revocation, suspension, or violation of any type of day-care license of the family child-care provider. Identifying information regarding children and their families shall remain confidential.
- (e) The cabinet shall provide, upon request, public information regarding the inspections of and the plans of correction for the family child-care home within the past year. All information distributed by the cabinet under this paragraph shall include a statement indicating that the reports as provided under this paragraph from the past five (5) years are available from the family child-care home upon the parent's, custodian's, guardian's, or other interested person's request.
- (f) The cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A which establish standards for the issuance, monitoring, release of information under this section and KRS 199.896 and 199.898, renewal, denial, revocation, and suspension of a certificate of operation for a family child-care home and establish criteria for the denial of certification if criminal records indicate convictions that may impact the safety and security of children in care. A denial, suspension, or revocation of a certificate may be appealed, and upon appeal an administrative hearing shall be conducted in accordance with KRS Chapter 13B. If the cabinet has probable cause to believe that there is an immediate threat to the public health, safety, or welfare, the cabinet may take emergency action to suspend a certificate pursuant to KRS 13B.125. The cabinet shall promulgate administrative regulations to impose minimum staff-to-child ratios. The cabinet may promulgate administrative regulations relating to other requirements necessary to ensure minimum safety in family child-care homes. The cabinet shall develop and provide an "easy-to-read" guide containing the following information to a family child-care provider seeking certification of his home:
1. Certification requirements and procedures;

2. Information about available child-care training; and
 3. Child-care food sponsoring organizations.
- (2) Family child-care providers shall annually demonstrate to the department completion of at least six (6) hours of training in child development. ***These hours shall include but are not limited to one and one-half (1.5) hours one (1) time every five (5) years of continuing education in the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours.***
- (3) The cabinet shall, either through the development of or approval of, make available a model training curriculum and training materials, including video instructional materials, to cover the areas specified in subsection (1)(a)6. of this section. The cabinet shall develop or approve the model training curriculum and training materials to cover the areas specified in subsection (1)(a)6. of this section.

➔Section 9. KRS 211.690 is amended to read as follows:

- (1) There is established within the Cabinet for Health and Family Services the Health Access Nurturing Development Services (HANDS) program as a voluntary statewide home visitation program, for the purpose of providing assistance to at-risk parents during the prenatal period and until the child's third birthday. The HANDS program recognizes that parents are the primary decision-makers for their children. The goals of the HANDS program are to:
- (a) Facilitate safe and healthy delivery of babies;
 - (b) Provide information about optimal child growth and human development;
 - (c) Facilitate the safety and health of homes; and
 - (d) Encourage greater self-sufficiency of families.
- (2) The cabinet shall administer the HANDS program in cooperation with the Cabinet for Health and Family Services and the local public health departments. The voluntary home visitation program may supplement, but shall not duplicate, any existing program that provides assistance to parents of young children.
- (3) ***The HANDS program shall include an educational component on the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act.***
- ~~(4)(3)~~ Participants in the HANDS program shall express informed consent to participate by written agreement on a form promulgated by the Cabinet for Health and Family Services.

➔SECTION 10. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO READ AS FOLLOWS:

- (1) ***As used in this section, "urgent treatment facility" or "urgent care facility" means a facility that delivers medically necessary ambulatory medical care apart from a hospital emergency department setting usually on a walk-in basis.***
- (2) ***All urgent treatment or urgent care facilities shall make available at least one (1) time every two (2) years a continuing education course relating to the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act. Training in recognizing pediatric abusive head trauma may be designed in collaboration with organizations and agencies that specialize in the prevention and recognition of pediatric abusive head trauma approved by the secretary of the Cabinet for Health and Family Services.***

➔Section 11. KRS 311.844 is amended to read as follows:

- (1) To be licensed by the board as a physician assistant, an applicant shall:
- (a) Submit a completed application form with the required fee;
 - (b) Be of good character and reputation;
 - (c) Be a graduate of an approved program; and
 - (d) Have passed an examination approved by the board within three (3) attempts.

- (2) A physician assistant who is authorized to practice in another state and who is in good standing may apply for licensure by endorsement from the state of his or her credentialing if that state has standards substantially equivalent to those of this Commonwealth.
- (3) A physician assistant's license shall be renewed upon fulfillment of the following requirements:
 - (a) The holder shall be of good character and reputation;
 - (b) The holder shall provide evidence of completion during the previous two (2) years of a minimum of one hundred (100) hours of continuing education approved by the American Medical Association, the American Osteopathic Association, the American Academy of Family Physicians, the American Academy of Physician Assistants, or by another entity approved by the board;
 - (c) The holder shall provide evidence of completion of a continuing education course on the human immunodeficiency virus and acquired immunodeficiency syndrome in the previous ten (10) years that meets the requirements of KRS 214.610;
 - (d) *As a part of the continuing education requirements that the board adopts to ensure continuing competency of present and future licensees the board shall ensure that physician's assistants shall demonstrate completion of a one-time training course of one and one-half (1.5) hours of training covering the prevention and recognition of pediatric abusive head trauma, as defined in Section 16 of this Act. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours. Current practicing physician's assistants shall demonstrate completion of this course by December 31, 2013; and*
 - ~~(e)(d)~~ The holder shall provide proof of current certification with the National Commission on Certification of Physician Assistants.

➔Section 12. KRS 311A.120 is amended to read as follows:

- (1) As a condition of being issued a certificate or license as an emergency medical technician or first responder, the applicant shall have completed a Kentucky Board of Emergency Medical Services approved educational course on the transmission, control, treatment, and prevention of the human immunodeficiency virus and acquired immunodeficiency syndrome with an emphasis on appropriate behavior and attitude change. The board shall require continuing education that updates this training at least one (1) time every ten (10) years that is consistent with and as required for other health care providers under KRS 214.610.
- (2) *The board shall require continuing education for emergency medical technicians or first responders that includes the completion of one and one-half (1.5) hours of board approved continuing education covering the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act, at least one (1) time every five (5) years. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.*

➔SECTION 13. A NEW SECTION OF KRS CHAPTER 311A IS CREATED TO READ AS FOLLOWS:

The board shall require continuing education for paramedics that includes the completion of one and one-half (1.5) hours of board approved continuing education covering the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act, at least one (1) time every five (5) years. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours.

➔Section 14. KRS 314.073 is amended to read as follows:

- (1) Except for the first licensure renewal following the issuance of an original license by the board, as a prerequisite for license renewal, all individuals licensed under provisions of this chapter shall be required to document continuing competency during the immediate past licensure period as prescribed in regulations promulgated by the board.
- (2) The continuing competency requirement shall be documented and reported as set forth by the board in administrative regulations promulgated in accordance with KRS Chapter 13A.
- (3) The board shall approve providers of continuing education. The approval may include recognition of providers approved by national organizations and state boards of nursing with comparable standards. Standards for these approvals shall be set by the board in administrative regulations promulgated in accordance with the provisions of KRS Chapter 13A.

- (4) The board shall work cooperatively with professional nursing organizations, approved nursing schools, and other potential sources of continuing education programs to assure that adequate continuing education offerings are available statewide. The board may enter into contractual agreements to implement the provisions of this section.
- (5) The board shall be responsible for notifying applicants for licensure and licensees applying for license renewal, of continuing competency requirements.
- (6) The continuing competency requirements shall include the completion of the course described in KRS 214.610(1) at least one (1) time every ten (10) years, but the board may in its discretion require completion of the course more frequently.
- (7) ***As a part of the continuing education requirements that the board adopts to ensure continuing competency of present and future licensees, the board shall ensure practitioners licensed under KRS Chapter 314 complete a one-time training course of at least one and one-half (1.5) hours covering the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act. The one and one-half (1.5) hours required under this section shall be included in the current number of required continuing education hours. Current practicing nurses shall demonstrate completion of this course by December 31, 2013.***
- ~~(8)(7)~~ In order to offset administrative costs incurred in the implementation of the mandatory continuing competency requirements, the board may charge reasonable fees as established by regulation in accordance with the provisions of KRS Chapter 13A.
- ~~(9)(8)~~ The continuing competency requirements shall include at least five (5) contact hours in pharmacology continuing education for any person registered as an advanced registered nurse practitioner.

➔Section 15. KRS 335.130 is amended to read as follows:

- (1) Each certified social worker, licensed social worker and licensed clinical social worker shall renew his license every three (3) years, and shall pay the board a renewal fee as established by the board by promulgation of an administrative regulation.
- (2) Licensees whose licenses are renewed by the board shall be issued a renewal license.
- (3) Renewal fees shall be waived for any licensee actually serving in the Armed Forces of the United States. The waiver shall be effective for six (6) months following honorable discharge, separation, or release from the Armed Forces, after which period a license shall be considered lapsed.
- (4) The board may, at its discretion, require continuing education as a condition of license renewal.
- (5) ***If the board requires continuing education as authorized in subsection (4), the continuing education requirements for each licensed social worker and each licensed clinical social worker shall include one and one-half (1.5) hours of continuing education approved by the board and covering the recognition and prevention of pediatric abusive head trauma, as defined in Section 16 of this Act, at least one (1) time every six (6) years. The one and one-half (1.5) hours of continuing education required under this section shall be included in the current number of required continuing education hours.***

➔Section 16. KRS 620.020 is amended to read as follows:

The definitions in KRS Chapter 600 shall apply to this chapter. In addition, as used in this chapter, unless the context requires otherwise:

- (1) "Case permanency plan" means a document identifying decisions made by the cabinet, for both the biological family and the child, concerning action which needs to be taken to assure that the child in foster care expeditiously obtains a permanent home;
- (2) "Case progress report" means a written record of goals that have been achieved in the case of a child;
- (3) "Case record" means a cabinet file of specific documents and a running record of activities pertaining to the child;
- (4) "Children's advocacy center" means an agency that advocates on behalf of children alleged to have been abused; that assists in the coordination of the investigation of child abuse by providing a location for forensic interviews and medical examinations, and by promoting the coordination of services for children alleged to

have been abused; and that provides, directly or by formalized agreements, services that include, but are not limited to, forensic interviews, medical examinations, mental health and related support services, court advocacy, consultation, training, and staffing of multidisciplinary teams;

- (5) "Foster care" means the provision of temporary twenty-four (24) hour care for a child for a planned period of time when the child is:
 - (a) Removed from his parents or person exercising custodial control or supervision and subsequently placed in the custody of the cabinet; and
 - (b) Placed in a foster home or private child-caring facility or child-placing agency but remains under the supervision of the cabinet;
- (6) "Local citizen foster care review board" means a citizen board which provides periodic permanency reviews of children placed in the custody of the cabinet by a court order of temporary custody or commitment under this chapter;
- (7) "Multidisciplinary teams" means local teams operating under protocols governing roles, responsibilities, and procedures developed by the Kentucky Multidisciplinary Commission on Child Sexual Abuse pursuant to KRS 431.600;
- (8) ***"Pediatric abusive head trauma" means the various injuries or conditions that may result following the vigorous shaking, slamming, or impacting the head of an infant or young child. These injuries or conditions, also known as pediatric acquired abusive head trauma, have in the past been called "Shaken Baby Syndrome" or "Shaken Infant Syndrome." Pediatric abusive head trauma injuries or conditions have included, but are not limited to the following:***
 - (a) Irreversible brain damage;***
 - (b) Blindness;***
 - (c) Retinal hemorrhage;***
 - (d) Eye damage;***
 - (e) Cerebral palsy;***
 - (f) Hearing loss;***
 - (g) Spinal cord injury;***
 - (h) Paralysis;***
 - (i) Seizures;***
 - (j) Learning disability;***
 - (k) Death;***
 - (l) Central nervous system injury as evidenced by central nervous system hemorrhaging;***
 - (m) Closed head injury;***
 - (n) Rib fracture; and***
 - (o) Subdural hematoma;***
- (9) "Permanence" means a relationship between a child and an adult which is intended to last a lifetime, providing commitment and continuity in the child's relationships and a sense of belonging;
- ~~(10)~~~~(9)~~ "Preventive services" means those services which are designed to help maintain and strengthen the family unit by preventing or eliminating the need for removal of children from the family;
- ~~(11)~~~~(10)~~ "Reasonable efforts" means the exercise of ordinary diligence and care by the department to utilize all preventive and reunification services available to the community in accordance with the state plan for Public Law 96-272 which are necessary to enable the child to safely live at home;
- ~~(12)~~~~(11)~~ "Reunification services" means remedial and preventive services which are designed to strengthen the family unit, to secure reunification of the family and child where appropriate, as quickly as practicable, and to prevent the future removal of the child from the family; and

(13)(12) "State citizen foster care review board" means a board created by KRS 620.310.

Signed by Governor April 26, 2010.

CHAPTER 172

(HB 531)

AN ACT relating to the sale, issuance, approval, and status of funding notes with respect to the Commonwealth and its political subdivisions, and declaring an emergency.

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

➔Section 1. KRS 56.8605 is amended to read as follows:

As used in KRS 56.860 to 56.869:

- (1) "Authorized project" means:
 - (a) Any project approved by the General Assembly and included in an enacted budget; or
 - (b) Any project approved by the General Assembly that is certified by the secretary of the Finance and Administration Cabinet in accordance with the provisions of KRS 56.870, to be of a type that will independently produce revenues or will be payable from receipts of federal transportation funds that are projected by the commission to be sufficient to fully meet debt service, issuance costs, reserve fund requirements, insurance premiums, or any other expenditures necessary for financing so that no appropriation of state funds is required;
- (2) "Cabinet" means the Finance and Administration Cabinet;
- (3) "Commercial paper" means obligations that by their terms mature not more than three hundred sixty-six (366) days from the date of their issuance and that may be refunded;
- (4) "Commission" means the Kentucky Asset/Liability Commission;
- (5) "Estimated revenues" means the official revenue estimates established pursuant to KRS 48.120 on or before the dates on which tax and revenue anticipation notes are awarded to the purchaser;
- (6) "Financial agreements" means interest rate swaps, options, or other agreements between two (2) parties to exchange or have the conditional right to exchange interest rate exposure from fixed rate to variable rate or from variable rate to fixed rate, or to provide other economic benefit to an issuance of notes or a portfolio of notes, or to hedge the net interest margin of the Commonwealth;
- (7) "Financing agreement" means an agreement between the commission and the cabinet, or between the cabinet and a state agency, relating to the funding of projects or items associated with projects as described in KRS 56.867(3), ~~or a~~ judgment against a state agency or the Commonwealth, **or the finance or refinance of obligations owed under KRS 161.550(2) or 161.553(2)**. The provisions of a financing agreement shall require either the cabinet to make payments to the commission relating to the commission's issuance of notes, or the state agency to make payments to the cabinet reimbursing the cabinet for its payments to the commission on the agency's behalf. The obligations of the cabinet or the state agency under a financing agreement shall be contingent upon appropriations by the General Assembly to the cabinet or to the agency for the payment of those obligations;
- (8) "Fixed-rate obligations" means obligations on which the interest rate remains constant to maturity;
- (9) "Funding notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission **for the purpose of funding:**
 - (a) **Judgments**, with a final maturity of not more than ten (10) years; **and**
 - (b) **The finance or refinance of obligations owed under KRS 161.550(2) or 161.553(2)**~~for the purpose of funding judgments~~;
- (10) "Interest-sensitive assets" means tangible and intangible property held by the Commonwealth whose market value is dependent upon the level of interest rates;

- (11) "Interest-sensitive liabilities" means interest-bearing debts or other obligations of the Commonwealth or a state agency;
- (12) "Multimodal obligations" means obligations for which the time period for establishing the rate of interest may be selectively determined and altered;
- (13) "Net interest margin" means the net income or expense associated with the difference between the Commonwealth's interest-sensitive assets and interest-sensitive liabilities;
- (14) "Project notes" means notes issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity of not more than twenty (20) years for the purpose of funding authorized projects, which may include bond anticipation notes;
- (15) "State agency" means any state administrative body, agency, department, or division as defined in KRS 42.005, and set out in KRS Chapter 12, or any board, commission, institution, state university, or division exercising any function of the Commonwealth;
- (16) "Tax and revenue anticipation notes" means notes that are issued under the provisions of KRS 56.860 to 56.869 by the commission with a final maturity that is no later than the last day of the fiscal year during which the tax and revenue anticipation notes are issued and that are issued in anticipation of estimated revenues to be received in that fiscal year; and
- (17) "Variable-rate demand obligations" means obligations on which the rate of interest is set by reference to a predetermined index or formula, by auction, by an agent that, in the sole judgment of the commission, has the financial expertise to establish market interest rates, or by similar means.

➔Section 2. KRS 56.868 is amended to read as follows:

- (1) The commission may issue and sell funding notes for the ~~purposes~~~~[purpose]~~ of funding judgments against the Commonwealth or any state agency **and financing or refinancing obligations owed under KRS 161.550(2) or 161.553(2)**. Funding notes may be sold and issued in a manner and have terms relating to the payment of interest, principal, and premiums or discounts as market conditions warrant.
- (2) Appropriations requests for payment of principal and interest on funding notes shall be made by the state agency against which a judgment has been rendered **or, in the case of financing or refinancing obligations owed under KRS 161.550(2) or 161.553(2), to the Kentucky Teachers Retirement System**. Funding notes, together with interest thereon, shall be repaid from payments received by the commission from the cabinet under a financing agreement.
- (3) Funding notes may be issued for the following purposes:
 - (a) To pay for judgments, which shall include legal settlements, court-ordered actions against the Commonwealth or any state agency, and any part of any expense or cost incidental to legal settlements or court-ordered actions against the Commonwealth or any state agency;~~and~~
 - (b) **To finance or refinance obligations owed under KRS 161.550(2) or 161.553(2); and**
 - (c) To refund outstanding issues of funding notes.
- (4) The issuance of funding notes shall be subject to KRS 56.870, to approval by the State Property and Buildings Commission, and to review by the Capital Projects and Bond Oversight Committee pursuant to KRS 45.810.
- (5) The cabinet, in providing for the expenditure of funds for any of the purposes mentioned in this section, may provide by a financing agreement with the state agency so affected for the funding of the Commonwealth's or that state agency's judgment, and the state agency so affected is authorized to enter into a financing agreement with the cabinet for that purpose.
- (6) Funding notes shall not constitute a debt of the Commonwealth or any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or any political subdivision, but the notes shall be payable solely from payments received under the financing agreement relating to the funding notes.

➔Section 3. Funding notes are authorized in an amount not to exceed eight hundred seventy five million dollars (\$875,000,000) in fiscal year 2009-2010 for the Kentucky Asset/Liability Commission established in KRS 56.861 to finance or refinance obligations owed under KRS 161.550(2) or 161.553(2).

➔Section 4. Whereas time is of the essence to finance or refinance obligations owed under KRS 161.550(2) or 161.553(2) in order to take advantage of savings to be derived from the current low interest rate environment, an

emergency is declared to exist, and this Act shall take effect upon its passage and approval by the Governor or upon its otherwise becoming law.

Signed by Governor April 26, 2010.

CHAPTER 173

(HB 329)

AN ACT relating to retirement.

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

➔Section 1. KRS 16.578 is amended to read as follows:

- (1) If a member dies prior to ***the first day of the month in which the member would have received his or her first retirement allowance***~~for before the first benefit payment has been issued by the State Treasurer~~, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office ***as provided by Section 3 of this Act*** and the member met the following conditions at the date of his or her death:
 - (a) The member was eligible to retire under KRS 16.576 or 16.577;
 - (b) The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date; or
 - (c) The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.
- (2) If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:
 - (a) A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);
 - (b) A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (c) A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (d) A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (e) A monthly benefit payable for a period of one hundred twenty (120) months that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or
 - (f) The higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or a one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.
- (3) If the beneficiary eligible for benefits as provided in subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under subsection (2)(c), (d), (e), or (f) of this section using the assumption that the beneficiary's age is the same as the member's age.
- (4) If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of accumulated contributions and interest as described in

KRS 61.625(1) or the one (1) time lump-sum payment payable under subsection (2)(f) of this section, using the assumption that the beneficiary's age is the same as the member's age.

- (5) Payments of taxable distributions made pursuant to this section shall be subject to state and federal tax as appropriate.

➔Section 2. KRS 16.642 is amended to read as follows:

- (1) The board shall be the trustee of the several funds created by KRS 16.505 to 16.652 and shall have full power to invest and reinvest such funds, subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state, except that the board may, at its discretion, purchase common stock in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.
- (2) All securities acquired under authority of KRS 16.505 to 16.652 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225, and every change in registration, by reason of sale or assignment of such securities shall be accomplished *pursuant to written policies adopted by the board*~~[by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems].~~
- (3) The board, in keeping with its responsibility as trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.

➔Section 3. KRS 61.542 is amended to read as follows:

- (1) Prior to the *first day of the month in which the member receives his or her first retirement allowance and prior to the member filing a notification of retirement or a request for refund*~~[time the first retirement allowance payment is issued by the State Treasurer].~~
 - (a) Each member may designate on the form prescribed by the board *a principal beneficiary and contingent beneficiary for his or her account. The principal beneficiary or contingent beneficiary designated by the member shall be:*
 1. One (1) or more persons~~[as a principal beneficiary or beneficiaries and one (1) or more persons as contingent beneficiary or beneficiaries]; or [each member may designate his]~~
 2. *The member's estate*~~[as principal or contingent beneficiary]; or~~
 3. ~~[each member may designate]~~A trust~~[or trustee as principal or contingent beneficiary].~~
 - (b) If multiple persons are designated *as provided by paragraph (a)1. of this subsection*, the member shall indicate the percentage of total benefits each person is to receive.
 1. If percentages are not indicated, payments will be disbursed equally to the named beneficiaries.
 2. If the percentages indicated do not total one hundred percent (100%), each beneficiary shall receive an increased or decreased percentage which is proportional to the percentage allotted him or her by the member.
 - 3~~[2]~~. If any of the multiple beneficiaries die prior to the member's death, the remaining beneficiaries shall be entitled to the deceased beneficiary's percentage of the total benefits, and each shall receive a percentage of the deceased's share which is equal to the percentage allotted them by the member.
 - ~~[3. — If any or all multiple beneficiaries die after the first retirement allowance has been issued by the State Treasurer, the deceased beneficiary's estate shall receive a lump sum payment which is the actuarial equivalent of the remaining monthly payments the deceased beneficiary was entitled to receive.]~~
 - (c) *The principal and contingent beneficiary*~~[This]~~ designation *established by the member pursuant to paragraph (a) of this subsection* shall remain in full force and effect until changed by the member, except:

1. A final divorce decree terminates an ex-spouse's status as beneficiary, unless the member has on file in the retirement office a beneficiary designation that redesignates the ex-spouse as beneficiary subsequent to the issuance of the divorce decree.
 2. If a beneficiary or beneficiaries are convicted of any crime which prohibits that person or persons from receiving the benefits under KRS 381.280, the beneficiary or beneficiaries shall not be eligible for any of the benefits and the remaining beneficiary or beneficiaries or, if none, the member's estate, shall become the beneficiary.
 3. When a notification of retirement has been filed at the retirement office, the designation of beneficiary on the notification of retirement, which shall be one (1) person, his estate, or a trust ~~or trustee~~, shall supersede the designation of all previous beneficiaries, ~~unless~~~~except that if~~ the notification of retirement is withdrawn, invalid, or voided. ***If the notification of retirement is withdrawn, invalid, or voided***, the prior beneficiary designation on file with the system shall remain in full force and effect until changed by the member.
 4. When a request for refund has been filed at the retirement office, the member's estate shall become the member's beneficiary if the member dies.
- (2) If the member dies ***prior to the first day of the month in which the member would have received his or her first retirement allowance*** and prior to filing a notification of retirement or a request for refund, any retirement benefits shall be payable to the principal beneficiary, except that:
- (a) If the death of the principal beneficiary or beneficiaries precedes the death of the member, or if the principal beneficiary is terminated by a divorce decree, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.
 - (b) If the principal beneficiary is~~the~~ one (1) person ~~and~~~~who~~ is the member's spouse and they are divorced on the date of the member's death, the contingent beneficiary or beneficiaries become the principal beneficiary or beneficiaries.
 - (c) If the member is survived by his principal beneficiary or beneficiaries who subsequently die prior to having on file at the retirement office the necessary forms prescribed under authority of KRS 61.590, the contingent beneficiary shall become the principal beneficiary or beneficiaries.
 - (d) If the deaths of all the principal beneficiaries and all of the contingent beneficiaries precede the death of the member, the estate of the member becomes the beneficiary.
- (3) Prior to the ***first day of the month in which the member would have received his or her first retirement allowance***~~member's retirement~~, a monthly benefit payable for life shall not be offered if the beneficiary ***designated under subsection (1) of this section*** is more than one (1) person, the member's estate, or a trust ~~or trustee~~.
- (4) When a notification of retirement has been filed at the retirement office:
- (a) The designation of beneficiary on the notification of retirement shall supersede the designation of all previous beneficiaries.
 - (b) The beneficiary designated by the member on the member's notification of retirement shall be one (1) person, the member's estate, or a trust ~~or trustee~~.
 - (c) If the death of the beneficiary named on the notification of retirement precedes the ***first day of the month in which the member receives his or her first retirement allowance***~~date the first benefit payment has been issued by the State Treasurer~~, the member may designate another beneficiary on the member's notification of retirement.
- (5) After the first ***day of the month in which the member receives his or her first retirement allowance***~~retirement allowance payment is issued by the State Treasurer~~ and subsequent thereto, a member shall not have the right to change his beneficiary, except that:
- (a) The estate of the retired member becomes the beneficiary if the date of death of the beneficiary precedes or coincides with the date of death of the retired member.

- (b) The estate of the retired member becomes the beneficiary if the retired member had designated a person as beneficiary who was the spouse or who later married the member and they were divorced on the date of the retired member's death. An ex-spouse who was the named beneficiary on the member's notification of retirement shall be reinstated as the member's beneficiary for the payment options provided by KRS 61.635(2), (3), (4), and (8)(b) if they are remarried to each other as of the date of the retired member's death.
- (c) The estate of the member shall not receive monthly payments if the member selected one (1) of the payment options provided by KRS 61.635(2), (3), (4), and (8)(b).

➔Section 4. KRS 61.590 is amended to read as follows:

- (1) A member or beneficiary eligible to receive retirement benefits under any of the provisions of KRS 61.510 to 61.705, 78.510 to 78.852, and 16.510 to 16.652 shall have on file at the retirement office on the form prescribed by the board, notification of retirement, giving his name, address, Social Security number, last day of employment, and other information the system may require. The form entitled "Notification of Retirement" shall not be filed more than six (6) months before the member's effective retirement date.
- (2) Within ten (10) days of the receipt of the form entitled "Notification of Retirement" submitted within two (2) months of the effective date of retirement, the system shall cause to be prepared an estimate of the amounts the member or beneficiary may expect to receive under the various plans available to the member or beneficiary. This information shall be recorded on a form entitled "Estimated Retirement Allowance" and forwarded to the member or beneficiary. If the member submits a form entitled "Notification of Retirement" more than two (2) months prior to the effective retirement date, the system shall provide the form entitled "Estimated Retirement Allowance" within forty-five (45) days of the member's effective retirement date.
- (3) The member or beneficiary shall file at the retirement office the form entitled "Estimated Retirement Allowance" after he has checked the payment option of his choice, signed the document and had his signature witnessed. A member ~~shall~~~~for beneficiary may~~ **not have the right to** select a different payment option after the **first day of the month in which the member receives his or her first retirement allowance or after the effective date of a deferred retirement option as provided by subsection (6) of this section**~~[payment has been issued by the State Treasurer]~~. **A beneficiary shall not have the right to select a different payment option after the effective date of the beneficiary's retirement allowance as provided in subsection (7) of this section.**
- (4) A member or beneficiary choosing a monthly payment option shall have on file at the retirement office his birth certificate or other acceptable evidence of date of birth. If a survivorship option is chosen, proof of dates of birth of the beneficiary and member shall be on file at the retirement office.
- (5)
 - (a) The effective date of normal retirement shall be the first month following the month in which employment was terminated from a regular full-time position.
 - (b) The effective date of disability retirement shall be the first month following the month in which the member's last day of paid employment in a regular full-time position occurred, provided the member files the form entitled "Estimated Retirement Allowance" no later than six (6) months following the date the notification of approval for disability retirement benefits is mailed. If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months of the date the notification of approval for disability retirement benefits is mailed, then the member's form entitled "Notification of Retirement" shall be void. The member shall be required to submit a new form entitled "Notification of Retirement" to apply for disability retirement and reestablish eligibility for disability retirement benefits.
 - (c) The effective date of early retirement shall be the first month following the month the form entitled "Notification of Retirement" is filed at the retirement office or a future month designated by the member, if employment in a regular full-time position has been terminated and if the member files the form entitled "Estimated Retirement Allowance" no later than six (6) months following termination. If the member fails to file the form entitled "Estimated Retirement Allowance" within six (6) months following the effective retirement date of the member, then the member's form entitled "Notification of Retirement" shall be void and the member shall be required to submit a new form entitled "Notification of Retirement" to apply for early retirement.
- (6) The effective date of a deferred retirement option as provided under KRS 16.576(5) shall be the month following age sixty-five (65), or the month following written notification from the member that he wishes to

begin receiving retirement payments. In the event of the death of a member who has deferred his retirement allowance, the effective date of retirement shall be the month following the member's death.

- (7) Notwithstanding the provisions of KRS 16.578 or 61.640, the effective date of a beneficiary's retirement allowance under normal, early, or disability retirement shall be as prescribed in subsection (5) or (6) of this section if the member dies before the ***first day of the month in which the member would have received his or her first retirement allowance***~~[has been issued by the State Treasurer]~~ and his beneficiary becomes eligible for payments under KRS 16.578 or 61.640.

➔Section 5. KRS 61.630 is amended to read as follows:

- (1) If a retired member who did not elect an optional retirement plan dies at any time ***on or after the first day of the month in which the member received or would have received his or her first retirement allowance*** but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to his accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the properly designated beneficiary. If a living person designated as the beneficiary predeceases the retired member, the estate shall become the beneficiary. If a spouse designated as the beneficiary is divorced from the retired member as of the member's death, the estate shall become the beneficiary.
- (2) If a retired member who elected an optional retirement plan and his beneficiary both die at any time ***on or after the first day of the month in which the member received or would have received his or her first retirement allowance***~~[of the member]~~ but before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the retired member's accumulated contributions as of the date of his retirement, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the last deceased, except that the retired member's estate shall receive the payment if the beneficiary was the spouse and they were divorced as of the date of the member's death. If the retired member and beneficiary die simultaneously, the estate of the retired member shall become the beneficiary.
- (3) If a beneficiary receiving a lifetime retirement allowance under KRS 16.578 or 61.640 dies before receiving total retirement allowances provided in KRS 16.510 to 16.652, KRS 61.515 to 61.705, and KRS 78.520 to 78.852 at least equal to the member's accumulated contributions as of the date of the member's death, the difference between the accumulated contributions and the total allowances shall be payable in a lump sum to the estate of the beneficiary.
- (4) If a beneficiary receiving a retirement allowance for sixty (60) or one hundred twenty (120) months certain under KRS 16.576, 16.578, or 61.640, or a beneficiary receiving a retirement allowance under KRS 61.635(5), (6), or (7), dies before receiving all payments under the plan, the executor or administrator of his estate shall receive a lump sum payment which shall be the actuarial equivalent to the remaining payments.
- (5) If the system is unable to verify a recipient's whereabouts or whether the recipient is living, the system shall suspend the recipient's retirement allowance. If the recipient is located, the system shall restore to the recipient all suspended retirement allowances.

➔Section 6. KRS 61.640 is amended to read as follows:

- (1) If a member dies prior to ***the first day of the month in which the member would have received his or her first retirement allowance***~~[or before the first benefit payment has been issued by the State Treasurer]~~, the member's beneficiary shall be eligible for the benefits provided by this section if the member had on file a written designation of a beneficiary with the retirement office ***as provided by Section 3 of this Act*** and the member met the following conditions at the date of his or her death:
- (a) The member was eligible to retire under KRS 61.559(2) or (3);
 - (b) The member was in active employment or on authorized leave of absence with five (5) or more years of service credit and died prior to his or her normal retirement date or was normal retirement age or older and had at least four (4) years of service credit; or
 - (c) The member was not in active employment or on authorized leave of absence with twelve (12) or more years of service credit and died prior to his or her normal retirement date.

- (2) If the beneficiary eligible for benefits as provided in subsection (1) of this section is a single person, then the beneficiary may elect to receive:
- (a) A monthly benefit payable for the life of the beneficiary that is equal to the benefit that would have been paid had the member retired immediately prior to his or her date of death and elected to receive benefits payable under the survivorship one hundred percent (100%) option as provided in KRS 61.635(2);
 - (b) A monthly benefit payable for the life of the beneficiary under the beneficiary Social Security adjustment option as provided in KRS 61.635(9) that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (c) A monthly benefit payable for a period of sixty (60) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (d) A monthly benefit payable for a period of one hundred twenty (120) months that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection;
 - (e) A monthly benefit payable for a period of one hundred twenty (120) months that is equivalent to the benefit the member would have been entitled to receive based on his or her years of service and final compensation at the date of his or her death reduced by the survivorship fifty percent (50%) factor as provided for in KRS 61.635(4), then reduced by fifty percent (50%), and that is the actuarial equivalent to the amount computed under paragraph (a) of this subsection; or
 - (f) The higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or one (1) time lump-sum payment which shall be the actuarial equivalent of the amount payable under paragraph (a) of this subsection for a period of sixty (60) months.
- (3) If the beneficiary eligible for benefits as provided by subsection (1) of this section are multiple beneficiaries or a trust, then the multiple beneficiaries by consensus or the trustee may elect to receive the actuarial equivalent amounts payable under subsection (2)(c), (d), (e), or (f) of this section using the assumption that the beneficiary's age is the same as the member's age.
- (4) If the beneficiary eligible for benefits as provided in subsection (1) of this section is the member's estate, then the beneficiary shall receive the higher of a refund of accumulated contributions and interest as described in KRS 61.625(1) or the one (1) time lump-sum payment payable under subsection (2)(f) of this section, using the assumption that the beneficiary's age is the same as the member's age.
- (5) Payments of taxable distributions made pursuant to this section shall be subject to state and federal income tax as appropriate.

➔Section 7. KRS 61.650 is amended to read as follows:

- (1) (a) The board shall be the trustee of the several funds created by KRS 16.510, 61.515, 61.701, and 78.520, notwithstanding the provisions of any other statute to the contrary, and shall have exclusive power to invest and reinvest such funds in accordance with federal law.
- (b) The board may establish an investment committee whose members shall be appointed by the board chair. The investment committee shall have authority to implement ***the investment policies adopted by the board***~~policy~~ and act on behalf of the board on all investment-related matters ~~and with full power~~ to acquire, sell, safeguard, monitor, and manage the assets and securities of the several funds.
- (c) A trustee, officer, employee, or other fiduciary shall discharge duties with respect to the retirement system:
- 1. Solely in the interest of the members and beneficiaries;
 - 2. For the exclusive purpose of providing benefits to members and beneficiaries and paying reasonable expenses of administering the system;
 - 3. With the care, skill, and caution under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an activity of like character and purpose;
 - 4. Impartially, taking into account any differing interests of members and beneficiaries;
 - 5. Incurring any costs that are appropriate and reasonable; and

6. In accordance with a good-faith interpretation of the law governing the retirement system.
- (2) All securities acquired under authority of KRS 61.510 to 61.705 shall be registered in the name "Kentucky Retirement Systems" or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished ***pursuant to written policies adopted by the board***~~[by the signatures of the chair of the board of trustees or a trustee appointed by the chair and the executive director of the systems].~~
- (3) The board, in keeping with its responsibility as trustee and wherever consistent with its fiduciary responsibilities, shall give priority to the investment of funds in obligation calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.
- (4) The contents of real estate appraisals, engineering or feasibility estimates, and evaluations made by or for the system relative to the acquisition or disposition of property, until such time as all of the property has been acquired or sold, shall be excluded from the application of KRS 61.870 to 61.884 and shall be subject to inspection only upon order of a court of competent jurisdiction.

➔Section 8. KRS 61.675 is amended to read as follows:

- (1) The employer shall prepare the records and, from time to time, shall furnish the information the system may require in the discharge of its duties. Upon employment of an employee, the employer shall inform him of his duties and obligations in connection with the system as a condition of employment.
- (2) The system may at any time conduct an audit of the employer in order to determine if the employer is complying with the provisions of KRS 16.505 to 16.652, 61.610 to 61.705, or 78.510 to 78.852. The system shall have access to and may examine all books, accounts, reports, correspondence files, and records of any employer. Every employer, employee, or agency reporting official of a department or county, as defined in KRS 78.510(3), having records in his possession or under his control, shall permit access to and examination of the records upon the request of the system.
- (3) (a) Any agency participating in the Kentucky Employees Retirement System which is not an integral part of the executive branch of state government shall file the following at the retirement office on or before the tenth day of the month following the period being reported:
 1. The employer and employee contributions required under KRS 61.560,~~[and]~~ 61.565, ***and 61.702;***~~[and]~~
 2. ***The employer contributions and reimbursements for retiree health insurance premiums required under KRS 61.637; and***
 3. A record of all contributions to the system on the forms prescribed by the board.
- (b) If the agency fails to file all contributions and reports on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), shall be added to the amount due the system.

➔Section 9. KRS 78.625 is amended to read as follows:

- (1) The agency reporting official of the county shall~~[by the tenth day of each month,]~~ file ***the following*** at the retirement office ***on or before the tenth day of the month following the period being reported:***
 - (a) ***The employee and employer***~~[an amount equal to the aggregate amount of the employees']~~ contributions ***required under***~~[deducted during the previous month in accordance with]~~ KRS 78.610,~~[and the aggregate amount of the employer's contributions due for the previous month in accordance with KRS]~~ 61.565, ***and 61.702;***
 - (b) ***The employer contributions and reimbursements for retiree health insurance premiums required under KRS 61.637; and***
 - (c) ***A record of all contributions to the system on the forms prescribed by the systems.***
- (2)~~[The agency reporting official or some other person designated by the county shall, by the tenth day of each month, file at the retirement office a record of all contributions to the system on the forms the board prescribes.]~~

- (3) (a) If the agency reporting official fails to file at the retirement office all contributions and reports on or before the tenth day of the month following the period being reported, interest on the delinquent contributions at the actuarial rate adopted by the board compounded annually, but not less than one thousand dollars (\$1,000), shall be added to the amount due the system.
- (b) Delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties may be recovered by action in the Franklin Circuit Court against the county liable or may, at the request of the board, be deducted from any other moneys payable to the county by any department or agency of the state.
- (4) If an agency is delinquent in the payment of contributions due in accordance with any of the provisions of KRS 78.510 to 78.852, refunds and retirement allowance payments to members of this agency may be suspended until the delinquent contributions, with interest at the rate adopted by the board compounded annually, or penalties have been paid to the system.
- ➔Section 10. KRS 78.790 is amended to read as follows:
- (1) The board shall be the trustee of the several funds created by KRS 78.510 to 78.852, and shall have full power to invest and reinvest such funds subject to the limitations that no investments shall be made except upon the exercise of bona fide discretion, in securities which, at the time of making the investment, are, by law, permitted for the investment of funds by fiduciaries in this state except that the board may, at its discretion, purchase common stocks in corporations that do not have a record of paying dividends to their stockholders. Subject to such limitations, the board shall have full power to hold, purchase, sell, assign, transfer or dispose of any of the securities or investments in which any of the funds created herein have been invested, as well as of the proceeds of such investments and any moneys belonging to such funds.
- (2) All securities acquired under the authority of KRS 78.510 to 78.852 shall be registered in the name Kentucky Retirement Systems or nominee name as provided by KRS 286.3-225 and every change in registration, by reason of sale or assignment of such securities, shall be accomplished *pursuant to written policies adopted by the board* ~~[by the signatures of the chair of the board of trustees or a trustee appointed by the chair and executive director of the systems]~~.
- (3) The board, in keeping with its responsibility as the trustee and wherever feasible, shall give priority to the investment of funds in obligations calculated to improve the industrial development and enhance the economic welfare of the Commonwealth.

Signed by Governor April 26, 2010.

CHAPTER 174

(HB 104)

AN ACT designating the Corvette as the official state sports car of Kentucky.

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

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

The Corvette is named and designated the official state sports car of Kentucky.

Signed by Governor April 26, 2010.

CHAPTER 175

(HB 139)

AN ACT relating to compensation of county officers and employees.

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

➔Section 1. KRS 64.530 is amended to read as follows:

- (1) Except as provided in subsections (5) and (6) of this section, the fiscal court of each county shall fix the *reasonable* compensation of every county officer and employee except the officers named in KRS 64.535 and the county attorney and jailer. The fiscal court may provide a salary for the county attorney.

- (2) For the purposes of this section, justices of the peace and constables in all counties shall be deemed to be county officers and deputies or assistants of county officers shall be deemed to be county employees, but employees of county boards or commissions which are now authorized by law to fix the compensation of their employees shall not be deemed to be county employees for the purposes of this section.
- (3) In the case of officers compensated from fees, or partly from fees and partly by salary, the fiscal court shall fix the *reasonable* maximum compensation that any officer except the officers named in KRS 64.535 may receive from both sources. The fiscal court may also fix the *reasonable* maximum amount that the officer may expend each year for expenses of his office. The fiscal court shall fix annually the *reasonable* maximum amount, including fringe benefits, which the officer may expend for deputies and assistants, and allow the officer to determine the number to be hired and the individual compensation of each deputy and assistant. Any revenue received by a county clerk in any calendar year shall be used exclusively for the statutory duties of the county clerk and budgeted accordingly. At the conclusion of each calendar year, any excess fees remaining shall be paid to the fiscal court pursuant to KRS 64.152.
- (4) In the case of county officers elected by popular vote and the county attorney, in the event the fiscal court provides him a salary, the monthly compensation of the officer and of his deputies and assistants shall be fixed by the fiscal court, consistent with the provisions of subsection (3) of this section, not later than the first Monday in May in the year in which the officers are elected, and the compensation of the officer shall not be changed during the term but the compensation of his deputies or assistants may be reviewed and adjusted by the fiscal court not later than the first Monday in May of any successive year upon the written request of the officer. On or before August 1, 1966, the fiscal court shall fix the salary provided herein for the county attorneys for the term commencing in January, 1966, notwithstanding any other provisions of this section which may be inconsistent herewith.
- (5) Nothing in this section shall apply to property valuation administrators or their deputies, assistants, and expenses, in any county, or to the circuit court clerk, county clerk, sheriff, jailer, and their deputies, assistants, and expenses, in counties having a population of seventy thousand (70,000) or more. If a county's population that equaled or exceeded seventy thousand (70,000) is less than seventy thousand (70,000) after the most recent federal decennial census, then the provisions of KRS 64.368 shall apply.
- (6) Justices of the peace serving on a fiscal court in any county, and county commissioners serving on a fiscal court in any county other than one containing a city of the first, second, third, or fourth class, shall be paid for their services, out of the county treasury, not to exceed the maximum compensation allowable under KRS 64.527. The fiscal court shall fix the amount to be received within the above limit, but no change of compensation shall be effective as to any member of a fiscal court during his term of office. The compensation of county commissioners serving on fiscal courts in counties containing a city of the first class shall not exceed nine thousand six hundred dollars (\$9,600) per year; in counties containing cities of the second class it shall not exceed nine thousand dollars (\$9,000) per year; and in counties containing cities of the third or fourth class it shall not exceed twenty percent (20%) more than the annual compensation paid in the county for the calendar year immediately preceding 1974; and all of said annual salaries shall be payable monthly. Justices of the peace and county commissioners shall not receive any compensation for their services on the fiscal court, other than as provided by this section; provided, however, justices of the peace and county commissioners may receive no more than three thousand six hundred dollars (\$3,600) annually or three hundred dollars (\$300) per month as an expense allowance for serving on committees of the fiscal court. The fiscal court shall fix the amount to be received within the above limit, but no change of compensation except as provided in KRS 64.285 shall be effective as to any member of a fiscal court during his term of office.

Signed by Governor April 26, 2010.

CHAPTER 176

(HB 152)

AN ACT relating to elections.

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

➔Section 1. KRS 116.055 is amended to read as follows:

Before a person shall be qualified to vote in a primary election, he shall possess all the qualifications required of voters in a regular election. In addition, he shall be a registered member of the party in whose primary election he seeks to vote, and shall have been registered as a member of that party on December 31 immediately preceding the primary election, or, in the case of new registrations made after December 31 immediately preceding the primary election, he shall have registered and remained registered as a member of that party. No person shall be allowed to vote for any party candidates or slates of candidates other than that of the party of which he is a registered member. The qualifications shall be determined as of the date of the primary, without regard to the qualifications or disqualifications as they may exist at the succeeding regular election, except that minors seventeen (17) years of age who will become eighteen (18) years of age on or before the day of the regular election shall be entitled to vote in the primary if otherwise qualified. However, any registered voter, whether registered as a member of a party, **political organization, political group**, or as an independent, shall be qualified to vote in primary elections for candidates listed in all nonpartisan races.

➔Section 2. KRS 117.035 is amended to read as follows:

- (1) There shall be a county board of elections, which shall, at the direction and under the supervision of the State Board of Elections, administer the election laws and the registration and purgation of voters within the county.
- (2) (a) The board shall consist of the county clerk, the sheriff, and two (2) members appointed by the State Board of Elections not later than July 1 following the election of persons to statewide office, for a term of four (4) years and until their successors are appointed.~~[- The first board shall be appointed within one (1) month following December 1, 1972, and serve until successors are appointed in April, 1976.]~~
- (b) The sheriff shall not serve on the board during any year in which he is a candidate, but shall recommend to the board a temporary replacement to serve in his place~~[- subject to approval by the board]~~. ***If the sheriff cannot serve because he is sick, injured, or otherwise incapacitated, he may recommend a temporary replacement to serve in his place until the sheriff may resume his duties or a vacancy in office is declared.***
- (c) The county clerk may, at his option, continue to serve on the board during a year in which he is a candidate. If the clerk elects not to serve, he shall recommend a temporary replacement to serve in his place~~[- subject to approval by the board]~~. ***If the county clerk cannot serve because he is sick, injured, or otherwise incapacitated, he may recommend a temporary replacement to serve in his place until the county clerk may resume his duties or a vacancy in office is declared.***
- (d)~~[- If the board rejects a replacement recommended by the sheriff or the county clerk under paragraph (b) or (c) of this subsection, a new name shall be recommended until a temporary appointment is approved by the board.]~~
- ~~(e)}~~ 1. Notwithstanding the provisions of KRS 61.080, service on the board of elections shall be compatible with the holding of any other county or city office;~~[-]~~
2. The members shall be at least twenty-one (21) years of age, qualified voters in the county from which they are appointed, and shall not have been convicted of any election law offense;~~[-]~~
3. One (1) member shall be appointed from a list of five (5) names submitted by the county executive committee of each ***political party as defined in KRS 118.015***~~[- of the two (2) political parties that polled the largest number of votes in the state at the last preceding election for presidential electors]~~. If there are two (2) or more contending executive committees of the same ***political*** party in any county, the one recognized by the written certificate of the chairman of the state central committee of the ***political*** party shall be the one authorized to submit the lists;~~[-]~~
4. ***If the State Board of Elections does not receive the list as required by subparagraph 3. of this paragraph for each political party for each county by the deadline established in paragraph (a) of this subsection or within one (1) month of a vacancy, then the chair of the state central committees for the political parties may submit lists of five (5) names of qualified residents from the remaining counties by August 1 following the election of persons to statewide office or within two (2) months of a vacancy;***
5. ***If the State Board of Elections does not receive a list from either the county executive committee under subparagraph 3. of this paragraph or the chair of the state executive committee under subparagraph 4. of this paragraph, then the State Board of Elections shall appoint a qualified resident from the county at its next regularly scheduled meeting in***

September following the election of persons to statewide office or within three (3) months of a vacancy;

6. *A member appointed by the State Board of Elections*~~[Appointees]~~ may be removed by the State Board of Elections for cause;~~[-]~~
 7. A member appointed by the State Board of Elections may be removed *by the State Board of Elections* upon a request approved by a two-thirds (2/3) vote of the *full membership of the* county executive committee that submitted the member's name. *The county executive shall provide conclusive evidence of the committee's membership and evidence of the committee's two-thirds (2/3) vote before the State Board of Elections removes any member appointed by the State Board of Elections;*
 8. If an appointee is temporarily unable to act, a temporary appointee shall be named by the State Board of Elections. A temporary appointee shall serve until the original appointee notifies the State Board of Elections that he is able to resume his term;~~[-]~~
 9. A member appointed by the State Board of Elections shall not serve on the board if he or she is a candidate for public office, and the member shall resign upon filing papers to become a candidate for public office or shall be removed from office by the State Board of Elections. A member who resigns or is removed because of his or her candidacy shall not resume his or her term following the completion of the candidacy; *and*~~[-]~~
 10. Vacancies and temporary vacancies shall be filled in the same manner as provided for original appointments, and the person appointed to fill the vacancy or temporary vacancy shall be of the same political party as his predecessor.
- ~~(e)(f)~~ Compensation and payment of actual expenses of members shall be set by the fiscal court either as an amount payable on an annual basis, or as an amount payable on a per diem basis of not less than fifteen dollars (\$15) nor more than one hundred dollars (\$100) for each day the board meets.

- (3) A majority of the board shall constitute a quorum. The county clerk shall serve as chairman of the meetings and may vote. In case of a tie, the chairman may cast an additional vote. Records shall be kept of all proceedings, and the records shall be public and kept at the office of the county clerk.
- (4) The board shall meet at least once a month and may meet more frequently if necessary. The board shall stay in session on election days to correct clerical errors and rule on questions regarding voter registration and may make to the election officers such certifications as may be necessary. On election days, appeals may be made to a Circuit Judge, but a ruling of the board shall be reversed only upon a finding that it was arbitrary and capricious.
- (5) In counties containing cities of the first and second class, the board may employ, on a bipartisan basis, a staff sufficient to carry out the duties assigned to the board.

➔Section 3. KRS 117.045 is amended to read as follows:

- (1) The county board of elections shall in the manner prescribed by this section, not later than March 20 each year, except in a year in which no primary and regular elections are scheduled, appoint for each precinct in the county two (2) judges, one (1) clerk and one (1) sheriff of election. They shall serve in all elections held in the county during the year, except for minors seventeen (17) years of age who will become eighteen (18) years of age on or before the day of the regular election who may only serve as election officers for the primary and regular elections as provided in subsection (9) of this section. If a special election is ordered to be held in a year in which no elections are scheduled, the county executive committee of each political party in each county in the territory affected by the special election shall, not later than twenty-eight (28) days preceding the date of the special election, submit a written list of nominees for precinct election officers to serve in the special election in a manner consistent with the provisions of subsection (2) of this section. The county board of elections in each county in the territory affected by the special election shall, not later than twenty-one (21) days preceding the date of the special election, appoint precinct election officers to serve in the special election in a manner consistent with the provisions of subsections (4), (5), and (6) of this section. The State Board of Elections shall promulgate an administrative regulation establishing evaluation procedures which county boards of elections may use to qualify persons nominated to serve as precinct election officers.

- (2) The county executive committees of the two (2) political parties having representation on the State Board of Elections may, on or before March 15 each year, designate in writing to the county board of elections a list of not less than four (4) names for each precinct; except that, in any precinct where there are not as many as four (4) persons possessing the qualifications of an election officer belonging to the political party filing the list, a lesser number may be designated. If there are two (2) or more contending executive committees of the same party in any county, the one recognized by the written certificate of the chairman of the state central committee of the party shall be the one authorized to submit the lists. The lists shall contain the full name, address, phone number, and Social Security number, if available, of each person listed. The lists shall be accompanied by a signed statement from each person stating that he is willing to serve, has not failed to serve without excuse in the past, and has not been convicted of an election law offense or any felony, unless the person's civil rights have been restored by the Governor. The State Board of Elections shall prescribe by administrative regulation the form of the list.
- (3) The Attorney General shall notify each party state central committee of the duties of the party.
- (4) If lists are submitted, the county board of elections shall select one (1) judge at each voting place from each political party's list, and the county board shall select the sheriff from one (1) political party's list and the clerk from the other. If no lists are submitted, the two (2) members of the county board of elections who are appointed by the State Board of Elections may submit lists; and the county board shall select the sheriff and one (1) judge from one (1) list and the clerk and the other judge from the remaining list. If no lists are submitted, the county board shall select the sheriff and one (1) judge from the membership of one (1) party and the clerk and the other judge from the membership of the remaining party. The county board shall, when possible, also appoint an adequate number of alternate precinct election officers from names on the lists which were submitted but which were not selected by the county board as precinct election officers. If alternate precinct election officers are not appointed from the lists of nominees who were not selected as precinct election officers, the county board of elections shall submit its method of selecting alternate precinct election officers to the State Board of Elections for its approval.
- (5) If, after all reasonable efforts have been made, the county board of elections is unable to find two (2) qualified officers for each precinct who are affiliated with the two (2) political parties having representation on the State Board of Elections, the county board shall submit a list of emergency election officer appointments to the State Board of Elections. The county board shall also present, in writing, its efforts to recruit and appoint election officers as prescribed in subsection (4) of this section. The list of emergency appointments may include qualified voters not affiliated with the two (2) parties represented on the state board. The state board, after its review, may approve any or all of the emergency appointments submitted by the county board or may direct the county board to take other action. Any emergency appointment shall be made for the next ensuing election only.
- (6) In addition to precinct election officers appointed under subsection (1) of this section, a county board of elections may appoint up to two (2) additional precinct election officers per precinct with the approval of the State Board of Elections. The state board shall promulgate an administrative regulation establishing conditions under which additional precinct officers may be approved.
- (7) The county board of elections shall, ***not less than***~~within~~ ten (10) days before the next ensuing election, ***send to give***~~to give~~ each election officer written notice of his appointment. The board may direct the sheriff of the county to serve the notice of appointment, if it deems the action is necessary.
- (8) The State Board of Elections may require the county board of elections to submit its list of precinct officers for review. The State Board of Elections may, after a hearing, direct the removal of any election officer who the board finds would not fairly administer the state election laws. The state board shall replace any officer so removed. The board shall provide for the method and manner of the hearing by administrative regulation.
- (9) An election officer shall be a qualified voter of the precinct; except that, where no qualified voter of the required political party is available within the precinct, the election officer shall be a qualified voter of the county. A minor seventeen (17) years of age who will become eighteen (18) years of age on or before the day of the regular election may serve as an election officer for the primary and regular elections in which he or she is qualified to vote; however, no precinct shall have more than one (1) person serving as an election officer who is a minor seventeen (17) years of age. An election officer shall not be a candidate ***for office during the election year. An election officer shall not be***~~or~~ the spouse, parent, brother, sister, or child of a candidate who is to be voted for at the election ***in the precinct in which the election officer will serve on election day.*** An election officer shall not have changed his voter registration party affiliation for one (1) year prior to his

appointment. An election officer may be removed, for cause, at any time up to five (5) days before an election. Vacancies shall be filled by the county board with alternate precinct election officers and the person appointed to fill the vacancy shall be of the same political party as the vacating officer, except for emergency appointments made as provided in subsection (5) of this section.

- (10) If the county board of elections fails to appoint election officers, or if any officer is not present at the precinct at the time for commencing the election, or refuses to act, and if no alternate is available, the officer in attendance representing the political party of the absentee shall appoint a suitable person to act in his place for that election. If both representatives of the same political party are absent, qualified voters present affiliating with that party shall elect, viva voce, suitable persons to act in their places.
- (11) Each election officer shall be paid a minimum of sixty dollars (\$60) per election day served, and such an additional amount as compensation as may be determined by the county board of elections, with the approval of the governing body which would be responsible for funding the election officers' pay, for each election in which the election officer serves, to be paid by the county. For delivering the election packets to the polls, the precinct election officers shall receive in addition the mileage reimbursement provided for state employees, for each mile necessarily traveled in the delivery of the packets to the polls, or a flat fee if the fee equals or exceeds that amount. For delivering election returns, the precinct election judges shall receive in addition the mileage reimbursement provided for state employees for each mile necessarily traveled from the place of voting to and from the place of delivery, or a flat fee if the fee equals or exceeds that amount. The fee paid to the precinct election judges for delivering election returns shall be paid by the county.

➔Section 4. KRS 117.075 is amended to read as follows:

- (1) Any qualified voter who has not been declared mentally disabled by a court of competent jurisdiction, and who, on account of age, disability or illness, is not able to appear at the polls on election day may vote in the following manner. At least seven (7) days prior to the date of the election and prior to the close of normal business hours, he shall present to the clerk by mail or in person his application for an absentee ballot containing a verified statement that his inability to appear is due to age, disability, or illness. The request for the application may be made by telephone, facsimile machine, mail, or in person. **Within three (3) days of receipt of the request, the clerk shall**~~Upon receipt of the application, the clerk shall immediately~~ mail to the voter an absentee ballot and envelopes, and the voter shall cast his vote in accordance with KRS 117.086. The ballot shall be returned by the voter to the county clerk by mail.
- (2) Ballots furnished pursuant to the provisions of this section shall include the names of all candidates for which the voter is entitled to vote.

➔Section 5. KRS 117.085 is amended to read as follows:

- (1) All requests for an application for an absentee ballot may be transmitted by telephone, facsimile machine, by mail, by electronic mail, or in person. Except as provided in paragraph (b) of this subsection, all applications for an absentee ballot shall be transmitted only by mail to the voter or in person at the option of the voter, except that the county clerk shall hand an application for an absentee ballot to a voter permitted to vote by absentee ballot who appears in person to request the application, or shall mail the application to a voter permitted to vote by absentee ballot who requests the application by telephone, facsimile machine, or mail. The absentee ballot application may be requested by the voter ~~or~~ the spouse, parents, or children of the voter, but shall be restricted to the use of the voter. Except for qualified voters who apply pursuant to the requirements of KRS 117.075 and 117.077, those who are incarcerated in jail but have yet to be convicted, military personnel confined to a military base on election day, and persons who qualify under ~~subparagraph 6 of~~ paragraph (a)7. of this subsection, ~~no~~ absentee ballots shall **not** be mailed to a **voter's residential address located in** ~~voter who resides within~~ the county in which the voter is registered. In the case of ballots returned by mail, the county clerk shall provide an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting to a voter who presents a completed application for an absentee ballot as provided in this section and who is properly registered as stated in his or her application.
 - (a) The following voters may apply to cast their votes by mail-in absentee ballot if the application is received not later than the close of business hours seven (7) days before the election:
 1. Voters permitted to vote by absentee ballot pursuant to KRS 117.075;
 2. **Voters who are** residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas;

3. ***Voters who are*** students who temporarily reside outside the county of their residence~~[-and other voters who temporarily reside outside the state but who are still eligible to vote in this state];~~
 4. ***Voters***~~[Persons]~~ who are incarcerated in jail who have been charged with a crime but have not been convicted of the crime;
 5. Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before an election of electors for President and Vice President of the United States, who shall be permitted to cast an absentee ballot for electors for President and Vice President of the United States only;~~[-and]~~
 6. ***Voters who temporarily reside outside the state but who are still eligible to vote in this state; and***
 7. ***Voters***~~[Persons]~~ who are prevented from voting in person at the polls on election day and from casting an absentee ballot in person in the county clerk's office on all days absentee voting is conducted prior to election day because their employment location requires them to be absent from the county all hours and all days absentee voting is conducted in the county clerk's office.
- (b) Residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and overseas citizens, may apply for an absentee ballot by means of the federal post-card application, which may be transmitted to the county clerk's office by mail or by facsimile machine. The application may be used to register, reregister, and to apply for an absentee ballot. If the federal post-card application is received at any time not less than seven (7) days before the election, the county clerk shall affix his or her seal to the application form upon receipt.
- (c) Absentee voting shall be conducted in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections during normal business hours for at least the twelve (12) working days before the election. A county board of elections may permit absentee voting to be conducted on a voting machine for a period longer than the twelve (12) working days before the election.
- (d) Any qualified voter in the county who is not permitted to vote by absentee ballot under paragraph (a) of ***this*** subsection~~[-(1) of this section]~~ who ***will***~~[shall]~~ be absent from the county on any election day may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.
- (e) ***The following voters may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections:***
1. ***Voters who are*** residents of Kentucky who are members of the Armed Forces, dependents of members of the Armed Forces, and citizens residing overseas, who ***will***~~[shall]~~ be absent from the county on any election day;~~[-may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.]-~~
 - 2.~~[(f)]~~ ***Voters who are*** students who temporarily reside outside the county of their residence;~~[-and other voters who temporarily reside outside the state but who are still eligible to vote in this state who shall be absent from the county on any election day may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.]-~~
 - 3.~~[(g)]~~ Voters who have surgery scheduled that will require hospitalization on election day, and the spouse of the voter;~~[-may, at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.]-~~

4. *Voters who temporarily reside outside the state but who are still eligible to vote in this state and who will be absent from the county on any election day;*
 5. *Voters who are residents of Kentucky who are members of the Armed Forces confined to a military base on election day and who learn of that confinement within seven (7) days or less of an election and are not eligible for a paper absentee ballot under this subsection; and*
 6. *A voter who is a pregnant woman in her last trimester of pregnancy at the time she wishes to vote under this paragraph. The application form for a voter under this subparagraph shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote.*
- (f)(h) Voters who change their place of residence to a different state while the registration books are closed in the new state of residence before a presidential election shall be permitted to cast an absentee ballot for President and Vice President only, by making application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.
- (g)(i) Any member of the county board of elections, any precinct election officer appointed to serve in a precinct other than that in which he or she is registered, any alternate precinct election officer, any deputy county clerk, any staff for the State Board of Elections, and any staff for the county board of elections may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. The application form for those persons shall be prescribed by the State Board of Elections and, in the case of application by precinct election officers, shall contain a verification of appointment signed by a member of the county board of elections. If an alternate precinct election officer or a precinct election officer appointed to serve in a precinct other than that in which he or she is registered receives his or her appointment while absentee voting is being conducted in the county, such officer may vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, up to the close of normal business hours on the day before the election. In case of such voters, the verification of appointment shall also contain the date of appointment. The applications shall be restricted to the use of the voter only.
- ~~(j) Any pregnant woman who is in her last trimester of pregnancy at the time she wishes to vote under this paragraph may at any time during normal business hours on those days absentee voting is conducted in the county clerk's office, make application to vote on a voting machine in the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections. The application form for those persons shall be prescribed by the State Board of Elections, which shall contain the woman's sworn statement that she is in fact in her last trimester of pregnancy at the time she wishes to vote.~~
- (h)(k) The members of the county board of elections or their designees who provide equal representation of both political parties may serve as precinct election officers, without compensation, for all absentee voting performed on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections. If the members of the county board of elections or their designees serve as precinct election officers for the absentee voting, they shall perform the same duties and exercise the same authority as precinct election officers who serve on the day of an election. If the members of the county board of elections or their designees do not serve as precinct election officers for the absentee voting, the county clerk or deputy county clerks shall supervise the absentee voting.
- ~~(i)(l) Any individual qualified to appoint challengers for the day of an election may also appoint challengers to observe all absentee voting performed at the county clerk's office or other place designated by the county board of elections, and approved by the State Board of Elections, and those challengers may exercise the same privileges as challengers appointed for observing voting on the day of an election at a regular polling place.~~
- ~~(m) Residents of Kentucky who are members of the Armed Forces confined to a military base on election day and learn of that confinement within seven (7) days or less of an election and are not eligible for a paper absentee ballot under subsection (1) of this section may, at any time during normal business hours~~

~~on those days absentee voting is conducted in the county clerk's office, make application in person to the county clerk to vote on a voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections.]~~

- (2) The clerk shall type the name of the voter permitted to vote by absentee ballot on the application form for that person's use and no other. The absentee ballot application form shall be in the form prescribed by the State Board of Elections, shall bear the seal of the county clerk, and shall contain the following information: name, residential address, precinct, party affiliation, statement of the reason the person cannot vote in person on election day, statement of where the voter shall be on election day, statement of compliance with residency requirements for voting in the precinct, and the voter's mailing address for an absentee ballot. The form shall be verified and signed by the voter. A notice of the actual penalty provisions in KRS 117.995(2) and (5) shall be printed on the application.
- (3) If the county clerk finds that the voter is properly registered as stated in his or her application and qualifies to receive an absentee ballot by mail, he or she shall mail to the voter an absentee ballot, two (2) official envelopes for returning the ballot, and instructions for voting. The county clerk shall complete a postal form for a certificate of mailing for ballots mailed within the fifty (50) states, and it shall be stamped by the postal service when the ballots are mailed. An absentee ballot may be transmitted by facsimile machine to a resident of Kentucky who is a member of the Armed Forces, a dependent of a member of the Armed Forces, or a citizen residing overseas.
- (4) Absentee ballots which are requested prior to the printing of the ballots shall be mailed by the county clerk to the voter within three (3) days of the receipt of the printed ballots; and absentee ballots which are requested subsequent to the receipt of the ballots by the county clerk shall be mailed to the voter within three (3) days of the receipt of the request.
- (5) The clerk shall cause ballots to be printed fifty (50) days prior to each primary or general election.
- (6) The outer envelope shall bear the words "Absentee Ballot" and the address and official title of the county clerk and shall provide space for the voter's signature, voting address, precinct number, and signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature. A detachable flap on the inner envelope shall provide space for the voter's signature, voting address, precinct number, signatures of two (2) witnesses if the voter signs the form with the use of a mark instead of the voter's signature and notice of penalty provided in KRS 117.995(5). The clerk shall type the voter's address and precinct number in the upper left hand corner of the outer envelope and of the detachable flap on the inner envelope immediately below the blank space for the voter's signature. The inner envelope shall be blank. The clerk shall retain the application and the postal form required by subsection (3) of this section for twenty-two (22) months after the election.
- (7) Any person who has received an absentee ballot by mail but who knows at least seven (7) days before the date of the election that he or she will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office no later than seven (7) days prior to the date of the election. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who were sent absentee ballots, and the voter may vote in the precinct in which he or she is properly registered.
- (8) Any voter qualified for a mail-in absentee ballot who does not receive a requested mail-in ballot within a reasonable amount of time shall contact the county clerk, who shall reissue a second ballot. The county clerk shall keep a record of the absentee ballots issued and returned by mail, and the absentee voting that is performed on the voting machine in the county clerk's office or other place designated by the county board of elections and approved by the State Board of Elections, to verify that only the first voted ballot to be returned by the voter is counted. Upon the return of any ballot after the first ballot is returned, the clerk shall mark on the outer envelope of the sealed ballot the words "Canceled because ballot reissued."
- (9) Any member of the military who has received an absentee ballot by mail but who knows that he or she will be in the county on election day and who has not voted pursuant to the provisions of KRS 117.086 shall cancel his or her absentee ballot and vote in person. The voter shall return the absentee ballot to the county clerk's office on or before election day. Upon the return of the absentee ballot, the clerk shall mark on the outer envelope of the sealed ballot or the unmarked ballot the words "Canceled because voter appeared to vote in person." Sealed envelopes so marked shall not be opened. The clerk shall remove the voter's name from the list of persons who

were sent absentee ballots, provide the voter with written authorization to vote at the precinct, and the voter may vote in the precinct in which he or she is properly registered.

➔Section 6. KRS 117.187 is amended to read as follows:

- (1) The State Board of Elections shall regularly provide special training regarding the election laws and methods of enforcement to all members of county boards of elections, county attorneys, Commonwealth's attorneys, and certain members of the Department of Kentucky State Police.
- (2) The county board of elections shall provide special training before each primary and regular election, ***and any special election held during a year in which no elections are scheduled***, to all election officers, alternates, and certified challengers regarding their duties and the penalties for failure to perform. Election officers, including alternates, and certified challengers shall attend the training session, unless excused by the county board of elections for reason of illness or other emergency. Any person who fails to attend a training session without being excused shall be prohibited from serving as an election officer or challenger for a period of five (5) years. The training provided by the county board of elections shall include but not be limited to the following:
 - (a) Operation of the voting machine or ballot cards;
 - (b) Posting of necessary signs and notices at the polling place;
 - (c) Voter assistance;
 - (d) Maintaining precinct rosters;
 - (e) Confirmation of a voter's identity;
 - (f) Challenge of a voter;
 - (g) Completing changes of address or name at the polling place;
 - (h) Qualifications for voting in a primary election;
 - (i) Electioneering and exit polling;
 - (j) Write-in voting procedures;
 - (k) Persons who may be in the voting room;
 - (l) Election violations and penalties;
 - (m) Assistance which may be provided by law enforcement officers;
 - (n) Election reports;
 - (o) Disability awareness;
 - (p) Provisional voting process;~~and~~
 - (q) Election emergency contingency plan; ***and***
 - (r) ***Elections and voting equipment security plan.***
- (3) The county attorney shall attend the training session for election officers to assist in explaining the duties and penalties for failure to perform.
- (4) Compensation in the minimum amount of ten dollars (\$10) for reimbursement of actual expenses shall be paid by the county to the election officers for attending the training session.

➔Section 7. KRS 117.265 is amended to read as follows:

- (1) A voter may, at any regular or special election, cast a write-in vote for any person qualified as provided in subsection (2) or (3) of this section, whose name does not appear upon the ballot label~~as a candidate~~ for any office, by writing the name of his or her choice upon the appropriate device for the office being voted on provided on the voting machine as required by KRS 117.125. Any candidate for city office who is defeated in a partisan or nonpartisan primary shall be ineligible as a candidate for the same office in the regular election. Any voter utilizing an absentee ballot for a regular or special election may write in a vote for any eligible person whose name does not appear upon the ballot, by writing the name of his or her choice under the office.

- (2) Write-in votes shall be counted only for candidates for election to office who have filed a declaration of intent to be a write-in candidate with the Secretary of State or county clerk, depending on the office being sought, on or before the fourth Friday in October preceding the date of the regular election and not ***later than the second Friday before***~~less than ten (10) days preceding~~ the date of a special election. The declaration of intent shall be filed no ***earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot, and no*** later than 4 p.m. local time at the place of filing when filed on the last date on which papers may be filed. The declaration of intent shall be on a form prescribed by the Secretary of State.
- (3) A person shall not be eligible as a write-in candidate:
- (a) For more than one (1) office in a regular or special election; or
 - (b) If his or her name appears upon the ballot label ~~as a candidate~~ for any office, except that the candidate may file a notice of withdrawal prior to filing an intent to be a write-in candidate for office when a vacancy in a different office occurs because of:
 1. Death;
 2. Disqualification to hold the office sought;
 3. Severe disabling condition which arose after the nomination; or
 4. The nomination of an unopposed candidate.
- (4) Persons who wish to run for President and Vice-President shall file a declaration of intent to be a write-in candidate, along with a list of presidential electors pledged to those candidates, with the Secretary of State on or before the fourth Friday in October preceding the date of the regular election for those offices. The declaration of intent shall be filed no ***earlier than the first Wednesday after the first Monday in November of the year preceding the year the office will appear on the ballot, and no*** later than 4 p.m. local time at the place of filing when filed on the last date on which papers may be filed. Write-in votes cast for the candidates whose names appear on the ballot shall apply to the slate of pledged presidential electors, whose names shall not appear on the ballot.
- (5) The county clerk shall provide to the precinct election officers certified lists of those persons who have filed declarations of intent as provided in subsections (2) and (3) of this section. Only write-in votes cast for qualified candidates shall be counted.
- (6) Two (2) election officers of opposing parties shall upon the request of any voter instruct the voter on how to cast a write-in vote.

➔Section 8. KRS 117.275 is amended to read as follows:

- (1) At the count of the votes in any precinct, any candidate or slate of candidates and any representatives to witness and check the count of the votes therein, who are authorized to be appointed as is provided in subsection (6) of this section, shall be admitted and be permitted to be present and witness the count.
- (2) As soon as the polls are closed, and the last voter has voted, the judges shall immediately lock and seal~~the operating lever, mechanism or other device of~~ the voting equipment so that the voting and counting mechanism will be prevented from operation, and they shall sign a certificate stating:
 - (a) That the voting equipment has been locked against voting and sealed;
 - (b) The number of voters, as shown on the public counters;
 - (c) The number registered on the protective or accumulative counter or device, if any; and
 - (d) The number or other designation of the voting equipment, which certificate shall be returned by the judges of election to the officials authorized by law to receive it. The judges shall compare the number of voters, as shown by the counter of the voting equipment, with the number of those who have voted as shown by the protective or accumulative counter or device, if any.
- (3) Where voting equipment is used which does not print the candidates' names ***along with the***~~and~~ total votes received on a general return sheet or record for that equipment, the procedure to be followed shall be ***as follows***:

- (a) The judges, in the presence of the representatives mentioned in subsection (1) of this section, if any, and of all other persons who may be lawfully within the polling place, shall **give**~~make visible the registering counters, and, for that purpose, shall unlock and open the doors, or other covering concealing the counters, giving~~ full view of all the counter numbers;~~[- The judges shall, under the scrutiny of the representatives, and in the order of the offices as their titles are arranged on the machine, read and announce, in distinct tones, the results as shown by the counter numbers for each candidate or slate of candidates and for and against each question voted on. The counters shall not be read consecutively along the party rows or columns, but shall always be read along the office columns or rows, completing the canvass for each office or question before proceeding to the next. The vote as registered shall be entered by the judges, in ink, on quadruplicate return sheets, and also on a general return sheet and statement, all of which, after the canvass is completed, shall be signed by the election officers.]-~~
- (b) ***The judges shall enter, in ink,*** the total votes cast for each candidate, and slate of candidates, and for and against each question~~[- shall be entered]~~ on the ~~[general and quadruplicate]~~ return sheets; ***and***
- (c) ***Each precinct election officer shall sign the return sheets, and a copy of the return sheets shall be posted on the precinct door***~~[- and statement. The proclamation of the result of the votes cast shall be announced distinctly and audibly by one (1) of the judges, who shall read the name and the vote cast for each candidate, and slate of candidates, and the vote for and against each question submitted. During the proclamation, ample opportunity shall be given to any person lawfully present to compare the results so announced with the counter dials of the voting equipment, and any necessary corrections shall be made by the judges, and the door or other cover of the voting equipment shall then be closed and locked].~~
- (4) ***Where voting equipment is used that prints the candidates' names along with the total votes received on a return sheet or record for that equipment, the precinct election officers shall sign the return sheets or record for the voting equipment, which shall be posted on the door of the precinct.***
- (5) If any officer shall decline to sign the return *sheets*, he or she shall state the reason in writing, and a copy thereof, signed by the officer, shall be enclosed with the return *sheets*.
- (6) Each of the return sheets, ***if applicable, and the record of the voting equipment*** shall be enclosed in an envelope~~[- which shall be securely sealed, and each of the officers shall write his or her name across the fold of the envelope].~~ One (1) *copy* of the ~~[quadruplicate]~~ return sheets, ***if applicable, one (1) copy of the record of the voting equipment,***~~[along with the general return sheet]~~ and the write-in roll, if any write-in votes were cast in the precinct, shall be directed to the county board of elections of the county in which the election is being held. ***One (1) copy of the return sheets or record of the voting equipment shall be given***~~[- one (1)]~~ to the county clerk of the county in which the election is being held and ***to each of***~~one (1) to]~~ the local governing ***bodies***~~[body of each]~~ of the two (2) dominant political parties, but a local governing body of a dominant political party may decline a copy of the precinct election return by filing a written declination with the county board of elections prior to the election, and upon this declination, a printed copy shall not be issued to the political party so declining. The declination on file shall be effective for that election and any subsequent elections until revoked by the local governing body of a dominant political party by filing a written revocation with the county board of elections. The envelope shall have endorsed thereon a certificate of the election officers, stating the number of the machine, the precinct where it has been used, the number on the seal, and the number on the protective or accumulative counter or device at the close of the polls.
- (7) Following the tabulation of all votes cast in the election, including absentee votes and write-in votes, the county board shall mail ***a copy of the precinct by precinct summary of*** the tabulation sheets showing the results from each precinct to the State Board of Elections and the county clerk shall mail or deliver the precinct ***signature rosters***~~[lists]~~ from each precinct to the State Board of Elections ***during the period established by KRS 117.355(3).***
- (8)~~(5)~~ As soon as possible after the completion of the count, the two (2) judges shall return to the county board of elections the keys to the voting machine received and receipted for by them, and the county clerk in which the precinct is located shall have the voting machine properly boxed or securely covered and removed to a proper and secure place of storage.
- (9)~~(6)~~ In primaries, each candidate, slate of candidates, or group of candidates may designate to the county board of elections a representative to witness and check the vote count. In regular elections, the governing authority of each political party, each candidate for member of board of education, nonpartisan candidate,

independent candidate, or independent ticket may designate a representative to the county board of elections to witness and check the vote count. The county board of elections shall authorize representatives of the news media to witness the vote count.

- ~~(10)(7)~~ If supplemental paper ballots have been approved, as provided in KRS 118.215, after the polls are closed, the ~~[precinct election officials shall stamp "Unused" on all supplemental paper ballots not used. The election officers shall string all used ballots' stubs upon a string provided for that purpose, and the stubs shall be placed in an envelope. The]~~ two (2) judges shall return to the county clerk's office the locked ballot box, all ballot stubs, spoiled ballots, and **unvoted**~~[unused]~~ ballots at the same time as the tabulation of votes from the voting machine is delivered. The county clerk shall issue a receipt for the number of ballot stubs, **unvoted**~~[unused]~~ ballots, spoiled ballots and the ballot box.
- (11) The county board of elections, or its designee, shall count and tally the paper ballots manually or with the use of tabulating equipment which does not involve an additional voting system. The results of the vote tally shall be certified by the county board of elections to the county clerk and to the Secretary of State.
- (12) The county board of elections shall authorize the candidates, slates of candidates, or their representatives, and representatives of the news media to be present during the counting of the paper ballots.
- (13) Except as otherwise required in this chapter that certain records and papers relating to specified elections be retained for twenty-two (22) months, the county clerk shall retain the **voted paper ballots for twenty-two (22) months and the unvoted** paper ballots for sixty (60) days **after each election day**, after which time they shall be destroyed in a manner to render them unreadable by the county board of elections if no contest or recount action has been filed.

➔Section 9. KRS 117.295 is amended to read as follows:

- (1) For a period of ten (10) days following any primary election, and for a period of thirty (30) days following any general or special election, the voting machine shall remain locked against voting **and the ballot boxes containing all paper ballots shall remain locked**, except that **the voting machines and the ballot boxes**~~may be opened and all the data and figures therein examined, upon the order of any court of competent jurisdiction, or judge thereof, or by direction of any legislative committee authorized and empowered to investigate and report upon contested elections~~~~[affected by the use of a voting machine]~~, and all the data and figures shall be examined by the court, judge, or committee in the presence of the officer having the custody of the machine **and ballot boxes**. In the event of a contest of election, the court in which the contest is pending or the committee before which the contest is being heard may, upon motion of any party to the contest, issue an order requiring that the voting machines **and ballot boxes** shall remain continuously locked for further time as may be reasonable or necessary, with due regard for the preparation of the machines for a succeeding primary, regular, or special election, but in no event shall the order compel that the machines remain locked to a time within thirty (30) days next preceding any approaching primary, regular, or special election.
- (2) During the period when the machine **and the ballot boxes are**~~is~~ required to be kept locked, the keys thereto shall remain in the possession of the county board of elections. After that period, it shall be the duty of the county board of elections to return the keys to the custody of the county clerk.

➔Section 10. KRS 117.315 is amended to read as follows:

- (1) Each political party is entitled to have not exceeding two (2) challengers at each precinct during the holding of the primary election. Any group of bona fide candidates, as defined in KRS 118.176, of the same political party equal to twenty-five percent (25%) of all the candidates for that party to be voted for in a county in any primary, including state, district, and all other candidates, may recommend to the county committee or governing authority of the party for the county a list of persons whom they desire to have appointed as challengers in each precinct in the county. If more than two (2) such lists are furnished, the committee or governing authority, in making appointments of challengers, shall alternate between the several lists so furnished so as to give to each list an equal amount or proportion of the appointments, but in no event shall there be appointed more than one (1) challenger for any precinct from any one (1) list. The list of challengers shall be presented to the chair or secretary of the party committee of the county on or before the third Friday in April preceding the primary, and the committee or the chairman thereof shall make the appointments, certify to same, and present a list of certified challengers to the county clerk at least twenty (20) days before the date on which the primary is held. The appointment of challengers shall be certified in all respects as challengers at regular elections, except as otherwise provided in this section. The challengers shall be registered voters of the county in which the primary is held and shall be subject to the same penalties and possess the same rights and

privileges as challengers at regular elections, except that the challengers of one political party shall not be entitled to challenge persons who offer to vote for candidates of any other party in the primary. The provisions of this section shall be enforceable against the chair of the political party committees by a mandatory summary proceeding instituted in the Circuit Court. The order of the court may be reviewed by the Court of Appeals as provided for the granting or dissolving of temporary injunctions.

- (2) Any school board candidate, any independent ticket or candidate for city office, any nonpartisan city candidate, or candidate for an office of the Court of Justice at the primary or regular election may designate not more than one (1) challenger to be present at and witness the holding of primaries or elections in each precinct in the county. A candidate who designates a challenger shall present the county clerk with the name of the challenger at least twenty (20) days preceding the primary or regular election. The challenger shall be entitled to stay in the room or at the door. The challenger shall be a registered voter of the county in which the primary or election is held, shall be appointed in writing by the chair of the committee, independent candidate, or candidates representing a ticket, and shall produce written appointment on demand of any election officer.
- (3) The county executive committee of any political party having a ticket to elect at any regular *or special* election may designate not more than two (2) challengers to be present at and witness the holding of the election in each precinct in the county. The challengers shall be entitled to stay in the room or at the door. The challengers shall be registered voters of the county in which the election is held, shall be appointed in writing signed by the chair of the committee, and shall produce written appointments on demand of any election officer. The committee or chair shall present the county clerk with a list of designated challengers at least twenty (20) days preceding a regular election *and at least fifteen (15) days preceding a special election*.
- (4) Except as provided in KRS Chapter 242, not later than the fourth Tuesday preceding an election at which constitutional amendments or other public questions are to be submitted to the vote of the people, any committee that in good faith advocates or opposes an amendment or public question may file a petition with the clerk of the county asking that the petitioners be recognized as the committee entitled to nominate ~~inspectors and~~ challengers to serve at the election at which the constitutional amendment or public question is to be voted on. If more than one (1) committee alleging itself to advocate or oppose the same amendment file such a petition, the county board of elections shall decide, and announce by certified mail, return receipt requested, to each committee not less than the third Tuesday preceding the election, which committee is entitled to nominate the challengers ~~and inspectors~~. The decision shall not be final, but any aggrieved party may institute proceedings with the county judge/executive and, upon hearing, the county judge/executive shall determine which of the committees shall be recognized as the one to select ~~inspectors and~~ challengers at the election.
- (5) The committee shall file the names of the persons nominated by it with the clerk of the county at least twenty (20) days before the *primary and regular elections and not less than fifteen (15) days preceding the date of a special* election. The county board of elections shall, not later than the Thursday preceding the election, certify the nominees of the committee for the respective precincts to serve as challengers ~~and inspectors~~ at the election where any constitutional amendment or public question is to be voted upon. If more than one (1) amendment or question is to be voted upon, the county board of elections may designate, on the petition of the committee, ~~one (1) person for each amendment and question to serve as inspector at the election and~~ one (1) person for each amendment and question to serve as challenger at the election.
- (6) The challengers ~~and inspectors~~ shall perform their duties in the same manner and be subject to the same privileges as other ~~inspectors and~~ challengers at an election.

➔Section 11. KRS 117.355 is amended to read as follows:

- (1) Within three (3) days after any primary or general election, the precinct election sheriff shall file a report with the chairman of the county board of elections and with the local grand jury. The report shall include any irregularities observed and any recommendations for improving the election process.
- (2) Within ten (10) days after any primary or general election, the county board of elections shall file a report with the State Board of Elections and the local grand jury. The report shall include any irregularities of which the county board has knowledge and any recommendations for improving the election process. The report shall also include a breakdown by precinct of the number of voters requiring assistance to vote and the reasons therefor; the number of special ballots cast by category; and any other information required by the state board.

- (3) Within thirty (30) days after any primary or general election, the county board of elections shall transmit the information required by KRS 117.275(4) *to* (7).
- (4) The State Board of Elections shall issue administrative regulations to prescribe the forms required by this section.

➔Section 12. KRS 118.425 is amended to read as follows:

- (1) The State Board of Elections shall issue certificates of election where the successful candidate was voted for by the state at large, was voted for by a district greater than one (1) county, or was a candidate for member of Congress or the General Assembly.
- (2) Except as provided in subsection (3) of this section, not later than the second Monday after the election, the county board of elections shall issue certificates of election where the successful candidate was voted for by the electors of one (1) county, or of a district less than one (1) county, except members of Congress, members of the General Assembly, and designated officers filing with the Secretary of State. The right to contest or recount an election in accordance with KRS Chapter 120 shall not be impaired. The county board of elections of the candidate's residence shall issue certificates of election where the successful candidate was voted for by the electors of a city whose boundaries extend beyond those of a single county. The board shall forward the certificate to the elected candidate. If the board finds that two (2) or more candidates have received the highest and equal number of votes for the same office, the board shall determine by lot which of the candidates is elected.
- (3) In counties containing cities of the first class, not later than the thirtieth day of December after the election, the county board of elections shall issue certificates of election where the successful candidate was voted for by the electors of the county, except members of Congress, members of the General Assembly, and designated officers filing with the Secretary of State. The right to contest or recount an election in accordance with KRS Chapter 120 shall not be impaired. The county board of elections of the candidate's residence shall issue certificates of election where the successful candidate was voted for by the electors of a city whose boundaries extend beyond those of a single county. The board shall forward the certificate to the elected candidate. If the board finds that two (2) or more candidates have received the highest and equal number of votes for the same office, the board shall determine by lot which of the candidates is elected.
- (4) In the case of all offices voted for, and in the case of public questions submitted to the vote of the people of the state at large or of a district greater than one (1) county, the county board of elections shall make out duplicate certificates of the total number of votes received by each of the candidates for the office and the total number of votes for and against each of the questions on a form prescribed by the State Board of Elections through the promulgation of administrative regulations in accordance with KRS Chapter 13A. The certificate of the total number of votes shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the Friday following the election. For special elections the certificate of the total number of votes shall be certified to the Secretary of State's Office not later than 12 p.m., prevailing time, on the day following the election. The clerk shall keep one (1) of the certificates in his or her office. He or she shall not later than three (3) days after receiving the certificate from the board, forward the other certificate by mail to the Secretary of State who shall deliver it to the State Board of Elections.
- (5) The State Board of Elections shall meet, to count and tabulate the votes received by the different candidates as certified to the Secretary of State *no later than* ~~on~~ the third Monday after the election. The right to contest or recount an election in accordance with KRS Chapter 120 shall not be impaired. A majority of the members of the board shall constitute a quorum and may act. The board shall make out the certificates of election in the office of the board from the returns made. The board shall make out duplicate certificates of election, in writing, over the signatures of its members. The board shall forward the original certificate, by mail, to the elected candidate. The duplicate shall be retained in the office of the board. In the case of the election of a representative in Congress, an additional certificate shall be made and sent, by mail, to the clerk of the House of Representatives.
- (6) The certificate of election shall be issued to the candidate receiving the highest number of votes in the territory from which the election is to be made. If two (2) or more persons are found to have received the highest and an equal number of votes for the same office, the election shall be determined by lot in the manner the board directs, in the presence of not less than three (3) other persons. In the case of elections for electors of President and Vice President of the United States, the board shall issue a certificate of election to each elector of the political party or organization whose candidates for President and Vice President received the highest number of votes and the determination by the board that the candidates of any political party or organization for

President and Vice President have received the highest number of votes shall constitute a determination that the electors nominated by that party have been elected.

➔Section 13. The following KRS section is repealed:

117.285 Form of return sheets and statement -- Delivery.

Signed by Governor April 26, 2010.